

Mandates of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur in the field of cultural rights; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the right to food; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and the Special Rapporteur on the rights of indigenous peoples

REFERENCE: AL
LAO 1/2016:

16 February 2016

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; Chairperson of the Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur in the field of cultural rights; Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; Special Rapporteur on the right to food; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and Special Rapporteur on the rights of indigenous peoples pursuant to Human Rights Council resolutions 25/17, 26/22, 28/9, 28/11, 22/9, 24/6 and 24/9.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **allegations of human rights violations against the population living along the banks of the Lower Mekong River (which spans Laos, Cambodia, Thailand and Vietnam) as a result of the Don Sahong dam project currently under construction in the territory of Lao People's Democratic Republic (Lao PDR). The right to an adequate standard of living, including the rights to adequate food and housing, the right to the highest standard of physical and mental health, cultural rights and the rights to information and participation appear to be at particular risk, as do the rights of indigenous peoples living in the area.**

According to the information received:

The Don Sahong Dam, a hydroelectric facility, is under development on the Hou Sahong Channel along the main course of the Mekong River, crossing the full

length of the channel at a height of 32 meters. The dam will be located 130 meters from where the channel separates from the body of the Mekong River and less than 2 kilometers from the Laos-Cambodian border, in the territory of Lao PDR. It is reported that the cumulative impact of the proposed dam would pose threats to some of the planet's most endangered wildlife species, as well as the world's most productive inland fishery, which supports the livelihoods, food security and culture of approximately 29.7 million people living along the Mekong in Lao PDR, Thailand, Vietnam and Cambodia. It is still unclear how Don Sahong power will be used. Some reports indicate that the power will be used domestically and others that it will be sold to neighbouring countries.

In March 2006, Lao PDR granted Mega First Corporation Berhad (Mega First), a Malaysian engineering and construction company, exclusive rights to study the feasibility of the Don Sahong Dam.

The four Lower Mekong River governments (Cambodia, Lao PDR, Thailand and Vietnam) are party to the 1995 Mekong Agreement, which established the Mekong River Commission (MRC). The Procedures for Notification, Prior Consultation, and Agreement (PNPCA), deriving from article 5 of the 1995 Mekong Agreement, set out a joint decision-making process for projects that affect the mainstream of the Mekong River. The procedures are intended to ensure that the four member countries cooperate in the utilization and development of the Lower Mekong Basin in a "constructive and mutually beneficial manner".¹

The 1995 Mekong Agreement defines the prior consultation procedure as follows: "Timely notification plus additional data and information to the Joint Committee, as provided in the Rules for Water Utilisation and Inter-Basin Diversion under article 26, that would allow the other member riparians to discuss and evaluate the impact of the proposed use on their uses of water and any other affects, which is the basis of arriving at an agreement. Prior consultation is neither a right to veto the use nor a unilateral right to use water by any riparian without taking into consideration other riparians' rights."²

In 2007, Lao PDR requested the MRC Secretariat to review an initial Environment Impact Assessment (EIA). The MRC Secretariat review identified problems with the proposed mitigation efforts, inadequate diligence regarding the probable impacts (particularly transboundary impacts) and poor disclosure of project design details and relevant information. Following this review, Lao PDR did not approve the 2007 EIA.

¹ *Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin* (April, 1995), see Preamble.

² *Technical Review Report on Prior Consultation for the Proposed Don Sahong Hydropower Project, the Mekong River Commission* (February 2015), p. 3. Available from www.mrcmekong.org/assets/Publications/Consultations/Don-Sahong/Technical-Review-Report-DSHPP-040315.pdf.

In February 2008, Lao PDR signed a Project Development Agreement with Mega First and authorized Mega First to enter into advanced negotiations and finalize the project details with Lao PDR and potential electricity buyers.

In 2010, the MRC recommended a moratorium on dam building on the Mekong mainstream for ten years, until further studies could be carried out.

In September 2013, Lao PDR notified the MRC of its intention to build the Don Sahong dam while simultaneously releasing a new EIA, which was allegedly approved by Lao PDR in 2013. The remaining MRC members - Cambodia, Thailand and Vietnam - strongly opposed the Don Sahong project and demanded the project go through the “Prior Consultation” procedure pursuant to the PNPCA.

In June 2014, Lao PDR agreed to submit the Don Sahong project to the “Prior Consultation” process. Under this process, the MRC coordinated a technical review of the project to assess its impacts on the Mekong River mainstream’s flow regimes, water quality and other environmental and socio-economic conditions. The Technical Review Report, published by the MRC in February 2015, described the impacts of the project on the Mekong mainstream and other MRC member countries. The report concluded that the effects would be significant and substantial because “the loss of fisheries for some local and immediately upstream and downstream communities could remove their only viable livelihoods”.³

At a MRC Joint Committee meeting held in Vientiane, Lao PDR, on January 28, 2015, the Governments of Thailand, Cambodia and Vietnam submitted their final positions on the Don Sahong project. They maintained strong opposition to the Don Sahong Dam, calling for an extension to the PNPCA process and urging that the project be suspended pending further studies, including assessment of transboundary impacts. To date, Lao PDR and the MRC have reportedly not reached an agreement on how the project should be handled, and the issue has been subsequently referred to the MRC Council, to be discussed at the Ministerial level.

Reports suggest that the preparatory construction for the Don Sahong Project had already begun in December 2013. The National Assembly of Lao PDR reportedly approved the concession agreement of the project in August 2015 and the full-scale construction has reportedly started in late November 2015. On the current timeline, the dam construction is expected to be completed by early 2018 with commercial operations beginning in early 2020.

The Don Sahong Dam construction poses a number of serious concerns for the affected populations’ human rights, including rights to information, participation,

³ *Technical Review Report on Prior Consultation for the Proposed Don Sahong Hydropower Project, the Mekong River Commission* (February 2015), p. 46. Available from www.mrcmekong.org/assets/Publications/Consultations/Don-Sahong/Technical-Review-Report-DSHPP-040315.pdf

food, health and housing, as well as their cultural rights. The rights of the indigenous peoples living in the area are also under threat.

These allegations are described in more detail below.

Rights to information and participation

According to information received, no adequate and complete impact assessment has been conducted to date, and there are gaps in the existing information about project impacts and proposed mitigation measures. For instance, it is alleged that the project's potential impacts on food security and health, living conditions, adequate housing and livelihood sources were never fully explored nor sufficiently studied. Additionally, the mitigation measures proposed by Lao PDR appear to be ineffective and scientifically unproven. For example, Lao PDR proposed re-engineering nearby channels making them wider and deeper in some places and diverting much of the Mekong River's water to flow through the Hou Sahong channel to allow for fish migration. Mitigation plans also include "trap-and-transport" systems (fish that do not use the alternative channels would be physically caught and moved upstream above the dam). However, it is reported that such measures are ineffective at reducing large species mortality and unlikely to preserve fish populations. Furthermore, up-to-date and complete engineering details and studies that support these claims have not been provided.

In this regard, it is reported that the lack of information on the Don Sahong dam made it impossible to identify the actual social, economic, human rights and environmental impacts of the project, including its transboundary impacts.

Not only was adequate project information not produced or provided, but the affected population was also not allowed to fully and meaningfully participate in the planning and decision-making process related to the project. While some limited community engagement appears to have taken place in six of the affected villages near the proposed dam construction site in Lao PDR, many other affected communities, including those living up and downstream of the project site in Thailand, Cambodia and Vietnam, have not been properly informed about the project, consulted or given an opportunity to participate in matters related to the project.

Providing for the effective exercise of these procedural rights is important in order to ensure compliance of other rights, such as rights to food, health and housing, as well as cultural rights. Information received indicates that the enjoyment of these human rights may be threatened by the project as it is currently going forward.

Rights to food, health, housing, and cultural rights

The Mekong River's freshwater resources are vital to the people living in the lower Mekong Basin. In 2008, the Mekong River enabled the production of 3.9 million tons of fish, valued at US\$3.9-7 billion. Reports suggest that about 75 per cent of people who reside in the region depend directly on the river system for

their agriculture, fisheries and livelihoods. The proposed Don Sahong dam is believed to affect approximately 30 per cent of these wild fisheries and therefore poses a serious threat to the livelihoods of millions of people, including their fisheries, with repercussions for the region's economy and for the human rights of those who depend on the river.

Fish consumption is the most important source of protein for many people living in the Mekong region. Between 47 and 80 per cent of animal protein intake for the lower Mekong basin residents comes from freshwater fisheries. For instance, the MRC estimates that Cambodians consume 32.4 kg of inland fish per capita per year and Laos communities consume 24.5 kg of inland fish per capita per year. Furthermore, Lao PDR households living in the Mekong region only purchase 3 per cent of their food items, which demonstrates the high level of dependency on natural resources. The reduction in migratory fish is likely to generate significant food insecurity for the Mekong people and the loss of an essential food and protein source may result in malnutrition while posing a risk to their health.

It is further alleged that the decrease in fish supply will likely increase fish prices in the market, leaving people living in poverty unable to afford fish or be forced to migrate due to inadequate livelihoods. If the construction of the Don Sahong dam proceeds as planned, there is no guarantee that these people would be able to access adequate and nutritious food that is affordable and culturally acceptable (that is, respectful of their rights to conduct their own cultural practices and follow their own food consumption patterns), and to maintain or achieve the highest attainable standard of health.

Many of the people living in the Mekong region obtain supplementary income from fisheries as well as rice paddies and vegetable gardens that are fertilized by the Mekong River. The majority of the population living in this area survives outside the formal economy and depends on natural resources and the ecosystem provided by the Mekong River. The Don Sahong project will threaten the population's subsistence and income security that is generated by fisheries and small-scale farming. According to the MRC's Technical Review Report (2015), 50 per cent of rural households living in the Mekong area responded by noting that the sale of rice is the major source of income while 25 per cent of households said they earn income from the sale of fish. In Cambodia and Lao PDR, about 40 per cent of households indicated fish sales as a source of income.

Furthermore, the Don Sahong dam is located only two kilometers from the critically endangered Irrawaddy dolphins' core habitat – a pool overlapping Cambodia and Lao PDR. The likely extirpation of the Irrawaddy dolphins caused by the Don Sahong project will further harm the livelihoods of the communities whose critical supplementary income depends on dolphin tourism in Lao PDR and Cambodia.

It is further reported that the deprivation of livelihood sources and threatening the communities' ability to generate income are likely to destabilize the economy of

the region and may exacerbate poverty of many who are already living in or close to poverty.

In addition, it is alleged that only 11 households in Lao PDR, who reside in vicinity of the construction site, are planned to be relocated to enable the construction of the Don Sahong dam, but many more Mekong residents would be forced to move due to the loss of access to livelihood sources caused by the Don Sahong project. For instance, the available but limited data indicates that residents of 15 villages in Cambodia (approximately 1371 households) near the Don Sahong dam expressed their concerns about possible resettlement. In particular, they were concerned that they would be forced to resettle due to the very likelihood of reduced access to food and income, if the Don Sahong project were to proceed as planned. We understand that none of these communities were officially given adequate information about the project and its impact on their homes or provided with other alternatives for possible resettlements.

Rights of indigenous peoples

Many of the people that live along the Mekong – and who will be affected by the Don Sahong dam – are indigenous peoples and ethnic minorities. For example, in Cambodia, the Kuy (Kuoy) make up a substantial proportion of the population of communities in Kratie and Stung Treng provinces, which will be affected by the Don Sahong project. Like many indigenous peoples, the cultural practices and traditions of the Kuy peoples are closely connected to natural resources, including the Mekong river. Not only are their rights to health, nutrition, lives and livelihoods threatened by the Don Sahong dam, but so are their cultural rights. Interfering with the right of indigenous peoples to the lands and resources they have traditionally occupied or used poses a threat to indigenous cultures and associated cultural rights.

Additionally, it is reported that Lao PDR has not provided any information about the Don Sahong project to indigenous peoples and made no attempt to obtain their free, prior and informed consent.

Duty to protect from harm by private companies

According to the information received, the Government of Lao PDR has not fulfilled its obligation to ensure that businesses operating in the country, namely Mega First in this case, respect human rights in the implementation of the Don Sahong project. In March 2006, Lao PDR granted Mega First Corporation Berhad (Mega First), a Malaysian engineering and construction company, exclusive rights to study the feasibility of the Don Sahong Dam. In 2008, the Government of Laos signed a project development agreement with Mega First. It is unclear whether the Government requested or verified that appropriate human rights due diligence processes were conducted, including assessing the human rights impacts of the dam.

While we do not wish to prejudge the accuracy of these allegations, we wish to express concern about millions of Mekong river residents and communities living in Lao PDR, Cambodia, Thailand and Vietnam whose human rights appear to be threatened by the Don Sahong development project. There appears to be a serious problem in the realization of procedural rights, such as the rights to information and participation, making it impossible to identify the social, economic, human rights and environmental impacts of the project. We are deeply concerned that the affected population's rights to food, health and housing, as well as their cultural rights, would be significantly impacted, despite the non-regression principle stipulated in international human rights law. It also appears that there is a lack of international/regional cooperation, which should be put in place as a means to protect all affected population from human rights violations that are arising from transboundary harms.

In connection with the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

It is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. We would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above mentioned allegations.
2. Please provide details about the 2013 EIA and how it was prepared in compliance with the rights to information and participation in decision-making of the affected population living not only in Lao PDR and but also in neighbouring countries such as Cambodia, Vietnam and Thailand. Also, please elaborate how the mitigation measures included in the EIA aim to minimize and address harm to the rights of all potentially affected populations.
3. Has the affected population, including indigenous peoples, been provided with adequate information about the project, including its impact on their environment and human rights? If so, please indicate what information was provided to whom, and when and where it was provided.
4. Has the Government held consultation(s) with affected populations in the decision-making process? If so, please indicate when the consultations were held, who participated in them, and the conclusions of the consultation. Please detail any efforts made specifically to gain the free, informed and prior consent of indigenous populations. In addition, please elaborate what efforts the Government has taken to integrate the results of the consultation into the decision-making.
5. Has the Government undertaken a human rights impact assessment in relation to the Don Sahong project, including its transboundary effects? If so, please provide the results of the assessment in detail. In addition, what

steps has the Government taken to reduce and mitigate potential impacts on human rights detected in the assessment?

6. Has the Government sought other alternative development projects which cause no or minimal adverse impact on human rights, in lieu of the Don Sahong project? If so, please provide in detail which other projects have been explored and how the Government came to decide on Don Sahong despite a range of human rights implications.
7. What measures has the Government taken to ensure that the affected populations continue to enjoy their rights, especially economic, social and cultural rights in accordance with the principle of non-regression? Has the Government provided the affected population with any guarantees or alternatives to sustain their lives given the foreseen decline in their standard of living? If so, please provide in detail what sort of remedial solutions were provided to whom and when.
8. Please indicate if the Government has required or requested Mega First to conduct human rights due diligence? Has it provided Mega First with any guidance in this respect? Such human rights due diligence process allows companies to identify, prevent, mitigate and account for how they address their impacts on human rights (as per the Guiding Principles on Business and Human Rights 17-21).
9. Please provide detailed information about actions taken by the Government, through international/regional cooperation, to minimize or avoid human rights harms arising from the Don Sahong project that go beyond the territory of Lao PDR.
10. Please provide information on measures that the Government plans to take to ensure non-recurrence of human rights violations arising from similar development projects that may take place in the future.
11. Please provide information on remedial measures that the Government plans to take vis-à-vis the 11 households which will be subject to relocation, as well as any others who may be forced to relocate due to the loss of access to livelihood sources caused by the Don Sahong project.
12. Please indicate whether compensation will be provided to affected communities, including assurances that alternative sources of livelihood will be guaranteed, particularly for those who depend on fishing and farming as a means of subsistence.

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their recurrence and in the event that the

investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

We may decide to publicly express our concerns about this case in due course. In any such public statement, we will indicate that we have been in contact with your Excellency's Government to clarify the issue/s in question.

We also wanted to bring to your attention that we may send a letter concerning this case to the MRC, Mega First as well as Malaysia, the country where Mega First is domiciled, in due course.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

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Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

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Special Rapporteur on the rights of indigenous peoples

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to applicable international human rights laws and standards, as well as authoritative guidance on their interpretation. These are detailed below:

In connection with the above concerns, we would like to remind your Excellency's Government that article 19 of the Universal Declaration of Human Rights (UDHR) and article 19 of the International Covenant on Civil and Political Rights (ICCPR), which has been ratified by your Excellency's Government in September 2009, state that the right to freedom of expression includes the freedom "to seek, receive and impart information".

Several Special Procedures mandates holders have addressed the fundamentality of the right to information. The Special Rapporteur on Freedom of Opinion and Expression has stated that access to information is often essential for individuals seeking to give effect to other rights (A/68/362, para. 19). Furthermore, the Independent Expert on human rights and the environment has stated that in order to safeguard a variety of human rights from environmental harm, it is necessary to engage in prior assessment of the potential environmental impacts on the enjoyment of human rights (A/HRC/25/53, para. 79). The Special Rapporteur on the situation of human rights defenders has stated that information relating to large-scale development projects should be publicly available and accessible (A/68/262, para. 62).

The Human Rights Council has also recognized that States have obligations to guarantee the enjoyment of human rights pertaining to environmental issues by "making environmental information public and enabling effective participation in environmental decision-making processes" (A/HRC/RES/25/21).

The baseline rights of everyone to participate in the conduct of public affairs are recognized in the Universal Declaration of Human Rights (art. 21) and the International Covenant on Civil and Political Rights (art. 25), respectively. The Independent Expert on human rights and the environment has stated that human rights law requires States to facilitate participation in environmental decision-making, in particular (A/HRC/25/53, para. 79). The Special Rapporteur on hazardous substances and wastes and the Special Rapporteur on the situation of human rights defenders have also indicated that governments must facilitate the right to participation in environmental decision-making (see A/HRC/7/21 and A/68/262).

Article 25 of the Universal Declaration of Human Rights (UDHR) recognizes the right of everyone "to a standard of living adequate for the health and well-being of himself and of his family, including food." Furthermore, article 11.1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which Lao PDR ratified on 13 February 2007, provides that States "recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions", and requires them to

“take appropriate steps to ensure the realization of this right.” In addition, we would like to stress that there is a strong presumption against retrogressive measures under the ICESCR.

Furthermore, the right to food is a key component of the right to an adequate standard of living, as is recognized by article 25 of the Universal Declaration and article 11.1 of the ICESCR. The Committee on Economic, Social and Cultural Rights (CESCR) has described the core content of the right to food in its General Comment No. 12, along with the corresponding obligations of States to respect, protect and fulfil the right to food. The Committee considers that the core content of the right to adequate food implies, *inter alia*, the availability of food, acceptable within a given culture, in a sufficient quantity and quality; and accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights (para. 8). The right to adequate food refers to the possibilities either for feeding oneself directly from productive land or other natural resources, or for well-functioning distribution, processing and market systems (para. 12). It entails both economic and physical accessibility of food, as well as the sustainability of food access for both present and future generations (para. 7).

According to the Committee, the obligation to respect existing access to adequate food requires States parties to refrain from taking any measures that result in preventing such access. The obligation to protect requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food. The obligation to fulfil (facilitate) means that the State must pro-actively engage in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood, including their access to land in order to ensure their food security (CESCR General Comment No. 12, para. 15). Paragraph 26 of the General Comment also emphasizes the need to adopt a national strategy to ensure food and nutrition security for all, including through “guarantees of full and equal access to economic resources [...] measures to respect and protect self-employment and work which provides a remuneration ensuring a decent living for wage earners and their families (as stipulated in article 7 (a) (ii) of the Covenant); maintaining registries on rights in land (including forests)”.

The right to adequate housing is also a central component of the right to an adequate standard of living and is protected in article 25 of UDHR, article 11.1 of ICESCR and article 17 of the ICCPR establishes that no one “shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence”. Furthermore, according to the CESCR’s General Comment No. 7 (paras 15 and 16), procedural protections are essential in relation to forced evictions, including, among others, genuine consultation, adequate and reasonable notice, alternative accommodation made available in a reasonable time, and provision of legal remedies and legal aid. In paragraph 17, the Committee further emphasizes that where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.

With respect to the right to health, the ICESCR (art. 12, para. 2(b)) provides that the steps, to be taken by States to achieve the full realization of this right, “shall include

those necessary for... the improvement of all aspects of environmental and industrial hygiene”. Interpreting this language in its General Comment No. 14, the CESCR stated that “the right to health embraces a wide range of socioeconomic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as... a healthy environment” (para. 4). Finally, General Comment No. 14 holds that the right to health also extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment (para. 4).

With respect to specific standards to guarantee the right to housing, including in relation to resettlement, the CESCR also established that the right to housing should not be interpreted in a narrow or restrictive sense such as merely having a roof over one’s head; rather, it should be seen as the right to live somewhere in security, peace and dignity. The right to housing includes guaranteeing (a) legal security of tenure; (b) availability of services, materials, facilities and infrastructure; (c) affordability; (d) habitability; (e) accessibility; (f) location; and (g) cultural adequacy. The Committee also added that “the right to housing should be ensured to all persons irrespective of income or access to economic resources.” (CESCR General Comment No. 4, para. 7).

In accordance with article 15 of ICESCR, everyone has the right to take part in cultural life. In its General Comment 21, the Committee on Economic, Social and Cultural Rights stressed that article 15 protects the right of all persons to express their cultural identity freely and to exercise their cultural practices and way of life (E/C.12/GC/21, para. 49 a). States must respect free access by minorities to their own culture, heritage and other forms of expression, as well as the free exercise of their cultural identity and practices. They must also respect the rights of indigenous peoples to their culture and heritage and to maintain and strengthen their spiritual relationship with their ancestral lands and other natural resources traditionally owned, occupied or used by them, and indispensable to their cultural life. (E/C.12/GC/21, para. 49 d). Furthermore, States must respect and protect cultural heritage of all groups and communities, in particular the most disadvantaged and marginalized individuals and groups, in economic development and environmental policies and programmes (E/C.12/GC/21, para. 50 b).

In its General Comment 21, the Committee on Economic, Social and Cultural Rights also stated that the full realization of the right of everyone to take part in cultural life on the basis of equality and non-discrimination requires appropriateness, referring to the realization of a specific human right in a way that is pertinent and suitable to a given cultural modality or context, that is, respectful of the culture and cultural rights of individuals and communities, including minorities and indigenous peoples. The Committee stressed in this regard the need to take into account, as far as possible, cultural values attached to, inter alia, food and food consumption, the use of water, the way health and education services are provided and the way housing is designed and constructed (E/C.12/GC/21, para. 16).

We also like to stress that, as recommended by the Special Rapporteur in the field of cultural rights, States are encouraged to develop cultural heritage mapping processes within their territory and should utilize cultural impact assessments in the planning and

implementation of development projects, in full cooperation with concerned communities (A/HRC/17/38, para 80 e).

We would like to recall that Lao PDR voted in favour of the UN Declaration on the Rights of Indigenous Peoples at the UN General Assembly in 2007. The Declaration provides that indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return. The Declaration requires assessment of the human rights impacts of proposed activities and the creation of plans to mitigate any potential negative impacts, and that the State takes the results of such assessments and mitigation plans into account in the consideration of whether to grant licenses/concessions. Fulfilling this duty might further entail ensuring that potentially affected populations have access to effective remedy in instances where adverse human rights impacts do occur, that are caused by or linked to business activities.

The UN Guiding Principles on Business and Human Rights (A/HRC/17/31), which were unanimously endorsed by the Human Rights Council in June 2011, are relevant to the impact of business activities on human rights. According to the UN Guiding Principles, States have a duty to protect against human rights abuses within their territory and/or jurisdiction by third parties, including business enterprises. In this regard, Lao PDR has a duty to ensure that foreign businesses operating within its territory, such as Mega First, respect human rights by taking steps to prevent as well as investigate, punish, and redress abuses through legislation, regulations, policies, and adjudication. Furthermore, Lao PDR has an obligation to ensure access to effective remedial mechanisms for persons whose rights have been violated by business activities within its territory. Such measures allow companies to identify, prevent, mitigate and account for how they address their impacts on human rights (as per the Guiding Principles on Business and Human Rights 17-21).

Similarly, the CESCR stated that “corporate activities can adversely affect the enjoyment of Covenant rights”, including through harmful impacts on the right to health, standard of living, the natural environment, and reiterated the “obligation of States Parties to ensure that all economic, social and cultural rights laid down in the Covenant are fully respected and rights holders adequately protected in the context of corporate activities” (E/C.12/2011/1, para. 1).

Considering the transboundary nature of these allegations, we would like to particularly bring your attention to the human rights obligations pertaining to extraterritorial issues. First, we would like to recall that the Charter of the United Nations refers to international cooperation with regard to human rights as contained in its article 55, “[t]he United Nations shall promote higher standards of living, full employment, and conditions of economic and social progress and development; solutions of international economic, social, health, and related problems; and international cultural and educational cooperation”. It should also be noted that the UDHR contains no explicit jurisdictional limitations, and the ICESCR may even provide an explicit basis for extraterritorial obligations. All rights recognized by the ICESCR should be understood in conjunction with its article 2, Para 1, which reads “[t]he States Parties will take appropriate steps to

ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.”

We would like to note that several special rapporteurs have adopted similar interpretations on transboundary human rights obligations. In 2011, a number of Special Rapporteurs joined with scholars and representatives of civil society organizations, and adopted the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights. This suggests that all States have obligations to respect, protect and fulfil human rights, including civil, cultural, economic, political and social rights, both within their territories and extraterritorially. Principle 20 states that “all States have the obligation to refrain from conduct which nullifies or impairs the enjoyment and exercise of economic, social and cultural rights of persons outside their territories.”