



Response to THPC response to Expanding Failure

BankTrack, International Rivers, Justice and International Mission Unit, Uniting Church in Australia, Les Amis de la Terre, and Netwerk Vlaanderen welcome THPC's decision to put their response to our report, '*Expanding Failure*', on their website. However, we are disappointed that the company failed to (a) respond to key issues that we believe must be addressed immediately; (b) respond to many of the specific concerns stated in the report; (c) state how the company is in compliance with Lao law and the Equator Principles, and (d) give any response to the recommendations in the report. Following are our responses to THPC's response.

1) Compensation for loss of assets and livelihoods from the first THPC project

We aware of the company's support to develop community gardens and dry season rice cultivation in order to compensate losses of riverbank gardens and abandoned rice paddy. However, these compensation mechanisms have not restored the livelihoods that the downstream affected communities lost due to eroded riverbank gardens, abandoned rice fields, losses of fisheries, and continuous losses of other assets, such as boats, cows, goats, pig, and poultry from the existing project. THPC has consistently refused to provide any compensation for lost fisheries.

THPC itself admits that dry season rice cultivation has not been successful. The final RAP states that "[s]ubsidized inputs (irrigation energy, improved seed and fertilizer) were provided to encourage use of the irrigation pumps in the Recipient River areas. Marginal benefit was obtainable overall but many villages lose money on this activity [dry season rice cultivation]" (THPC 2008a, Part 3: 47). According to the Theun-Hinboun Expansion Project Social Action & Environmental Management Plan prepared by Resource Management and Research in 2006¹, at least 822.5 hectares of rice paddy has been abandoned along the recipient river (RMR 2006, Chapter 21: Page 2-146-148). Since dry season rice cultivation has not been profitable for most villagers, the loss of rice paddy has not been compensated. These are clear "unresolved issues" under the Decree on the Compensation and Resettlement of the Development Project in Lao PDR (hereinafter referred to as the Lao Resettlement Decree) (GoL 2005: Article 6, paragraph 8). Under Lao law, THPC should have restored all livelihood losses in the downstream areas before it started construction on the expansion project.

2) No entitlement for food allowance and relocation assistance for downstream villages

In the final RAP, there is no description of any food allowance, disturbance allowance, educational and health improvement, provision of new housing materials and assistance with construction of new houses to be provided to downstream resettlement families. These are all

¹ The Theun Hinboun Expansion Project Social Action & Environmental Management Plans produced by the Resource Management and Research (RMR) in 2006 is the primary source of information for EIA preparation (THPC 2008b, Final EIA/EMMP Executive summary: i).

provided to the resettlement families in the reservoir area. . THPC’s response doesn’t even address the issue of food allowances. If THPC plans to provide this assistance, it should provide evidence of the entitlements that downstream resettlers have and the budget to support these entitlements. Provision of food allowances and other assistance is a requirement under the Lao Resettlement Decree (GoL 2005: Article 6, paragraph 7 & Article 7).

3) No detailed cost estimate for “resettlement” of downstream villages

THPC’s claim that having a budget or cost estimate is not in line with best resettlement practice is nonsensical. Without a clear budget or cost estimate, what guarantees are there that the necessary funds will be available? In the final RAP, THPC clearly outlines a budget and schedule for the reservoir area resettlement (THPC 2008a, Part 2: 139-141). However, for the downstream areas, the company only includes a budget and schedule for infrastructure, livelihood development and the social development plan in the final RAP (THPC 2008a, Part 3: 71-72). We maintain that resettlement in the downstream areas should have a clear budget and implementation schedule. If THPC is indeed working on defining a final budget and plan, we would appreciate receiving a copy of this.

4) No “land for land” compensation for resettlers

According to interviews with resettlement families in Nongxong Village in November 2009 immediately after their first rice harvest in their new fields; it is questionable that villagers have received “better quality land with better soils”. The villagers in Nongxong Village reported that the quality of the soil in the area is poor compared with the rice fields they used to have in their old village. Some villagers used to have paddy fields in their old village. Villagers reported that when they moved into the resettlement site in February 2009, the allocated lands had not all been cleared. The company told the villagers that it will take a couple of years to create productive paddy fields in their new lands. However, the villagers are doubtful as to whether the land could ever be suitable for rice paddy and whether it is worthwhile to spend their time trying to make it so.

Moreover, what the Lao Resettlement Decree requires is “provision of ‘land for land’ arrangement of **equivalent size and productivity** (GoL 2005: Article 6, paragraph 2)”. THPC admits in their own response that “additional land holdings by the APs in the reservoir area are compensated for in cash.” This, together with the interview evidence provided in our report, shows that the company has not provided land of “**equivalent size and productivity**” to all resettled families.

5) No provision for food allowances and assistance for self-resettlers

The Lao Resettlement Decree makes no distinction between those who move to resettlement sites and those who opt for self-relocation. Article 7 states that “affected persons displaced and/or affected due to the loss of income and livelihood [...] shall be provided with [...] food allowance [...] during the transition period” and Article 6 states that “All affected persons [...] will be provided with other assistance during the transition period (GoL 2005: Article 6, paragraph 7)”.

Thus, self-relocation families also have a right to receive food allowances and other assistance during the transition period under the Lao Resettlement Decree.

6) No provisions for range of resettlement options for downstream communities

THPC does not even address the main point in our critique, which is whether downstream resettlers are entitled to receive adequate replacement housing. According to our interviews, some downstream villagers would prefer to receive new houses equivalent to those the resettlement families around the reservoir area received, instead of dismantling and rebuilding their houses. The IFC Performance Standards require providing **options** for the affected communities such as whether they would like to bring their old houses and receive cash compensation or be provided with new houses (IFC 2006, Performance Standard 5, paragraph 16). THPC does not appear to be in compliance with Performance Standard 5.

7) Failure to establish clear monitoring mechanisms

We argue that failing to establish procedures to monitor and measure the effectiveness of the management program in the downstream area is a non-compliance of the Equator Principles (IFC 2006, Performance Standard 1, paragraph 24). It is commendable that a summary of the 2008 Baseline Survey is posted on the THPC website. However, it is still not clear what kind of procedures will be adopted to monitor the downstream program. Clear procedures should be established similar to what the company has established for the reservoir area resettlement (THPC 2008a, Part2: 90-91). Moreover, GOL and the LTA do not disclose their monitoring reports to affected communities or the public. Thus, there is no real external oversight of the program.

8) No documentation of consultations with “indigenous peoples”

Ethnic minority groups are considered indigenous peoples for the purposes of IFC Performance Standard 7. There is no documentation about **“good faith negotiations”** with ethnic minority groups in the final RAP, although the company insists they conducted consultations with the affected ethnic minority groups. If indigenous peoples have to resettle, Performance Standard 7 requires that “the client will not proceed with the project unless it enters into a good faith negotiation with the affected communities of Indigenous Peoples, and documents their informed participation and the successful outcome of the negotiation (IFC 2006, Performance Standard 7, paragraph 14)”. The company fails to document outcome of **“a good faith negotiation”** and to meet the requirement of the Performance Standard.

9) No documentation of land use by “indigenous peoples”

It is great that THPC has allocated additional resources for the ethnic minority groups. However, the requirement of Performance Standard 7 is to document the indigenous peoples’ land use by experts in collaboration with the affected people (IFC 2006, Performance Standard 7, paragraph 13). THPC did not follow this requirement in the final RAP. It is vital to have this documentation in order to learn their land use patterns and ensure their livelihood in the new resettlement site provides similar benefits for them. If THPC has indeed prepared such documentation, we would appreciate a copy.

10) No plan to provide reports to communities during implementation

According to our interviews in the downstream areas in November 2009, it is questionable whether the company has had frequent communications with affected people. Our interviewees did not know when the company plans to clear the land for resettlement, when they need to move to the new sites, and when the irrigation system will be installed. Moreover, the requirement of Performance Standard 1 is external reporting on the company's action plans. Under the Performance Standards, the company has a responsibility to "provide periodic reports that describe progress with implementation of the Action Plan on issues that involve ongoing risk to or impacts on affected communities, and on issues that the consultation process or grievance mechanism has identified of concern to these communities" (IFC 2006, Performance Standard 1, paragraph 26). THPC has so far failed to meet this requirement.

11) No allocation of forage, plantation and forest lands for resettlers

When we visited Nongxong Village in May 2009, the villagers did not know about any community forage area. The company now claims it has provided a community forage area. However, when we visited the village again in November 2009, the community forest and plantation areas had not yet been allocated by the company. THPC should complete their land allocation process and issue clear land titles to affected communities.

Regarding the collaboration with WWF, we understand that this project is only in Soppouan village, Khamkeut District, which is neither Nongxong nor other resettlement villages. It is misleading to imply the WWF project is related to the restoration of livelihoods in the reservoir resettlement area.

12) No provision for 440kg of rice per person

It is misleading to claim that the first rice harvest in November 2009 was successful. According to interviews in November 2009, many villagers could not cultivate their full 1 ha of land because the land had not been cleared yet. In addition, villagers reported that the rice harvest this year was far less than on their former lands due to the poor quality of land. The villagers are seriously concerned about their food security because of the poor harvest this year and the failure of the company to provide rice support as promised.

13) No provision for year-round access to new resettlement areas

After resettlement, the villagers have to rely on road access to their village rather than boat access. Ensuring road access during the rainy season is particularly important for the villagers. In November 2009, International Rivers observed that the access road to Nongxong Village was in really bad shape after the rainy season, and some repairs were taking place. The company committed to villagers that they would provide a year-round access road before they moved to the new resettlement villages. The company should ensure that this occurs.

14) Reference to "indigenous people"

Most multilateral development banks and UN agencies use the term "indigenous peoples" to refer to ethnic minority groups. This is consistent with the definition in the IFC's Performance Standards.

15) Relocation definition

The differentiation between “relocation” and “resettlement” has been created by THPC in order to differentiate their mitigation measures for the resettlement families around the reservoir area and those affected by the project downstream. International institutions’ policies, such as IFC’s Performance Standards, which form the basis of the Equator Principles, have two definitions of resettlement: “physical displacement” and “economic displacement” (IFC 2006, Performance Standard 5). Under IFC’s definition, both “relocation” and “resettlement” villagers in the Theun-Hinboun Expansion Project are considered to be physically displaced. Therefore, THPC should follow Performance Standard 5’s requirement for physical displacement for both “relocation” and “resettlement” villagers.

16) Death of people on rivers below the Powerhouse

THPC categorically denies any responsibility for several deaths noted in the FIVAS (2007) report at Tha Village along the Hai River. This position is at odds with feedback from certain villagers interviewed in May 2007, including the village headman, who reported that the deaths occurred during periods of strong water release from the turbines during the previous two years, against a single drowning occurring between 1982 and 1998. One of these deaths, that of a five year old boy in the 2006/07 dry season, appears to have been a direct result of the negligence of THPC to adequately warn the child or his parents of the release of a strong pulse of water following a period of powerhouse shutdown for maintenance. To claim this is an “accidental” death with no links to THPC’s operations is to obfuscate the truth. Furthermore, given the size of profits reported by the company, the \$30 offered to the family as a gift for “funeral arrangements” is pitiful.

In theory, the villagers are supposed to be informed of the times and dates of operations via a letter to the headman, but it was reported that the letters are either not totally accurate about times, arrive late or do not always reach the eyes and ears of all the village. An audio warning system would be far more effective. It would be useful to learn exactly how THPC intends to deal with the fluctuations expected during the post-THXP operating regime and what its policy will be if other villagers are swept away and drowned as a result of its operations. It is also disturbing that THPC has still apparently failed to build a bridge linking Ban Kongphat and Ban Vangdao near the Nam Hai confluence with the Nam Hinboun, despite assurances to villagers that it would do so up to a decade ago and the daily project-induced risk that villagers and school children are exposed to in having to cross the swollen river in a small boat (see Box 1, p. 17, FIVAS, 2007).

17) Loss of riverbank gardens

According to RMR’s 2006 study, many households along the recipient river lost income from riverbank gardens (RMR 2006, Chapter 21-24: 2-191). Some villagers continue to cultivate riverbank gardens; however many villagers lost their riverbank gardens due to erosion. Some villagers cultivate replacement gardens provided by THPC, but the replacement garden program has met with limited success. The quality of the replacement gardens in Kongphat and Xang villages are poor and because of severe flooding, Xang Village has abandoned their replacement gardens. The final RAP states that “[i]n general terms, adoption of new practices [garden and

orchard development] was limited, with PAPs reluctant to adapt to new ideas without incentives that ensure food security.” (THPC 2008a, Part 3: 47) The portable water pumps provided by the company require maintenance that has not always been performed. As the RMR report states, “It is unlikely that many householders would continue with these gardens if the water supply and other inputs were not provided free.” (RMR 2006, Chapter 21-24: 2-172)

18) Widening of the river

There is ample evidence that the Nam Hai has widened considerably since the original project came online. According to RMR’s report, “There were in 2005 some 461 large dead trees and 92 large clumps of bamboo in the Nam Hai needing to be removed. Most seriously the channel had widened by about 45m with erosion of 68 ha (7 million tons) of river terrace. Clearly the prescriptions of the [operations] manual were not effectively being followed.” (RMR 2006, Chapter 21-24: 2-24). The report also states that “[i]t is hardly surprising that the owners decided control of the bank erosion would be ineffective.” (RMR 2006, Chapter 21-24: 2-25) ADB also admits that “[w]ith the construction of THHP in 1997, flooding increased and river banks experienced additional erosion.” (ADB 2010, paragraph 6)

19) Abandoned rice paddy

According to the RMR report, 822.5 hectares of paddy land had been abandoned along the recipient rivers by 2005. This figure is likely to have increased in the ensuing years. The RMR report is the primary source of information for EIA preparation. (THPC 2008b, Final EIA/EMMP Executive summary: i) The final RAP even admits that “Between 1000 and 2000 ha of paddy field have been or will need to be abandoned for wet season production in the Recipient River area as a result of flooding caused by natural conditions plus THPC releases” (THPC 2008a, Part 3: 35). ADB also states that flooding in the downstream areas increased after the operation of the original Theun-Hinboun project (ADB 2010, paragraph 6). It is surprising that the company continues to deny this well-known and well-proven fact. The company has full responsibility to replace these abandoned rice fields and ensure the food security of the affected communities in the downstream area.

20) Project-induced floods or sudden releases of water

It is surprising that the company does not admit that the project has induced floods. THPC’s final EIA/EMMP states “[t]he diversion of water into the Nam Hai-Nam Hinboun has increased the duration, depth and frequency of natural floods” (THPC 2008b, Final EIA/EMMP: 4-31). It also declares “At Ban Namsanam [the village along Hai River] the 100 year flood in average would last for about 5.5 days during natural conditions, 10.5 days with the present power plant release and, 19.5 days with the expansion project” (THPC 2008b, Final EIA/EMMP: 6-5). This longer duration of flood will have a serious damage to the downstream villages along the Hai and Hinboun rivers. ADB also admits that flooding increased after the operation of the Theun-Hinboun Project (ADB 2010, paragraph 6). All villagers we interviewed report having experienced more frequent, slightly deeper and longer-lasting floods caused by the existing Theun-Hinboun Project. This is why the villagers have abandoned their rice paddy and even moved to higher ground by themselves.

21) Rice yields

THPC's response does not address the point made in our report. Dry season rice cultivation has not been successful, as admitted in the final RAP. In the final RAP, THPC admits that "[s]ubsidized inputs (irrigation energy, improved seed and fertilizer) were provided to encourage use of the irrigation pumps in the Recipient River areas. Marginal benefit was obtainable overall but many villages lose money on this activity [dry season rice cultivation]." (THPC 2008a, Part 3: 47)

22) Villagers unaware of THXP plans

The fundamental problem with resettlement in the downstream areas is the lack of clear plans for where people will move and what lands they will cultivate. Villagers being forced to move should be informed well in advance about the timing of resettlement, their compensation entitlements and social development plans. Without such information, villagers find it difficult to plan their agricultural activities and investments. THPC is behind in providing this information to affected villagers and the general public.

23) No payment of fruit trees

It is good that THPC will compensate for the fruit trees of resettlement families in the downstream area. When we interviewed people in six downstream villages, all of them reported that THPC would not compensate for their fruit trees because they could continue to harvest them even after they have moved to a new location.

24) Small compensation amounts

We introduced one example to illustrate how current compensation mechanisms are not sufficient to restore livelihoods.

25) Situation in Ban Xang: No compensation for abandoned rice paddy

As described in our report, dry season rice production has not been nearly as productive as wet season rice production. Villagers reported to us that they have abandoned 71 ha of rice paddy, yet the company has provided fuel to irrigate on 21 ha in the dry season. Also, because the company does not fully subsidize the fuel needed for 21 ha, the villagers have lost money in dry season rice production. The company has failed to compensate for lost wet season rice production and has caused food insecurity in the village.

26) Situation in Ban Xang: Fruit trees were not replaced

We are happy to hear that the company is providing more fruit trees to villagers. If this is indeed the case, please provide us with information regarding when these trees will be provided and how the company will ensure that they are not again lost to project-induced flooding.

27) Situation in Ban Xang: rubber trees instead of rice

Our report never alleged that THPC provided rubber trees instead of rice. The point raised by villagers is that it takes time to harvest rubber and the villagers need special training. Thus, the

rubber plantations at this stage are not solving the immediate needs of the villagers, which are for food and rice.

28) Situation in Ban Xang: villagers do not know where to find coconuts to be used for collecting rubber sap or latex.

This situation clearly illustrates that THPC is not providing sufficient agricultural extension support to villagers when introducing new livelihood programs in the villages. THPC should learn from its past mistakes.

29) No independent review

THPC's response does not address our point, which refers to the independent reviews that THPC committed to do in their 2001 logical framework. The LTA and DFI reviews are part of the due diligence process related to the financial institutions' risk management and differ from THPC's independent review. It is nonsensical to claim that the LTA and DFI reviews are equivalent to THPC independent reviews. As stated in our report, THPC has not provided any detailed information about the Panel of Experts or other independent monitoring teams mentioned in their RAP (THPC 2008a, Part 1: 132). We would like to hear more about the progress of the Panel of Experts for independent monitoring.

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