

## **3 ADMINISTRATIVE AND LEGAL FRAMEWORK**

### **3.1 Introduction**

The national legal framework and requirements and the relevant administrative structures are all described in detail in the different project specific studies for the NT2 Project. Other studies, which focus on the institutional capacity for implementation of regulations and plans are presently under preparation.

In the following a brief summary of the administrative and legal situation in the main relevant national sectors, Lao PDR international commitments, and the environmental and social requirements of the International Financing Institutions is provided.

### **3.2 National Legal and Institutional Situation**

#### *3.2.1 Environment Protection*

The basic legal framework is laid down in the Environmental Protection Law of 1999, which was approved by the implementation decree of 2002. The law includes provisions for EIA for projects and activities that might have an impact on the environment, and regulations for all enterprises to control pollution and comply with environmental quality standards.

The executing agency is the Science, Technology and Environment Agency (STEA), which also is in charge of reviewing EIAs. STEA has developed specific guidelines for the content and process of environmental assessment of hydro-power projects, including the preparation of environmental management plans.

The conservation of areas for biodiversity purposes has its legal basis in the Prime Ministers (PM) Decree of 1993 aimed at fulfilling the Lao PDR obligations under the Convention of Biological Diversity. Through this decree 20 National Biodiversity Conservation Areas (NBCAs) have been established, including the Nakai-Nam Theun NBCA. The administrative responsibility for the management of the NBCAs has been placed at the Ministry of Agriculture and Forestry (MAF).

#### *3.2.2 Forestry*

The Forestry Law of 1996 gives the general provision for management of all forest related resources, including all plants, wildlife, watercourses, etc. The Department of Forestry, Ministry of Agriculture and Forestry, has the overall responsibility. GoL is responsible for allocating the use of forestland and forest resources. Forests are grouped into the following five categories: Protection, Conservation, Production, Regeneration, and Degraded, each with their specific management policy.

#### *3.2.3 Water Management*

The Law on Water and Water Resources of 1996 is intended to assure sustainable use of water. Water use is categorised into small, medium and large-scale use. The legislation prescribes the rights and permit procedures for the different categories of water use. Development of a large-scale user projects will require the preparation of an EIA. The administration of the Water Law is located in the Water Resources Coordination Committee under the Prime Ministers Office.

### 3.2.4 *Resettlement Policy and Regulation*

A Draft National Resettlement Policy was issued by GoL in 1997. The principles of this policy has been included in the Electricity Law, the Water Law and the Road Law, all of which now require developers to provide the affected people with compensation and/or replacement for lost land. A set of regulations for preparing and implementing involuntary relocation programmes has been issued.

The Nam Theun 2 Resettlement Committee issued a resettlement policy specific to the NT2 Project in 2002. The policy prescribes provision of agriculture and forestry land and developing compensation packages. The objective is to provide means for a sustainable livelihood for the affected population.

In addition to the draft resettlement policy and regulation, a Decree on Resettlement and Compensation was issued in June 2004. The Decree aims at:

- ⌘ help integrating social dimensions and mitigation measures into development projects with special focus on vulnerable groups;
- ⌘ ensuring that provisions for mitigation measures in other applicable laws, decrees and the national policy on resettlement and compensation are adhered to, and;
- ⌘ ensuring that the project affected population share in the benefits of the development project and that their livelihoods and living standards are restored to at least pre-project level.

### 3.2.5 *Land Ownership and Land Use Rights*

Most of the agricultural land in Lao PDR is still held through traditional and customary rights but there are ongoing initiatives both in the form of the World Bank supported “Land Titling Project” and the “Land and Forest Allocation Program” of the Ministry of Agriculture and Forestry that is providing an increasing number of farmers with land titles and legal deeds to their land.

The legal basis for land use and land ownership is provided in the Land Law of 1996 and Land Decree No. 99. In principle the State owns all land but long term occupancy and utilization rights for individuals are recognised.

## 3.3 **International Commitments**

### 3.3.1 *Mekong River Commission*

Lao PDR is one of the four signatory parties to the 1995 Agreement on the Co-operation for Sustainable Development of the Mekong River Basin and one of the members of the Mekong River Commission (MRC). The Commission succeeded the Mekong Committee, which, among other things, was instrumental in the planning of Nam Ngum, the first larger hydropower project in Lao PDR. Whereas the Committee was primarily focussed on hydrology, navigation and hydropower, the mandate of the Commission is more oriented towards co-operation for the promotion of sustainable development, utilisation, management and conservation of the water and related resources of the Mekong River Basin.

The primary purpose of the Agreement is to promote economic and social well-being of the people in all the riparian countries through the protection of the environment, improvement of navigation and the cooperation in the maintenance of flows and intra-and inter-basins diversions. As mentioned in Chapter 1, MRC

has initiated several basin-wide planning and research programmes, including the Water Utilisation Plan (WUP), the Environmental Programme (EP), the Basin Development Plan (BDP) and the Fisheries Programme.

Lao PDR has its own National Mekong Secretariat in Vientiane.

### 3.3.2 *ASEAN Membership*

Lao PDR became a member of the Association of Southeast Asian Nations (ASEAN) in 1997. ASEAN countries have adopted an agreement on the Conservation of Nature and Natural Resources. However, this agreement has been ratified by only three countries since it was adopted in 1985, and is therefore not in force. ASEAN also has provisions to assist member countries to establish trans-boundary nature reserves.

### 3.3.3 *Greater Mekong Sub-region (GMS) initiative*

In 1992, with the assistance of ADB, Cambodia, Lao People's Democratic Republic, Myanmar, Thailand, Viet Nam, and Yunnan Province in the People's Republic of China entered into a program of sub-regional economic cooperation, designed to enhance economic relations among the countries. The program has contributed to infrastructure development and better use of the resource base in the sub-region.

### 3.3.4 *International Conventions and Treaties*

#### Convention on Biological Diversity (CDB)

Lao PDR became a signatory to the CDB in 1992, following up the ASEAN Agreement of the Conservation of Nature and Natural Resources, which was signed in 1985. The obligations of CDB have been fulfilled in terms of new policy and legislation and by establishing NBCAs.

#### Convention on the protection of World Cultural and Natural Heritage

This convention was ratified by GoL in 1987. The convention addresses the protection of both cultural and natural objects and sites of high national and international value.

#### Convention on International Trade in Endangered species (CITES)

Lao PDR ratified this convention in early 2004. Prior to the ratification, the Ministry of Agriculture and Forestry (MAF) issued a regulation that banned all hunting for trade. Hunting for consumption was still allowed. This is a signal that GoL is now committed to increasing efforts to halt the extensive trade in wildlife from Lao PDR to its neighbouring countries.

## 3.4 **Impact Assessment Requirements and Safeguard Principles**

### 3.4.1 *EIA process*

The process of Environmental Impact Assessment is a method used by the Asian Development Bank (ADB) and the World Bank (WB) to ascertain the environmental risks and benefits associated with their lending operations and other financial support to development projects. The Environmental Policy of the ADB dates from November 2002 and forms the basis for environmental requirements and interventions for project implementation. The Environmental Assessment

Guidelines (2003) describe procedures and methodology to be used to investigate environmental and social impacts of projects to be considered for funding. The WB's environmental assessment procedures are described in OP/BP 4.01 (Operational Policy, Bank Procedures). This policy is considered to be the umbrella policy for the Bank's "safeguard policies", which includes specific requirements and policies

In both ADB and WB projects Environmental Assessment (EA) plays a key role in improving decision-making and in ensuring that project options under consideration are sound and sustainable.

#### Involuntary Resettlement

The ADB policy on involuntary resettlement (1995) outlines the main issues of relocation, compensation and rehabilitation, drawing on the experiences of many donors in implementing and evaluating resettlement programmes. The policy emphasises avoidance of resettlement wherever feasible and minimisation of resettlement when it is unavoidable. It prescribes that all losses of assets, livelihood and income should be compensated for in full, specifying that an absence of formal legal title to land and access to resources should not be a bar to full compensation.

The World Bank's OP/BP 4.12 (2002) is based on the principle of informed participation of the affected people in resettlement planning and implementation. The policy is to ensure that people affected by a project have their standard of living improved, or at least maintained on the same level. Resettlement should be carried out in a manner that is consistent with cultural preferences. The policy requires that thorough baseline studies be conducted to identify affected people and the extent of impacts. A full resettlement action plan is required in those cases where more than 200 people will be displaced. In cases where less than 200 people are displaced, an abbreviated resettlement plan may suffice.

#### Indigenous People/Ethnic Minorities

The ADB's Policy on Indigenous Peoples (1998) aims to ensure that indigenous peoples, in the context of Lao PDR called 'ethnic minorities', have opportunities to participate in and benefit equally from development. It draws up strategies and approaches that are designed to avoid negatively affecting ethnic minorities in its operations, and to provide adequate and appropriate compensation when a negative impact is unavoidable. Open and transparent consultations are an integral part of this process.

In the World Bank's OD 4.20 on Indigenous People (1997) transparent and meaningful consultations with directly affect ethnic minorities is required to be undertaken prior to the initiation of detailed project preparation. If ethnic minorities are considered vulnerable groups and are likely to be adversely affected by a project, the borrower is required to prepare Indigenous Peoples/Ethnic Minority Development Plans to mitigate adverse impacts and to promote tailoring of benefits based on the preferences of the people concerned.

#### Safety of Dams (OP/BP 4.37)

For large dams (15 meters or more) it is a requirement that the borrower adopts and implements certain dam safety measures for the design, bid tendering, construction, operation and maintenance of the dam and associated works.

#### International Waterways (OP/BP 7.50)

The policy does not allow financing of a project on an international waterway until all the riparian countries are notified of the project. If there is an objection from one of the riparians, the Bank will assess and confirm that the project will not cause appreciable harm to the interests of the other riparians.

#### Cultural Property (OP 4.11)

The World Bank's general policy regarding cultural properties is to assist in their preservation, and to seek to avoid their elimination. The assessment of the value of cultural properties, possible impact and mitigation is covered by ADB's policy on resettlement and indigenous peoples.

#### Natural Habitats (OP/BP 4.04)

The World Bank does not support projects that, in the World Bank's opinion, involve the significant conversion or degradation of critical natural habitats.

### 3.4.2 *The Banks' Project Preparation and Consultation Process*

The ADB and WB are committed to ensure that key stakeholders are systematically identified and involved in project planning and implementation. Early consultations have to be held with affected groups to guide project decision making, and their views and preferences has to be reflected in the plans developed as an integral part of the project.