

IB no.10/2022



A member of  MUFG
a global financial group

16 September 2022

Ms. Federica DONATI
Officer-in-charge
Special Procedures Branch
Office of the High Commissioner for Human Rights

Subject: Responses to the letter dated 18 July 2022 (AL OTH 62/2022) regarding the joint communications of UN Human Right's Council's Special Procedure on the collapse of the auxiliary dam in the Attapeu province

Dear Madam,

We, Bank of Ayudhya Public Company Limited (the "Bank"), refer to the letter from the United Nations Human Rights regarding a joint communication sent by the Working Group on the issue of human rights and transnational corporations and other business enterprises to seek clarification on the impacts caused by the collapse of the auxiliary dam of Xe-Pian Xe-Namnoy Hydropower Project located in Attapeu Province, Lao PDR (the "Letter").

We would like to provide our responses as enclosed herewith on such issues in order to ensure that the Bank has been well aware of all mentioned issues and has closely monitored remedial measures taken by Xe-Pian Xe-Namnoy Power Company Limited ("PNPC"), a project developer of Xe-Pian Xe-Namnoy Hydropower Project, and the Government of Lao PDR ("GOL").

As part of the syndicated lenders in the financing to PNPC, we, together with the other lenders, also asked the lenders' legal advisor to prepare collective response for the lenders, especially on the status, progress and process of the implementation of remedial plan. This is to ensure that all lenders have been updated the same information that remedial measures have been appropriately implemented to the local communities in the affected area and that PNPC complies with all applicable human rights laws, instruments and standards.

The Bank also places human rights protection at highest priority as guided by our published Disclosure Statements and Policies to ensure all actions are taken to prevent, mitigate and remedy abuses of the human rights.

Yours Sincerely,

For and on behalf of
Bank of Ayudhya Public Company Limited

(Prakob Phiencharoen)
First Executive Vice President
Head of Corporate and Investment Banking Group and
Acting Head of Investment Banking Division

Enclosed: Bank of Ayudhya's Responses on the OHCHR report

Response to the Joint Communication from Special Procedures, the United Nations' Office of the High Commissioner for Human Rights (OHCHR)

(18 July 2022 – AL OTH 62/2022)

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.

Having reviewed the Letter, the information provided relating to the situation of the people in the affected areas is rather surprising. We have been closely monitoring remedial measures implemented by PNPC and GOL and have seen periodic reports of positive progress with the rehabilitation process to date. From the reports and our discussion with representatives of PNPC, PNPC and GOL have strictly observed and remained strongly committed to provide remedies to local communities in the affected area through obstacles that were presented due to the COVID-19 pandemic in accessing the affected area, contacting relevant persons who are responsible for remedial actions, and in resuming the construction of housing in neighborhood. The Bank has been collaborating with PNPC to ensure that sufficient compensation and construction of suitable and habitable housing for villagers is taking place, and that voices and concerns of each of the victims are heard and addressed.

Therefore, based on the reports and our discussion with representatives of PNPC, there is no reason to believe that support from PNPC has not been appropriately carried out and the process to offer remedies are not transparent. We outline rationale for our comments in our responses below.

2. Please provide information on whether and how your company has used and built upon its leverage to promote and enable the provision of remedies to victims of business-related human rights abuses.

Policies regarding human rights are embedded in our Bank policies. The Bank has imposed several prerequisites for our staff to comply with when dealing with customers. Prior to reaching a decision on a lending transaction, our staff are required to conduct an environmental, social, and governance due diligence on businesses and projects that request funding. We take this process very seriously by conducting our own independent due diligence with internal departments as well as engaging reputable external advisors who are experienced in relevant areas and industries to assess risks from an environmental, social and governance perspective. Moreover, with the understanding that lending to, or partnering with, customers without prior investigation regarding human rights may result in grievous human rights violations, our internal process also includes an in-depth investigation of human rights issues and a human rights survey. All customers in every industry and sector are subject to such scrutiny, especially in large-scale infrastructure or mega project developments. In such projects (which includes Xe-Pian Xe-Namnoy Hydropower Project), the level of scrutiny is at its maximum. The Bank are confident that our customer due diligence process prior to deal execution, both by internal and external teams, effectively mitigates risks of any potential human rights infringement and human rights abuses.

Once the risks have been assessed and analysed based on our due diligence exercise and a funding decision has been made, further steps to ensure that we impose stringent obligations

relating to environmental, social and governance policies for customers are strictly complied with. For example, loan agreements will contain minimum standards provisions relating to compliance with respect to environmental, social and governance related laws. More specific obligations may be set forth in the case we view that there are specific issues arising for any particular project during the due diligence phase. These issues are addressed in the loan documentation phase.

Customers are usually required to report to us on the operation of the businesses and/or the projects on a periodic basis as an ongoing obligation. Moreover, customers are required to notify or report any event or circumstance that could be viewed as material and that may lead to more serious events.

Respectively, regarding our policy to promote and enable the provision of remedies to victims of business-related human rights abuses, if we are aware of, or have received any information regarding human right violations from our customers or employees, we will take action through our closed investigation process where an ad-hoc committee will be set up and be dedicated solely for investigation into the possible abuse. In parallel, we will work with related stakeholders to analyse and determine appropriate remedial measures to be implemented by the customers. Given that settling and resolving human rights abuses are our highest priority we are willing to offer support to customers in certain circumstances to ensure that the issues are resolved to a satisfactory level by all relevant concerned parties.

3. Please provide information regarding what processes and mechanisms are available to survivors to file complaints, make their grievances known, or make inquiries with regard to housing, compensation or other issues related to the 2018 dam collapse. Please detail what steps, if any, are being taken to raise the awareness of survivors to these processes and mechanisms.

Based on the reports and our discussion with representatives of PNPC:

- (i) The latest update of the remedial measures is that construction of new houses, totaling 812 houses, is 96 % complete. Most families have relocated into new permanent homes. With respect to compensation for those affected, the process includes collection of household-by-household compensation data and household-by-household consultation where compensation amounts, and the basis for calculation of such amounts, are explained to the villagers. Affected individuals are entitled to submit a complaint, which are proceeded with and resolved in person.
- (ii) In addition, interview sessions are conducted for all claimants individually to assure that all concerns and issues in relation to the offered accommodation and compensation are addressed. Such sessions are followed by an open consultation session for each village where PNPC's staff remain on standby to accept comments and questions raised by villagers. Each individual interview and open consultations serve as platform for complaints or grievances submissions and compensation settlements. To date, we were informed that PNPC has attended all interviews and consultation sessions so that assistance by PNPC can be performed to the satisfaction of the villagers. A significant decrease in the numbers of official complaints being made against PNPC through the government's claim process is proof that the master plan for compensation and construction of housing has been effective.
- (iii) All claimants were given opportunities to provide responses/feedback on their compensation claims and their experience with the claim process. PNPC and the Government continually coordinate with each other and jointly put an effort to resolve and address any complaints and queries to the satisfaction of each claimant.

- (iv) Payments of compensation are deposited directly into each claimants'/household's bank accounts. Donations from the private and government sectors are coursed through relevant government offices/committees tasked with the management of donations.
- (v) In total, PNPC has provided the required USD 3.13 million in full to support the cost of operating and maintaining temporary accommodations. The amount is inclusive of daily allowances and monthly food expenses.

4. In your previous response, your bank noted that it has provided donations to assist affected individuals and families. Please describe the steps taken to ensure that donations, supplies, and any compensation payments have reached their intended recipients; payments are paid on a consistent schedule; estimates given on the damages incurred and actual compensation received are consistent; and the application of certain processing fees are legitimate.

To assist the affected individuals and families, our Bank, together with other Thai commercial banks in Lao PDR., partnering with the Royal Thai Embassy, Vientiane, had collectively provided financial donations through the Victim Rescue Foundation under the supervision of the Ministry of Labor and Social Welfare.

5. Please explain what measures have been adopted to ensure that the staff of your bank as well as those of your business partners possess adequate awareness, knowledge and tools to identify and report human rights abuses, including those alleged in the present letter, throughout your operations.

Guided by international best practices and Thailand's Sustainable Banking Framework, in 2020, the Bank formulated the responsible lending guidelines as a credit policy governing our lending activities. The guidelines designated transactions/activities deemed detrimental to social and environmental sustainability, ranging from outright prohibitions where new or additional financing is strictly not allowed to restricted lending where new or additional financing is under supreme due diligence. Examples of transactions and activities identified, among others, include:

- Transactions which violate public order and good morals
- Transactions involving the use of child labor or forced labor
- Transactions that impact indigenous peoples or communities or society, e.g., construction of dams
- Transactions that lead to land expropriation resulting in involuntary resettlement
- Transactions that impact high conservation value areas

The aforementioned policy and guidelines have been communicated to the Bank's operating officers for acknowledgement and full compliance with emphasis on raising awareness of ESG risks among the parties related to the credit underwriting process, namely relationship managers, credit analysts, underwriters.

Since the introduction of the aforementioned guidelines and policy, no financing activity/support has been provided to a dam construction project.

6. **Please provide information on whether your bank publicly discloses how it is addressing human rights risks and impacts connected with investment activities, and**
7. **Please kindly provide information on how Bank of Ayudhya does not impact negatively the work of human rights defenders, specifically in light of the recommendations provided to Businesses in the report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on the adverse impact of business activities on human rights defenders (A/HRC/47/39/Add.2), which recalls for States and businesses the normative and practical implications of the Guiding Principles on Business and Human Rights in relation to protecting and respecting the vital work of human rights defenders.**

Being committed to the sustainable banking guidelines, we place great importance on social and environmental risk management and ensure our business operations align with and are supportive of human rights and environmental sustainability through the following important actions:

- **Established and Communicated our Environmental Disclosure Statement in 2019**

We have taken actions to address global environmental issues as follows:

- Striving to protect the environment and respond to climate change which is the responsibility of all human beings.
- Aiming to contribute to the realization of a sustainable society by protecting the global environment in alignment with the SDGs.
- Complying with applicable legislation and international agreements and responding appropriately when our operations result in environmental risks or negative impacts.
- Striving to reduce the environmental impacts of our operations, as well as actively working towards finding solutions to global environmental issues through our business activities.

- **Established and Communicated the Human Rights Disclosure Statement in 2019**

We recognize respect for human rights as an important issue to be addressed in the management of our business for the realization of our Corporate Mission as a member of the world's most trusted financial group in serving society through sustainable growth. We aim to fulfill our responsibility to respect human rights across all our operations.

- **Formulated and Communicated the Human Rights Policy in 2022**

We have established the Human Rights Policy in compliance with related domestic and international laws, regulations, and guidelines, e.g. the Universal Declaration of Human Rights ("UDHR"), ILO Declaration on Fundamental Principles and Rights at Work adopted by the International Labour Organization ("ILO"), United Nations Guiding Principles on Business and Human Rights ("UNGP"), and used the Policy as the key framework to manage human rights issues throughout the organization and the business value chain. Our Human Rights Guidelines are as follows:

- Ensure treatment of all stakeholder groups in accordance with the human rights principles at the domestic and international levels based on equality and non-discrimination.

- Refrain from any actions that violate human rights through human rights risk management, human rights due diligence, and remedies and reparation upon human rights violations.
- Support and encourage the protection of and respect for human rights through communication and dissemination of knowledge, and stipulate guidelines for monitoring and providing support to stakeholders in the business value chain.