

Specific Instance regarding the involvement of ANDRITZ HYDRO GmbH in
connection with the Xayaburi hydropower project in Lao PDR

Follow-up Process

Follow-up Statement of the Austrian NCP

1) Context

In April 2014 the Austrian NCP received a submission from nine NGOs alleging that ANDRITZ HYDRO GmbH had not observed the Guidelines. More specifically, the submission regarded the company's supply of hydropower-turbines and its role in the construction and operation of the Xayaburi hydropower project in Lao People's Democratic Republic.

In June 2017 a Joint Statement between the NGOs EarthRights International, Finance & Trade Watch and ANDRITZ HYDRO GmbH as well as the Austrian NCP was signed. The Statement was published on July 13, 2017.

The Joint Statement foresaw the continuation of the efforts of both parties for improving the situation of the local communities in the Mekong region. The company acknowledged 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.

ANDRITZ HYDRO GmbH also committed to develop policies and procedures in relation to the implementation of human rights and environmental standards in accordance with internationally recognized principles including a direct referral to and commitment to apply the OECD Guidelines for Multinational Enterprises. In the course of the adaptation of its policies, ANDRITZ HYDRO GmbH would exchange information and involve relevant stakeholder groups including the remaining complainants.

In the Joint Statement the parties stipulated to engage in a follow-up process. It was envisioned that the dialogue between ANDRITZ HYDRO GmbH and NGO representatives should continue with particular attention to the topics of resettlement issues, as well as due diligence policy development within the company. The parties agreed to both issue a follow-up statement on recent developments to the Austrian NCP twelve months from the date of publication of the Joint Statement based on four in-person exchanges envisaged. After reception of the follow-up statements, the Austrian NCP would be willing to provide its good offices for a follow-up meeting. The follow-up statements would be published on the websites of the Austrian NCP and the OECD.

In the Joint Statement the Austrian NCP issued the following recommendations:

- to the remaining parties¹ to continue the dialogue and the exchange of further information - in particular on resettlement issues and policy development,

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 21, 2015. In February 2017, six of the submitting organisations left the process, stating

- 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 recognized human rights and environmental standards, including the OECD Guidelines for Multinational Enterprises.
- to the parties to further apply the OECD Guidelines for Multinational Enterprises.

2) Follow-up process

On September 6, 2018 the follow-up meeting was held at the premises of the Austrian NCP. Beforehand, the Austrian NCP received follow-up statements from ANDRITZ HYDRO GmbH on August 2, 2018 and from the complainants on September 4, 2018 (see Annex for the Statements).

In the follow-up meeting the parties reported on and discussed further the follow-up process. The parties confirmed that - as agreed in the Joint Statement - four bilateral follow-up meetings took place between February 2018 and June 2018. Both parties described the follow-up process as constructive and valuable. The implementation of the recommendations of the Austrian NCP from the Joint Statement of June 2017 were also discussed (for further information see 3. below). The parties stated that they would be willing to continue their dialogue after the end of the formal follow-up process.

3) Measures implemented with regards to the recommendations of the Austrian NCP from June 2017

In their follow-up statements and during the follow-up meeting on September 6, 2018 both parties explained that the below-cited activities were undertaken in regards to the following topics and commitments from the Joint Statement.

3.1) Basis of trust and dialogue between the parties

Both Parties stated that the dialogue was conducted in a constructive and polite manner throughout the entire follow-up process and that they are planning to continue the dialogue after the end of the formal follow-up.

The Austrian NCP appreciates that the dialogue between the parties was conducted in a constructive manner and expresses its support for the parties' engaging in further discussions.

that it was no longer productive to discuss the responsibility for the Xayaburi hydropower project's cross-border impacts within the mediation. Finance & Trade Watch Austria, EarthRights International and ANDRITZ HYDRO GmbH remained in the proceedings.

3.2) **Situation of the local communities and resettlement issues**

Both parties reported that further information was exchanged on resettlement issues. ANDRITZ HYDRO GmbH explained that it used its contacts to gain further information concerning the resettlement process of the project-affected population. The situation of the local communities in the Mekong region and the technical developments and innovations in turbine and dam building were discussed regarding technical equipment in connection to issues concerning ecological impact and fish migration.

The Austrian NCP welcomes the fact that further information was shared between the parties. The Austrian NCP encourages both parties to further continue the dialogue to improve the situation of the local communities. The Austrian NCP acknowledges the intentions of ANDRITZ HYDRO GmbH to continue to use its contacts.

3.3) **Development and improvement of the company's policies and due diligence procedures with regards to international human rights and environmental standards**

The ANDRITZ Code of Conduct is currently being revised within the ANDRITZ Group. ANDRITZ HYDRO GmbH explained that further consultation with the complainants could take place in October/November 2018. **The parties** explained that they discussed a draft of the new Code of Conduct of the ANDRITZ Group, especially in regards to human rights and environmental issues and due diligence procedures. As another stakeholder from Austrian civil society a representative from WWF Austria with geographical expertise in regards to South-East-Asia and fish ecology took part in all four meetings. Both parties explained their commitment to continue the dialogue on the development of a new Code of Conduct of the entire ANDRITZ Group as soon as possible.

The Austrian NCP appreciates the fact that the parties cooperated in discussing draft versions of ANDRITZ' future code of conduct attempting to further develop the company's social and environmental due diligence measures. The Austrian NCP welcomes the fact that upon mutual consent an expert from WWF Austria was consulted during the bilateral follow-up process.

The Austrian NCP encourages both parties to further exchange in regards to the ANDRITZ Code of Conduct. The Austrian NCP acknowledges the commitment of the company during the follow-up meeting and in its follow-up statement (for further information see page 4 below) to base the new ANDRITZ Code of Conduct on international principles such as the OECD Guidelines. The Austrian NCP particularly appreciates that the new Code of Conduct will be valid for the whole ANDRITZ Group. The Austrian NCP encourages the company to directly reference to the OECD Guidelines for Multinational Enterprise in its new Code of Conduct.

The Austrian NCP commends both parties on the achieved progress. The Austrian NCP particularly supports the parties' intentions to continue their dialogue and hold regular meetings as affirmed during the follow-up process. The Austrian NCP is also at the disposal of both parties to contribute its expertise to the further work of the parties, especially in regards to questions on developing the new Code of Conduct of the ANDRITZ Group. The Austrian NCP encourages both parties to further apply the OECD Guidelines for Multinational Enterprises.

With this Statement, the Austrian NCP concludes the formal follow-up of the specific instance.

ANNEX

Follow-up Statement of ANDRITZ HYDRO GmbH

(as submitted on August 2, 2018)

The agreement in the Joint Statement (from July 2017) foresaw the continuation of the efforts of both parties **regarding the situation of the local communities** in the Mekong region. ANDRITZ HYDRO GmbH also agreed to further discuss its due diligence procedures and **its policies and procedures** in relation to the implementation of human rights and environmental standards in accordance with internationally recognised principles, such as the OECD Guidelines.

Since February 2018 four follow-up meetings have taken place. In these the two parties discussed the situation of the local communities in the Mekong region, and the technological developments of ANDRITZ HYDRO regarding fish-friendly equipment, not only for Xayaburi, but also included in other projects.

Together with WWF the parties worked on the ANDRITZ Code of Business Conduct and Ethics, mainly in respect of the topics Human rights and Responsibility for the environment. The new Code of Conduct is based on international principles such as the OECD Guidelines and will be valid for the whole ANDRITZ GROUP with more detailed policies in the specific business areas and their special requirements.

The parties decided to continue their dialogue. Certain meetings, after prior consent, could also be extended to a larger group of participants (according to the topic) and could be organized by ANDRITZ.

The discussion atmosphere was respectful and polite.

Follow-up Statement of Finance & Trade Watch and EarthRights International

(as submitted on September 4, 2018; the first page of the statement on the proceedings was removed upon consent by Finance & Trade Watch and EarthRights International)

Bilateral Follow-up Process

From February 2018 to June 2018 four meetings took place between ANDRITZ HYDRO and Finance & Trade Watch, with WWF Austria participating as an additional Austrian NGO.²

Two meetings in February 2018 focused on reviewing the outcomes of the mediation process. The sphere of influence of ANDRITZ HYDRO as a supplier in different project participation scenarios was discussed, as well as the company's due diligence potential regarding environmental, human rights, worker's rights, corruption safeguarding and other topics. The company representatives gave general insights into technical development and innovations in turbine and dam building aimed to reduce environmental impact. A number of current ANDRITZ HYDRO projects were discussed that had been and still are heavily criticized due to their severe social and environmental impact, including the Xayaburi Hydropower Project.

The issue of resettlement was given special attention. ANDRITZ HYDRO shared additional insights into the level of detailed information the company receives about resettlement impact mitigation measures available in some projects where the flow of information has been integrated into the original project planning. This concerned both the Xayaburi Hydropower Project, as well as one other current project.

It was concluded by the coalition of NGOs that there was and still is a high risk of exposure within the current political regime in Lao PDR of local individuals who express criticism of the project and its impacts. Therefore, it would be hard to continue following up in detail on the severe problems the relocated communities have experienced during the Xayaburi resettlements which were reported by the NGOs in the course of the mediation process. From the viewpoint of the NGOs it would have been necessary to - with the help of the Austrian NCP - set up an independent human rights expert delegation that could investigate the reported problems during the Xayaburi resettlements from a neutral perspective while the mediation process was still underway. Without the willingness of the NCP to support neutral investigation in this matter within the framework of the mediation process, this was not possible.

Two meetings in April and June 2018 focused primarily on process to begin drafting text for a due diligence policy to be implemented within ANDRITZ HYDRO. The company representatives presented the first rough outlines for a draft document aiming to become a new code of conduct policy document for the entire ANDRITZ Group, including the hydropower-segment as well as other business areas, and discussed these outlines with the NGO representatives.

Discussions centered on how to give priority to the development of feasible guidelines for human rights and environment which in the past were not included in ANDRITZ's code of conduct. It was agreed that a general set of guidelines should eventually lead to specific sub-sets of guidelines or standards for different topic areas such as worker's rights, human rights safeguarding, and environmental impact. Priority was

² The following persons attended all four meetings. Representing ANDRITZ HYDRO: Mr. Alexander Schwab (Senior Vice President), Mrs. Christina Zwickl (CSR) and Mr. Peter Stettner (Market Management and Strategy). Representing EarthRights International and Finance & Trade Watch: Mr. Thomas Wenidoppler (Director, Finance & Trade Watch). As additional Austrian NGO representative: Mr. Georg Scattolin (Head of International Program, WWF Austria). Three meetings were held in the offices of ANDRITZ HYDRO, one in the offices of WWF Austria.

given to reflecting on how to align the draft text with the OECD Guidelines for MNEs as well as with a range of different sets of standards and guidelines, especially if the text is to be effectively implemented across the entire ANDRITZ Group.

From the NGOs' point of view, while a good start has been made, a new code of conduct is far from finished and needs to continue to be developed and finalized from ANDRITZ's side in a timely manner.

Follow-up Assessment

As an outcome of the mediation process, ANDRITZ HYDRO acknowledged *"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."*³

ANDRITZ HYDRO also 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", to "exchange information and involve relevant stakeholder groups including the remaining complainants [in the course of the adaptation of its policies]" as well as "to make adapted and further developed policies publically available [...]."*⁴

Finance & Trade Watch and EarthRights International appreciate that after concluding the NCP mediation process further exchange with ANDRITZ HYDRO towards due diligence policy development has been possible. Four meetings were held in total between company and NGO representatives. These meetings were conducted in a constructive manner and appeared to be of value for both sides. Our impression at this point is that all parties involved are willing to continue the dialogue for the time being.

As discussed in the most recent meeting in June 2018, we would have hoped for ANDRITZ HYDRO to already prepare the general code of conduct draft with spaces for future cross-references to more topic-specific and hence more detailed norms, standards and policy documents which should be applied in connection with the company's business activities. In the course of the most recent discussions a number of standards and norms were mentioned that are already being applied at the present time. These practices would provide a good starting point for further reference. We hope and expect that discussions in the upcoming joint meeting with the Austrian NCP can proceed at this level.

Also, the NGO representatives have repeatedly pointed out that the new corporate policy document should be aligned with and explicitly refer to the OECD Guidelines for MNEs, as agreed as an outcome of the NCP mediation process. There is still need for adjustments in this regard.

In our role as NGO representatives, it is vital to emphasize at this point that we cannot take over the work of spelling out concrete policies on paper, for ANDRITZ or any other corporation. Furthermore, as representatives of advocacy organizations we want to avoid under any circumstances the possibility of appearing to provide a carte blanche for company activities by providing specific language for corporate policy documents.

It is also important to state at this point that CSR officers should not be left on their own with the task of policy building within their company. The selection of standards to be applied in specific contexts requires good exchange between colleagues in different branches of a corporation. We are firmly convinced that

³Joint statement, p.8.

⁴Ibid, p.7.

this process of reflection and discussion must take place within the company itself – anything that is simply handed to a corporation from the outside without such a process will be of far less value.

It appears to us that the policy drafting process has been stalling since the most recent follow-up meeting. The joint agreement - which was formulated as a main outcome of the NCP mediation process - refers to the need for policy development within ANDRITZ HYDRO. It is comprehensible that drafting a code of conduct simultaneously applicable to the entire ANDRITZ Group may require additional time. Even so, it is important for us to underline that this should not provide justification for unnecessary delay.

We will consider further exchange with ANDRITZ HYDRO as valuable providing that the drafting process of the new code of conduct progresses at an adequate pace and leads to adequate implementation.

Conclusion

As a reminder, the issues raised in the complaint referred to a potential breach of the following sections of the OECD Guidelines for Multinational Enterprises, according to which enterprises should:

- contribute to economic, environmental, and social progress with a view to achieving sustainable development. (General Policy A.1)
- respect the internationally recognized human rights of those affected by their activities. (General Policy A.2)
- 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.10)
- avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur. (General Policy A.11)
- 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 2)
- have a policy commitment to respect human rights. (Human Rights 4)
- 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 5)
- 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. (Human Rights 6)
- 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. (Environment 3)

It is essential that a future code of conduct earnestly take into account the lessons learned from past projects and from the Xayaburi complaint case.

We appreciate ANDRITZ HYDRO's openness to exchange information with and involve Finance & Trade Watch, EarthRights International and WWF Austria during their process of adapting their corporate due



diligence policies. The past follow-up meetings give hope that ANDRITZ HYDRO takes its commitments undersigned in the joint statement seriously.

At the same time our impression is that the drafting process has been stalling. We hope that the upcoming joint meeting together with the Austrian NCP will help gain momentum. It would be helpful to determine a fixed date at which ANDRITZ HYDRO envisions their new corporate code of conduct document to be finalized and publicized.

We feel that it would also be helpful - at this stage of the company's efforts to develop a new corporate code of conduct - to actively include in this process the Austrian NCP as the Austrian governments' representative in charge of promoting corporate due diligence alignment with the OECD guidelines for MNEs.