



OECD-LEITSÄTZE
FÜR MULTINATIONALE
UNTERNEHMEN



ÖSTERREICHISCHER
NATIONALER KONTAKTPUNKT
www.oecd-leitsaetze.at

Final Statement

of the Austrian National Contact Point

**SPECIFIC INSTANCE UNDER THE OECD-GUIDELINES
FOR MULTINATIONAL ENTERPRISES 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**

June 2017

Contents

1. Background.....	3
1.1 OECD Guidelines for Multinational Enterprises.....	3
1.2 Austrian NCP Specific Instance Procedure.....	3
2. Specific Instance Complaint of FT-Watch, EarthRights International et. al. against ANDRITZ HYDRO GmbH.....	5
2.1 Submission.....	5
2.2 The Parties.....	5
2.2.1 Confidentiality Agreement.....	9
2.2.2 Mekong Complainants.....	10
2.3 Substance of the complaint.....	11
2.4 Initial Assessment and acceptance of the specific instance.....	12
3. Mediation and Good Offices.....	13
3.1 Offer and Acceptance of Mediation.....	13
3.2 Consultation of the Steering Committee of the Austrian NCP and the Austrian Embassy Bangkok.....	13
3.3 Mediation.....	13
3.4 Use and Establishment of Contacts.....	15
3.5 Future Engagement.....	16
4. Conclusions by the Austrian NCP.....	16
4.1 Recommendations.....	16
4.2 Follow-Up Process.....	17
Annex A Joint Statement.....	1

1. Background

1.1 OECD Guidelines for Multinational Enterprises

The OECD Guidelines for Multinational Enterprises (the Guidelines) are recommendations addressed by governments to multinational enterprises operating in or from adhering countries. They provide non-binding principles and standards for responsible business conduct in a global context consistent with applicable laws and internationally recognised standards. As an OECD member government, Austria is required to maintain a National Contact Point (NCP) to promote the Guidelines and to consider complaints regarding a potential breach of the Guidelines by multinational enterprises based in Austria, or operating there.

The Austrian NCP is based in the Federal Ministry of Science, Research and Economy (BMWFW). A Steering Committee including representatives of the Federal Chancellery, the Federal Ministry of Labour, Social Affairs and Consumer Protection, the Federal Ministry for European and International Affairs, The Federal Ministry of Science, Research and Economy, the Federal Ministry of Finance, the Austrian Federal Chamber of Labour, the Austrian Trade Union Federation, the Federation of Austrian Industries, the Austrian Federal Economic Chamber, the Austrian Chamber of Agriculture, an Austrian-based member organization of OECD-Watch as well as one external expert in the field of extrajudicial dispute resolution functions as an advisory body of the Austrian NCP.

The Terms of Reference (ToR) of the Austrian NCP and the Steering Committee are available at www.oecd-leitsaetze.at in German and in English.

1.2 Austrian NCP Specific Instance Procedure

Specific instances are not legal cases and NCPs are not judicial bodies. NCPs focus on problem solving - they offer good offices and facilitate access to consensual and non-adversarial procedures (e.g. conciliation or mediation). Any

party may submit a specific instance to the Austrian NCP and any other NCP regarding the alleged non-observance of the Guidelines. In the event of a specific instance being submitted to the Austrian NCP due to purported violations of the Guidelines, it will be handled in accordance with the Procedural Guidance of the Guidelines. The referral to the Austrian NCP is informal and free of charge.

In the case of an admissible notification, the Austrian NCP carries out a first evaluation on whether the question raised justifies a closer revision. The complainant will be immediately informed on the result of the first evaluation which shall be appropriately founded, however at the latest within six weeks upon receipt of the notification.

In case the Austrian NCP, upon the first evaluation, decides to initiate a closer revision of the specific instance, it will forward – provided that this has not been done yet – the notification to the respondent asking for a statement. The Austrian NCP endeavours to convince the parties to participate in good faith during the procedure. The Austrian NCP considers the contribution to a mutual proceeding carried out by the parties in specific instances to be its central task.

The Austrian NCP strives for closing the proceedings with a Joint Statement of the parties. In the event that it cannot be reached despite all endeavours, the Austrian NCP reserves the right to issue a unilateral Statement.

2. Specific Instance Complaint of FT-Watch, EarthRights International et. al. against ANDRITZ HYDRO GmbH

2.1 Submission

On April 9th, 2014, the Austrian NCP received a request for review from EarthRights International and Finance & Trade Watch (formerly ECA Watch Austria) et al. alleging that ANDRITZ HYDRO GmbH had breached the general policies, the human rights and the environmental provisions of the Guidelines in connection with its role in the construction and operation of the Xayaburi hydropower project in Lao PDR.

2.2 The Parties

Finance & Trade Watch (formerly ECA Watch Austria) is a non-governmental, non-profit organization based in Vienna, Austria. Its main operational focus lies on issues of political education, environment and human rights. The organisation was originally set up in the late 1990s as a platform of Austrian environmental, human rights and development organisations aiming for the reform of the Austrian export credit agency (OeKB) and was established as an independent environmental and human rights organisation in 2008.

Finance & Trade Watch nowadays advocates on a broader level for a decrease of negative social and environmental impacts in dominant trade and finance structures (both on the state and corporate level) and strives towards socially and ecologically more sustainable practices. In this context it engages both at the national and international level in activities that aim at achieving more transparency and better practices within the Austrian export promotion system, as well as in campaign work targeted at the prevention of highly destructive export projects.

The Northeast Community Network of 7 Provinces of the Mekong River Basin was established under the Community Organization Council Act, B.E. 2551 (2008) under the umbrella of the Institute of Community Organization Development, Ministry of Social Development and Human Security, on May 17th, 2009. The network comprises 64 founding subdistricts in seven provinces along the Mekong including Loei, Nong Khai, Buengkan, Nakhon Phanom, Mukdahan, Amnat Chareon and Ubon Ratchathani.

The objectives of the Northeast Community Network of 7 Provinces of the Mekong River Basin are to protect community rights in natural resource management – in particular land, water and minerals; build collaboration on sustainable environmental and natural resource management; monitor and respond to disasters; empower community organizations and networks to monitor threats to human security; promote participatory community based research; promote participatory water governance among communities in Thailand and the Mekong region; and publish and share information regarding the activities of network members.

The Community Resources Centre of Thailand is a non-governmental organization that is committed to protecting and promoting human rights, community rights and environmental rights. CRC acts as a watchdog on the implementation of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and international laws in Thailand and the Mekong Region and conducts public interest law cases and legal advocacy to protect community rights to natural resources and environmental protection. CRC has represented communities impacted by the Xayaburi hydropower project in legal actions in Thailand and is engaged in regional advocacy on the impacts of Mekong mainstream dams.

The Fisheries Action Coalition Team of Cambodia is a coalition of eight non-governmental organizations (NGOs) working in collaboration with 38 NGO

partners on fisheries and environmental issues around the Tonle Sap Lake, the Mekong River and the coastal provinces of Cambodia. FACT works on issues that affect the livelihood of local fishing communities, addressing a wide range of fishery resource conflicts in both inland and marine fisheries. FACT monitors fisheries policy development and mobilizes grassroots organizations and fishers' networks to effectively conduct advocacy on development policies and plans. FACT is concerned about the predicted impacts to fishing livelihoods along the Mekong River and Tonle Sap Lake due to the Xayaburi and other proposed Mekong dams. As an active member of the Rivers Coalition in Cambodia (RCC), FACT has been instrumental in leading and conducting advocacy campaigns against all hydropower development on the Mekong mainstream and its tributaries.

Samreth Law Group is a public interest law firm based in Cambodia. Samreth provides advice and representation to individuals and communities involved in land and other natural resource disputes or other matters of a public interest nature. Samreth aims to establish public interest legal advocacy as a viable component of the legal profession in Cambodia, and to instill a culture in which legal norms are valued and implemented. Samreth conducts pro bono case work, promotes the rights of the poor and works to develop a culture of transparency and accountability. Samreth is concerned about the downstream impacts of the Xayaburi hydropower project on vulnerable communities reliant on fisheries and other riverine resources along the Mekong River and Tonle Sap Lake in Cambodia. Samreth is committed to promoting adherence to law and transparency in environmental decision-making on the Xayaburi hydropower project in Cambodia and the region.

The Centre for Social Research and Development is a national non-governmental organization based in the city of Hue in Central Vietnam. CSRD has been working since 2008 to protect Vietnam's natural environment, in particular, water resources and river systems. CSRD also works to support

poor and vulnerable communities, many of whom depend on the rivers for their life and livelihoods. CSRD works closely with local communities, supporting them with information, training, advocacy services and practical assistance and also makes policy recommendations to government and business, based on community-based research. CSRD is committed to working to preserve the health and well-being of Vietnam's water resources and the communities who rely upon them. CSRD works in the Lower Mekong Basin to bring together local community based groups to voice concerns and take action on adverse impacts of hydropower dams on the Mekong River.

The Law and Policy of Sustainable Development Research Center focuses on law and policy research, with the goal of promoting sustainable development to ensure economic growth, social development, and environmental protection. LPSD analyzes development related policy and provides legal and policy support in the public interest to provincial and national governments. LPSD is now expanding its mandate to include community engagement. LPSD takes a public interest legal approach to issues surrounding sustainable development and works with communities affected by development, poor industrial practices, and environmental degradation to help them understand and enforce their rights. LPSD has conducted policy research on legal and institutional strengthening regarding decision-making on hydropower dams in Vietnam and the Mekong region.

International Rivers works to stop destructive dams, improve decision-making processes in the water and energy sectors, and promote water and energy solutions for a just and sustainable world. Since 1994 International Rivers has been working to protect the Mekong River Basin. As an active member of the Save the Mekong Coalition, International Rivers works with partners in the region to advocate against destructive dams on the Mekong River and promote more responsible options for meeting the region's energy and development needs.

EarthRights International (ERI) is a non-governmental, non-profit organization that combines the power of law and the power of people in defense of human rights and the environment, defined as “earth rights.” ERI specializes in fact-finding, legal actions against perpetrators of earth rights abuses, training grassroots and community leaders, and advocacy campaigns. ERI’s Mekong Legal Program builds regional capacity for campaigning and legal advocacy responding to the negative social and environmental impacts of irresponsible development practices by governments and multinational corporations, including hydropower dams on the Mekong River. ERI is the legal consultant on this complaint.

ANDRITZ Group, or ANDRITZ AG, is an international technology group that supplies customized plants, systems, equipment, and services for the hydropower, pulp and paper, solid/liquid separation, steel, and feed and biomass industries. ANDRITZ AG is headquartered in Graz, Austria. The company divides its activities into four “business areas”: Hydro, Pulp and Paper, Metals and Separation. ANDRITZ HYDRO GmbH, one of its major business areas, is an important global supplier of electro-mechanical systems and services for hydropower plants. ANDRITZ HYDRO GmbH is headquartered in Vienna, Austria, and has more than 50 locations in 20 countries worldwide. ANDRITZ HYDRO GmbH was the winning bidder in an international tender to supply electromechanical equipment for the Xayaburi hydropower project in Lao PDR. The Xayaburi Power Company Ltd., a subsidiary of Thai construction company Ch. Karnchang Public Company Ltd., has ordered turbines, generators, automation systems, and additional equipment from ANDRITZ HYDRO GmbH.

2.2.1 Confidentiality Agreement

In order to strengthen and widen the basis of mutual trust, the parties agreed to sign a confidentiality agreement. The parties declared that confidentiality applies to the Specific Instance Complaint and that any information shared between the parties is subject to these confidentiality conditions. It was further agreed by the

parties, that publishing or sharing of any information to any others outside of the parties is prohibited.

It was also agreed by the complainants, that they will not conduct any public campaign activities that use any information provided confidentially by ANDRITZ HYDRO GmbH for the duration of the Specific Instance mediation. The Austrian NCP received the confidentiality agreements signed by all parties - except for International Rivers - by end of June 2015.

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.

2.2.2 Mekong Complainants

Six complaint organisations (the Community Resources Center of Thailand, Fisheries Action Coalition Team, Samreth Law Group, Law and Policy of Sustainable Development Research Center, Centre for Social Research and Development and the Northeast Community Network of 7 Provinces of the Mekong River) decided to leave the complaint proceedings in March and April 2017. The withdrawal notes were transmitted to the Austrian NCP on April 26th, 2017.

These six organisations (in the following called Mekong Complainants) stated that it was no longer productive within the mediation process to discuss the responsibility for the Xayaburi hydropower project's transboundary impacts, which include but are not limited to the potential impacts on fisheries, agriculture and overall biodiversity along the Mekong, as raised in the complaint against ANDRITZ HYDRO GmbH. No common ground on these issues could be found.

EarthRights International as well as Finance & Trade Watch Austria remained as complainants in the proceedings (remaining complainants).

2.3 Substance of the complaint

The complainants inter alia argued that the project will cause devastating effects on the natural environment that cannot be mitigated, including the likely extinction of 41 critically threatened fish species, e.g. the giant Mekong catfish, the overall significant reduction in biomass of fish in the Mekong River due to changed hydrology and the inability of migratory species to circumvent the dam as well as the trapping of sediment, resulting in reduction of nutrient availability to downstream farmlands and fisheries and a deterioration in water quality. The complainants also argued that the studies commissioned by the developer were inadequate.

The complainants claimed that the project will cause significant human rights impacts, harming the livelihoods of 200,000 people and threaten the food security of millions more. The complainants especially stressed the fact that the dam will cause significant displacement of entire communities.

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.

2.4 Initial Assessment and acceptance of the specific instance

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 on May 22nd, 2014.

3. Mediation and Good Offices

3.1 Offer and Acceptance of Mediation

After several rounds of exchange of information by the Austrian NCP and clarifications by the parties in a written form, the parties accepted the offer of good offices and mediation by the Austrian NCP.

3.2 Consultation of the Steering Committee of the Austrian NCP and the Austrian Embassy Bangkok

The Steering Committee of the Austrian NCP was informed and consulted during the Specific Instance Procedure on a regular basis with regards to recent developments and the procedural steps taken according to the Terms of Reference of the Steering Committee.

On 29 July 2014, the Austrian NCP consulted the Austrian embassy in Bangkok (competent for Thailand, Cambodia, Lao PDR and Myanmar) concerning the situation of NGOs in Lao PDR, the human rights situation in Lao PDR as well as the activities of the organisations in the region which had raised the complaints. Furthermore questions regarding the legal status of the Mekong River Agreement and the competences of the Mekong River Commission were raised. The current status of the Xayaburi project, the resettlement of the local population, media coverage of dam projects in the region as well as the role of ANDRITZ HYDRO GmbH in the region were also covered within the consultation process.

On August 24, 2014 the request of the Austrian NCP was answered by the Austrian Embassy Bangkok in accordance with the respective information available to the embassy.

3.3 Mediation

Seven mediation meetings were held between 2014 and 2017. These mediation meetings were, in agreement with the parties, complemented by several bilateral meetings between the Austrian NCP and the parties. All mediation meetings were

chaired by the Austrian NCP. Throughout the whole mediation process, the parties successfully managed to keep a basis of mutual trust and constructive dialogue.

As a sign of willingness to continue the mediation process and to reach a Joint Statement both parties signed an Interim Statement on February 10th, 2016.

In the Interim Statement, the parties agreed that ANDRITZ HYDRO GmbH will review the complainants' additional request for information and clarification on scientific studies and the design of the Xayaburi hydropower project and will respond to them in due time. The parties also agreed to undertake action to address specific issues and concerns related to the resettlement and compensation process in connection with the Xayaburi hydropower project. ANDRITZ HYDRO GmbH committed itself to continue developing its policies and procedures in relation to human rights and environmental issues. The parties stated that they will continue to comply with the confidentiality conditions and will refrain from public campaigns against the company.

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.

In the mediation, particular focus was placed on relevant technical issues in connection with the realization of the final design of the Xayaburi hydropower project. Possible environmental impacts, related to changes in water flow and the disruption of the fish migration passage with potential impacts to the Mekong River as a habitat of threatened fish species were debated.

The loss of fish biomass with potential impacts on people's nutrition in the Mekong region as well as sediment trapping, with potential negative impacts to

agricultural production by the loss of natural fertilizers caused by the Xayaburi hydropower project, were key issues discussed in the mediation talks.

Potential human rights impacts, related to livelihoods, food insecurity, displacement and resettlement of local communities caused by the Xayaburi hydropower project in general, were also discussed.

Particular focus was also placed on 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.

In February 2017 six complaint organisations decided to leave the complaint proceedings. The formal withdrawal notes were transmitted to the Austrian NCP on April 26th, 2017 (see chapter 2.2.2. above). EarthRights International, Finance & Trade Watch Austria as well as ANDRITZ HYDRO GmbH remained in the proceedings (remaining parties).

3.4 Use and Establishment of Contacts

The remaining complainants affirmed that ANDRITZ HYDRO GmbH, as a supplier to the Xayaburi hydropower project, used its contacts vis-à-vis the Xayaburi hydropower project developer (Ch. Karnchang) to provide additional information on the progress and realization 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.

The remaining complainants also affirmed that 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 and/or the government of Lao PDR, if necessary.

3.5 Future Engagement

ANDRITZ HYDRO GmbH has agreed 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.

The remaining complainants 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.

4. Conclusions by the Austrian NCP

The Austrian NCP fully supports the Joint Statement agreed by the parties (Annex A). The Austrian NCP congratulates the parties on reaching the Joint Statement through mediation and commends them for their efforts to resolve differences. Both parties demonstrated a commitment to ensuring compliance with the Guidelines. As a result, the attached Joint Statement serves as a demonstration of the value of the Guidelines and of the National Contact Point mechanism.

4.1 Recommendations

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 Guidelines,
- to the parties to further apply the Guidelines.

4.2 Follow-Up Process

The Joint Statement agreed by the parties as well as the Final Statement will be published on the websites of the Austrian NCP and of the OECD. The Statements can also 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 of both Statements.

In the Joint Statement, the remaining parties agreed to issue a follow-up statement on relevant 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 Austrian NCP will inform the OECD of the outcomes of this Specific Instance and that the formal NCP mediation process of this Specific Instance Procedure is deemed closed by the remaining parties.



OECD-LEITSÄTZE
FÜR MULTINATIONALE
UNTERNEHMEN



ÖSTERREICHISCHER
NATIONALER KONTAKTPUNKT
www.oecd-leitsaetze.at

Annex A

Joint Statement



OECD-LEITSÄTZE
FÜR MULTINATIONALE
UNTERNEHMEN



ÖSTERREICHISCHER
NATIONALER KONTAKTPUNKT
www.oecd-leitsaetze.at

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.



OECD-LEITSÄTZE
FÜR MULTINATIONALE
UNTERNEHMEN

bmwfw Bundesministerium für
Wissenschaft, Forschung und Wirtschaft ÖSTERREICHISCHER
NATIONALER KONTAKTPUNKT
www.oecd-leitsaetze.at

Finance & Trade Watch

Mag. Thomas WENIDOPPLER

Director

Date: 12.06.2017

ANDRITZ HYDRO GmbH

Prok. Dipl.Ing. Alexander SCHWAB -

Senior Vice President

Date: 27.06.2017

EarthRights International

Ka Hsaw Wa

Executive Director

Date: 15.06.2017

Austrian NCP

Mag. Irene Janisch

Director

Date: 27.06.2017