

**Capacity Building for
Environmental and Social Mitigation for NT2
And Other Hydropower Projects in Lao PDR**

TA4213-Lao PDR: ADB Capacity Building Assistance – Phase 1

Executive Summary

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and
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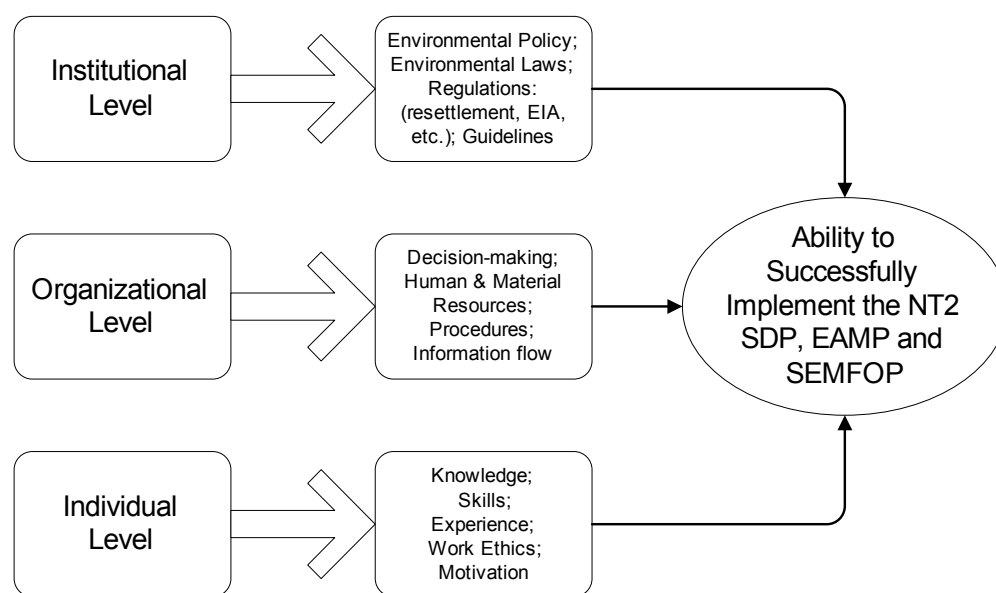
Capacity Building for Environmental and Social Mitigation for NT2 and Other Hydropower Projects in Lao PDR: Phase I Executive Summary

1 Purpose and Scope

Due to the size and complexity of the Nam Theun 2 hydropower project (NT2), substantial risks exist both regarding environmental and social resources. Considerable effort has been expended by the Government of Lao PDR (GOL) and the project sponsors to produce a set of safeguard documents that will reduce those risks, if implemented properly. Implementation of the environmental and social mitigation measures will be carried out by the Nam Theun 2 Project Company (NTPC) and the GOL through the Environmental Assessment and Management Plan (EAMP) and Social Development Plan (SDP). In this regard, the GOL's and other stakeholders' capacity building should be focused on implementation, monitoring compliance, and policy oversight functions.

The Social and Environmental Management Framework Operations Plan (SEMFOP) is the guiding document for management and protection of the NBCAs in the Project area and corridors interconnecting them, and for undertaking necessary mitigation measures. Implementation will be undertaken by the provincial government and district offices under the direction of Watershed Management and Protection Authority (WMPA). Capacity building assistance will be required for various elements of the Government of Lao PDR (GOL) to include the implementation, as well as compliance monitoring and policy oversight.

A common definition of "capacity" is "the ability to carry out stated objectives," which in this case is the implementation of the EAMP, the SDP, and the SEMFOP. Capacity building, or capacity development, is the application of activities that increase those abilities. It is recognized that capacity building is multi-dimensional, that is, it is applicable to the institutions, organizations, and individuals involved, as shown below.



2 Institutional Structure for Environmental and Social Management

The GOL has recognized the need for protecting its valuable and unique environment. A national Environmental Protection Law (EPL) lays out the means for this protection and conservation. The EPL and regulations specify a number of functions that need to be performed by various segments of the government, organizations, and the public.

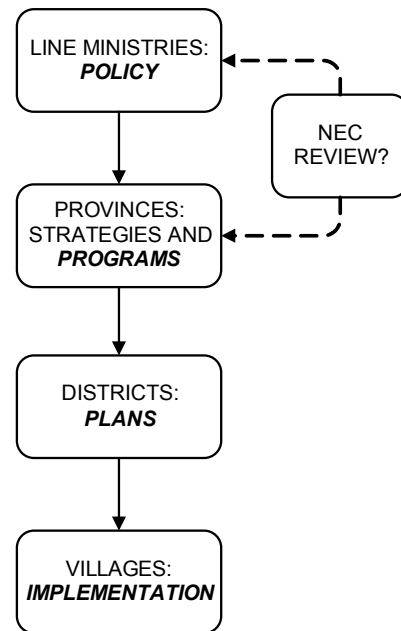
The first function shown is “Protection of the Environment”. This function is specifically mentioned in the Environmental Protection Law as being the responsibility of all people and organizations residing in Lao PDR. The second function shown, “Environmental Legislation” is the responsibility of the National Assembly. The Prime Minister is responsible for submitting laws to the Assembly, in consultation with all stakeholders. Other functions contain some degree of uncertainty. For example, it is not currently clear what the specific role of the National Environment Committee is regarding the development of international environmental agreements or other environmental policy, as shown at right.

Similarly, the enforcement of environmental standards appears to be the responsibility of the relevant ministries, but this leaves the role of STEA and the PSTEOs in some doubt. The role of the Lao National Mekong Committee is not clear in terms of enforcement of environmental standards that could have international implications. The specific environmental responsibilities of certain ministries, such as Ministry of Finance and Ministry of Justice, are fairly minimal, whereas others, such as Ministry of Agriculture and Forestry, Ministry of Communication, Transport, Post and Construction, and Ministry of Industry and Handicrafts have broad and significant authorities and responsibilities. This could be a reflection of the different roles of those ministries regarding infrastructure projects and their impacts. Or, it could be an indication that there has not been sufficient definition of the role of some ministries with regard to environmental and social safeguards.

The activities involved in social impact assessment and resettlement are even less clear at this time. It should be noted that social impact assessment and mitigation is not directly mentioned in the EPL, although it is generally maintained by GOL that “environment” includes the human environment. Although this is alright from the point of view of definitions, it fails to address the different issues and needs that arise in social impact assessment, compared to environmental protection. A new Social Impact Assessment unit has been formed under STEA, but it is not yet functioning, and its mandates need clarification. Resettlement plans have been developed on a project-by-project basis, and implementation has been largely the responsibility of the provincial government or the developer.

Environment and Social Safeguard legislation has developed very quickly in Lao PDR. Most of safeguard-related laws were developed by sectoral agencies. As a result, there are some conflicts in provisions, particularly stipulating mandates of government agencies in charge of environment management. Other provisions just specify general principles of the law that need implementing regulations to make them effective. Areas needing review involve institutional arrangements, lack of implementing regulations, and the common problem of limited resources.

GENERAL RESPONSIBILITIES:
**COORDINATION OF
SAFEGUARD ISSUES**



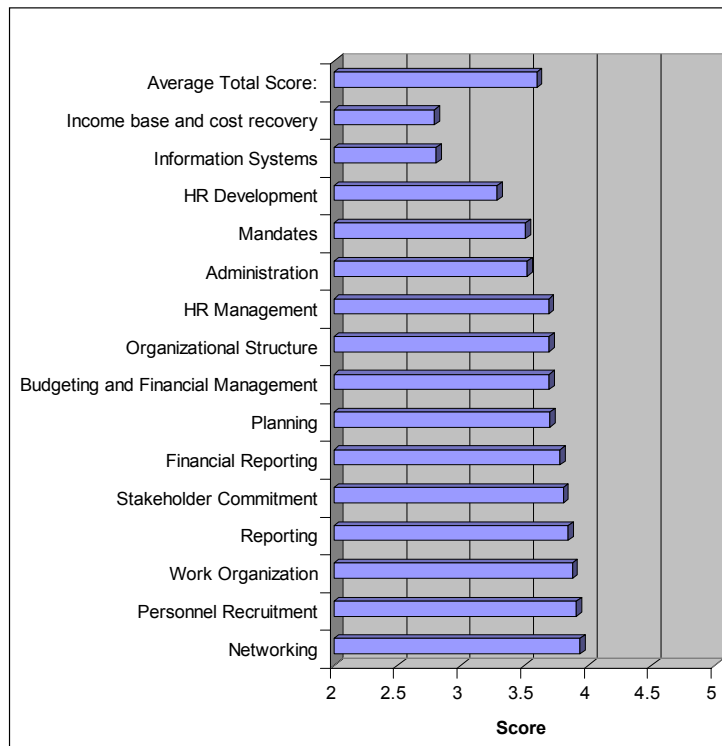
3 Needs Assessment

The organizational and educational situation in the management structures of the provincial and district government offices and mass organizations was assessed by the Consultants, to provide the background against which the self-assessment of capacity needs was performed by the concerned organizations. Areas reviewed included the decision making system, the leadership structure, and qualifications of top managers, administrative and technical middle managers, technical staff, and the mass organizations.

Self-Assessment Questionnaires

In addition, CB needs have been estimated for this study by investigating the existing capabilities of the involved organizations in light of their responsibilities and authorities regarding environmental and social issues. Capabilities were assessed by means of interviews with responsible and knowledgeable individuals and through the use of a Capacity Assessment Questionnaire. The questionnaire and follow-up interviews sought to identify areas of CB needs, and prioritize these according to the urgency and degree of the need. This identification then resulted in a preliminary indication of effective CB programs customized by organization, according to their needs and preferences.

A total of 61 organizations returned self-assessment questionnaires. As expected, the urgency by topic varied from organization to organization, but the overall trends indicate that the primary areas of concern and need are “Information Systems” and “Income Base and Cost Recovery”, as illustrated at right (lower score indicates higher need). This latter area covers the issue of salaries. Almost universally, salaries are deemed to be inadequate. Most respondents indicated that salaries were “fair”, with respect to salaries around the government in general, but not competitive with the private sector.



The concern over “Information Systems” appears to indicate not just a general need for improved methods for retrieving, storing, and accessing data, but also better sharing and distribution of the information people find necessary to do their jobs. This would indicate that some organizations need to review their policies regarding the dissemination of information.

Institutional/Staff Strength

Well over sixty organizations with varying degrees of potential involvement in the NT2 project environmental and social safeguards were interviewed. A second questionnaire was distributed to determine the general background of those organizations with respect to their present resources, the amount of training in safeguard issues that they had received previously, and their indication of specific needs, including financial and material

requirements. In addition, Information on staffing was obtained from official Government sources.

Casting a fairly wide net, the GOL organizations that will have some involvement in the implementation, monitoring, or regulation of the NT2 project were asked to identify their current staffing strength, including the staff educational background.

The SEMFOP document presents the staffing requirements of the WMPA Secretariat itself, and also specifies GOL staffing to be seconded or work in partnership with WMPA. The Executive Secretariat will ultimately require approximately 59 staff, composed of 4 directors, 12 administrative support staff, 31 professional staff, and 12 technical staff. Moreover, "Implementing Partners" (primarily Nakai and Khamkeut Districts) will be expected to provide up to 22 full time and 83 seasonal workers, not counting police, military, and transport personnel. The WMPA proposed salary structure described in the SEMFOP ensures that the Secretariat will have an advantage in recruiting qualified staff in the region. Provincial and District Implementing Partners, in particular, may experience difficulty in recruiting staff to carry out their participation requirements.

The Social Development Plan describes in detail the functioning and makeup of the Resettlement Management Unit, and its organizational structure. The SDP also indicates that staff requirements at full mobilization of the District Resettlement/ Compensation Working Groups will total 218 people, in addition to 31 for the RMU itself.

It is interesting to compare the available staff currently reported in this study to the requirements of the WMPA and RMU for counterpart and partner staffing, as shown in the table below. This does not include the requirements for district police and militia. Although available staff has evidently been under-reported in the survey carried out for this study (especially for Nakai District), it is clear that the NT2 staff requirements will be a very large proportion of available staff, and that additional staff will be needed at the District level. Moreover, the GOL staff required to support the RMU and WMPA will likely need to have higher qualifications than the current staff.

Proportion of Staff Required for NT2 to Reported Available District Staff

District	Total staff reported	RMU	WMPA	Total NT2 need	% of total available staff
Khamkeut	147	22	15	37	25%
Gnommalath	191	28		28	15%
Mahaxay	84	26		26	31%
Nakai	37	90	72	162	438%
NongBok	64	13		13	20%
XeBangfai	19	21		21	111%
Xaibouly	72	18		18	25%

Monitoring and Performance Indicators

Capacity can sometimes be measured in quantitative as well as qualitative terms. For this effort, it is suggested that the "Self-Assessment" questionnaires that were completed as part of the diagnostic phase of the CB program be used as a baseline. On an annual basis, these same questionnaires should then be thoughtfully completed by each organization's management to provide a basis for understanding trends in capacity development (as demonstrated, for example, by a comparison of average individual organization scores and overall average scores to the baseline scores). This approach will allow for an overview of the CB program's success, but also allow for necessary mid-course corrections to the program based on identified areas of weakness as pointed out by lack of progress in any of the questionnaire topics. It is recommended that these assessments be done annually at a

time that will allow the results to be used by upper management to help plan their organization's activities for the coming year. Feedback from the self-assessment questionnaires, together with less quantitative feedback from stakeholders, could be used to suggest policy or regulatory enhancements, make necessary adjustments in organizational structure, assign individuals to specific tasks and obtain focused educational improvement, and formalize the next year's training cycle. The Advisors should coordinate the completion of the questionnaire effort and assist in the analysis.

An annual report on CB progress should be distributed to stakeholders. The report should include a review of CB activities and expenditures taken in the past year, problems encountered and how they are being resolved, a comparison of the current questionnaire results to the baseline, and an outline of the CB program activities and budget for the coming year.

4 Lessons Learned from Past and On-Going Capacity Building Projects

A review of environmental and social capacity programs in Lao PDR indicates that there have been some successes. Ten years ago there was no Environmental Protection Law or the necessary enabling decrees to implement it. A number of TA efforts by various donors resulted in the development of some of these implementing decrees and regulations necessary to enforce the EPL. ADB supported the GOL with regard to environment and social management in the energy and transport sectors by means of a successful program loan. As a result of the program loan and accompanying TA, it is likely that Lao will establish an Environmental Fund before the end of 2004. Valuable capacity building programs are under way, supported by ADB, World Bank, SIDA, AusAID, JICA, and others.

In spite of these positive results, there remains much to do. Some examples:

- there are as yet no ambient or emission environmental standards in Lao PDR, or a significant capacity to monitor or analyze most pollutants;
- the recently established Social Impact Assessment Unit within STEA exists primarily on paper, and is not yet active;
- there exist some inconsistencies among the mandates of the various government agencies tasked with protecting aspects of the environment, especially between STEA and the NEC;
- STEA at the national level is under-staffed and does not have the budgets necessary to be an effective enforcement or even policy-setting agency. The STEOs in the provinces have even fewer human, financial, and material resources;
- under the EPL, STEA does not have the legal mandate to enforce environmental mitigation without the cooperation and concurrence of others, such as the Provincial government or line agencies;
- Government salaries and benefits are so meager that motivation at STEA and elsewhere among government employees to do their jobs is very low; new organizations like the Environment Fund, the Secretariat of the National Environment Committee, and STEA's Social Unit will suffer from a lack of capable Lao candidates, especially if salaries are set at government levels;
- timely decision-making is hampered by lack of effective delegation and the fact that the top decision-makers are often not available due to travel, training, or other commitments;
- the National University of Lao PDR (NUOL) is working hard to produce the type of educated professionals the country needs, but it has not yet achieved international standards;
- a few fortunate individuals leave the country to get higher education abroad, which causes temporary or permanent disruption if they leave important government posts to do this.

What appears to work:

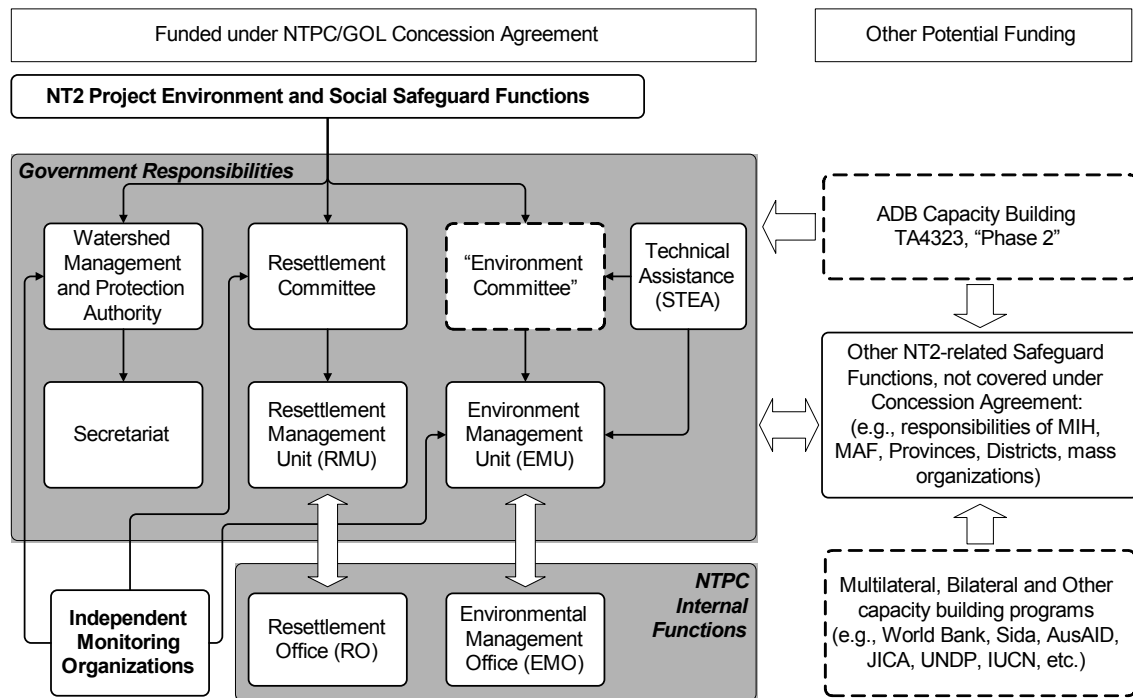
- The workers are trained while on the job by more experienced workers and consultant advisors;
- Appropriate material and financial support is made available at the organizational level;
- Individuals are motivated by an understanding that their training will result in advancement, but they are also able to earn a living wage at their jobs;

What has been less successful:

- financing of infrastructure projects in Lao PDR is largely the result of ODA, but the capacity building that occurs as part of the projects is seldom institutionalized beyond the design and construction of the individual project;
- capacity building programs have tended to address technical capabilities while not paying enough attention to needed administrative and management expertise;

5 NTPC Responsibilities in Institutional Strengthening

Responsibilities for implementation of the safeguard agreements have been distributed among a number of organizations, as shown schematically below. Some of the capacity-building that is required to implement the safeguards will be the responsibility of the NTPC, particularly as to funding. Other functions remain the responsibility of the GOL. There will be a need to enhance the capacity of the GOL agencies that fall into this latter category.



The Concession Agreement and Safeguards CB

Schedule 4, Part 1 of the Concession Agreement between the GOL and the Nam Theun 2 Project Company (NTPC) specifies the responsibilities of NTPC with respect to resettlement and other social issues. It clearly defines the duration and scope of the resettlement process, and provides for the establishment, under the GOL Resettlement Committee, of the Resettlement Management Unit (RMU). All costs of the RMU, including salaries, per diem, and facilities are covered by the NTPC. The RMU will have the responsibility to provide training to GOL agencies involved in the resettlement process, as well as providing through

the District Resettlement Working Groups for community participation and new skills training for Project Affected Persons. Numerous activities are capacity building efforts, and these have been funded to about \$1,210,000 for specified capacity building tasks, plus additional unspecified amounts from RMU and other budgets.

On the Environment Side, Section 8 of Schedule 4, Part 2 of the Concession Agreement specifies that the company shall provide funds for the institutional strengthening activities to be carried out by the GOL. This is aimed at assisting STEA and the Environmental Management Unit (EMU) to carry out their responsibilities “for environmentally managing, evaluating, and monitoring the development and operations of the Project.” The EMU will be established at STEA. A total of US\$1,008,000 is assigned to this support.

6 Capacity Building/Institutional Strengthening Assistance Program

The NT2 CB program should be composed of several complementary aspects, focusing on the ability of all concerned organizations to carry out their responsibilities on NT2. This includes the need for urgent capabilities, such as reviewing the EAMP which STEA must do in the near term. In addition to informative topical workshops, on-the-job training, targeted formal course work, and opportunities for advanced degrees abroad for a few individuals, it is expected that a short- to medium-term program of placing Advisors in the field to work side-by-side with the agencies and other organizations will be needed. In the short term it will also be necessary to consider outsourcing certain functions to local consultants or NGOs.

Organizations will be invited to participate in some or all of the following activities according to the priorities developed during the diagnosis:

Workshops

A number of workshops will address the needs discovered during the diagnostic survey. Some of these workshops will be recurring periodically as needed while others will be one-time events to provide information on the NT2 project or other issues. It is anticipated that a number of organizations will be invited to each workshop, and that they will send several representatives. In general, workshops should not exceed two days in duration.

On-the-job training

A program will be devised to assist experienced members of each organization to become trainers in their areas of responsibility/expertise. The trainers will participate in a two-day course to learn the techniques they are to employ to carry out OTJ training. This would include the setting of goals for the training, screening of participants, development of metrics to assess the progress of the OTJ program, dissemination of training tools, etc.

Targeted In-Service Formal Courses

One negative aspect of providing for advanced or undergraduate degrees to staff is that this takes them away from their duties in the organization, affecting the accomplishment of the organization's work. There exist numerous organizations, including local and regional universities, institutes, and NGOs that can provide formal courses on relevant technical subjects locally, delivered on a part-time basis to personnel while they are carrying out their duties, both in Vientiane and in the provinces. Another rich source of formal coursework is the internet. There are many organizations providing formal courses (leading to degrees and otherwise), covering all the areas specified in the self-assessment, and more.

University degrees and certificates

The overall capacity building program will also include the management of a process to provide certain select individuals the opportunity to obtain university degrees, at various levels. The Advisors will assist individuals and organizations in identifying and applying for existing opportunities. However, this part of the program will not contribute immediately to the NT2 Safeguards implementation process.

Advisor Program

In order to get the capacity building program under way in an effective manner as soon as possible, a number of advisors should be placed with key organizations with NT2 responsibilities to work side-by-side to accomplish the requirements of the environment and social programs. Advisors will provide coordination, management, and technical advice, and be part of the on-the-job training program. Positions should be established, as shown below.

Advisor	Target Organization(s)	Background requirements
Team Leader; Environment/ Social Management Advisor	Central STEA (including ERI, EMU), Department of Electricity, MAF	Advanced degree and experience in environment/ social management. Lao PDR experience required. Lao language desirable. Excellent English required. As team leader will be responsible for coordination and administration of the Advisor Program. Based in Vientiane.
One social impact expert and one environmental expert.	Provinces Cabinets, STEOs, DIH, and PAFOs	Advanced degree in environment/ social area, with demonstrated experience in implementation of environmental and social mitigation programs. Lao PDR experience and Lao language required. English required. Based in Khammouane, and serving all 3 provinces..
One social impact expert and one environmental expert.	Districts DAFO, LWU, LNF	Advanced degree in environment/ social area. Lao PDR experience and fluent Lao language required. Basic technical English required. Based in Nakai, Lak Sao, or other suitable district, and serving all affected districts.
Training Coordinator	All	Advanced degree in education, particularly business management/ training. Lao PDR experience and Lao language desirable. Excellent English required. Will be responsible for coordination and administration of the Training Program. Based in Vientiane.
Short-term Experts	All	National and international experts, called upon for input to the training program as needed. Report to Team Leader and Training Coordinator

7 Implementation

In terms of budgeting, the program described in this report can be divided into two general components: costs of the advisor program and the “out-of-pocket” costs associated with the training programs. The total cost of the overall program of capacity building could range from US\$1.2 million to \$3.5 million per year, for a minimum of five years. This will need support from several sources. A prioritized first-year program estimated to cost \$1.2 million is recommended, to be modified as the program is refined, and new funding sources are identified. As a starting point, it is recommended that the Advisor program be funded from the ADB TA Phase 2 (with potential cost-sharing by World Bank or others), with training out-of-pocket costs covered by the applicable Concession Agreement budget items.

As mentioned earlier, a number of capacity development programs already exist in Lao PDR, funded by a variety of donors and the NTPC. Some of these programs could be tapped to provide funding for the NT2 CB program, or modified to cover some or all of the CB aspects described in this report. It is likely, however, that the “Advisor Program” will need to obtain new donor funding in addition to the Phase 2 of this TA.

8 Summary of Recommendations

In keeping with the multiple dimensions of capacity building, specific recommendations are presented here in terms of impacts on Lao PDR institutions, organizations involved with NT2, and individuals within those organizations.

Institutions

A number of institutional areas need improvements and some conflicts need resolution. A temporary sub-committee including at a minimum, the NEC, STEA, and the Ministry of Justice, should propose legislation to the Prime Minister's Office to improve or remedy the following areas.

1. Review and amend laws, decrees, and regulations to remove inconsistencies and conflicts especially with regard to responsibilities.
2. Develop an Operational Manual or Charter for the National Environment Committee to further define and clarify the roles it has within government. Specifically, clearly define the differences between its responsibilities and authorities and those of STEA.
3. Develop a new Social Impact Protection Law paralleling the Environmental Protection Law, or amend the EPL to specifically address policy on social impact analysis, resettlement, impacts on ethnic minorities, etc..
4. Strengthen the responsibility and authority of STEA, particularly with respect to the following areas: Pollution Control; International Environmental Agreements (as a facilitator and coordinator); Environmental Restoration (as a regulator); Environmental Training and Awareness (particularly with respect to the PSTEOs and the local authorities); Enforcement of Environmental Standards (as a regulator); Approval of Environmental strategies, programs and plans developed by various levels of government; Approval of Environmentally-Friendly Technology (as regulator); Increased involvement in the initial environmental screening of projects; Enforcement of environmental standards, EMPs and SAPs.

As a regulator, STEA should be given the power to halt projects and/or impose fines for lack of compliance with the EPL or any environmental regulations
5. Increase the responsibility of the Ministry of Justice in supporting environmental protection by using legal means to force compliance.
6. Define the role of the NEC, STEA, and the LNMC in enforcing environmental standards emanating from international environmental agreements.
7. Better define the role of line ministries in carrying out environmental research within their sectors, and in the coordination of this research through STEA-ERI.

Organizations

To provide guidance and authority to the NT2 EMU, it is recommended that an Environmental Committee of senior government and some non-government officials be formed. This would parallel the already established Resettlement Committee.

Five advisors should be placed with key organizations with NT2 responsibilities to work side-by-side to accomplish the requirements of the environment and social programs. The targeted organizations would be at national, provincial and district levels. The Advisor assigned to work at STEA (and MIH, MAF) would be the Team Leader and would be responsible for coordination with the affected government ministries, the NT2 project management, and the other advisors. Advisors would also have the significant responsibility of coordinating the training program. This would include organizing the training workshops and other efforts, identifying organizations and individuals who should receive training, and coordinating and implementing the system for measuring the immediate and long-term effects of the CB program. Advisors should assist the government to prepare and submit annual reports to relevant stakeholders on the beneficial effects of the CB program, problems encountered, and specific measures taken to correct deficiencies.

Since the implementation of the EAMP and SDP must begin immediately and the capacity building program suggested here is a long-term process, it is recommended that consideration be given to out-sourcing certain tasks (for example, environmental or social monitoring) to either private sector companies or international NGOs. It is further recommended that any outsourcing include provisions for government counterpart staff to be involved so that they can acquire and retain some of the skills of the contracting organizations.

Individuals

As introduced earlier, individuals in the identified organizations will benefit from informative topical workshops, on-the-job training, targeted formal course work, and opportunities for advanced degrees abroad and in Lao PDR. This training process will become a strong incentive for staff to remain with government.

To attract the staff to stay as long as possible in the districts, economic incentives are also needed, which can be provided by local government and/or projects. These might include, for example, provision of land and developmental funding support, and income generation training and activities.

9 TA 4213 Phase 2 Activities

Phase 1 of the TA ends after consultation with stakeholders and with submittal of this report. Draft terms of reference for Phase 2 of the present TA are presented in the main report. Phase 2 will be an implementation stage for some of the activities recommended in this phase. The Consultants' TOR are summarized as follows:

The Consultants will review the NT2 documents related to environmental and social safeguards. With the cooperation and support of the GOL and NTPC, as required, they will make site visits to the Project area, and consult with the Phase 1 identified organizations; update the list of involved agencies as needed; identify gaps, constraints, adequacy of cost estimates, and risks in the Phase 1 framework capacity development program. Based upon these reviews and activities, the Consultants will refine and provide detailed work plans to accomplish the recommendations of the Phase 1 report, and discuss with GOL, NTPC, and ADB, the need for any modifications in the Phase 1 recommendations. It is recognized that some of the recommended interventions will be carried out by others. It will be the responsibility of the Consultants to provide the ADB and the GOL with a process for coordinating activities performed by others.

The Consultants will provide overall coordination for the implementation of Capacity Development activities as specified in the Phase 1 report, and refined in the preparation stage. They will provide technical and administrative day-to-day advice to decision-makers on actions necessary to carry out their NT2 Safeguards responsibilities. They will also carry out specific capacity building components as detailed in the work plans, including short-term workshops and other training, provide advice on longer-term educational programs, and in the selection of training target individuals. The Consultants will develop draft documents that may be required to resolve institutional inconsistencies and gaps in safeguard legislation and regulation.