



THPC RESPONSE TO INTERNATIONAL RIVERS REPORT

Upon review of the report entitled “Expanding Failure: An assessment of the Theun-Hinboun Expansion Project’s compliance with Equator Principles and Lao Law,” October 2009, published by Bank Track, FIVAS, International Rivers, Les Amis de la Terre and Justice & International Mission Unit, Uniting Church in Australia (the “Report”), THPC has the following comments and responses.

The Theun-Hinboun Expansion Project (“THXP”) has been developed, and is currently being implemented, pursuant to the laws and regulations of the Lao PDR, Equator Principles as well as the Asian Development Bank Safeguard Policies. In 2008, officials of the Government of the Lao PDR (“GOL”) and the Lenders’ Technical Advisor (“LTA”) conducted an extensive review of all planning documents and determined that such were in compliance with the above laws and principles.

In 2009, as part of the implementation of the THXP, the LTA conducted several site visits to review all aspects of the THXP, including the alleged shortcomings listed in the Report, and contrary to the allegations raised in the Report, the LTA has concluded that the social and environmental measures are in compliance with Lao law and all obligations under the THXP documents and Equator Principles. In addition to the LTA, environmental and social specialists from three Development Finance Institutions (“DFIs”) as well as an independent external consultant for social issues were retained by the DFIs to conduct a review of the THXP documents and site visits to evaluate whether the THXP is in compliance with Lao laws and Equator Principles as part of their due diligence for financing of the THXP. The conclusion of this detailed review was that the THXP’s plans and implementation activities are in compliance with the IFC Performance Standards (the applicable standards used in the Equator Principles). Accordingly, in November 2009, the DFIs, which include PROPARCO of France, FMO of the Netherlands, and DEG of Germany, signed loan agreements to become part of the THXP financing that was completed in October 2008.

With regard to the particular allegations raised in the Report, THPC has determined that these allegations are either misleading or incorrect. Below are the allegations of non-compliance raised in the Report and THPC’s response to such allegations.

THPC is committed to ensuring that the THXP fulfills all of its obligations and will strive to meet the highest standards with regard to environmental and social matters. In addition, THPC believes that the development of the THXP could become a guiding model of sustainable development of hydropower projects.



ISSUE/ALLEGATION	THPC RESPONSE
<ul style="list-style-type: none"> • Compensation for loss of assets and livelihoods from the first THPC project 	<p>In 2001, THPC conducted surveys/measurements regarding Riverbank gardens and other losses, and accordingly, THPC paid compensation from 2002 onwards. THPC has been monitoring the situation and compiling detailed data ahead of any additional impacts by the Expansion Project in 2012.</p>
<ul style="list-style-type: none"> • No entitlement for food allowance and relocation assistance for downstream villages 	<p>In compliance with THPC’s obligations, THPC will provide transport, cash for dismantling and rebuilding houses, additional materials and replacement materials (more than 50% of the villagers will receive wood and frames for housing to improve the poor state of the existing housing) as well as economic development assistance until income targets for downstream villages meet the requirements of the THXP planning documents. While there have been some delays, the relocation process is complex but this is primarily because it is a participatory process and requires long-term livelihood planning on a village by village basis. THPC is finalising arrangements for relocation in consultation with Affected People.</p>
<ul style="list-style-type: none"> • No detailed cost estimate for “resettlement” of downstream villages 	<p>The Report is proposing a far less sustainable approach to restoration based on budgets and fixed amounts, while THPC has adopted the best practice of income targets, which are 10-15% higher than existing levels and the budget for such obligation is limited by scope and not by amount as proposed by the Report. For planning purposes a preliminary budget has been outlined in the RAP, while the actual amount will depend on work on the ground, interaction with APs and GoL as to the final agreements. To utilize a final amount at the beginning of the project as proposed by the Report is contrary to a participatory and sustainable approach to planning and implementation, which is recognized as best practice for project development.</p>
<ul style="list-style-type: none"> • No “land for land” compensation for resettlers 	<p>This is an incorrect allegation as THPC is providing better quality land with better soils: one hectare of paddy, 0.5 ha of upland fields, 1000m² of residential and garden land and access to community forests and grazing areas. Additional land holdings by the APs in the reservoir area are compensated for in cash at set unit rates depending on how the land was previously used.</p>

THPC RESPONSES TO THE REPORT

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THPC RESPONSE

- **No provision for food allowances and assistance for self resettlers.**

This is a misleading allegation as Lao law and regulations only addresses resettlers and not those individuals who freely choose to be a self-resettler. THPC and GOL had used considerable resources in consultations with the APs to ensure that each household can make an informed and free choice as to whether they wish to move to the resettlement site or rather move on their own as a self-resettler. Such consultations included advanced visits to sites and discussions of entitlements as a resettler versus self-resettler. Those who have decided to self-resettle (self-resettler) receive cash compensation in lieu of resettlement for all lost assets after having selected this option themselves instead of moving to resettlement sites. In addition to the cash compensation, THPC also provides transportation of individuals and material to the new location for the self-resettler.

- **No provisions for range of resettlement options for downstream**

This is a misleading allegation as the RAP clearly provides that the downstream villages may be relocated within, or nearby, the traditional and regulatory boundary of the village while still utilizing the same village lands for livelihoods. Resettlement, however, means the relocation outside of the traditional and regulatory boundary of the village and a complete new livelihood system. In preparation of the RAP, THPC held consultations and obtain inputs from downstream communities that established the main approach to relocation that addresses all community concerns about infrastructure, land and livelihoods.

- **Failure to establish clear monitoring mechanisms**

THPC conducts an annual survey of the THXP to chart progress on income targets and selected human development indicators, and a summary of the annual survey will be posted on the THPC website. A summary of the 2008 Baseline Survey is also posted on the THPC website. This annual survey is in addition to the regular review by the GOL and the LTA.

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- **No documentation of consultations with “indigenous peoples”**

This is a misleading allegation as it uses an incorrect terminology (indigenous peoples) as the correct terminology is “ethnic minorities” used by international professionals and development organizations in SE Asia and the GOL. With regard to ethnic minorities, THPC has taken a very proactive approach to deal with ethnic issues. In particular, THPC has had separate consultations (by a leading international anthropologist) with ethnic minorities in the reservoir (there are no ethnic minorities in Downstream areas) and measures for detailing relocation and restoration have been based upon recommendations by this international specialist. THPC has also assigned particular staff to work solely with the small ethnic groups (Thaveung and Phong) as well as Hmong-speaking staff members for the Hmong households to facilitate mitigation measures.

- **No documentation of land use by “indigenous peoples”**

THPC has a detailed account of the livelihood systems and the problems ethnic minority groups face, including a lack of official land holdings, low-levels of technology and specific needs. THPC has allocated additional resources for the ethnic minority groups in order to meet these challenges. In addition, each ethnic minority household is monitored in detail by THPC.

- **No plan to provide reports to communities during implementation**

This is a misleading allegation as the THXP is now fully into the implementation phase, and thus, there are frequent, sometimes daily, interaction between THPC and the APs that are part of the interactive process of participatory implementation. In fact, there is a constant exchange of information between THPC and all APs and any action to be undertaken by THPC must be met with the villagers’ and GOL approval and cooperation.

- **No allocation of forage, plantation and forest lands for resettlers**

This is a misleading allegation as there is already a community forage area established in Nongxong (40 ha) and land use planning with host villages included the identification of community forest areas for use by all villagers. WWF is cooperating with THPC on NTFP harvesting plans and sustainable forest management. In fact, access to community forestry was one of the criteria for selection of resettlement sites.

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- **No provision for 440kg of rice per person**

This is an incorrect allegation as THPC is responsible to provide food support (rice and protein) if livelihood systems or food-for-work options are not adequate to meet the nutritional needs of the resettlers. This commitment is especially important for vulnerable households that may need additional resources or time to implement the livelihood systems. As part of international best practice, THPC must work with a careful balance of support with long-term sustainability while not creating dependency by the villagers. However, THPC, in conjunction with GOL and villagers, has agreed to provide a limited supply of rice for one year (220 kg per adult) even though most of the resettlers were able to meet their nutritional needs by the livelihood programs and/or food-for-work options offered by THXP. This decision was a compromise to address some misunderstandings regarding food support between THPC, local GOL officials and villagers while also trying to implement such support within the local context. In November 2009, the resettlers in Nongxong successfully obtained their first rice harvest, which will help to ensure food security for the villagers in the long term.

- **No provision for year-round access to new resettlement areas**

This is an incorrect allegation as THPC has nearly completed new access roads (more than 25 km) to the three resettlement sites and some minor repairs and rehabilitation are required after the rainy season to fully complete some short sections of the access roads. The road access to Nongxong and for resettlers has vastly improved from what were the original footpaths and tracks.

- **References to “indigenous people”**

This is a misleading allegation as it uses an incorrect terminology (indigenous peoples) as the correct terminology is “ethnic minorities” used by international professionals and development organization in SE Asia and the GOL. The THXP has a total of 14 households (Thaveung and Phong) that can be described as vulnerable ethnic minority groups while there are about 90 Hmong households. The rest of the villagers (Tai) are related to the dominant Lao or Lao Loum ethnic groups.

THPC RESPONSES TO THE REPORT

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THPC RESPONSE

- **Relocation definition**

Relocation involves only a movement of physical items within, or nearby, the traditional and regulatory village boundary village, while resettlement, on the other hand, is a complete transformation from one village area to another with a totally new livelihood development scenario. In the downstream villages, THXP will attempt to improve the livelihood systems within existing village territories. This issue is explained in the RAP.

- **Deaths of people on rivers below the Powerhouse**

The deaths reported by FIVAS on the river were accidents and not due to the operations of the THPC hydropower facility. In the Lao PDR, when an accident has occurred within your village or area of operations, it is culturally expected that everyone, including companies, within that area will make contributions that are used to help cover the funeral arrangements. As per company policy, THPC had provided a contribution to the family of the deceased for the funeral arrangements, and thus, demonstrating the proper respect for Lao culture.

- **Loss of riverbank gardens**

This is an incorrect allegation as river gardens are planted seasonally on most river banks in Laos (including the Nam Hai) during the dry season. Monitoring by THPC clearly demonstrates that villages have adapted well to the present flow regime and continue to cultivate river gardens on annual basis. THPC will also provide support to guide villages concerning any changes in flow during the dry season from the THXP.

- **Widening of the river**

This is a misleading allegation as the river width is in the range of 30 to 50 m along most of the river length as measured in 2009. One notable exception is the river width at the Nam Hai bridge crossing which is greater due to the constricted flow at the bridge and is the site seen by most visitors due to easy access. THPC has ongoing programmes for monitoring of the river regime and is undertaking studies to assist with future operations.

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- **Abandoned rice paddy**

This is a misleading allegation as the actual situation is more complex than provided in the Report. While the THPC release of water downstream has impact on the seasonal flooding, but this release is most likely a secondary cause of increased flooding since land use in the downstream areas has changed radically with deforestation, population increase, and the growth of market-oriented economic development. THXP will address the cumulative impacts despite the fact that THPC is only part of the problem by undertaking detailed land use planning for all villages as this is the only sustainable solution to this problem.

- **Project induced floods or sudden releases of water**

The operations of the THPC Hydropower facility do not induce floods, which are naturally occurring events that are caused by rainfall in the river catchment downstream, and in fact, the release of water from operations is small as compared to the natural storms that cause the flooding. During the wet season the power station operates continuously and any flow changes in the river are due to the natural runoff to the river. The flow from the power station does change daily during the dry season, but the regulating pond downstream from the powerhouse causes the rise or fall of the river to occur over a period of two to three hours. While the THXP will provide for more water release during the dry season, the operations will be more continuous, and thus, it should reduce the existing daily fluctuations.

- **Rice yields**

This is an incorrect allegation as a yield of 5 tons per hectare for paddy rice in the rainy season has never been reported in the Lao PDR. The national annual average yield is 3-3.5 tons per hectare in the rainy season, while the local conditions in the area referred to in the Report (middle-Hinboun) have an annual average of 1.5-2 tons per hectare for paddy rice in the rainy season.

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- **Villagers unaware of THXP plans**

This is a misleading allegation as it appears that the villagers who were interviewed for the Report are villagers that will be resettled in 2010 and 2011, and accordingly, detailed consultations with such villagers would not be held until end of rainy season 2009 and 2010 in preparation for the resettlement activity. While all villages were involved in consultations prior to the approval of the THXP, consultations are held intensely between THPC and APs prior to any large activity such as resettlement and compensation. THPC is working to ensure that the resettlement process is well planned and conceived, and this process involves consultation as well as community planning and engineering work.

- **Non payment of fruit trees**

This is an incorrect allegation as THPC has already paid compensation for the loss of fruit trees and all non-moveable assets for the first phase resettlers and will pay such compensation to future resettlers and relocation villagers.

- **Small compensation amounts**

This is a misleading allegation as the allegation is solely based upon one villager, who claimed that the compensation was inadequate. The compensation rates are determined by market rates and approved by the local GOL authority. In many instances, the final approved compensation rates that are being used by THXP are actually higher than existing market rates as a result of consultations between the villagers and the local GOL officials.

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- **Situation in Ban Xang**

The Report cites several issues in Ban Xang that are only based upon interviews with only a few villagers, and the following are incorrect allegations:

Incorrect Allegation: No compensation for abandoned rice paddy.

Actual Situation: THPC Food-for-Work programs were introduced to clear areas for new rice paddy land that was not in flood-prone areas; and THPC has provided subsidies (diesel fuel for pumps, seeds, and fertiliser) each year for dry season production.

Incorrect Allegation: Fruit trees were not replaced.

Actual Situation: THPC had provided fruit trees, but they died in natural flood events. THPC is providing more fruit trees.

Incorrect Allegation: Rubber trees instead of rice.

Actual Situation: THPC has provided rubber as a potential supplementary source of income, not a replacement for rice.

Incorrect Allegation: Villagers do not know where to find coconuts to be used for collecting rubber sap or latex.

Actual Situation: There are coconut trees growing near the village.

- **No independent review**

This is a misleading allegation as the preparation of the final RAP and EIA for the THXP involved a complete reassessment by independent consultants. In addition, as part of the final approval for the THXP and since Financial Close, there is an independent LTA team that conducts regular reviews of the THXP. Finally, the DFIs have completed their own independent review of the THXP before making the final decision to join the financing of the THXP.