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# Public Consultation and Participation in the Nam Theun 2 Hydroelectric Project in the Lao PDR

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In this submission, I would like to discuss the example of public participation and consultation processes that were conducted for the Nam Theun 2 Hydroelectric project in the Lao PDR. I do not, by any means, wish to discuss whether or not the project is viable, or whether the decision to proceed with the project is correct or incorrect. I do however intend to argue that the public consultation processes in the project were not appropriate to the overall social and political context in the Lao PDR. Based on this example, I would like raise some questions regarding “best practices” of participation in decision making about large dams.

This paper is divided into three sections. The first section provides a brief background of the Nam Theun 2 project. Section two offers a critique of the public consultation and participation processes carried out in the project. Finally, the third section raises some questions about the overall purpose and nature of public participation processes.

## I. Background

The Nam Theun 2 is the largest hydroelectric power project planned for the Lao PDR. Situated in Khammouane Province in the Lao PDR, the project consists of a 50 metre high dam on the Theun river in central Lao PDR. When constructed, the project would flood approximately 450 square kilometres of the Nakai plateau and necessitate the relocation of approximately 4,500 people from the reservoir area. Water from the Nam Theun reservoir will drop more than 350 metres to a power house with an installed capacity of 650-900 MW (figures installed capacity vary among reports), and then discharged to flow into the Se Bangfai river through a specially built waterway. Both the Nam Theun and the Se Bangfai are part of the greater Mekong watershed and the Nam Theun is the fourth largest tributary of the Mekong river. Bulk of the power generated would be exported to Thailand.

Exploration of the potential of the Nam Theun 2 project began in the mid-1980s and in 1989, the World Bank and UNDP commissioned the Snowy Mountains Engineering Corporation (SMEC), an Australian consultancy firm, to conduct a feasibility study of the project. According to the study and a World Bank appointed panel of experts, the Nam Theun 2 presented the best option for hydroelectric development in the Lao PDR. The government was then advised by the World Bank to pursue a partnership with the private sector for financing and implementing the project. In 1993, the responsibility for project development was awarded to Transfield Holdings Ltd., one of Australia’s largest construction companies. Transfield then formed a consortium, now called the Nam Theun 2 Electricity Consortium (NTEC) to take the project further. NTEC is a public-private partnership consisting of Transfield with a 10 percent stake in the project, Electricite de France (EDF) with a 30 percent stake, Italian-Thai Development with a 15 percent stake, Jasmine International with a 10 percent stake and Merrill Lynch Phatra Thanakit Securities with a 10 percent stake in the project. The government itself has 25 percent equity in the project.

The Nam Theun 2 is a Build, Operate and Transfer (BOT) project with a concession period of 25 years to the project developers. In 1998, its estimated cost was US \$ 1.2 billion. In contrast, the Lao PDR’s national budget in 1997 was only US \$ 341.5 million with total GDP at US \$ 1.7 billion. Members of the Louis Berger economic assessment team admitted during a public briefing that some long term impacts of the project could not be properly

estimated in advance and mitigation of these impacts would further increase project costs of the project. Financing for the project is expected to consist of 30 percent equity (by NTEC) and 70 percent debt to commercial banks and export credit agencies, primarily from Europe and Australia. In addition, the World Bank has provided much of the financing for project assessment and appraisal.

Due to the perceived risk of investment in the Lao PDR, commercial lenders have asked the World Bank to provide a partial risk guarantee before they make loans for the project. The guarantee would protect the lenders from loss of income that may result from government credit and performance (including interference with the project), foreign exchange convertibility, non-fulfillment of government obligations under its BOT contract, and other similar risks. In the event of default by the Lao Government on any of the agreed conditions, the World Bank would repay the amount borrowed by the project developers to its lenders. In return, the Lao Government would have to sign a counter-guarantee under which, if the guarantee is called into question, it would have to pay the World Bank all outstanding costs, as well as a fine. However, there is no parallel guarantee mechanism to protect the Lao people from the risks of private investment, or in the event that the benefits promised by the project do not materialise. According to the 1997 Lao Public Expenditure Review, the size of the project will affect the Lao PDR's credit standing and debt service burden. Further, the country's weak economic position would not permit it to meet its contractual obligations of a counter-guarantee should it be activated in case of a default.

Because of its size and the ambitious nature of its design, the Nam Theun 2 project is expected to result in significant economic, social, environmental and ecological impacts. NTEC has claimed that the project will generate US \$ 250 million in revenue from the sales of electricity per annum, and that the government's share of overall accumulated revenues over the 25 year concession period will be approximately 50 percent. However, this figure does not take into account debt servicing, or the risks associated with hydrology, foreign exchange convertibility, or drops in power purchase prices. Because of the recent economic crisis and the rise of independent power producers, the Electricity Generating Authority of Thailand (EGAT) has already sought to renegotiate the earlier power purchase agreement it signed with the Lao Government. Further, the costs of mitigating long term and inter-generation impacts related to resettlement, altered ecology and changes in resource tenure systems will have their own economic consequences. Such costs have not been fully articulated and internalised into current project costs and will, in all likelihood, be borne by the people of the Lao PDR.

The proposed site of the dam, the Nakai plateau, is an area of rich biological diversity. The total watershed area, the Nakai-Nam Theun Bio-diversity Conservation Area (NBCA), hosts an abundance of diverse plant and animal species, including 17 globally threatened species and at least 20 other species that are considered at risk. It is populated by a variety of ethnic communities widely accepted as indigenous to the area, who depend greatly on the natural resources of the Nakai-Nam Theun NBCA for their livelihood. The resettlement of villages on the Nakai plateau is classified as "involuntary" according to the operational directives of the World Bank, although it is justified by project proponents by pointing to the diminishing resource base on the plateau due to population increase, swidden agriculture, unsustainable harvesting of non-timber forest products and widespread commercial logging. The expected social, environmental and economic impacts of the project are not restricted to the inundation area and NBCA alone. Significant impacts are also anticipated in downstream channel areas along the Se Bangfai river, the transmission line corridor, the power station area, and downstream from the Nam Theun in the Nam Kading and eventually the Mekong rivers.

The Nam Theun 2 has been positioned by project proponents as an important development project that will result in significant benefits to the nation through increased national revenues and enhanced livelihood options for the directly affected population which is

in urgent need of poverty alleviation. It has also been hailed as a “green project,” and justified by the World Bank as an opportunity to accelerate the development of programmes by which the environmental costs of the project can be addressed and the larger watershed area protected. As the argument goes, the Nakai plateau is already so degraded by over exploitation and logging that construction of the dam should be seen as an opportunity for creating a more sustainable livelihood system and protecting the Nakai-Nam Theun NBCA from further destruction. Members of the Louis Berger and Lahmeyer assessment teams have gone as far as to say that the Nam Theun 2 is more expensive than other hydropower projects in the country because of the particular attention paid to environmental protection and mitigation.

Large northern environmental NGOs such as the IUCN, the World Wildlife Fund (WWF) and Wildlife Conservation Society (WCS) have also voiced similar opinions, and have been involved in conducting assessments and studies for the World Bank and NTEC. However, the arguments of the World Bank and consulting teams are circular, especially since much of the environmental and ecological destruction that the project purports to address result from the project itself.

## **II. Public Consultation and Participation**

Public consultation and participation are widely accepted as important components of the decision making process regarding large dam projects. Not only is such participation and consultation necessary in order to generate appropriate and sufficient information for impact assessment, but also, they provide avenues by which public support for a project can be mobilised. According to the World Bank, public participation is a process through which stakeholders influence and share control over development initiatives and decisions concerning the resources that affect them.

For the World Bank to finance the project, it requires that specific social, environmental and economic standards be met. Another requirement is that the project development process involve all stakeholders in decision making about the project. In the case of the Nam Theun 2 project, a number of Operational Directives (ODs) are applicable with regard to public involvement: OD 4.01 on Environmental Assessment, OD 4.30 on Involuntary Resettlement, OD 4.20 on Indigenous Peoples, GP and OP 4.04 on Natural Habitats and OD 14.70 on involving Non-Governmental Organisations (NGOs). According to NTEC, the public involvement process in the Nam Theun 2 project has been informed by guidelines provided in these ODs.

However, there is considerable difference between participation as a genuine decision making process through which communities can adequately protect their interests and needs, and participation as an “after the fact” process that serves to design better mitigation measures and claim justification for a decision already taken. For people to truly participate in decision making about a proposed project, they must be accorded due process which recognises that they have certain basic minimum rights. If these rights are denied, or do not exist to begin with, public involvement is a process of justification rather than participation. This section highlights some of the major failings with regard to due process in the consultation-participation activities in the Nam Theun 2 project.

### ***1. Fair and timely notice of a proposed development:***

In the case of the Nam Theun 2, the decision to construct the dam had been taken well before the public was invited to participate in the decision making process. Teams of experts had started to visit the watershed area and conduct a range of studies at least five to six years before the Lao public was invited to provide input into the process. Some of these studies were found wanting by the World Bank’s own standards and recommissioned. But there is little to show that directly affected communities were properly briefed at the very onset of these studies

about the scope and timeline of the project, or about the various stages of project development and appraisal. The proposed area started to be aggressively logged almost immediately after the decision was taken to proceed with the project. This accelerated the deterioration of the natural resource base that local communities depended upon, but no interim compensation was offered for the decline in their livelihoods. In a sense, people started to be affected by the project well before it actually materialised, although the promised benefits of the project are still a long time in coming.

Majority of the public consultation and participation efforts were launched after 1995, when the scope of the project had already been worked out. Participatory methods per se had been used in villages on the Nakai plateau in earlier social, health, wildlife, etc. studies, but these were primarily to elicit information from plateau residents, not to discuss the proposed development in any detail. Substantive input of affected communities and the public at large was solicited primarily within the parameters of developing resettlement options and mitigation measures, which came in the later part of the project development process.

## **2. *Full disclosure of information about a proposed development:***

The public did not have access to information about the project in a form that sufficiently enabled them to assess the merits and demerits of the project for themselves. During initial discussions with local communities, the teams themselves did not have sufficient information about the scale, complexity and impacts of the project, and how negative impacts would be best mitigated. Discussions at the district and province level were conducted primarily with local government officials in an attempt to create awareness about the project and mobilise support for it. However, the larger financial and economic challenges of the project, particularly in relation to mitigation costs and long term financial liability of the Lao public were not even fully known, let alone discussed during these meetings.

It is not that information about the project was not available, on the contrary, the country was deluged by a range of “expert” consultants in the fields of economics, sociology, anthropology, fisheries, wildlife, environment, etc. However, this information was not accessible to directly affected communities, province and district residents, and even government officials because of a tremendous knowledge gap between the foreign experts and consultants on the one hand, and the local people on the other hand. Educational levels in the country are low, particularly in the rural areas, and the complexity of the information made it extremely difficult for the public to absorb and understand key issues about the project. Further, the study reports were in English and translations were often delayed. As a result, many participants in consultation meetings were unable to engage in comprehensive discussions with policy and decision makers about possible impacts of the project.

This gap was even greater at local levels, where language and comprehension were further complicated by vast differences between the experiences of local residents and the project teams. A 1998 report of public consultation and participation on the Nakai plateau about resettlement options cautioned against expecting “too much” from villagers’ participation because of their “limited experience of the outside world.” According to the report’s author, it was only when communities experienced events themselves (such as “farm extension activities” and the “actual move”) that “real participation” would begin in earnest (NTEC, April-May 1998). The report also outlined problems in communication and comprehension resulting from local language differences and limited literacy levels. Records of meetings in a 1997 review of local consultations (Franklin, 1997) also reveal that language, cultural and educational barriers were significant in limiting local communities’ understanding about the project. Further, both reports highlight how gaps in understanding were significantly higher among women, who were often not present in meetings at all, or took back seats in meetings when they were present.

Consultation meetings were also held at the provincial and national levels with government officials and selected international organisations. Here too, debate and discussion about the project were limited since appropriate information was simply not available on time. Study reports in both Lao and English were made available with too short lead times to fully absorb their findings. Language barriers during meetings often resulted in conversations or arguments between foreign consultants and foreign staff from international organisations, with little input from Lao participants. Interestingly, bulk of the information presented at the national meetings was of a technical nature pertaining to environmental and social mitigation, resettlement, bio-diversity protection, etc. While there was a comparison of the costs and benefits of electricity generation and revenues from the Nam Theun 2 with other power production options, there was little discussion about the financial arrangements of the project, debt exposure, long term financial liabilities resulting from the project, or risk distribution.

In accordance with World Bank guidelines, NTEC set up a project information center that is open to the public and where copies of studies and reports can be obtained. However, this centre has been used largely by project consultants, international agency staff and foreign researchers. Majority of the Lao people one sees there are those who either work at the centre, or in neighboring government offices.

### **3. *The ability to assess options and offer informed consent or dissent:***

This failing follows directly from the first two, and is related to both internal and external capacity. Reports of meetings and actual experience of several consultations showed that most participants could not sufficiently absorb the information provided to engage in discussion about the complexities of the project. The issue of accessibility of information has already been described above. Further, at all levels, the content of discussions in the consultations was very much within the framework of a decision already taken. There were almost no authentic opportunities in the consultations for the Lao public to challenge the information presented or question the overall viability of the project.

The Lahmeyer Alternatives study focussed more on how the country could meet its commitments to an agreement to provide electricity to Thailand, rather than on other genuine options by which water and other resources in the area could be utilised to provide revenues and alternative livelihoods. What would happen if the dam was not built at all? What if a smaller dam was built, or a dam with a different design? How could the resources of the area be managed to balance watershed protection and enhance livelihoods without resulting in the types of impacts expected from a project as large as the Nam Theun 2? How would reduced revenues from such alternatives compare with the reduced costs of mitigating the anticipated impacts of the proposed project? The public, and in particular directly affected communities were not able to assess options to the project since they were simply not presented.

There is little point in participating in meetings that already have set courses and pre-conceived outcomes. When people feel that they cannot challenge the arguments or justifications of project proponents, they will not express dissent. And the absence of dissent cannot de facto be interpreted as informed consent.

The NTEC report on public consultation on the Nakai plateau (NTEC April-May 1998) points to barriers in conducting dialogue and achieving consensus presented by the unequal positions of power between community residents and the project teams. A similar trend was observed in the national level workshops which were held to present the findings of the major studies commissioned by the World Bank. These workshops were attended primarily by government officials and staff from international organisations, and local civil society was significant in its absence. Few substantial questions regarding the viability of the project were raised at these meetings by any of the participants and there was certainly no discussion about whether the project was a wise investment of the country's resources.

It cannot be denied that consultation activities at all stages and levels were elaborate, nor did they lack for technical inputs. The guidelines recommended by the World Bank appear to have been duly followed, external resource persons were called in to guide, conduct and monitor consultation meetings, and national and local government staff were trained in how to conduct such meetings in the future. However, it is important to keep in mind that the experts who generated the information on the basis of which project decisions were made come from professional backgrounds that are far removed from the contextual realities of those sections of society that would be most seriously affected by the project.

The consultation process was aimed not at empowering the public to engage in informed dialogue about the project, but rather to justify the decision to proceed with it. As such, it was an extremely good show, albeit hastily put together, by international players for the consumption of an international audience.

### **III. Some Questions Arising from the Public Consultation and Participation Process**

The public consultation activities in the Nam Theun 2 project were new to the Lao PDR. It is understandable that one is unfamiliar with certain methods and standards, their application will not always yield the ideal results. However, public involvement and consultation were not new or unfamiliar to the international agencies and consultants who designed the activities, or to the staff of the World Bank who claimed to closely monitor them for quality. It is indeed regrettable that those who are considered experts in the field were unable to design a process that was responsive to Lao contextual needs and reality.

Public involvement in a proposed project needs to be considered and evaluated within the larger framework of project development, appraisal, implementation and decision making. Consultation processes will always be limited by the structural parameters of this framework, and certain questions need to be asked about what a given framework permits or does not permit. For example:

1. Who identifies the stakeholders in a proposed project and by what process? What are the rights of these stakeholders in terms of access, control and ownership of resources, compensations, and legal redress for wrong-doing? Are these rights fair and equitable? How will the rights of vulnerable stakeholders be protected?
2. Who has the eventual right and authority to make decisions about a proposed project? How are the interests and needs of different stakeholders weighed in decision making?
3. Who will, eventually, be accountable for project decisions and the consequences of these decisions? The project developers? The financiers? The World Bank? The State? Equally important, who will they be accountable to?

The World Bank defines stakeholders as all those who: have an interest in a project; are directly or indirectly affected by it, and/or; those who can contribute to it. This begs further questions about how stakes are distributed and valued. As parties with significant interest in the project, should the stakes of Transfield and Electricite De France have the same value as those of directly affected communities who will have their lands and homes flooded? A number of banks, including the World Bank, will contribute to the financing of the project. Are their stakes equal to the stakes of Lao citizens who will repay the debt and bear future economic costs?

It is important that an assessment of interests in any proposed project be broad based and provide due consideration to both long, and short term interests. However, current methods of stakeholder analysis can be extremely problematic when one looks at their implications for making decisions about projects, ensuring adequate and fair compensation for all project related losses, and rights towards proportional shares of project benefits. Stakeholder analysis

should not become a process for diluting the legitimate rights of people and communities to resources and decision making.

Unless lines of accountability and responsibility about decision making are justly developed, clearly articulated and legally enforced, the development and appraisal of a proposed project will be based on compromised economics. Assessments of impacts, costs and benefits will favour those with greater political and economic advantage, and the public consultation process will serve to rationalise the perspectives and interests of the more powerful, rather than provide fora for free and authentic dialogue about the viability and desirability of the project.

In sum, when we talk about "best practices," related to participation, it might be worthwhile to ask: "Best practices for who?" There is no dearth of methods, tools or experts to further participation in any field. But participation is a complex process that requires more than simply the use of different methods and tools. It calls for a will to open the decision making platform to those who will be most affected by these decisions. More fundamentally, it requires that people are able to engage in decision making as equals and not as potential victims without rights.

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