

# Manipulating Consent: The World Bank and Public Consultation in the Nam Theun 2 Hydroelectric Project

By Shalmali Guttal and Bruce Shoemaker

The World Bank is currently considering providing financial support to one of the most controversial projects in Southeast Asia, the Nam Theun 2 Hydroelectric Project in the Lao People's Democratic Republic (Laos). Although the Bank has not yet publicly declared its decision to appraise the project – appraisal indicates that the project will be submitted to the Bank's Board of Executive Directors for approval – it has been involved, both financially and institutionally, in the project for more than 15 years. The World Bank funded the first feasibility study for Nam Theun 2, has helped the Government of Laos to appoint and finance a Panel of Experts to advise on the handling of social and environmental issues in the project and legal experts to negotiate financing arrangements, and has required the project developer to undertake social, environmental, economic and resettlement studies that have been instrumental in project preparation. The World Bank also required a "public consultation" procedure for the Nam Theun 2.

The project has been widely criticised for: the devastation of prime forest and agricultural lands in the project; the involuntary relocation of 5,700 village residents; the serious – and as yet un-assessed – impacts on the riverine eco-systems of two large river basins and the livelihoods of tens of thousands of farmers and fishers who depend on these resources, and; the long-term financial and economic burden on the Lao people as a result of project-incurred debt and the costs of mitigating social, economic and environmental impacts.

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As controversial as the Nam Theun 2 is the role of the World Bank in developing, promoting and supporting the project. Today, the World Bank is the most powerful policy institution in Laos. More important than its role as a concessional loan provider is its role as the architect of the country's structural reforms programme. All bilateral donors and the Asian Development Bank (ADB) align their respective aid, lending and technical assistance programmes with development and macroeconomic frameworks

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determined by the World Bank and the International Monetary Fund (IMF). The National Poverty Eradication Programme (NPEP), which will serve as the country's national development plan, faithfully follows the World Bank-IMF template for its Poverty Reduction Strategy Paper (PRSP) and Poverty Reduction Growth Facility (PRGF) and includes far-ranging reforms in all economic and social sectors, from trade, banking and investment to the judiciary, agriculture, education and health services. Specifically related to the Nam Theun 2, financiers are unwilling to participate unless the project is backed and supervised by the World Bank. If the Bank decides to formally appraise the project, its Country Assistance Strategy will include further institutional and policy reforms that the Lao Government must follow in exchange for World Bank support of the Nam Theun 2 dam.

Despite its obvious leverage in the Lao government and with the project, the World Bank has not been forthcoming or transparent on the nature, full extent and future of its involvement in Nam Theun 2. The Bank has evaded substantive discussions about the basis and rationale for its support and possible funding for the project, opting instead to portray a misleading "objective" position that it is assessing whether or not to appraise it. In a "Decision Framework for Processing the Proposed Nam Theun 2 Project" that was made public on 3 July 2002, the Bank has set three conditions that must be met by the Lao government and project developers before obtaining World Bank financing. Key to the World Bank being able to justify its support for the Nam Theun 2 project is the issue of public participation and consultation.

## **The World Bank, the WCD and Participation**

Public consultation and participation in decision-making regarding large infrastructure projects is official World Bank policy and is required by the Bank's operational directives. The gaining of public acceptance for key decisions regarding large infrastructure projects is the first strategic priority identified by the World Commission on Dams (WCD) report, *Dams and Development: A New Framework for Decision-Making*, in which the World Bank was a leading participant. According to the WCD, gaining public acceptance demands the informed participation by all project-affected groups, with special emphasis on the free, prior and informed consent of

affected indigenous peoples. Most of the 5,700 people to be resettled, as well as many downstream communities in the Xe Bang Fai River Basin, are of indigenous, ethnic minority groups. The WCD guidelines on gaining public acceptance, based on a thorough review of problems with past projects, are more rigorous than World Bank policies and operational directives, and have not yet been fully adopted by the Bank.

According to the World Bank, "Participation is a process through which stakeholders influence and share control over development initiatives and the decisions and resources which affect them." And further, "The key characteristic of a participatory approach is the collaborative stance that project sponsors and designers take in carrying out steps to ensure that stakeholders influence and share control over the decisions that are made."

The Bank claims that while there can be no blueprint for consultation and participation, the operational directives contained in its Operational Manual serve as a guide to ensure that the rights of specific constituencies are protected in the policies and projects it supports. In the case of the Nam Theun 2, the key operational directive is Operational Directive (OD) 4.20 on Indigenous Peoples, which is expected to (a) "ensure that indigenous people benefit from development projects," and (b) "avoid or mitigate potentially adverse effects on indigenous people caused by Bank-assisted activities. Special action is required where Bank investments affect indigenous peoples, tribes, ethnic minorities, or other groups whose social and economic status restricts their capacity to assert their interests and rights in land and other productive resources."

OD 4.20 also states that, "The Bank's policy is that the strategy for addressing the issues pertaining to indigenous peoples must be based on the informed participation of the indigenous people themselves" (emphasis added). In the section entitled "Strategy for Local Participation," OD 4.20 directs that "Mechanisms should be devised and maintained for participation by indigenous people in decision making throughout project planning, implementation, and evaluation. Many of the larger groups of indigenous people have their own representative organizations that provide effective channels for communicating local preferences. Traditional leaders occupy pivotal positions for mobilizing people and should be brought into the planning process, with due concern for ensuring genuine representation of the indigenous population."

## Jumping Through Hoops: The Nam Theun 2 Public Consultation Process

The opportunity to support a large infrastructure project without a great deal of in-country controversy or criticism is certainly appealing to the World Bank, which is sensitive to the damage that has been done to its image due to its past support of ill-conceived and destructive large dam projects around the world. For the World Bank to finance a project, it requires that specific social, environmental and economic standards be met and that all “stakeholders” be involved in decision-making (World Bank, 1994). Bank staff informed the project developers – the Nam Theun 2 Electricity Consortium (NTEC), later incorporated as the Nam Theun 2 Power Company (NTPC) in 2002 – early on that they would need to comply with Bank policies on public consultation in order for the Bank to provide a loan guarantee or other support. Thus, in 1996, NTEC/NTPC’s Public Participation Process for Nam Theun 2 was initiated.

NTEC/NTPC (hereafter referred to as NTPC) now claims that it has already carried out the most extensive public participation process in the history of Laos. According to NTPC, “a high level of public consultation and disclosure has been a priority for the Government and the Sponsors [NTPC]” and over “200 consultations and workshops have been conducted for the people to actually participate in the preparatory work, and later on during the implementation process.”

In an effort to convince the World Bank that Nam Theun 2 is worth supporting, project proponents have claimed that the project is “WCD compliant”. But while the public consultation process begun in 1996 may have been somewhat extensive, it has failed to meet either World Bank or WCD standards. As the public participation process unfolded, it soon became apparent that its overall goal was not to foster genuine participation of project-affected communities as de-

finied by the WCD’s Report and Recommendations, but rather to appear to conduct public consultation that appeared to adhere to World Bank policies so that the World Bank could defend its decision to proceed with its controversial decision to support the Nam Theun 2 project.

### Why the Process Has Failed: Non-Reality-Based Public Consultation

The WCD framework for gaining public acceptance provides a basis for analysing Nam Theun 2’s public consultation process. Have the NTPC’s consultations provided an opportunity for informed participation by all project-

affected groups? Have indigenous communities consented to relocation and other impacts of the Nam Theun 2, and has this been free, prior, and informed consent?

#### *Free Consent?*

For the past eight years, the challenge for NTPC has been to overlay a public consultation process that would appear to comply with World Bank policies onto a country with no political, cultural, historical, or institutional structures for such participation. In 1996 Laos was, and in 2004 Laos remains, a single-party state (the Lao

People’s Revolutionary Party) in which no independent local environmental, human rights, farmer, labour or other civil society institutions are permitted to exist. While there are mass organisations such as the women’s, youth and labour unions, they represent the Lao State to the public rather than the public to the Lao State. All of the media – print, radio, and television – are State-controlled. Although debates about development projects and strategies do take place, these occur within structures and mechanisms not readily visible or accessible to outsiders. It is common for officials in government departments and mass organisations at province and district levels to discuss the pros and cons of development projects within their respective organisations. Similarly, discussions among village level residents about projects are also common. However, village residents

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and government officials are not likely to express their concerns quite as easily to external consultants in a high profile consultation process.

Rather than attempting to accept this situation and then devise a process of public consultation that might work in Laos, NTPC, with World Bank encouragement, instead chose to ignore the political and cultural reality of the country, and to pretend that they were working in an open and pluralistic political and social environment. This expedient decision allowed NTPC to craft a carefully stage-managed show of participation, intended to ratify and reinforce pre-determined outcomes and conclusions. NTPC hired public relations-oriented consultants to assist in the public consultation process; however, none of them had any experience in designing and implementing an effective and genuine participatory consultation process in a country such as Laos.

A series of high-profile consultation workshops were held in Vientiane to which foreign embassy staff and donor agencies were invited – and it was mostly the voices of foreigners that were heard at these workshops. Lao participants came almost exclusively from the government or the State media. Some carefully coached village leaders from the Nakai plateau were brought to express how much they were looking forward to being resettled. Faced with a lack of Lao civil society organisations – but needing NGO participation in order to satisfy Bank policies – the participation of international NGOs working in the country was sought, and the few that attended became surrogates for non-existent local groups. Presentations were invariably strongly pro-project, opportunities for real debate were limited and potential problems or impacts were downplayed. At a National Consultation and Participation Workshop in Vientiane in May 1997, attended by international NGOs, substantive discussion was limited when a senior government official stated in his opening address that “The government wants to build Nam Theun 2.” The inability of World Bank staff to understand the political situation was revealed when one befuddled Bank staff complained to his colleague, “We’ve been hearing about

how this dam is so bad, but none of the NGOs are saying anything.” The lack of substantive criticism was apparently accepted as consensus, as no Lao citizens dared to speak openly against the project and international NGOs did not want to risk getting expelled from Laos by openly criticising the project.

### *Prior Consent?*

One of the fundamental problems in attempting to conduct anything close to a genuinely participatory consultation process is that, while the World Bank may not have made an explicit final decision on whether or not to support financing of Nam Theun 2, the Lao government made its decision many years ago. From 1993 onwards, the construction of the Nam Theun 2 was official national policy and this decision was repeatedly emphasised in the State media and in the pronouncements of Party and national leaders. In the face of such strong official support, it was practically impossible for domestic debate about the pros and cons of the project to find their way into official deliberations through

externally driven consultation processes. However, instead of realising and acknowledging this, the World Bank and NTPC continued to proceed with their elaborate and expensive consultation process – which quickly deteriorated into little more than a public relations exercise for international consumption.

If local people living on the Nakai Plateau needed any further confirmation that the decision to build Nam Theun 2 had already been made, logging of the proposed reservoir area by a Lao Army-controlled company began almost immediately after the central government’s decision was announced. This led to a rapid deterioration of the natural resource base upon which local communities depended for their livelihood security.

Anyone with experience in working in local communities in Laos knows that a negotiation of intra-community power relationships needs to occur before the knowledge and opinions of local people can become available to the outsider.

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Eliciting genuine dialogue at the local level is possible – but it takes time, understanding and sincere commitment. Historical, cultural, and political factors instill local people with deference towards outsiders and a particular desire to avoid conflict with outsiders perceived as powerful. This is particularly true when the outsiders are foreigners or those in positions of state authority. In such situations, if outsiders and officials already know what answers they want, it is usually quite easy for them to obtain these answers from local people. In local communities living on the Nakai Plateau, the content of discussions in the consultations were (and are) – as they had been (and are) in Vientiane – very much within the framework of a decision already made. This created an insurmountable barrier that prevented public consultation and participation of the extent and degree required by World Bank regulations and demanded by the WCD framework for decision-making.

### *Informed Consent?*

At no time in the consultation process has the Lao public – from indigenous communities in the project area to other impacted communities downstream, or the public in general – had access to sufficient and reliable information about the Nam Theun 2 project in a form that would enable them to assess its merits or its negative aspects.

Perhaps most disturbing is the failure of the NTPC and the World Bank to recognise the importance of potential project impacts on hundreds of communities living along the Xe Bang Fai River, downstream of the Nam Theun 2 project, or to inform and engage in discussions with them about possible impacts. (The Nam Theun 2 project will divert water from the Theun River to turbines in its powerhouse and then release the water into the Xe Bang Fai River.) Until recently, NTPC’s consultation processes and resettlement/impact mitigation planning have concentrated almost entirely on the 5,700 people to be relocated on the Nakai plateau. When information about the impacts of the Theun-Hinboun Hydropower Project (which, like Nam Theun 2, is a trans-basin diversion project, diverting water from the Theun River to the Hinboun River) were publicised in 1998, NTPC

chose to discount the information, and eventually blamed massive declines in the fisheries of the Hinboun River on local fishing communities. In 1999, the World Bank-annointed Panel of Experts for Nam Theun 2 finally acknowledged that NTPC’s belief that “more water would equal more fish” downstream in the Xe Bang Fai River was not grounded in reality and that much more attention would need to be paid to the impacts on the Xe Bang Fai River. Research conducted in 2001 demonstrated that the livelihoods of many tens of thousands of people, including many from indigenous ethnic communities, are strongly linked to the fisheries and

other aquatic resources of the Xe Bang Fai and its tributaries. However, as late as December 2003, NGO observers taken by NTPC to visit villages along the Xe Bang Fai River found that local communities had been provided with no information whatsoever about potential negative downstream impacts. They had been given the impression that impacts will all be positive and had been told that “more water means more fish.” While

NTPC now acknowledges that fishery losses are likely, this has not yet been discussed with villagers. According to an NTPC spokesperson, Xe Bang Fai villagers “are enthusiastic about the project in general, but they don’t know the details yet”.

The mass of information collected by foreign experts and consultants in a wide-range of studies, including of wildlife populations on the Nakai Plateau and country-wide surveys of potential sites for hydroelectric dams that could be an ‘alternative’ to the Nam Theun 2, was not accessible to directly affected communities, potentially affected residents of districts and provinces, or even government officials from the village-level to Vientiane. This is yet another reason why many participants in consultation workshops/meetings did not have information about the details and potential outcomes of the Nam Theun 2, and were unable to engage in comprehensive discussions with policy- and decision-makers about the possible impacts of the project.

A 1998 report on public consultation and participation on the Nakai Plateau about resettlement options cautioned against expecting “too much” from villagers’ participation

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because of their “limited experience of the outside world.” According to the report, 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. Furthermore, both reports highlight how gaps in understanding were significantly higher among women, who often did not attend meetings at all, or placed themselves at the back, or at the periphery, of meetings when they did attend.

At the national and provincial level consultation workshops held with government officials and selected international organisations, debate and discussion about Nam Theun 2 was also limited due to the lack of appropriate and timely information. Study reports in English, sometimes with general, Lao-language summaries, were made available to workshop participants upon their arrival, or only a few days before the workshop, preventing full understanding of the contents of the report. While there was a comparison of the costs and benefits of electricity generation and revenues from Nam Theun 2 with other generation options, there was little discussion about the financial arrangements of the project, debt exposure, long-term financial liabilities resulting from the project, or the distribution of financial risks between investors, financiers, project implementers, the government and the Lao public.

### **“Stakeholder Participation”: A tool to further marginalise vulnerable communities**

An extremely problematic element in the World Bank’s framework of public consultation and participation is the definition and identification of “stakeholders.” Chapter III of The World Bank Participation Sourcebook (1996) states that, “In the context of Bank-supported activities, stakeholders are those who are affected by the outcome – positively or negatively – and those who can affect the outcome of a proposed intervention.” This includes borrowers (elected officials, government line agency staff, local government staff, etc.), directly affected groups (e.g., the intended project benefici-

aries, including the poor and those disadvantaged in terms of wealth, education, ethnicity and gender), indirectly affected groups (such as NGOs, private sector organisations, etc., who have an interest in the outcomes) and the Bank itself. But, according to the Bank, “government is always the first and most obvious stakeholder since government is a shareholder of the Bank, the primary decision-maker and implementer of policies and projects, and the one who repays the Bank loan or credit.”

By the World Bank’s own definition, “direct stakeholders” in the Nam Theun 2 project would include the Lao government, communities on the Nakai Plateau, communities downstream along the Xe Bang Fai River, and the project developers and financiers. But in the political and social context of Laos, it is simply not possible that affected communities of the Nakai Plateau or the Xe Bang Fai River Basin areas will be able to, as the World Bank says, “influence and share control over decisions that are made” about the project with government, foreign corporations, and international financial institutions.

The Nam Theun 2 project has long been promoted as crucial to poverty reduction because of the amount of revenues it will bring to the Lao government. The World Bank has demanded the project must be “embedded in a development framework, characterised by concrete performance that aims at poverty reduction and environmental protection”. However, as is evident from the indiscriminate logging on the Nakai Plateau and the resultant poverty created by the loss of forest resources essential to the livelihood security of the people living there, those with the greatest “stake” in protecting the area’s natural environment have had no opportunity whatsoever to “influence and share control” over the decision to destroy their most important source of food, fodder, and building material.

In the case of Nam Theun 2, “stakeholder participation” appears to have contributed to a process of diluting the legitimate rights of people and communities to resources and decision-making by ignoring or discounting the inherent power imbalances between the various “stakeholders.” This framework has done nothing to ensure that the effective participation of directly affected local communities, or that such participation will actually influence project decision-making, will result in fair and adequate compensation for those negatively affected, and will lead towards an equitable sharing of project benefits. Marginalising local communities – who have for generations used the natural re-

sources that outsiders like the NTPC now want – by labeling them as just one among many equal “stakeholders” is very different from a starting point in which the customary rights of local communities to natural resources are acknowledged, recognised, and respected. Recognising and respecting these rights would imply a completely different basis for negotiations and decision-making about the project – one involving processes very different from the Bank’s “stakeholder participation.”

## The Next Act

Now, following the signing of the Power Purchase Agreement between the NTPC and the Electricity Generating Authority of Thailand, and the finalisation of project studies, a new round of consultations with all the identified “stakeholders” is set to begin. This time the Asian Development Bank, which has now indicated an interest in supporting the project, will also be a “stakeholder.” There is likely to be intense pressure on international NGOs based in Laos to participate in these consultations.

However, little has changed to inspire confidence that this round of consultation will be any more genuine or effective than those in the past. Lao citizens continue to believe it is dangerous and inadvisable to publicly criticise the project. One Lao citizen who has extensive knowledge of Nam Theun 2 responded to an inquiry from an organisation about the possibility of attending a recent World Bank Executive Directors meeting about the project by saying: “About the WB have a meeting with NGOs on February 6. I am truly appreciated in your sincere to the socio-environmental impacts because of Nam Theun 2. However, about my conduct, as I am Lao, I am living in Laos. As you know, the political in Laos is really different so far, government very pro in this project. So, if me or someone of Lao speak out tending to against, we can not live, especially tell to the foreigner important person which concerning to the project,

even if we are truly identify to the deficiencies, and truly wanted to improve. By the reason I am quiet, and better I should be find another way to help the poor in other parts...I am very sorry, but I can not directly tell to some person such kind of important meeting under dangerous of situation political, is really feel unsafely, if I say anything against, everything finish for me, I can not work.”

The NTPC stated that consultations with Xe Bang Fai communities were to begin in May 2004. These

will all be within the context of a decision made by the government and a concession agreement – a document not publicly available but which presumably details any compensation requirements the NTPC must follow – that has already been signed. For NTPC, with the World Bank’s blessing, to only now be beginning such consultations in these communities for a project that has been in the planning stage for over fifteen years, is extraordinary – particularly as this is a project being promoted by its proponents as compliant with the WCD framework. This eleventh hour consultation, an irrelevant last-minute add-on to an

already flawed consultation process, appears to be the final hypocritical act in the long-running, stage-managed farce that the World Bank seems ready to accept as meeting its standards for public involvement.

Grainne Ryder, policy analyst with the Canadian foreign aid monitor Probe International, has raised a number of questions regarding this latest round of “consultations”:

What is the specific purpose of this consultation? (i.e., where is the purpose of these consultations spelled out, in the Bank’s working language and in local languages?)

Will the Lao public have access to the terms of reference for the consultants conducting the consultations?

Will the purpose of the consultation and the rights of Lao citizens be clearly defined and agreed upon by all parties prior to the consultation process?

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Will the Lao public be told how much money the company expects to make from the Nam Theun 2 Project and that in many countries, hydro project revenues are shared directly with local affected communities? Will they be given that option?

Does the public have the right to prior information and prior knowledge of the schedule for consultations?

Does the public have the right to re-view the concession agreement?

Do those to be consulted have the right to seek expert counsel or an independent arbiter of the process? Do they have the right to choose their own interpreters?

Do they have the right to reject any of the proposals for resettlement or the Project as a whole?

Do they have the right to see and review transcripts and summaries in order to ensure that their views are properly documented? Or will the process just be videotaped and edited for World Bank public relations?

Do those impacted have the right to receive a lump sum payment of compensation rather than the Bank's proposed programmes? Do they have the right to legally enforceable property rights to land when resettled? (i.e., will they receive proper land titles upon resettlement?)

The contracts for the Nam Theun 2 project are said to be legally binding; what legal recourse do project-affected citizens have in the event that the company does not comply with the contracts?

## Conclusion

From its beginning in 1996 to the present time, the Nam Theun 2 public consultation process was aimed not at empowering the public to engage in informed dialogue and debate about the project, but rather, to justify the decision to proceed with it. NTPC, as the proponent, builder, owner and operator of the Nam Theun 2, cannot be considered an impartial actor in the decision-making process about the Project. NTPC has failed to provide local officials and communities with accessible, appropriate and relevant information, or to fairly present unbiased information about the project and its impacts. Given

the absence of domestic civil society institutions, project-affected communities and the people of Laos have not been able to get such information from other, independent sources. This makes a genuinely informed debate impossible. The public, and in particular, directly affected communities, have not been able to assess options to the project as they were not presented by project proponents. Local

communities have no assurance that any concerns they might have would be taken seriously or could fundamentally influence whether or not the Project proceeds.

There is an obvious and considerable difference between participation as a genuine decision-making process through which communities can protect their interests and needs, and participation as an 'after the fact' process that serves to announce

mitigation measures and claim justification for a decision already made. 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 rights. If these rights are denied, or do not exist to begin with, public consultation is a process of justification rather than participation.

There is little point in participating in meetings that already have pre-determined outcomes. When project-affected communities feel that they cannot question the arguments or justifications of project proponents, they may not express dissent. But the absence of dissent cannot be interpreted as informed consent.

Whether it would be possible for a more neutral and well-intentioned party to structure a participatory decision-making process that could work in the political and social context of Laos – and that would meet the universal standards of transparency and accountability that the WCD recommends and the World Bank claims to require – remains to be seen. But in the current situation, the Nam Theun 2 public consultation process has clearly failed to meet even minimal World Bank standards, much less the more rigorous WCD standards, and therefore should not be accepted as an adequate basis for the World Bank's approval of financial support for the Nam Theun 2 Hydroelectric Project.

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