

Follow-up Statement

Concerning the specific instance complaint alleging that ANDRITZ HYDRO GmbH contribute to human rights abuses and environmental damage in connection to the Xayaburi Hydropower Project in Lao PDR

Finance & Trade Watch and EarthRights International
September 3rd, 2018

Between May 2014 and June 2017 a mediation process took place at the Austrian “National Contact Point” (NCP) between Finance & Trade Watch and EarthRights International as representatives of a total of seven Mekong regional as well as international environmental/human rights NGOs¹ and the Austrian company ANDRITZ HYDRO. The mediation addressed the company’s role as supplier of key technology (hydropower-turbines) for the Xayaburi Hydropower Project in Lao PDR and hence its role in the construction and operation of the hydropower plant. The NGOs had filed a specific instance complaint arguing that the company was in breach of the OECD Guidelines for Multinational Enterprises (Guidelines for MNEs) by contributing to the disruptive displacement of local populations as well as to severe environmental damage impacting communities and the ecology along the lower Mekong river.²

In June 2017 Finance & Trade Watch, EarthRights International, ANDRITZ HYDRO and the Austrian NCP signed a joint agreement concerning the outcomes of the mediation process.³ The NCP issued a list of final recommendations directed at ANDRITZ HYDRO and suggested continuing exchange between the mediation parties. A twelve month bilateral follow-up process was agreed upon by Finance & Trade Watch and EarthRights International as complainants and ANDRITZ HYDRO.

It was agreed that a minimum of four bilateral meetings would take place between ANDRITZ HYDRO and NGO representatives at which particular attention would be given to the topics of problematic resettlement in the Xayaburi project as well as due diligence policy development within ANDRITZ HYDRO.

It was also agreed with the Austrian NCP that both parties would issue a follow-up report to the NCP one year after closure of the specific instance case.

1 Complainants:

Northeast Community Network of 7 Provinces of the Mekong River (Thailand)
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)
EarthRights International (ERI) (USA/Mekong Region)
Finance & Trade Watch (formerly ECA-Watch Austria)

2 Specific Instance Complaint under the OECD Guidelines for Multinational Enterprises regarding the Contributions of ANDRITZ AG to Human Rights abuse and Environmental Damage in Connection with the Xayaburi Hydropower Project in Lao PDR (April 2014): <http://www.ftwatch.at/wp-content/uploads/2014/04/Andritz-OECD-complaint-re-Xayaburi-FINAL-submitted-9.April2014.pdf>

3 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 (June 2017)

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.⁴

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 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.

⁴ 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.

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.*”⁵

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 [...]*.”⁶

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 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.

5 Joint statement, p.8

6 Ibid, p.7

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.