



## Annex 2: Does the Xayaburi resettlement comply with Lao law?

The Xayaburi project's resettlement scheme has not complied with Lao laws and policies on involuntary resettlement and compensation. As the following initial assessment demonstrates, the project has violated at least 22 requirements set forth in Laos' Decree #192 on Compensation and Resettlement of People Affected by Development Projects (2005).<sup>1</sup> The project also has failed to fully comply with at least eight requirements in the decree.

The requirements of Decree #192 are further detailed in its 2005 implementing regulations.<sup>2</sup> The protection of Lao citizens' food security is further supported by the requirements of the 1991 Constitution, 2003 Land Law, 2004 Law on Food, 2006 National Policy on Environmental and Social Sustainability of the Hydropower Sector, and the 2010 Decree on Environmental Impact Assessment. These laws and policies were reviewed but not assessed for compliance in the following chart.

Key requirements of Lao decree 192 (2005) on resettlement and compensation	Has the Xayaburi project complied with the decree?
<b>Part I: No compliance</b>	
<p><b>(1) Leave the affected people no worse off than before the project.</b>  <i>The law "aims to ensure that project affected people are compensated and assisted to improve or maintain their pre-project incomes and living standards, and are not worse off than they would have been without the project."</i>            (Art. 1)</p>	<p><b>No compliance.</b> As discussed in more detail below, resettled villagers reported lower incomes, lower quality of life, and higher food insecurity than before. Similar risks exist in the villages that will be resettled in the next two years, because concerns about food security, income sources, and land availability remain unresolved.</p>

<sup>1</sup> For the full text of Decree 192, please visit:

<http://www.prflaos.org/Government%20Policy/Land%20and%20Forest/41.%20PM%20Decree%20on%20the%20C ompensation%20and%20Resettlement%20of%20the%20De.pdf>.

<sup>2</sup> Regulations for Implementing Decree 192 on Compensation and Resettlement of People Affected by Development Projects (2005),

<http://www.prflaos.org/Government%20Policy/Land%20and%20Forest/42.%20Regulations%20for%20Implementi ng%20Decree%20192%20on%20compensation%20.pdf>.

<p><b>(2) Make every attempt to avoid causing impacts on people.</b>  <i>Project owners have a responsibility to “make every attempt so that displacement and other direct adverse impacts on peoples’ assets and income are avoided or, if unavoidable, minimized by examining all design options available to the project.”</i>  <i>(Art. 4b)</i></p>	<p><b>No compliance.</b> The project company proceeded with resettlement of the first village before the Mekong River Commission made a decision on whether the project will go forward, and even before the Lao government publicly stated that construction would move forward. The company told villagers that additional resettlement will continue over the next year, with the next villages to be resettled by early 2013.</p>
<p><b>(3) Set aside adequate budget for resettlement and compensation.</b>  <i>Project owners have a responsibility to “be responsible for the timely provision of adequate budget for all aspects of planning, implementing, monitoring and evaluating all resettlement and compensation activities.”</i>  <i>(Art. 4c)</i></p>	<p><b>No compliance.</b> The project company does not appear to have provided full and adequate compensation to restore the livelihoods of affected people. Key elements of the first resettlement were not completed on time, such as construction of housing and preparation of agricultural lands.</p>
<p><b>(4) Pay particular attention to vulnerable groups.</b>  <i>Project owners have a responsibility to “pay particular attention to the needs of the poorest affected people, and vulnerable groups that may be at high risk of impoverishment. Appropriate assistance must be provided to help them improve their socio-economic status.”</i>  <i>(Art. 4d)</i></p>	<p><b>No compliance.</b> Based on interviews with villagers, the project company did not take into account the particular concerns of the most vulnerable groups. There is no evidence that consultations were conducted with these groups. In the villages of Houay Hip and Pak Mon, for example, poor households were being displaced from their lands without any support whatsoever.</p>
<p><b>(5) Ensure meaningful involvement of affected people in the resettlement process.</b>  <i>Project owners have a responsibility to “ensure that the resettlement process is carried out through a meaningful involvement of project-affected communities, and their existing social and cultural institutions are supported to the greatest extent feasible.”</i>  <i>(Art. 4e)</i></p>	<p><b>No compliance.</b> Not all households within communities who will be impacted by the dam have been consulted. Where interactions took place between the company and affected communities, they did not consist of two-way dialogue or meet other international standards for community engagement. The project company has visited many of the affected villages around two to four times in order to take surveys. On one occasion, the company showed a video to villagers describing the benefits of the project, the quality of resettlement sites, and how the dam’s fish passages will work. However, at no point were communities given an opportunity to provide input into the design of the resettlement process. Most villagers who we interviewed were unclear about how much compensation and what type of resettlement package they would receive.</p>

<p><b>(6) Ensure that all affected people are provided with assistance.</b>  <i>For purposes of compensation, rehabilitation, and rehabilitation assistance, “all individuals and entities residing or making a living within the area to be acquired for a project as of the formally recognized cut-off date would be considered as project affected persons (APs).” Furthermore, “people who are not living within the project areas, but have land and buildings in the project areas, are also entitled to compensation, resettlement and rehabilitation assistance.”</i>  <i>(Art. 5)</i></p>	<p><b>No compliance.</b> The company appears to have excluded several categories of affected people or livelihood sources from assistance: (1) villagers living on land where resettlement villages will be built are being displaced without any compensation or assistance; (2) no consideration of impacts on fisheries; (3) no consideration of how the villagers depend on the Mekong River for their income and resources; (4) in some cases, no compensation for lost micro-hydropower schemes. Many villagers are unclear about whether the company intends to provide them with compensation, and are also unclear about how exactly their villages will be impacted.</p>
<p><b>(7) Replace lost land with land of equivalent size and productivity.</b>  <i>“Where significantly large or entire land holding is affected by a project namely agriculture, residential or commercial land, the compensation shall be through provision of “land for land” arrangements of equivalent size and productivity and be acceptable to [affected people] and project owners.”</i>  <i>(Art. 6-2)</i></p>	<p><b>No compliance.</b> In the first resettlement village, the company provided only 0.75 hectares of land per family, when most families previously owned around two hectares. Villagers that we interviewed consistently argued that 0.75 hectares was insufficient for their livelihoods.</p>
<p><b>(8) Provide compensation for lost or damaged houses and other structures.</b>  <i>“If the house or structure is only partially affected by the Project and the remaining structure is unviable for continued use or the remaining area is less than the minimum house size, the [affected people] shall be entitled to be compensated for the entire structure at replacement cost without depreciation or deduction for salvaged materials. In case the remaining structure is viable for continued use, project owners shall provide compensation for the lost portion and assistance in cash or material for restoration of the remaining structure.”</i>  <i>(Art. 6-3)</i></p>	<p><b>No compliance.</b> The project company several villages that it would not provide compensation for any impacts above 275 meters, the level at which they expect waters to rise. Several villagers whose housing are currently on higher ground but will soon be located near the new riverbank are concerned. Several expressed fear about possible damage to their houses from flooding, erosion, and increased insects. The company has not offered to provide compensation to these households.</p>
<p><b>(9) Compensate affected people for lost land use rights, even if they do not own the land.</b>  <i>Affected persons “who are living in rural or remote areas, who do not have any legal Land Use Certificate or any other acceptable proof indicating land use right to the affected land and assets they occupy shall be compensated for their lost rights to use land and for their other assets at replacement</i></p>	<p><b>No compliance.</b> In several villages, the project company does not appear to have recognized the full range of land rights. Where villagers did not have formal title to the land, the company said it would not provide compensation even though the villagers have traditional land use and access rights.</p>

<p><i>cost and provided additional assistance to ensure that they are not worse-off due to the project. [Affected persons] in urban areas, who do not have any legal Land Use Certificate or any other acceptable proof indicating land use right to the affected land and assets they occupy and who have no land at other places will be compensated for their lost rights to use land and for their other assets at replacement cost and other additional assistance to ensure they are not worse off due to the project.”</i> (Art. 6-6)</p>	
<p><b>(10) Provide assistance to ensure that affected people are not worse off due to the project.</b> <i>All affected persons “regardless of land use right, will be entitled to compensation for lost assets (structures, crops, trees) at replacement cost, and provided with other assistance during the transition period, and economic rehabilitation assistance to ensure that they are not worse off due to the project.”</i> (Art. 6-7)</p>	<p><b>No compliance.</b> Villagers in the resettlement site considered themselves worse off than before. Many people expressed concerns that they would not receive adequate compensation or would not be able to find adequate food. The project company did not appear to measure the overall well-being of affected communities, instead relying on a checklist of activities. The company did not appear to assess the full extent to which villagers depend on the Mekong River for their livelihoods.</p>
<p><b>(11) Work jointly with affected people to assess losses that need to be compensated.</b> <i>“Before provision of compensation, project owners shall establish a joint committee, with representatives from all stakeholders, to assess the loss to [affected persons].”</i> (Art. 6-9)</p>	<p><b>No compliance.</b> There is no indication that the project company worked collaboratively with affected people to identify potential losses and compensation measures.</p>
<p><b>(12) Provide full compensation before construction begins.</b> <i>“Prior to the commencement of project construction, [affected people] shall be fully compensated and resettled and rehabilitations measures shall be in place, although not necessarily completed yet.”</i> (Art. 6-10)</p>	<p><b>No compliance.</b> The company has not provided full compensation to the first resettled village, even though construction activities have begun. The company provided no indication to affected people of when or how much compensation they would receive. At the first resettled village, people were moved before their houses were completely constructed or their agricultural lands prepared.</p>
<p><b>(13) Restore lost income of affected people to pre-project livelihood levels.</b> <i>All affected persons “severely affected by the project due to loss of 20% or more of productive income generating assets (loss of agricultural, industrial or commercial land), means of livelihood, employment or business and access to community resources shall be entitled to sustainable income restoration measures in</i></p>	<p><b>No compliance.</b> At Houay Souy, all villagers who we interviewed indicated that their income levels and livelihoods were worse off than before. There is no indication that the company is measuring current livelihoods against previous livelihoods (or that the company assessed livelihood levels prior to the resettlement).</p>

<p><i>addition to their entitlement for compensation and other allowances enabling them to attain at a minimum pre-project livelihood levels.”</i> (Art. 8-1)</p>	
<p><b>(14) For land-based affected people, provide new land at resettlement site.</b> <i>“For displaced persons whose land-based livelihoods are affected due to the project, preference shall be given to land-based resettlement strategies, or where land is not available, options built around opportunities for employment or self-employment.”</i> (Art. 8-2)</p>	<p><b>No compliance.</b> As of June 2012, the project company had not yet cleared land for the resettled village. The company had acquired land and planned to do so within the coming months. However, land scarcity remains a major concern in Ban Houay Hip and Ban Pak Mon, where other villages will be resettled. These villages are located in steep terrain where there is not much land available. Villagers expressed concern about the availability of land and food, and the company does not appear to have addressed these concerns.</p>
<p><b>(15) Ensure that vulnerable groups achieve household income levels above the national poverty line.</b> <i>“These rehabilitation measures shall specifically focus on vulnerable groups. Adequate assistance, in addition to compensation for affected assets and other allowances, shall be provided to enable such [affected people] to achieve household income targets set above the national poverty line.”</i> (Art. 8-4)</p>	<p><b>No compliance.</b> There is no indication that the project company has taken special efforts to ensure that vulnerable groups in the affected area will be above the national poverty line.</p>
<p><b>(16) Replace community property resources.</b> <i>“Any impact or restriction on access to resources managed by affected community as a common property shall be mitigated by arrangements ensuring access to improved or at least equivalent resources on a continuing basis. Attention shall also be paid to directly [affected persons] if their benefits are affected due to the loss of access to common property resources.”</i> (Art. 9-2)</p>	<p><b>No compliance.</b> The company does not appear to have assessed the impacts of the dam on community natural resources, such as the river and forests. Many villagers depend heavily on these natural resources for food, shelter, and transport. These lost community resources appear to be one of the major burdens that the first resettled community now faces.</p>
<p><b>(17) Avoid causing environmental and social harm to areas around the resettlement site.</b> <i>“Project owners shall take responsibility to develop resettlement sites in order to avoid or mitigate adverse social and environmental impacts to the surrounding areas.”</i> (Art. 10-3)</p>	<p><b>No compliance.</b> There is no indication that any environmental or social assessment was conducted at the new resettlement sites, especially in the villages Houay Hip and Pak Mon that will host large resettled populations.</p>
<p><b>(18) Mitigate impacts on the host community at a group resettlement site.</b> <i>“Where relocation to a group resettlement site is</i></p>	<p><b>No compliance.</b> There is no indication that the project company considered the impacts of joining together several resettlement villages. At the Houay</p>

<p><i>considered necessary, project owners shall mitigate the adverse impacts on host community and shall provide appropriate compensation (to damaged assets) and assistance to host community similar to the project affected persons.”</i> (Art. 10-4)</p>	<p>Hip and Pak Mon villages, which will soon each host at least large resettled populations, the company has promised little or no compensation. Villagers have been ordered to leave the land designated as resettlement sites with no compensation. The company does not appear to have assessed the food security and health risks of merging the villages together where land is limited.</p>
<p><b>(19) Take into account local cultural and religious practices.</b> <i>“During planning, construction and operation periods, project owners shall consider local cultural and religious properties, practices and beliefs.”</i> (Art. 11-1)</p>	<p><b>No compliance.</b> Many of the affected villagers come from ethnic minorities in Laos. Nevertheless, the company did not appear to take into consideration the distinct needs or differences among ethnic groups. Villagers interviewed did not anticipate any problems or tensions, but there is an absence of in-depth consideration of this potential issue.</p>
<p><b>(20) Determine mitigation measures and benefits in consultation with affected communities.</b> <i>“Project owners shall define mitigation measures and socio-economic benefits to improve status of ethnic communities and shall be in harmony with their cultural preferences and shall be decided in consultation with affected communities.”</i> (Art. 11-3)</p>	<p><b>No compliance.</b> There is no indication that the project company conducted meaningful consultations with affected people. The company made presentations in some villages, but did not seek input early in the design stage as expected under international involuntary resettlement standards (such as the World Bank Group’s standards).</p>
<p><b>(21) Design the resettlement program in a participatory manner.</b> <i>“The project owners shall implement the resettlement program in a participatory manner ensuring that [affected people], local authorities and other stakeholder are fully informed and consulted and their concerns are taken into account at all stages of the project cycle, particularly during the planning and implementation phases of the land acquisition, valuation and resettlement process.”</i> (Art. 12-1)</p>	<p><b>No compliance.</b> As discussed above, the resettlement program was not designed in a participatory manner. Many affected villages remain unclear when they will be resettled and how much compensation they will receive. The first resettlement site was selected by the company. The company has made a number of promises to villagers (such as giving them the option to select land for new homes), but there is no indication yet that these promises will be implemented.</p>
<p><b>(22) Provide public information about the project.</b> <i>“Project owners shall make concerted efforts for an effective public dissemination of information about the objectives of the project, the compensatory package that is part of the resettlement process, through the mass media such as newspapers, radio, TV or public meeting and other means to inform local authorities at provincial, district and village levels and mass</i></p>	<p><b>No compliance.</b> Villagers have received very little (and often contradictory) information about the impacts of the dam. Many are unclear if they will be resettled, if they will be compensated, and how much they will receive. The project company did not inform villagers about the risks that the dam poses to fisheries or other potential negative impacts of the project.</p>

<p>organizations, [affected persons] and other concerned people as necessary.” (Art. 12-2)</p>	
<p><b>Part II: Partial compliance</b></p>	
<p><b>(1) Provide compensation for lost land rights and lost assets.</b> <i>“Project owners shall compensate project affected people for their lost rights to use land and for their lost assets (structures, crops, trees and other fixed assets) affected in full or in part, at replacement cost.”</i> (Art. 6-1)</p>	<p><b>Partial compliance.</b> The company has promised to provide compensation for lost trees and crops, and to provide replacement housing. However, people living in the first resettlement village complain that the replacement housing is sub-standard. The company did not offer compensation for lost land rights, arguing that the land is owned by the government (although the decree focuses on all forms of land use rights).</p>
<p><b>(2) Conduct a survey to identify affected people and determine mitigation measures.</b> <i>Project owners have a responsibility to collaborate with the government “to carry out necessary surveys and field investigations, identify affected communities, prepare inventory of impacts by types and degree, determine entitlement to mitigation measures including compensation for affected assets.”</i> (Art. 4a)</p>	<p><b>Partial compliance.</b> The project’s Resettlement Action Plan has not been made public. Villagers confirmed that the project company had conducted surveys, marked flood levels, and identified houses that might require resettlement. The company has also counted fruit and teak trees. However, there was no indication that the company assessed the full extent to which villagers’ livelihoods depend on the Mekong River. No information was gathered, for example, to assess protein from daily fish catch, income from gold panning and other sources, or the value of forest products.</p>
<p><b>(3) Providing funding to support affected people in a timely manner.</b> <i>Project owners “must provide appropriate funding to assist, support, relocate [affected people] and to implement income rehabilitation measures and to prepare necessary plans in an efficient and timely manner and approved by the concerned agencies to ensure the improvement of their socio-economic situation.”</i> (Art. 4a)</p>	<p><b>Partial compliance.</b> The project company appears to have set aside limited funds for compensation of lost fruit and teak trees, housing, and relocation costs. However, villagers complained that they have not received compensation in a timely manner. In the first resettled village, land was not provided in time for the resettlement, housing construction was not completed, and full compensation payments were not made. Trees were not assessed according to their real market value. Monthly stipends do not cover full expenses of living at the resettlement site.</p>
<p><b>(4) Provide assistance for transport, food, and development assistance during transition period until income levels and living conditions are stabilized.</b> <i>Assistance during Relocation and Transition Period: Affected persons “displaced and/or affected due to the loss of income and livelihood shall be</i></p>	<p><b>Partial compliance.</b> At the Houay Souy resettlement site, the company has provided a single source of replacement income and a monthly stipend to buy food. Villagers complained that the amount provided is insufficient. There is no indication that the company has provided transport to and from local markets, or to and from the villagers’ remaining agricultural fields. As of June</p>

<p><i>provided with the following assistance until their income levels and living conditions can be stabilized:</i></p> <p><i>(a) Transport allowance or assistance in kind to transfer to the resettlement site or their choice of relocation;</i></p> <p><i>(b) Food allowance, in cash or in kind to compensate for income lost, during the transition period;</i></p> <p><i>(c) Suitable development assistance after displacement during the transition period until they are able to restore their incomes and living standards or reach the targeted level of household incomes on a sustainable basis.</i></p> <p><i>(Art. 7)</i></p>	<p>2012, the villagers and company faced a dispute over how long this assistance would be provided (especially free electricity, which was promised for at least one year but provided for only one month).</p>
<p><b>(5) Replace lost businesses of affected people.</b>  <i>“For displaced persons whose businesses are affected due to the project, in addition to compensation for lost land, structures, and income, assistance shall be given to finding replacement sites for business as appropriate.”</i>  <i>(Art. 8-3)</i></p>	<p><b>Partial compliance.</b> The project company promised to provide new sources of income, but in the first resettlement site only provided a single source of income for each family. This single source has not proved adequate to replace the previous livelihoods. Several business people in villages, such as “middlemen” and merchants, did not appear to receive any compensation for their lost income.</p>
<p><b>(6) Restore or repair community facilities.</b>  <i>“Project owners shall restore or repair community facilities and infrastructure that are damaged due to the project, at no cost to the community.”</i>  <i>(Art. 9-1)</i></p>	<p><b>Partial compliance.</b> The company promised to replace community facilities that were lost, such as schools and temples. However, in the first resettlement village, the company did not inform villagers about additional costs that they would incur, such as water fees, electricity after only one month, street lighting, and transport costs.</p>
<p><b>(7) Provide suitable housing, business locations, and community facilities at the resettlement site.</b>  <i>“All persons relocating to group resettlement sites shall be provided with suitable housing or developed housing lots, shop lots if businesses are affected, agricultural sites of equivalent size, with productive potential and locational advantages better or at least equivalent to the old site. Replacement land, house/business plot shall be as close as possible to the land that was lost and/or acceptable to the [affected persons]. Group resettlement sites shall be developed with water supply, sanitation, drainage, with internal and access roads, and access to electricity. When it is necessary they may be provided other form of assistance from project owners such as public</i></p>	<p><b>Partial compliance.</b> The company promised to provide housing and community facilities at the resettlement site. At the first resettlement site, however, they did not complete construction on the ground floor of houses, creating a significant expense for villagers. The company is also requiring the villagers to pay for many of the community facilities only a few months after the resettlement.</p>

<p><i>health and education.”</i> <i>(Art. 10-1)</i></p>	
<p><b>(8) Provide a grievance mechanism for affected people starting during the planning phase.</b>  1. <i>“Project owners shall establish an effective mechanism for hearing and grievance redress during the resettlement planning and implementation in a project”.</i>  Art. 13(1)</p> <p>2. <i>“Project owners in consultation with concerned government authorities, shall establish a Grievance Redress Committee to address complaints and grievances pertaining to land acquisition, compensation and resettlement due to the project.”</i>  Art. 13(2)</p> <p>3. <i>“Grievances related to any aspect of the project or sub-project shall be handled through consultations conducted in a transparent manner and aimed at resolving matters through consensus at the project level before complainants forward these to higher level and ultimately to the court of law. The responsible agency shall record the complaints (or put in written form the oral report) by the [affected people].”</i>  Art. 13(3)</p> <p>4. <i>“[Affected people] will be exempted from all administrative and legal fees incurred pursuant to the grievance redress procedures. In case the complaints are forwarded to the court of law, all costs for pursuing such cases in the court of law must be borne by the project.”</i>  Art. 13(4)</p>	<p><b>Partial compliance.</b> The first resettled village has a committee through which it negotiates grievances with the company. However, other affected villages have no mechanisms through which to raise concerns or ask questions. No individuals, including in the resettled village, have the option to raise concerns directly to the company or government without fear of retribution.</p>