

Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises; 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 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 Special Rapporteur on the rights of indigenous peoples; the Special Rapporteur on the human rights of internally displaced persons; the Special Rapporteur on extreme poverty and human rights and the Special Rapporteur on the human rights to safe drinking water and sanitation

REFERENCE:
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17 April 2020

Mr. Jae Hyun Ahn,

We have the honour to address you in our capacities as Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; 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; Special Rapporteur on the rights of indigenous peoples; Special rapporteur on the human rights of internally displaced persons; Special Rapporteur on extreme poverty and human rights and Special Rapporteur on the human rights to safe drinking water and sanitation, pursuant to Human Rights Council resolutions 35/7, 37/8, 34/9, 42/20, 41/15, 35/19 and 42/5.

We are independent human rights experts appointed and mandated by the United Nations Human Rights Council to report and advise on human rights issues from a thematic or country-specific perspective. We are part of the special procedures system of the United Nations, which has 56 thematic and country mandates on a broad range of human rights issues. We are sending this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on information we have received. Special Procedures mechanisms can intervene directly with Governments and other stakeholders (including companies) on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals, allegation letters, and other communications. The intervention may relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a letter to the concerned actors identifying the facts of the allegation, applicable international human rights norms and standards, the concerns and questions of the mandate-holder(s), and a request for follow-up action. Communications may deal with individual cases, general patterns and trends of human rights violations, cases affecting a particular group or community, or the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards.

In this connection, we would like to bring to your attention information we have received concerning the **alleged negative human rights impacts caused by the collapse of an auxiliary dam in Attapeu province, in the south-eastern state of Lao PDR**. The

SK Engineering Construction

dam was constructed under a Public-Private Partnership (PPP) project financed by the Korean Export-Import Bank's Economic Development Cooperation Fund and a syndicate of four Thai banks (Krung Thai Bank, Ayudhya Bank, Thanachart Bank and the Export-Import Bank of Thailand). The collapse has affected 19 villages, of which six villages were impacted by severe flood damages, including loss of productive land and property, and caused displacement. Displaced people who remain in temporary accommodations face various challenges to the enjoyment of their human rights including the right to health, the right to adequate and sufficient food, and the right to access to safe drinking water and sanitation, as well as inadequate housing conditions. Displaced indigenous peoples lost their traditional lands and are unable to pursue their own means of subsistence. The collapse had also negative impacts on the environment.

According to the information received:

On 23 July 2018, the auxiliary dam 'Saddle D' of the Xe Pian-Xe Namnoy Hydropower Dam in Attapeu province of Lao PDR collapsed causing five billion cubic meters of water to affect 19 villages (6 of these 19 villages were inundated). Many residents lost their lives or went missing. The official figures from the government reported that 43 people had been killed and 28 people had gone missing. However, concerns were expressed regarding the count of total casualties, due to an alleged lack of transparent surveying. It was also reported that approximately 7,000 people were displaced in temporary accommodations, under the promise of resettlement and awaiting promised financial support.¹

The impacted villages are covered by sediment and thick mud. Affected displaced villagers have been moved to temporary shelters of small, prefabricated metal structures, which lack appropriate areas for cooking, eating and sleeping. It was alleged that the enjoyment of their human rights including the right to health, the right to adequate and sufficient food, and the right to access to safe drinking water and sanitation, as well as adequate housing conditions are not met. It was alleged that the villagers experience food shortages, insufficient and unhygienic temporary housing and inadequate medical care. According to information received, infection rate is high in the temporary housing areas, caused by dengue-carrying mosquitos, pools of wastewater and uncollected garbage.

Many communities residing in the affected area, including indigenous peoples such as Oy, Nye Heun and Lap Lum, were previously able to farm, cultivate and live sustainably. As a result of the dam collapse, affected communities have allegedly neither been provided with adequate compensation for the losses nor sufficient alternative land to engage in subsistence cultivation or cash cropping. There seems to be no transparent process or grievance mechanism to evaluate losses and offer reparations. Additionally, it was reported that plots of land cleared by authorities for the affected communities to use have been granted to

¹ Report of the Special Rapporteur on extreme poverty and human rights on his visit to the Lao People's Democratic Republic, A/HRC/41/39/Add.2, para. 42. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/177/01/PDF/G1917701.pdf?OpenElement>

various international companies for specific crops, where some of the survivors have been hired to work as labourers.

The Xe-Pian Xe-Namnoy Hydropower Dam is a Public-Partnership Project funded by the Korean Export-Import Bank's Economic Development Cooperation Fund and a syndicate of four Thai banks, under a build, operate and transfer (BOT) model.² Xe-Pian Xe-Namnoy Power Company (PNPC) is a special-purpose corporation established to oversee the construction of the dam and operate it for 27 years. PNPC is a Lao-registered joint venture comprising the following business enterprises: SK Engineering Construction (SK E&C) with 26% equity, Korea Western Power Company with 25% equity, Ratchaburi Electricity Generating Holding of Thailand with 25% equity, and Lao Holding State Enterprise (a state-owned company of Lao PDR) with 24% equity. The project financing is shared among one Korean bank (Export-Import Bank of Korea) and four Thai banks (Krung Thai Bank, Bank of Ayuhaya, Thanachart Bank, and Export-Import Bank of Thailand). The construction of the dam was expected to produce 1,879 gigawatts of electricity annually, with 90% of the electricity produced to be exported to Thailand. This project has been promoted as part of the Laos' "battery of ASEAN" policy.

After the dam collapse, a National Investigation Committee was established in August 2018 to analyse the causes of the collapse and determine the degree of responsibility of the actors involved. We have received information that the Committee submitted the report to the Lao Government, however the findings were never released in full to the public. The National Investigation Committee presented some of their conclusions in a public statement, declaring that the collapse of the dam was due to the porous core of the earth foundation and not to raising water-level from rainfall. Other sources point to the potential substandard construction and design of the dam. A member of the National Assembly of the Republic of Korea, Mr. Kyunghyup Kim issued a public statement, in which he alleged that the dam's design was changed and its construction period deliberately shortened in comparison to the original design, and that the process was altogether rushed to allow early soaking. An SK E&C document indicated that construction costs of US\$19 million were cut through alterations of the dam's construction design and of materials used during the construction period. Furthermore, Export-Import Bank of Korea included a conditional provision of USD 4,800,000 bonus for early soaking that could be seen to have encouraged the shortening of the construction period.

According to information received, other factors such as inappropriate foundation preparing, bad grouting and high-risk design for building the dam would have had great impacts on the structure of the dam. It is reported that the design of Xe-Pian Xe-Namnoy dam was not in compliance with international standards for

² Reckless Endangerment: Assessing Responsibility for the Xe Pian-Xe Namnoy Dam Collapse. Inclusive Development International and International Rivers, July 2019; p. 10. Available at: https://www.internationalrivers.org/sites/default/files/attached-files/reckless_endangerment_final_for_web.pdf

geological survey, and that the height of Xe-Pian Xe-Namnoy dam was lowered by an average of 6.5m from its original basic design plan, whereas heights of dams should take into account various natural disasters as a safety measure, in order to avoid the chance of overflow.

It is also alleged that the response to the disaster from the Lao Government as well as by the relevant business enterprises was not immediate or organised, despite having information about the damages prior to the collapse. The project's Environmental and Social Impact Assessment and mitigation plan, conducted by the Lao Consulting Group for PNPC, indicated that the project made areas downstream of the dam vulnerable to flooding and suggested that PNPC should be responsible for developing and implementing a warning system with response plans agreed upon by affected communities. Such a system does not appear to have been effectively developed or implemented. Although SK E&C expressed that it had immediately alerted the local authorities and began evacuation 24 hours before the disaster, there is no sufficient information on these actions, and reportedly, the damage was not notified to the provincial Government until noon on the day of the collapse. Furthermore, according to the analysis of scientist from the Joint Research Centre of European Commission (JRC), the most severely affected areas were hit 7 hours after the collapse took place. In addition, it is reported that some people interviewed in the affected area had no knowledge of the dam's existence, which might point to a lack of meaningful consultation from an early stage regarding all relevant aspects of the dam's construction.

Information was received indicating lack of transparent processes or grievance mechanisms to evaluate the losses suffered and offer adequate, effective and prompt reparations. We received allegations that the Lao Government entered into negotiations with the involved business enterprises on payments of compensation for lost property, as well as cash payments after the incident. We were informed that in early 2019, families whose relatives were counted in the official death/missing toll (71 people) received a one-time cash payment of USD 10,000. Attapeu Province Governor, Mr. Leth Xayaphone, also confirmed that the Government will release compensation to the same families. Nonetheless, survivors and those who are related to the victims find the amount of compensation insufficient. In addition, donations and support are received from civil society organisations and the joint venture established to build the dam. However, it is reported that these donations of relief items are insufficient and the handling is disorganised in some areas, partly due to access difficulties. Much of the farmland in the flooded villages is still covered in silt and debris, with no known plans or action to rejuvenate the damaged fields for planting. The project is covered by a USD50 million liability insurance based on two policies (USD 10 million construction insurance policy and USD40 million excess of loss liability policy). However, we have received information regarding the lack of public disclosure and information to the affected communities on the existence of this insurance coverage. Although the Government has indicated that it intended to provide people with information about the response timeline and to

meaningfully consult with them about potential plans, many interviewed interlocutors reported that they had had little or no information and had not been consulted.³

We wish to express our serious concern about the human rights situation of all those affected who have been severely impacted by the flooded water, including the condition of many displaced people in relation to their rights to health, safe water and sanitation and housing, and about the negative impacts on the environment. Further concern is expressed regarding communities and indigenous people whose right to live sustainably is affected. We also express concern at the aggravated situation of people living in poverty in the affected areas. Concern is further expressed as to the lack of support to immediate evacuation and monitoring mechanisms for dams in the country. In addition, we wish to express concern regarding measures of accountability of involved companies and access to remedy, both judicial and/or non-judicial, for the affected persons.

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

As 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 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 information about the human rights due diligence policies and processes put in place by your company to identify, prevent, mitigate and remedy adverse human rights impacts of your activities, in line with the UN Guiding Principles on Business and Human Rights.
3. Please provide information about specific due diligence measures taken by your company concerning the Xe-Pian Xe-Namnoy dam. In particular, please highlight how your company conducted meaningful consultation with affected stakeholders before and after the dam collapse. Please indicate whether any steps were taken to avoid negative social and cultural impacts on the indigenous communities located in the area of the project, including by seeking their free and informed consent prior the approval of the project on their traditional lands.
4. Please describe how your company is collaborating with the Government of Lao PDR and all other relevant stakeholders in conducting any

³ Report of the Special Rapporteur on extreme poverty and human rights on his visit to the Lao People's Democratic Republic, A/HRC/41/39/Add.2, para. 42. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/177/01/PDF/G1917701.pdf?OpenElement>

investigations concerning the dam collapse. In particular, please indicate if an independent external investigation on the collapse of Xe-Pian Xe-Namnoy dam has been carried out, and if so, provide information regarding the findings and any actions taken to redress adverse human rights impacts.

5. Please provide comments, if any, on the investigation conducted and the findings released by the National Investigation Committee about the Xe-Pian Xe-Namnoy dam collapse.
6. Please describe the measures that your company has taken, or plans to take, to prevent recurrence of such disasters in the future.
7. Please provide information on steps taken by your company to establish operational-level grievance mechanisms to address adverse human rights impacts caused by your company throughout your operations globally.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your company will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your company to clarify the issue/s in question.

Please be informed that a letter on the same subject has also been sent to the Governments of Lao PDR, Thailand, and to the Republic of Korea, as well as to other companies involved in the above-mentioned allegations.

Please accept, Mr. Jae Hyun Ahn, the assurances of our highest consideration.

Githu Muigai

Chair-Rapporteur of the Working Group on the issue of human rights and transnational corporations and other business enterprises

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Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we wish to draw your attention to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

We would like to highlight 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. These Guiding Principles are grounded in recognition of:

- a. “States’ existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- b. The role of business enterprises as specialized organs or society performing specialized functions, required to comply with all applicable laws and to respect human rights;
- c. The need for rights and obligations to be matched to appropriate and effective remedies when breached.”

According to the Guiding Principles, States have a duty to protect against human rights abuses within their territory and/or jurisdiction by third parties, including business enterprises. States may be considered to have breached their international human law obligations where they fail to take appropriate steps to prevent, investigate and redress human rights violations committed by private actors. While States generally have discretion in deciding upon these steps, they should consider the full range of permissible preventative and remedial measures.

Furthermore we would like to note that as set forth in the United Nations Guiding Principles on Business and Human Rights, all business enterprises have a responsibility to respect human rights, which requires them to avoid infringing on the human rights of others to address adverse human rights impacts with which they are involved. The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States’ abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. Furthermore, it exists over and above compliance with national laws and regulations protecting human rights.

The Principles 11 to 24 and Principles 29 to 31 provide guidance to business enterprises on how to meet their responsibility to respect human rights and to provide for remedies when they have cause or contributed to adverse impacts. Moreover, the commentary of the Principle 11 states that “business enterprises should not undermine States’ abilities to meet their own human rights obligations, including by actions that might weaken the integrity of judicial processes”.

The Guiding Principles have identified two main components to the business responsibility to respect human rights, which require that “business enterprises: (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; [and] (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts” (Guiding Principle 13).

Principles 17-21 lays down the four-step human rights due diligence process that all business enterprises should take to identify, prevent, mitigate and account for how they address their adverse human rights impacts. Principle 22 further provides that when “business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes”.

Article 25 of the 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) ICESCR – ratified by Lao PDR on 12 February 2007 – which stipulates that States should “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 realisation of this right.” Furthermore, article 12 of ICESCR provides that the steps, to be taken by States to achieve the full realisation of this right, shall include those necessary for the improvement of all aspects of environmental and industrial hygiene (article 12(2)(b)) and the prevention, treatment and control of epidemic, endemic, occupational and other disease (article 12(2)(c)). Interpreting this language, the Committee on Economic, Social and Cultural Rights 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” (General Comment No. 14, para. 4). The central obligation in relation to ICESCR is for States Parties to give effect to the rights recognized therein (General Comment No. 9, para. 1).

Moreover, the Committee on Economic, Social and Cultural Rights 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).

Recalling article 6(1) of the International Covenant on Civil and Political Rights (ICCPR) on the right to life in conjunction with article 2 on the right of victims of human rights violations to an effective remedy. ICCPR was ratified by the Lao PDR on 22 September 2009.

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 organisations, 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.”

We wish to also draw your attention to the General Comment No. 15 of the Committee on Economic, Social and Cultural Rights (CESCR) on the right to water. In that General Comment, the Committee interpreted that the obligations contained in Article 1 (2) of the Covenant include the obligation of State Parties to " ensure that there is adequate access to water for subsistence farming and for securing the livelihoods of indigenous peoples "(E / C.12 / 2002/11 , paragraph 7) .

The 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).

Moreover, 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).

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 utilisation 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 realisation 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).

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 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 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).

General Comment No. 14 (2000) of the Committee on Economic, Social and Cultural Rights describes the normative content of article 12 of ICESCR and the legal obligations undertaken by the States parties to the Covenant to respect, protect and fulfil the right to health. In General Comment No. 14, the Committee interprets the right to health as an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe drinking water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information. (para. 11, GC 14 CESC).

We would like to draw your attention to the UN Declaration on the rights of indigenous peoples, in particular to article 7. 1 on the right to life, physical and mental integrity, liberty and security of indigenous peoples; article 32 on the obligation to obtain their free and informed consent prior to the approval of any project affecting their territories and other resources, particularly in connection with the development, use or exploitation of mineral, water or other resources; and article 28 on the right to redress by means that can include restitution or, where this is not possible, fair and equitable compensation for land that has been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

We would like to finally refer to the Guiding Principles on Internal Displacement, which provide, among others, that satisfactory conditions safety, nutrition, health and hygiene is provided to displaced persons. In particular, principle 18 requires that internally displaced persons shall have an adequate standard of living that includes essential foods and potable water, basic shelter and housing, appropriate housing and essential medical services and medication. Principle 28 provides that special effort should be made to ensure the full participation of internally displaced persons in the planning and management of their return, resettlement and reintegration. Principle 29 states that competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they were dispossessed of upon their displacement. When recovery of such property and possession is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.