

Joint Statement

Joint Statement concerning the specific instance complaint raised by Finance & Trade Watch Austria, EarthRights International et al. alleging human rights abuses and environmental damage by ANDRITZ HYDRO GmbH in connection to the Xayaburi hydropower project in Lao PDR

On April 9th, 2014, Finance & Trade Watch Austria (formerly ECA-Watch Austria), the Community Resources Center (CRC) (Thailand), Fisheries Action Coalition Team (FACT) (Cambodia), Samreth Law Group (Cambodia), Law and Policy of Sustainable Development Research Center (LPSD) (Vietnam), Centre for Social Research and Development (CSRD) (Vietnam), Northeast Community Network of 7 Provinces of the Mekong River (Thailand), International Rivers¹ (USA/Mekong Region) and EarthRights International (ERI) (USA/Mekong Region)² submitted a written complaint to the Austrian National Contact Point (the Austrian NCP) of the OECD-Guidelines for Multinational Enterprises (the Guidelines) alleging that the role of ANDRITZ HYDRO GmbH as a supplier of hydropower-turbines but also its role in the construction and operation of the Xayaburi hydropower project in Lao PDR is contributing to severe environmental damage as well as displacement of communities affected by the project, both recurring in impacts to the livelihoods and food security of local communities in the Mekong region.³

1 Maintaining that the levels of confidentiality required throughout the negotiations would not meet International Rivers' standards for a transparent process, International Rivers decided not to take any further part in this NCP Specific Instance Procedure and left the group of complainants on May 21st, 2015.

2 The Community Resources Centre (CRC) (Thailand), Fisheries Action Coalition Team (FACT) (Cambodia), Samreth Law, Group (Cambodia), Law and Policy of Sustainable Development Research Center (LPSD) (Vietnam), Centre for Social Research and Development (CSRD) (Vietnam) and the Northeast Community Network of 7 Provinces of the Mekong River (Thailand) left the complaint proceedings during the drafting phase of the Joint Statement in March-April 2017 (see section 3 below).

3 The full complaint is publically available on the website of Finance & Trade Watch (<http://www.ftwatch.at/wp-content/uploads/2014/04/Andritz-OECD-complaint-re-Xayaburi-FINAL-submitted-9.April2014.pdf>).

The issues raised in the complaint refer to a potential breach of the following sections of the Guidelines:

- General Policy A.1: *[Enterprises should]* contribute to economic, environmental, and social progress with a view to achieving sustainable development.
- General Policy A.2: *[Enterprises should]* respect the internationally recognized human rights of those affected by their activities.
- General Policy A.10: *[Enterprises should]* carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts as described in paragraphs 11 and 12, and account for how these impacts are addressed. The nature and extent of due diligence depend on the circumstances of a particular situation.
- General Policy A.11: *[Enterprises should]* avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur.
- Human Rights 2: *[Enterprises should]*, within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.
- Human Rights 4: *[Enterprises should]* have a policy commitment to respect human rights.
- Human Rights 5: *[Enterprises should]* carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts.

- Human Rights 6: *[Enterprises should]* provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts.
- Environment 3: *[Enterprises should]* assess, and address in decision-making, the foreseeable environmental, health, and safety-related impacts associated with the processes, goods and services of the enterprise over their full life cycle with a view to avoiding or, when unavoidable, mitigating them.

Consistent with the criteria of the handling of specific instances as established in the Procedural Guidance of the Guidelines themselves and the Terms of References of the Austrian NCP, the Austrian NCP determined in the initial assessment that the matters raised were bona fide, substantiated, of legitimate interest and relevant to the implementation of the Guidelines. This decision was forwarded to both parties via e-mail on May 22nd, 2014.

The Austrian NCP invited both parties for bilateral meetings to inform them about the intended further proceedings and the offer of good offices and mediation and that this would proceed on a confidential basis.

The Austrian NCP then started written consultations with the parties in order to facilitate a first exchange of information. Several rounds of written consultations were followed by seven mediation meetings between 2014 and 2017.

In these in-depth discussions particular focus was placed on the following topics:

- Relevant technical issues, in connection with the realization of the final design of the Xayaburi dam.

- Potential environmental impacts, related to changes in water flow and disruption of the fish migration passage with potential impacts to the Mekong River and its tributaries as a habitat of threatened fish species as well as the loss of fish biomass with potential impacts on peoples' nutrition in the Mekong region. The issue of sediment trapping caused by the Xayaburi dam with potential negative impacts to the Mekong's biodiversity as well as to agricultural production by the loss of natural fertilizers, was also raised.
- Potential human rights impacts, related to livelihoods, food insecurity, displacement and resettlement of local communities caused by the Xayaburi hydropower project in general.
- Corporate responsibility measures, with regard to the development and/or adaption of relevant corporate policies including active stakeholder-involvement, the integration of risk-management tools into corporate proceedings and the implementation of human rights and environmental due diligence procedures.

All mediation meetings were chaired by the Austrian NCP, which ensured a continuously respectful climate of discussion.

Final Outcomes

1. Trust Building Around Confidentiality

During the entire mediation process, all parties agreed to deal with each other in mutual respect and to conform to the agreed confidentiality conditions that prohibited publishing and/or sharing any information, which was part of the mediation process, externally or with third parties without the prior permission of the other party would have been seen as a breach of trust.

2. Exchange of Information, Use of Contacts

The parties agreed to enter into a mediation process and exchanged information. Since the official receipt of the submission, the parties exchanged information on issues concerning the Xayaburi hydropower project, including but not limited to, technical design aspects, status of construction, potential transboundary environmental and social impacts of the Xayaburi hydropower project and the situation for communities near the project site who have had to be resettled.

ANDRITZ HYDRO GmbH, as a supplier to the Xayaburi hydropower project, started to use its contacts vis-à-vis the Xayaburi hydropower project developer (Ch. Karnchang) to provide additional information on the progress and realisation of the Xayaburi hydropower project and on environmental issues. There has been a continuing discussion between the parties about the level of disclosure required under the Guidelines and laws in Lao PDR.

ANDRITZ HYDRO GmbH has shown its willingness to use its contacts vis-à-vis the Xayaburi hydropower project developer to provide additional information about the resettlement site.

ANDRITZ HYDRO GmbH has agreed to discuss the situation of the resettled communities and to support the remaining complainants in their respective efforts by helping them to establish direct contact to the Xayaburi hydropower project developer (Ch. Karnchang) and/or the government of Lao PDR, if necessary.

ANDRITZ HYDRO GmbH agrees to stay in contact with representatives of the remaining complainants in order to ensure that there is future progress in addressing the situation of the communities affected by the Xayaburi hydropower project.

Finance & Trade Watch and EarthRights International intend to support ANDRITZ HYDRO GmbH in its efforts in good faith. Both sides express their hope that through these efforts they can make a positive contribution to the avoidance or mitigation of potential negative impacts of the Xayaburi hydropower project on communities in the resettlement area.

3. Mekong Complainants

The Community Resources Centre (CRC) (Thailand), Fisheries Action Coalition Team (FACT) (Cambodia), Samreth Law Group (Cambodia), Law and Policy of Sustainable Development Research Center (LPSD) (Vietnam), Centre for Social Research and Development (CSRD) (Vietnam), Northeast Community Network of 7 Provinces of the Mekong River (Thailand) (collectively the Mekong Complainants) acknowledge the work of Finance & Trade Watch and EarthRights International in representing their interests. The Mekong Complainants also acknowledge the Austrian NCP and ANDRITZ HYDRO GmbH for participating in the mediation process.

All the parties could not find common ground on key issues, particularly regarding the transboundary impacts of the Xayaburi hydropower project,

which include but are not limited to the potential impacts on fisheries, agriculture and overall biodiversity along the Mekong. Ultimately, it was therefore agreed by all the parties that it was no longer productive to continue discussing these issues within the context of this mediation framework.

As a result, the Mekong Complainants have decided not to sign on to this statement and have decided to leave the complaint in March and April 2017.

The Mekong Complainants agree to continue their obligation of confidentiality around the documents and information disclosed in the proceedings.

4. Bilateral Follow-up Process and Revision of Internal Policies and Procedures

As an outcome of the mediation process, ANDRITZ HYDRO GmbH has committed to develop policies and procedures in relation to the implementation of human rights and environmental standards in accordance with internationally recognised principles including a direct referral to and commitment to apply the OECD Guidelines for Multinational Enterprises.

ANDRITZ HYDRO GmbH agrees to make adapted and further developed policies publically available in a similar way as pre-existing Corporate Social Responsibility (CSR)-documents, such as the company's "Code of Conduct" Document, which is available for download on the ANDRITZ GROUP's website.

In the course of the adaptation of its policies, ANDRITZ HYDRO GmbH will exchange information and involve relevant stakeholder groups including the remaining complainants.

After the completion of the formal NCP mediation process ANDRITZ HYDRO GmbH will maintain informal exchanges with the remaining complainants for a minimum of twelve months from that date and within those twelve months at least four in-person exchanges are envisaged.

ANDRITZ HYDRO GmbH has agreed that other organisations can be invited to these bilateral meetings if there is a mutual understanding that these organisations' expertise is useful to the topic and if there is a mutual agreement that these organisations can join a bilateral meeting without this being seen as a breach of confidentiality.

It has also been agreed that there can be ad hoc and less formal exchanges via phone or email between Finance & Trade Watch, EarthRights International and ANDRITZ HYDRO GmbH concerning the situation of the communities that were/are to be resettled in the course of the Xayaburi hydropower project.

5. Adoption of Due Diligence Procedures

ANDRITZ HYDRO GmbH acknowledges its obligation to respect international human rights and environmental standards, as laid down in particular in the OECD Guidelines for Multinational Enterprises, in its due diligence procedures for all future projects.

6. Conclusion & Recommendations by the Austrian NCP

The Austrian NCP commends the remaining parties for their efforts to resolve differences.

On the basis of the outcomes of the mediation process, the Austrian NCP recommends

- to the remaining parties to continue the dialogue and the exchange of further information - in particular on resettlement issues and policy development,

- to ANDRITZ HYDRO GmbH to continue to use its contacts to mitigate or prevent any negative impacts, related to the Xayaburi hydropower project,
- to the remaining complainants, to maintain the established basis of mutual trust by continuing the positive dialogue with ANDRITZ HYDRO GmbH,
- to the remaining parties to continue the dialogue on the development and improvement of the company's policies and procedures in regard to international human rights and environmental standards,
- to ANDRITZ HYDRO GmbH to discuss and further develop its due diligence procedures in due consideration of internationally recognised human rights and environmental standards, including the OECD Guidelines for Multinational Enterprises.
- to the parties to further apply the OECD Guidelines for Multinational Enterprises.

7. Closing and Follow-Up

The remaining parties agree that this Joint Statement will be published on the websites of the Austrian NCP and of the OECD. They also agree that it can be made public by ANDRITZ HYDRO GmbH and the remaining complainants.

The Austrian NCP together with the remaining parties will coordinate the date of publication.

The remaining parties agree to issue a follow-up statement on recent developments to the Austrian NCP twelve months from the date of issuing this Joint Statement based on the four in-person exchanges envisaged.

After reception of the follow-up statements, the Austrian NCP is willing to provide its good offices for a follow-up meeting. The follow-up statements will be published on the websites of the Austrian NCP and of the OECD and can also be made public by ANDRITZ HYDRO GmbH and the remaining complainants.

The remaining parties thank the Austrian NCP for its good offices and its contribution to the proceedings.

The Austrian NCP will inform the OECD of the outcomes as set out above in this Joint Statement, and that the formal NCP mediation process of this Specific Instance Procedure is deemed closed by the remaining parties.

Finance & Trade Watch
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Director

Date: 12.06.2017

EarthRights International
Ka Hsaw Wa
Executive Director

Date: 15.06.2017

ANDRITZ HYDRO GmbH
Prok. Dipl.Ing. Alexander SCHWAB -
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Date: 27.06.2017

Austrian NCP
Mag. Irene Janisch
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Date: 27.06.2017