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Mr. Duy-Thanh Bui
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Dear Ms. Daryl Fields and Mr. Duy-Thanh Bui

Re: Questions and Recommendations regarding the Nam Theun 2 Hydroelectric Project in Lao PDR

Mekong Watch is a Japanese NPO based in Tokyo. Thus far, we have conducted constructive consultations with the World Bank, the Asian Development Bank (ADB) and the Japanese Ministry of Finance on the Nam Theun 2 Hydroelectric Project (NT2) in Lao PDR.

The NT2 project has been supported by the World Bank and ADB as a “model for sustainable hydropower development,” but according to the International Environmental and Social Panel of Experts (POE) livelihood restoration program issues have been pointed out several times and a two-year extension of the Resettlement Implementation Period (RIP) was proposed in November 2015. The World Bank and ADB have also explained that revenue from the project will contribute to the eradication of poverty in Lao PDR, but the Government of Lao PDR has yet to publicize a financial statement and auditor’s report for the project, and since the implementing company has not disclosed revenue figures, it is unclear how the project is contributing to the eradication of poverty in Lao PDR.

We would like to ask you questions about (1) the extension of the project’s RIP, (2) transparency of the public finance management, and (3) the sustainability of the environmental and social considerations policy supported by the World Bank and ADB in preparation for this project.

1. Extension of the Resettlement Implementation Period

In October 2015, the 24th POE Report stated that “The POE’s finding is that a substantial proportion of the Resettlement Objectives and Provisions has not been fully achieved as yet and hence the Panel recommends a two year extension of the RIP to the end of 2017” (24th POE Report, p.2).

According to explanations given by Japan’s Ministry of Finance in its regular consultation with NGOs on June 24, 2016, the POE proposal has been accepted, RIP has currently been extended to the end of 2017, and a joint working group has been set up to consult on an action plan. However, while a quarter of the two-year extension period has already passed, there are doubts about whether this action plan will lead to an effective livelihood restoration for the affected persons.

Q.1-1 Could you please indicate a concrete schedule for the formulation and implementation of the Action Plan?

Q.1-2 The views of civil society should be reflected in the process of formulation of the Action Plan. Are any consultations planned?

Q.1-3 International civil society has expressed strong interest in this project, since it is being promoted as “a model for sustainable hydropower development.” We believe that, having publicized the Action Plan, the project should aim to carry out a highly transparent livelihood restoration and improvement program, but is there a schedule for the disclosure of the Action Plan?

Q.1-4 The RIP extension is due to end after a two-year period, but do you consider this period to be reasonable and valid? We believe that having set concrete targets for the livelihood restoration of the resettled residents, the RIP should be extended until these targets are fulfilled. What would be the two banks’ thinking on this view?

2. Monitoring of the transparency of the public finance management

In the regular consultation meeting between the Japanese Ministry of Finance and Japanese NGOs, mentioned above, the Ministry of Finance stated that “In the new finance management system introduced in 2014, the project support having been transferred to the national treasury, the current arrangements are that all the support funds are being allocated to the poverty eradication program and project.”

Q.2-1 How do you assess the transparency of the NT2 project’s revenue and expenditures management from the time of the inception of the project in 2010 to the present date? Further, how do the World Bank and ADB verify that project revenue is being used for poverty eradication?

Q.2-2 Was the transition to the “new finance management system introduced in 2014” carried out with the support of the World Bank and/or ADB?

Q.2-3 What improvements have occurred in the finance management system compared with that previously in place?

Q.2-4 Do the World Bank and ADB consider that transparency of the projects revenue and expenditure has been secured at present as a result of the introduction of the new system?

Q.2-5 If so, as the responsibility of donors who have supported the project, could we ask you to indicate concrete data that show how the project’s revenue is contributing to the eradication of poverty?

3. Expiration of the Decree No.192 issued by Prime Minister’s Office on relocation and compensation

At the time when the decision was taken by the World Bank and ADB to support the NT2 project, it was explained that the project would contribute to improvements in the criteria for environmental and social considerations in Lao PDR. In fact, the two banks have contributed to the formulation and enactment of laws and guidelines on Lao PDR’s environmental and social considerations through a number of technical assistance programs and other means.

One of these was the Decree on the Compensation and Resettlement of the Development Project (No.192/PM) issued by the Prime Minister’s Office in July 2005 along with the Regulations for Implementing Decree 192/PM on Compensation and Resettlement of People Affected by Development Projects (No. 2432/STEA) formulated by the Science, Technology and Environment Agency in November of the same year through the ADB’s “Environment and Social Program (Project Number: 34543 Loan Number: 1867).” Since Decree No.192 was formulated on the precondition that the NT2 project would receive support from ADB, the ADB has emphasized in its completion report for the “Environment and Social Program” (ADB. 2007. Completion Report: Lao PDR: Environment and Social Program, p.32) that the issuance of Decree No.192 was an achievement of ADB’s technical assistance.

However, as of April 5, 2016, the “Prime Minister’s Office Decree No.84 on Compensation and Relocation in Development Projects” has been issued, in which the expiration of Decree No.192 is clearly stated. Shown below is a summary of the main differences between Decree 192 and the new

Decree No.84 (*Please see the table on a separate sheet attached to this letter).

- While compensation to affected persons who have customary land use rights was clearly stated in Decree No.192, conditions have been added to the receipt of compensation to affected residents who have customary land use rights in Decree No.84.
- The “land for land” principle (Article 6, para 2), clearly stated in Decree No.192 with regard to impacts on land acquisition of farmland, residential land and commercial areas due to the project, has been deleted from Decree No.84.
- Regarding support for affected persons (APs) during the relocation period, while Decree No.192 states “until income and daily life situation stabilizes,” Decree No.84 states, “at least three years or over according to the consideration of the provincial, city Committee for Compensation and resettlement since the relocation of the affected from their original living areas” (Article 16). The responsibility of the project operators, which should have been to support APs’ income and daily life situation until they stabilize, has been diluted.
- While Decree No.192 clearly states that land for which land titles and certificates have been secured will be given as compensation, Decree No.84 makes no mention of the land titles and certificates of compensatory land.
- While Decree No.192 clearly mandates the the establishment of a Grievance Redress Mechanism by the project operator (Article 13, para 1), the establishment of a “Grievance Mechanism” as a responsibility of the project operator has become ambiguous in Decree No.84.
- While Decree 192 clearly states (Article 16, para 2) that the establishment of an independent monitoring agency is mandatory in the case of projects involving large-scale relocation, Decree No.84 makes no mention of independent monitoring.
- While the “Regulations for Implementing Decree 192/PM (2432/STEA)” stipulates detailed project operator responsibilities regarding Public participation, Consultation and Disclosure, Decree No.84 has no clear statement of this.

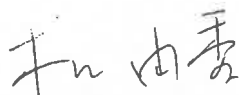
It can thus be said that with the issuance of Decree No.84 and the expiration of Decree No.192, the criteria for environment and social considerations regarding relocation and compensation in Lao PDR have suffered a setback.

Q.3-1 The Decree No.192, issued with the support of IFIs as preparation for NT2, has expired, and the policy on relocation and compensation has suffered a setback, but how do the World Bank and ADB, who have clearly stated that NT2 will contribute to the improvement of environmental and social consideration policies in Lao PDR, evaluate this fact?

Q.3-1 What role do the World Bank and ADB consider they should perform in environmental and social consideration policies in Lao PDR from this time onward?

Thank you for your attention. We respectfully request that you respond to this letter by September 12, 2016.

Sincerely yours,



Yuka KIGUCHI
Director
Mekong Watch

Attachment: Comparison between PM Decree No. 192 and Decree No.84