

# **THEUN-HINBOUN UPDATE:**

## **A Review of the Theun-Hinboun Power Company's Mitigation and Compensation Program**

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## INTRODUCTION

In September, 2000 the Theun-Hinboun Power Company (THPC) released its Mitigation and Compensation Program (MCP) Report.<sup>1</sup> The MCP was prepared as part of the company's obligations under its loan and concession agreements with the Asian Development Bank and Government of Laos (GoL) and followed almost three years of mounting evidence of serious livelihood impacts occurring to local citizens in the project area. Many of these impacts had been identified in the April, 1998 study *Trouble on the Theun-Hinboun: A Field Report on the Socio-Economic and Environmental Effects of the Nam Theun-Hinboun Hydropower Project in Laos*.<sup>2</sup> This briefing paper was commissioned by International Rivers Network in order to provide an update on the situation at Theun-Hinboun since the *Trouble on the Theun-Hinboun* report was released, and to review and provide some analysis of the THPC's proposed Mitigation and Compensation Program.

## BACKGROUND

The Theun-Hinboun Hydropower Project is a 210 MW trans-basin water diversion project which cost \$260 million to construct. Water from the Theun-Kading river is diverted into the Hai/Hinboun rivers through turbines which generate electricity for export to Thailand. The project is operated by the Theun-Hinboun Power Company, (THPC), under a 30 year "build-own-operate-transfer" (BOOT) agreement facilitated by the Asian Development Bank (ADB). The Lao government owns 60% of the project, mainly financed by a \$60 million ADB loan. MDX Lao, a unit of the Thai company GMS, owns 20% and Nordic Hydropower, a partnership of Swedish and Norwegian state-owned utilities Vattenfall and Statkraft, owns another 20%. The project also received financial assistance from the Norwegian government and UNDP.

The Theun-Hinboun Hydropower Project has been plagued with controversy and problems from its inception.<sup>3 4</sup> Concerns raised by outside groups during the project approval process—over its poor decision-making process, inadequate EIA, conflicts of interest, and potential for severe environmental and socio-economic impacts—were downplayed or ignored by the project sponsors. At the time of its official opening in April, 1998 the Asian Development Bank praised Theun-Hinboun as a "model project" with "little for the environmental lobby to criticize."<sup>5</sup> The initial agreement, brokered by the ADB, limited the THPC's total financial responsibility for all mitigation and compensation to \$1 million—almost all of which was spent on project infrastructure, consultants, government training, and similar activities. No meaningful direct compensation for villagers affected by the dam was included. No provisions were made to hold the project developers or financiers liable for future problems.

However, shortly after the closure of the dam in early 1998, villagers began suffering increasingly severe impacts to their livelihoods from the project. These impacts have included the loss of fisheries, flooded vegetable gardens, loss of drinking water supply, lowered water tables, impaired boat and pedestrian access to surrounding areas, inundation of agricultural lands, bank erosion, and the loss of fishing equipment. This has created great hardships for thousands of local people—reducing their food security,

cash income, and overall quality of life. These impacts were first reported in the *Trouble on the Theun-Hinboun* report, released by International Rivers Network in April, 1998. Soon thereafter, other independent visitors to the project area confirmed villager accounts of these impacts.<sup>6</sup> The THPC and the ADB initially refused to acknowledge these impacts were occurring and they aggressively attempted to discredit the accounts. A hastily launched ADB mission tried to track down individual informants and get them to refute statements included in the *Trouble on the Theun Hinboun* report.<sup>7</sup>

The THPC then hired Terry Warren, a reputable fisheries expert with extensive experience in Laos, to look into the allegations of fishery damage. Contrary to THPC's expectations, Warren's study confirmed the reports of serious impacts on fisheries over a wide area in the Theun-Kading and Hai-Hinboun river basins.<sup>8</sup> While Warren's report was completed in June, 1999, the THPC and ADB have refused to officially release it, despite repeated requests.

A follow-up ADB mission to the project in November, 1998 – as Warren's field work was underway – was confronted with overwhelming evidence of serious livelihood impacts. As a result, the ADB publicly acknowledged for the first time that local people were being seriously harmed by the project. The mission also admitted that the impact area was much larger than previously acknowledged and included the lower Nam Kading and the lower Nam Hinboun all the way to their confluences with the Mekong.<sup>9</sup>

The mission promised speedy action to further document and respond to these impacts. To address the *"incomplete investigation and compensation of impacts in the newly defined project zone"* the mission defined the action to be taken as *"immediate design and implementation of a program to clearly identify and mitigate all impacts within the new impact area"* through a *"survey to begin in January 1999. Negotiations to begin in March 1999. Compensation to be completed approximately May 1999."* Regarding fishery losses, the ADB Mission proposed to *"negotiate and provide compensation for direct Project-related impacts"* through *"Implementation of the plan expected to begin as early as June, 1999. Immediate mitigation after impact survey completion for villagers, if any, suffering acutely from fisheries impacts."*<sup>10</sup>

Unfortunately, what followed was a series of delays, poor process, and apparent stalling by the THPC:

- The survey, conducted by researchers from the National University of Laos contracted by the THPC, was scheduled for January, 1999 but wasn't initiated until April. The survey report was not completed until September. Villagers have reported that the survey was superficial, did not allow for adequate input, and was not participatory. The interviewers were rushed and in some cases only spent an hour or so in each village. They did not provide adequate information to villagers about the compensation determination process. Many villagers felt they did not have an opportunity to detail their losses or request appropriate action.<sup>11</sup>
- Despite these problems, many villagers were left with the impression that at least some compensation would soon be provided. But by August, 1999 a Lao speaking visitor to the project area found that negotiations with villagers regarding

compensation had not yet commenced and adequate compensation had not been provided to affected communities. Villagers had been given very little information about the project or the compensation process, and were frustrated and angry.<sup>12</sup>

- A new ADB mission in November, 1999 was much more forthcoming about the serious harm occurring to villagers from the project and the lack of action by THPC.<sup>13</sup> The mission report acknowledges that the NUOL/THPC survey "*fails to clearly identify Project-related impacts at the villages. Therefore, the process of negotiation and provision of compensation, which was to begin immediately after the survey was completed, has not been accomplished.*"<sup>14</sup> The mission was critical of the THPC's failures:

*"THPC continues to deal with the Project's complex environmental and social issues on a largely ad hoc basis. As a result, some major Project-induced impacts have gone unmitigated for almost two years. These include no compensation for lost gardens and virtually no compensation for losses in fish catch. These impacts have had serious negative consequences for the affected villagers."*<sup>15</sup>

- In July, 2000 a visit by representatives of the Norwegian NGO FIVAS and International Rivers Network found ongoing villager dissatisfaction with the project. Villagers were unclear about what type of compensation was to be provided or the timetable. Villager reports about the situation at Ban Namsanam were in great contrast to those provided by the THPC.
- In September, 2000 the MCP Report was finally released and approved by the THPC Board of Directors.

Almost three years after villagers began being harmed by the project, and a full two years following the November, 1998 ADB Mission, no direct compensation for fisheries losses has been provided to local people. This is a clear violation of the ADB/THPC's commitment to provide timely assistance to all affected villagers. Throughout this entire period, concerned international NGOs made numerous appeals to the ADB, as the project's lead financier, and as a development institution with a poverty alleviation mandate, to ensure that fair and timely compensation be provided to affected villagers. The ADB has policies in place which state that the Bank must "*identify and assess options for avoiding, mitigating, or compensating groups which may be adversely affected*" by a Bank project.<sup>16</sup> Throughout the process, the ADB has responded to NGO concerns with assurances that the compensation process will soon be underway. The Bank remains obligated to ensure that Lao citizens are duly and fairly compensated for their losses.

## **THE PROPOSED MITIGATION AND COMPENSATION PROGRAM**

The THPC hired a Lao-based environmental consultant, Murray Watson, to design the MCP. Mr. Watson is a favored consultant of the ADB in Laos and he has consulted for numerous other hydropower projects in the region including Nam Leuk, Se San 3, Xekaman, and Nam Ngum 3. His report was completed and approved by the THPC

Board in September, 2000. The MCP Report outlines a ten-year program, costing somewhere between \$2.74 million and \$4.65 million. The current Environmental Management Committee (EMCO) is to be restructured as THPC's Environmental Management Division (EMD) and is to be the implementing agency for the program. The MCP Report divides its summary of environmental and social impacts—and proposed mitigation and compensation measures—into those for the “Downstream Donor River” (the Nam Kading), the “Headpond” area, and the “Downstream Recipient River” (the Hai/Hinboun rivers). Impacts related to project construction, and their associated mitigation/compensation measures, are listed separately.

The MCP lists some of the previously agreed-upon activities—road building, improved village access through now flooded areas, and provision of alternative village water supply—that are already being implemented. These are initiatives that were included in THPC's original mitigation agreement dating from the start of the project. Measures to compensate villagers for the loss of fishing nets and equipment and for their riverbank gardens are also reportedly underway (see below). A number of environmental mitigation measures, including erosion control, are proposed.

The MCP points out that the THPC has also continued with several other initiatives, such as a model school and clinic, which were under the terms of its initial agreement with the ADB and Lao government. The report mentions steps taken towards providing rural electrification in the area by THPC and Electricité du Laos (EdL). The MCP acknowledges that these are separate development contributions by THPC and EdL not considered as part of project mitigation or compensation for losses incurred by local citizens.

For the first time, the THPC has acknowledged a somewhat more realistic estimate of the extent of the project's environmental and socio-economic impacts. The MCP document lists over 3000 households (589 along the headpond and 2475 in the Hai/Hinboun river basins) as suffering from “seriously impaired” fisheries and an additional 1372 households in the Nam Kading river basin as suffering from “slightly impaired” fisheries. Impaired water supply, “seriously impaired” gardening opportunities, impaired washing and bathing water, and “mildly impaired” access to rice fields, fishing, and forests are inventoried for thousands of households. “Very severe damage” to fish migration routes and “severe damage” to 32.5 km (plus “mild damage” to 64.2 km) of aquatic and riverbank/island habitats and wild populations along the Kading River (in the Nam Kading National Biodiversity Conservation Area) is also acknowledged.

While the THPC holds a thirty year concession to operate Theun-Hinboun, the MCP will operate for ten years. No mention is made of what will happen after that time. It is unclear whether the THPC is committed to further mitigation and compensation, as required, throughout the life of the project concession.

A detailed assessment of the MCP has revealed several serious inadequacies with the program, outlined as follows:

## **Lack of Accountability to Local Citizens**

The MCP provides no evidence that the initiatives proposed were developed together with local communities as their preferred options for compensation. As of July 2000, villagers in the area had very little idea of what measures were being proposed for compensation. Local people do not appear to have had sufficient opportunity to give input into proposed mitigation and compensation measures or to formally approve of the MCP plan.

The MCP provides no process for affected villagers to hold the THPC accountable for its actions. Affected villagers have no mechanisms for arguing their case and no recourse to an independent body or court to expedite some relief or to sue the developers for the full value of their losses. No allowance is made for independent verification of whether the MCP is performing adequately to the satisfaction of local people. It is left up to the THPC to make these determinations. As the ADB and THPC have a track record of consistently ignoring or downplaying concerns about project impacts and breaking their commitments, it is now particularly important that the MCP proceed with maximum transparency, a formal system of checks and balances, and a timeframe for delivering services to affected residents. Without such mechanisms, citizens have no guarantee that the program will benefit them as claimed.

The World Commission on Dams, which released its final report in November 2000, criticizes the type of approach used by THPC and the ADB at Theun-Hinboun, finding that *"there has been a generalised failure to include and recognise affected people and empower them to participate in decision making."*<sup>17</sup> This results in poor social, environmental and economic performance of large dams. The WCD also recognizes the *"failure of dam proponents and financing agencies to fulfill commitments made, observe statutory regulations and abide by internal guidelines..."*<sup>18</sup> The WCD Knowledge Base *"offers many examples of the failure of project proponents, contractors and operators to fulfill commitments, whether explicit (project specific agreements and contracts) or implicit (applicable policies, laws, regulations and guidelines)."*<sup>19</sup>

The WCD proposes that future compensation and mitigation measures be based on negotiated agreements with affected peoples. According to the WCD, this *"requires a legal and procedural framework that provides for a free and informed negotiation process. This framework it must provide for arbitration, recourse and appeal mechanisms to ensure equitable adjudication in cases where negotiated settlements are not achievable."*<sup>20</sup> These principles should be applied in the Theun-Hinboun case, and the mitigation and compensation program should involve negotiated agreements with affected villagers.

## **Unclear Criteria for Evaluating Extent of Project Impacts**

The MCP may still be underestimating project impacts in some areas. It is unclear why the households in the lower Nam Kading watershed are listed as only suffering "mild impairment" to their fisheries and access or what criteria were used in making this judgement. This conclusion is not based on findings in Warren's fisheries report and there is no evidence that it was based on good data, detailed field investigations, or

even villager reports. A visit in August, 1999 by an independent researcher to two villages in the lower Nam Kading found Ban Hatxaykham experiencing “*severe declines in fisheries*” and Ban Pak Soun having “*dramatic declines in fish catches.*” Fish consumption and income from fishing had dropped significantly. The researcher also noted that impacts to village water supply through the drying up of wells has not been adequately documented or addressed by THPC.<sup>21</sup> The MCP consultant needs to provide detailed information on what methodology and criteria it used for evaluating project impacts for the entire project impact area and how it justifies its determination of only “slight impairment” to the fisheries, water table/supply, and boat access for villages in the lower Nam Kading.

### **Misallocation of resources to consultants and officials instead of villagers**

The total “definitive or probable” mitigation and compensation budget for the \$260 million Theun-Hinboun Hydropower Project is \$2.74 million over ten years, an average of \$274,000 per year—less than the annual budget of many NGOs operating in Laos. An additional \$1.9 million of “conditional or contingent” costs may be spent if the THPC determines it necessary to do so at a later time. Deducting allocations for construction-related mitigation—including those related to access roads and transmission lines—a total of \$2,602,470 is available for “definitive or probable” expenses for environmental and social impacts relating to dam operations. Of this amount it appears that \$1,979,970 (76%) will be spent on further studies, assessments, plans, and monitoring. Most of the remainder will go to support development initiatives, such as aquaculture and model gardens, of uncertain benefit to local people (see below). Only \$137,500—for the purchase of water pumps for gardens—is allocated as direct compensation to villagers. The “contingent” budget may provide additional funding for direct compensation but no firm commitments are made. Large contingent budget allocations are made for the fish pass (\$390,000) and for a Substitute Habitat Protection Plan for the Nam Kading NBCA (\$186,200) although both initiatives would appear to conflict with THPC’s proposal to eliminate minimum flows in the Nam Kading. (See below for further details).

Instead of compensating victims, the MCP is effectively creating several new classes of project beneficiaries—including local and foreign consultants and EMD staff.

### **Failure to recognize citizens’ rights to immediate direct compensation for fishery losses**

The MCP fails to provide any direct financial compensation to villagers who have suffered from lost food security and cash income due to the destruction of their fisheries. The MCP proposes to make villagers wait—possibly up to ten more years—for unclear potential benefits to materialize from alternative development initiatives in order to make up for the harm inflicted to their basic livelihoods dating from the closure of the dam almost three years ago. In the meantime, no compensation is provided and there are no revenue-sharing agreements with the developers that might provide some immediate relief for villagers while waiting for these potential long-term benefits. Meanwhile, the THPC is earning an estimated \$54 million in electricity sales annually.<sup>22</sup>

The Nordic partners of the THPC would never be able to operate dam projects in their home countries in such a manner. In Norway, Statkraft would be obligated to provide cash compensation to recognized users of water resources should it in any way expropriate or damage their resources, property, or livelihoods. Amounts to be provided are determined by the courts, not the developer.<sup>23</sup>

The MCP Report justifies the failure to compensate by saying that it is now impossible to evaluate fish impacts since there was no baseline data on fisheries collected before the dam was built. The lack of baseline data – a failure of the project developers including the ADB – thereby becomes the responsibility of the villagers. This is clearly unjust. At this point the THPC should be accepting high-side estimates of past fish catches based on villager recollection and data collection by a competent, independent, and unbiased third party.

The author of the MCP Report, Murray Watson, states that providing direct compensation will encourage villagers to exaggerate their claims and that this is good grounds for refusing to provide such compensation: “*Retrospective compensation induces dependence and dishonesty.*”<sup>24</sup> The MCP Report acknowledges that fishery impairment will be “*more or less permanent*” but goes on to claim that direct compensation should not be attempted as it would become a source of “*permanent dependence on the part of the villagers*” and subject to “*misappropriation by agents involved in administering it.*”<sup>25</sup> But the main administering agent would presumably be the THPC's own Environment Management Division. This begs the question of why Mr. Watson expects that institution to do any better at managing the rest of the multi-million dollar MCP than he believes it would do at administering direct financial compensation.

It has been the Theun-Hinboun project itself—not the local villagers—that has caused permanent harm to local livelihoods and consistently been dishonest about project impacts. To use fears of dependence or future dishonesty as grounds for refusing direct compensation to villagers is arrogant, patronizing, and unjustifiable. Permanent losses require permanent solutions and direct compensation will have to be provided. Local people may then decide to invest some of their compensation in new development initiatives or for community-wide projects but those will be their individual decisions. Compensation must be retroactive to the time of dam closure and should continue through the life of the project unless it is proven, through independent verification, that alternative and sustainable food production and income generating opportunities have already been successfully provided to affected villagers to their satisfaction.

### **Reliance on Risky Development Initiatives Without Substantiating Claims of Future Benefits**

The MCP makes claims of future benefits—increased fish production, restored vegetable gardens, employment and trading opportunities—without any substantiation, guarantees, or evidence from elsewhere that those benefits will in fact materialize. Risky development initiatives of unquantified and uncertain future benefit are proposed for individual families—families who are experiencing serious livelihood concerns right now. The report admits that those most in need are the least likely to benefit from such



development initiatives and that current THPC staff do not have the skills to address these issues, requiring a major—and probably time-consuming—restructuring of the EMD. Without providing any specific details, the report goes on to claim that the MCP will implement agricultural development initiatives attempting to reach “*most households in a relatively short space of time.*” This is the justification used that “*allows THPC to, for the moment, to ignore the issue of compensating for lost fishery production.*” (sic)<sup>26</sup>

The MCP recommends aquaculture using net cages to compensate for the loss of river fisheries. Mr. Watson cites his own theoretical study for another hydropower project in Laos and a study from Indonesia, where conditions are very different, in justifying this idea. The MCP Report was not able to point to any existing successes for this type of project in Laos. The THPC's own fisheries consultant reports that net cage fish raising is a high-risk activity given conditions in Laos and he recommended against it in his report on Theun-Hinboun:

*“The possibility of raising fish in cages has been proposed in some reports. However, this cannot be recommended in this report either. Cages cost time and money to build. They have limited life-spans and are subject to outsider theft. In a river like the Theun, during the wet-season months, they are vulnerable to submerging by flash floods and physical damage from floating debris. Above all, whatever species are stocked, fish require good-quality protein food in order to grow and provide returns on investments. Given the limited resources of riparian villagers along the head-pond, pelleted concentrate feed would probably need to be imported from Thailand, which would almost certainly make the venture unprofitable. Unless the cages are positioned in sheltered areas, fish growth would probably be poor during the wet-season months because of the extra energy demands required by the fish to “hold station” in the cages. With no readily available source of wild seed fish, at the right time, of the correct species, of the right size, there would be a tendency to try to use exotic fish again. This introduces the risk of escapees and also the possibility of disease. It's quite possible that some villagers will experiment with cages on their own, but this is unlikely to become a sustainable activity in the long-term and should not be actively promoted.”<sup>27</sup>*

Raising fish takes a continual investment each year—costs the villagers must bear. It is often the richer villagers that succeed with fish farming, not the poorest who are most in need of compensation. In the lower Nam Kading, there isn't enough water in the dry season for cages. There are very limited extension services in the area for teaching villagers how to raise fish, and the villagers have little experience in this regard. High rates of failure can be expected and it will be the villagers bearing these risks.

Similar concerns exist over the MCP's methods for compensating villagers for the loss of riverside gardens—which in the past provided important sources of nutrition and cash income. Electric pumps are being provided so that villagers can irrigate new garden areas. But even the MCP Report points out that the use of electricity to carry out garden watering is “*unsound and unsustainable.*”<sup>28</sup> At other locations in Laos pump irrigation, which had been heavily promoted by the government and some aid projects, is being abandoned due to high costs. According to local Agriculture Promotion Bank officials in Khong District of Champasak Province, ten of 100 villages supplied with

pumps have stopped using them and villagers in other villages are reportedly dissatisfied and considering abandoning them as well.

The MCP proposal makes guinea pigs of Theun-Hinboun villagers—they will be experimenting with unproven technologies of unclear future benefit. Such risk-taking may at times be appropriate in private enterprises or when initiating innovative development programs. But in a situation where villagers are already suffering direct livelihood losses from a profit-making enterprise—financed through public funds by the ADB and Nordic agencies—this is certainly not appropriate. Even if these initiatives eventually were to work, such attempts to restore livelihoods can in no way absolve the THPC from its obligation to compensate affected villagers for their losses from the start of the project.

### **MCP proposes to cutoff downstream flow to Nam Kading**

The MCP proposes that the THPC renege on its commitment to allow a minimum 5 cumecs of water to flow downstream into the Nam Kading—through the Nam Kading National Biodiversity Conservation Area and past villages already suffering from the impacts of lowered water levels. Eliminating the minimum flow would increase electricity generation and revenues. THPC claims money saved by eliminating the minimum flow will be used to fund the MCP—but no guarantees of this are provided nor any promises made to expend additional funds on compensation beyond what the THPC has already committed in the MCP. The 5 cumec level is already only half of what was recommended in the NORPLAN EIA for the project.

This proposal does not appear to be based on scientific reality. Mr. Watson admits the current level is of “unknown mitigative benefit.” Mr. Watson relies on an out-of-context quote from the book *Silenced Rivers* for justification in arguing that—since the current release is insufficient—the THPC might as well eliminate it altogether. His opinion is at odds with the THPC's own fisheries consultant. One of the critical recommendations in Warren's report was that the minimal flow be increased to 10 cumecs and that there then be further study to consider whether it should be increased still further: “*It is highly unlikely that the existing minimum flow release is sufficient to maintain the health of the aquatic environment in the Nam Kading downstream from the dam.*”<sup>29</sup> Warren suggests that increasing the flow would to at least the level recommended in the original NORPLAN EIA, 10 cumecs, would be beneficial: “*There is no evidence to suggest that the damage undoubtedly caused by the present minimum release of 5 cumecs over two dry-seasons in 1998 and 1999 is irreversible. On the contrary, environmental conditions can be expected to improve providing the increased minimum flow is continuous.*”<sup>30</sup>

WCD findings regarding minimum flows are also at odds with Mr. Watson's view:

*"Efforts to minimize the impacts of changes in flow regime have relied on measures to restore the streamflow regime through the setting of environmental flow releases (EFR)... The level of EFR required is determined by the need to maintain particular ecosystem components downstream... The countries that use this method have recognised that a short-term reduction in financial returns from a project often leads to*

*improved long-term sustainability and attainment of broader societal objectives for a healthier environment.*"<sup>31</sup>

WCD recommendations point out the value of maintaining significant minimum flows and the necessity of involving local communities in agreements over such flows:

*"Large dams provide for releasing environmental flows to help maintain downstream ecosystem integrity and community livelihoods and are designed, modified and operated accordingly.... Dams should now be specifically designed to release the necessary flow of good quality water... Locally driven processes to establish the objectives of environmental flows will lead to improved and sustainable outcomes for rivers, ecosystems and the riverine communities that depend on them."*<sup>32</sup>

Eliminating the minimum flow can be expected to further harm the ecology of the Nam Kading, particularly through the Nam Kading National Biodiversity Conservation Area, destroying all river-based wildlife to the confluence with the Nam Mouan. It will also exacerbate all of the negative impacts—impaired fisheries, impaired river boat access, impaired access to water for gardens, impacts on drinking water supply—being experienced by villages in the lower Nam Kading watershed, creating the need for yet more compensation and mitigation. It would also result in greater impacts along the Nam Hai/Nam Hinboun, where water levels would be higher during the dry season.

### **Contradictory Plans Regarding Fish Pass Construction**

The MCP proposes to study, and possibly construct, a fish pass at the dam site at an estimated cost of \$390,000. It is unclear why this wasn't done as part of the basic project infrastructure right from the start. Funding for its construction should not have to come out of the limited compensation budget. Unfortunately, the THPC has tended to include items that should be basic project infrastructure, such as the re-regulating pond, into its mitigation and compensation budget. The Warren fisheries report points out that a fish pass may have some benefits for certain species of fish but it is unlikely to make a significant impact in restoring fisheries for area citizens. Therefore, the fish ladder should not be considered a substitute for direct compensation to villagers. Furthermore, this initiative appears to be in direct conflict with the THPC's desire to eliminate the minimum flow in the Nam Kading. The elimination or decrease of the minimum flow in the dry season will affect fisheries in the Nam Kading, thereby affecting fish migration.

### **Failure to fairly assess 1996 flood damage upstream of dam**

Many villagers believe the severe floods of 1996 were at least partially caused by project construction. Villagers have repeatedly requested compensation for this from the THPC. While the MCP Report states at one point that "*accurate assessment involving all parties about whether the project works made the natural flood worse in the headpond ... needs to be done as soon as possible*"<sup>33</sup> other comments in the report indicate that THPC has already decided it is not responsible for the flooding: "*THPC and EMCO have strong grounds to believe that this was a natural phenomena and THPC bears no responsibility. A report must be prepared and verified and a way of convincing the headpond villages found.*"<sup>34</sup> What is needed is an independent

assessment rather than another THPC effort to convince the villagers that the flooding is unrelated to the dam.

### **Continuing problems and misunderstandings at several area villages**

Outside reports have consistently found the situation at some affected villages to be very different from that described by THPC and the ADB. At Ban Namsanam the ADB claimed relocation to a new site was unrelated to the project but villagers deny this: *"Nobody wants to move their homes to the new relocation site. We were happy in the old village but circumstances resulting from the construction of the dam have made it difficult for us to remain in the old village."*<sup>35</sup> Compensation for moving has been inadequate to cover costs and promised services at the new site have been very slow in coming. Those that moved to the new site and found it lacking were not allowed to return to their old site. Visitors in July, 2000 found that *"everyone in Ban Namsanam has suffered losses or setbacks...now only 50-60% are self-sufficient in food."*<sup>36</sup>

Villager reports from Ban Kengbit also point to misunderstandings: *"The issue of relocation is a sore point in the minds of Ban Kengbit villagers. While the THPC and the ADB maintain that villagers relocated from the other side of the Nam Theun River voluntarily in order for them to be adjacent to the road, this is in fact only partially the truth...while it was not forced relocation in the strictest sense of the term, neither was it true voluntary relocation...Fear of impacts from the dam caused the move."*<sup>37</sup> Equally compelling concerns have been reported at several other villages as well.

At this point there is a lack of trust and possibly a need for some type of outside mediation by an independent third party so that misunderstandings can be resolved and an equitable resolution of the situation devised. The THPC and ADB need to recognize that reasons for relocation are complex and that many indirect project-related impacts can lead to villagers having to move. The full costs to villagers of such moves needs to be calculated and compensated for by the project in a much more timely manner than has so far been the case.

### **CONCLUSION**

While instituting a just system for compensating affected villagers is a long-overdue step for the Theun-Hinboun Hydropower Project, the gross flaws in THPC's proposed Mitigation and Compensation Program provide cause for concern. The MCP—by refusing to move forward with direct compensation for fishery losses or to make itself accountable to local people—actually represents a step backwards in efforts to gain redress and justice for those Lao citizens suffering impacts from the project. Villagers have now been experiencing livelihood impacts for almost three full years and it has been over two years since the November, 1998 ADB Mission finally acknowledged that these impacts are occurring. But to date the loss of villager food security and cash income through impaired fisheries has not been remedied in any way. In effect, very poor rural villagers continue to subsidize the profits of the Theun-Hinboun Power Company. The project is in clear violation of ADB lending guidelines which state that local citizens should be left no worse off by their projects.

At this point the THPC and ADB staff appear to be unwilling or unable to address these concerns. It is time for the donor countries to the ADB, along with the governments controlling Nordic Hydropower, to take a much stronger role. At a minimum, they should insist that:

- **A comprehensive program of direct compensation to affected villagers, as outlined above, be initiated immediately.** This should include reparations for past damage, dating from the construction and opening of the project, and ongoing compensation. As recommended by the WCD, such compensation and mitigation measures should involve negotiated agreements with affected villagers and the development of systems of accountability through which villagers can hold the THPC responsible for project impacts and its performance in remedying them. Independent monitoring will be needed as the THPC has proven itself unreliable in this regard.
- **An independent Environmental Impact Assessment be conducted in advance of any reduction in the minimum flow in the Nam Kading.** This assessment should look at what changes could be expected by eliminating the minimum flow, as proposed by THPC, or—conversely—whether it should be increased. Agreements regarding water flows should include direct negotiations with affected villagers over the management of their river systems.
- **Full funding of direct compensation be provided—through reorienting the existing MCP budget, from the ample profits of the THPC, and/or through the ADB and Nordic agencies responsible for the promotion and approval of the project in the first place.** Full funding may well require financial resources in excess of what the THPC has so far committed to provide in the proposed MCP. But funding of all needed mitigation and compensation measures should not be at the expense of further socio-economic disruption and environmental destruction in the Theun-Hinboun region through the elimination of the minimum riparian flow. As Nordic state utilities are major project beneficiaries, it might be appropriate for either Nordic ratepayers or taxpayers to cover the cost of conducting future studies and to use the THPC's existing MCP budget to begin providing some immediate relief to affected citizens in the project impact area.
- **A comprehensive and participatory post-project evaluation be undertaken.** Such an evaluation should be conducted by an independent neutral organization—not a private consulting firm contracted by the THPC. This would be particularly timely as both the ADB and the World Bank are looking at supporting new hydropower projects in Laos in the near future. Conducting such evaluations are in keeping with new WCD recommendations: *"More intensive monitoring, extending from the construction phase through the first few years of operation, followed by a comprehensive post-project evaluation after three to five years involving affected stakeholders, will help to identify and resolve many early problems..."*<sup>38</sup>

## ABBREVIATIONS/TERMS USED

ADB	Asian Development Bank
Ban	Lao word for village
Cumecs	Cubic meters of water per second (measure of water flow)
EdL	Electricité du Laos
EMCO	Environmental Management Committee (of the THPC)
EMD	Environmental Management Division (of the THPC)
GoL	Government of Lao PDR (Laos)
MCP	Mitigation and Compensation Program
Nam	Lao word for river
THPC	Theun-Hinboun Power Company
WCD	World Commission on Dams

All dollar figures are US dollars.

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<sup>19</sup> WCD, 2000: p.189.

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<sup>22</sup> We have been unable to obtain figures for actual revenues to THPC. The estimated revenue of \$54 million annually is from Gunnar Wallin of Vattenfall, quoted in Ann Danaiya Usher (ed), *Dams as Aid: A political anatomy of Nordic development thinking* (London: Routledge, 1997). According to the ADB's 1994 figures, the dam was expected to generate \$68.8 million annually.

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<sup>25</sup> THPC, 2000, Section A.2.1.

<sup>26</sup> THPC, 2000, Section G.

<sup>27</sup> Warren, 1999, p.34.

<sup>28</sup> THPC, 2000, Section B.2.6.

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