

Mr Yoshihiro Yamabayashi, Managing Director,  
Nam Ngiep 1 Power Company  
House No.236, Unit 16, Ban Phonesinumam,  
Sisattanak District, Vientiane Capital, Lao PDR  
*-Via Email-*

6<sup>th</sup> May 2014

**Re: Nam Ngiep 1 Public Consultation Process**

Dear Mr. Yamabayashi,

We are writing on behalf of International Rivers and Mekong Watch to raise specific concerns and questions related to the “Broad Stakeholder Forum” being hosted by the Nam Ngiep 1 Power Company at Don Chan Palace in Vientiane this week. We understand the meeting on 7 May will be convened to present the project’s impacts and social and environmental mitigation measures to the media, international organizations with registered offices in Laos, and Lao NPAs.

International Rivers is an international non-governmental organization working around the world to protect rivers, support the aspirations of people who depend upon rivers for their livelihoods, and promote development alternatives that meet peoples' energy and water needs. Mekong Watch is a Tokyo-based environmental non-governmental organization which monitors development projects, especially those involving Japanese public and private funds. We appreciate your company's efforts to disclose project documents to date, and hope that in the future, reports made by the Independent Advisory Panel, as well as all ecological and social studies done over the course of the concession agreement period, will similarly be made public. In the spirit of open communication and exchange, International Rivers and Mekong Watch respectfully submit the following questions about the procedures of consultation being followed by your company, based on the standards outlined in the ADB's safeguard clauses on the Environment and Indigenous People that are diligently referenced in project documents.

The ADB's Safeguards on the Environment require a company to consider meaningful options for a “no project alternative” (Section D on General Requirements). The willingness to consider withdrawing the proposal to build a dam is not only important from the ecological perspective, but also as the basis from which to engage with indigenous people in the affected area in a process of free, prior and informed consent. However, the Executive Summary of the Nam Ngiep 1 Hydropower Project Environmental Impact Assessment states: "The No project alternative does not comply with the Greater Mekong Subregion energy strategy, with Lao national development priorities, with GOL policies for the power sector or the MOU between Laos and Thailand on energy supply" (p. viii).

Can you please confirm whether this means your company automatically dismissed the “no project alternative” - prior to meeting and consulting with the indigenous people whose villages would be affected by the dam?

Can you clarify if affected villages involved in the consultation meetings were informed that the project would move ahead, with or without (a) their consent, and (b) alternative options for development being thoroughly explored?

In your project documents, the content covered during the consultation sessions with affected villagers, includes discussions which presume the project will proceed, such as the project timeline, impact assessments, resettlement options, compensation, access to the grievance mechanism and livelihood restoration measures. In this context, how was it possible to ascertain that people are giving consent and being, meaningfully consulted as outlined in the ADB's safeguard policy on Indigenous People without already being under implicit pressure to accept the situation at hand?

The ADB safeguard policy on Indigenous People explicitly explains the following:

*“To carry out meaningful consultation with affected Indigenous Peoples, the borrower/client will establish a context-specific strategy for inclusive and participatory consultation”* (Section G on General Requirements, para. 11).

Significantly, a “context-specific” strategy would need to take into consideration that Laos is a state where well-established human rights groups, such as the International Federation on Human Rights and Amnesty International, have documented widespread restrictions on the freedom of expression, association and peaceful assembly, and the particularly severe levels of intimidation experienced by ethnic minorities and advocates working for environmental and social justice (e.g., FIDH Briefing Paper, October 2012; Amnesty International's Annual Reports on the State of the World's Human Rights Report 2012, 2013). However, in all instances of consultations outlined in your project documents, various representatives of the government ministries were present, and in some cases, they outnumbered the villagers present. Can you please clarify if your company considered taking any context-specific steps to ensure consultations took place in an atmosphere free of intimidation and coercion?

At the consultation meeting in Vientiane, a similar set of restrictive circumstances exists. Participation is limited to organizations registered in Laos, and is therefore only inclusive of groups that have the express approval of the Government of Laos. However, the Lao National Guidelines for Public Involvement in Environmental and Social Impact Assessment (ESIA) issued in 2013 to accompany the Prime Minister's Decree on Environmental Impact Assessment No. 112 clearly state that “[s]takeholders include all people with an interest in a project” (Section 4.1 on Identification) and that public hearings for proposed projects should be open to “[a]ll interested parties who wish to attend or participate in this public [meeting/hearing]” (6.2 Proforma for Notifying the Public of a Public Meeting). Furthermore, the “broad stakeholder” meeting to be held on the 7<sup>th</sup> of May is located in the Don Chan Palace, which is considered neither a neutral nor non-intimidating place for many members of INGOs and NPAs operating in Laos because of the presumed high degree of government monitoring.

Given that:

- (a) there is a general context of fear amongst civil society to raise fundamental or critical questions about hydropower projects,
- (b) there are no explicitly Hmong-identified organizations or ethnic minority alliances registered in Laos to advocate on behalf of their rights and interests, and

(c) limiting participation in such stakeholder consultations is contrary to the spirit and language outlined in the Public Involvement Guidelines,

we would like to know if your company intends to hold any additional meetings to gather the specific concerns and perspectives of civil society groups (registered and non-registered) in a location mutually agreed upon as non-threatening? We would also like to know if you intend to hold a national level meeting with translation into Hmong?

We hope that before proceeding further with the Nam Ngiep 1 Hydropower Project, your company will attend to the concerns outlined in the questions above. We look forward to receiving your response at the earliest time possible. Thank you for your consideration of these matters.

Sincerely,



Tanya Lee  
Lao Program Coordinator  
International Rivers



Toshiyuki Doi, Senior Advisor  
Mekong Watch

Cc:

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