

Mandates of the Special Rapporteur on extreme poverty and human rights; 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 situation of human rights defenders; the Special Rapporteur on the human rights of internally displaced persons and the Special Rapporteur on the human rights to safe drinking water and sanitation

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15 July 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extreme poverty and human rights; 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 situation of human rights defenders; Special Rapporteur on the human rights of internally displaced persons and Special Rapporteur on the human rights to safe drinking water and sanitation, pursuant to Human Rights Council resolutions 44/13, 44/15, 46/7, 43/14, 43/16, 41/15 and 42/5.

We would like to bring to the attention of your Excellency's Government information we have received concerning the **alleged prolonged negative human rights impacts on survivors, that is, the people and communities affected by the collapse of an auxiliary dam in Attapeu province.**

The present communication is addressed to Japan regarding its obligations to protect against human rights abuses and ensure due diligence by Japanese business enterprises, in particular Mitsubishi UFJ Financial Group.

This joint allegation letter follows up on JAL LAO 1/2020 of 17 April 2020. The allegations in this communication were as follows: On 23 July 2018, an auxiliary saddle dam, 'Saddle D' of the Xe-Pian Xe-Namnoy Hydropower Project located in Attapeu and Champasak provinces in Southern Lao PDR collapsed and resulted in massive flooding. In part due to the inadequate warning provided by the dam engineers and provincial government officials of the imminent risk of collapse, local communities in 19 villages were impacted by the massive flood of water, mud, and debris. The flood damage left at least 71 people dead or missing in Attapeu province, according to the official toll. Roads, bridges, vehicles, irrigation systems, thousands of livestock, and more than 1700 hectares of agricultural land were also destroyed by the mud and debris rendering much of the area inarable. An overall estimated 15,000 people were impacted by the flood in Lao PDR and an additional 15,000 across the border in Cambodia along the Sekong River. Some of those who were internally displaced in Lao PDR were relocated to emergency camps set up by the Government in Sanamxay district.

In the above communication, we outlined our concerns about the human rights impacts of the flood, including the aggravated situation of people living in poverty in

the affected areas; lack of access to healthcare, safe drinking water and sanitation, and housing of many internally displaced people; the loss of lands experienced by local communities and indigenous peoples; and the apparent lack of free prior and informed consent regarding the potential impact of the dam on their lands and resources. We also expressed further concern as to the lack of support provided to immediate evacuation and monitoring mechanisms for dams in the country, and in relation to the accountability measures applicable to involved companies and the issue of access to remedy – both judicial and/or non-judicial – for affected persons.

The present communication outlines new allegations and remaining concerns with regard to the populations impacted by the dam collapse, and the ongoing recovery efforts undertaken by authorities and the companies involved.

According to the new information received:

Almost four years after the auxiliary saddle dam collapse, many survivors, who have been internally displaced, remain in unsatisfactory temporary accommodation while long-term housing has not been provided; there is little transparency, consistency and involvement of the affected communities throughout the recovery effort; victims have been provided little support and lack compensation; and there are no effective complaint mechanisms for survivors.

Furthermore, since its collapse in 2018, the auxiliary saddle dam, saddle D, has been rebuilt. However, two additional saddle dams, E and F, reportedly are in the same condition as saddle D prior to its collapse, displaying signs of impending failure if reservoir levels reach a certain level.

Housing

The Lao government promised to build 807 permanent houses for those displaced by the 2018 disaster. Of those, a few have been financed by a neighbouring country and 66 by a bilateral governmental donor through a UN Habitat project. UN Habitat confirmed that, with that support, 66 families were moved into permanent homes during the previous year.

The remaining 700 permanent houses have been funded by Xe-Pian Xe-Namnoy Power Company (PNPC), the special-purpose, public-private enterprise managing the Attapeu dam which is 50% State-owned. The houses were meant to accommodate 3,500 people from 6 affected villages who were living in 3 temporary camps. In May 2020, the government stated that USD 24 million had been allocated to the construction of the houses, to be completed by the end of 2021.

In February 2021 however, it was reported that the building of at least 200 houses was delayed. Authorities specified that they had carried out a needs assessment to prioritize beneficiaries, and that, once ready, houses would be assigned to beneficiaries with disabilities and beneficiaries over 65 years old as a priority. However, it was noted that the design of most houses was not suited to the needs of persons with disabilities or to those of older persons.

In June 2021, 505 of the houses were under construction and only 182 were estimated to be complete and ready to be occupied by the end of 2021. The delays in the construction of houses were attributed to various factors, such as clearing, zoning and expropriating private land for the purpose of building new homes, as well as bad weather conditions, access to the area, lockdowns and supply chain disruptions because of the COVID-19 pandemic.

In February 2022, the Governor of Sanamxay District in Attapeu Province stated that 401 of the houses were completed and handed over to the survivors, with 299 houses still under construction. He stated that the final 299 homes would be completed by April 2022.

In April 2022, the Minister of Information, Culture and Tourism visited villagers in the Sanamxay District of Attapeu Province and stated that 403 houses were built, of which 322 completely finished. A large proportion of survivors therefore remain in temporary shelters, which, reportedly, are unsanitary and unsuitable for long-term shelter.

Other types of recovery and compensation measures

According to the Minister of Labour and Social Welfare, the government and PNPC promised a recovery effort and compensation for survivors. The compensation package totaled to USD 10,466,939, split in half and paid in two installments, in July 2019 and July 2020. Moreover, the government and PNPC promised families living in the shelters a daily allowance of USD 0.56 USD, a monthly stipend of USD 11.15, and a monthly rice ration of 20 kilograms.

It was reported that, on multiple occasions, rice rations were rotten and allowances have been inconsistently paid at the authorities' discretion, with stipends arriving up to three months late. Additionally, some authorities reportedly cut 20% of the compensation money for processing fees.

It was also reported that since February 2021, PNPC has stopped providing the promised living allowances and has reduced rice quantity from 20 to 12 kilograms. Reportedly, PNPC is in financial distress affecting their ability to meet their commitments to the communities affected.

Complaint mechanisms and accountability

While authorities reiterated that they have not received any complaints from survivors, reportedly there are insufficient processes and mechanisms for survivors to file complaints with the government or the companies involved, and no inquiries have been launched. Additionally, when survivors have been able to make their grievances known, they have reported being diverted through bureaucratic processes or receiving unreliable information.

Communities also seem reluctant to voice their concerns for fear of retaliation, in the form of losing their compensation or even being arrested for criticizing the government. A human rights defender advocating for the survivors of the collapse was reportedly arrested on 12 September 2019 for criticizing the government regarding its response via Facebook posts and sentenced to five

years imprisonment on the charge of defaming the country.

Private actors involvement

PNPC, a special-purpose corporation established to oversee the construction of the dam and operate it for 27 years, is a Lao-registered joint venture comprising the following enterprises:

- a. SK Engineering Construction (SK E&C) with 26% equity;
- b. Lao Holding State Enterprise with 24% equity;
- c. the RATCH Group Public Company Limited (formerly known as Ratchaburi Electricity Generating Holding) with 25% equity. The International Finance Corporation provided a USD 150 million sustainable loan to RATCH Group in 2021 via the latter's subsidiary RH International (Singapore) Corporation Pte Ltd; and
- d. Korea Western Power Company with 25% equity. Its parent company is state-owned enterprise Korea Electric Power Corporation (KEPCO), which, in turn, has Korean Development Bank as one of its major shareholders.

The project's electricity is expected to be sold to state-owned enterprises Electricity Generating Authority of Thailand (EGAT) and Electricite du Laos.

The project financing is shared among one Korean bank (Export-Import Bank of Korea) and four Thai banks (Krungthai Bank, Thanachart Bank, Export-Import Bank of Thailand, and Bank of Ayudhya). Bank of Ayudhya's parent company is Mitsubishi UFJ Financial Group.

AON Thailand, the project's insurance advisor, arranged the insurance for the different components of the project. The project has about USD 50 million in liability coverage from American International Group (AIG), Korean Re, and Samsung Fire & Marine. The Korean firms have reinsured their exposure with Singapore-based Asia Capital Reinsurance Group. While PNPC, in its response dated 12 June 2020, stated that numerous open consultation meetings were held in each affected village, it is alleged that most affected people are unaware that such insurance coverage exists and have received no information as to whether they have a right to make any claims on the basis of this insurance.

Without prejudging the accuracy of these allegations, we would like to express our deep concern regarding the condition of saddle dams E and F, which warrants high alert and close monitoring of the risk for communities affected by the previous dam collapse as well as the general population and environment.

We are also concerned about the lengthy delays in providing survivors with long-term accommodation, leaving them stranded in unsuitable and unsanitary temporary shelters, which impacts their rights to housing and health. Furthermore, we are concerned about the irregularities in providing allowances, compensation money and rice, along with the reported suspension by PNPC to the payment of living

allowances which affect survivors' rights to food and an adequate standard of living. Moreover, we are concerned about the protracted displacement of survivors of the dam collapse, the lack of durable solutions to their displacement and their lack of participation in the planning and management of their return, resettlement or reintegration.

We would also like to express our concerns about the retaliation against human rights defenders advocating for the survivors of the collapse, who are facing judicial harassment and other forms of retaliation for their legitimate human rights work. Finally, we are concerned about the lack of a genuine complaint process and related mechanisms for survivors as well as the reported reprisals faced by affected communities when voicing their grievances and concerns.

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 if you could provide any additional information you may have on the above-mentioned allegations. We also would be grateful for your observations on the following points:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please indicate what measures have been adopted to support durable solutions for the communities displaced by the dam collapse and to ensure their full participation in the planning and management of their return, resettlement or reintegration.
3. With a view to promoting and enabling the provision of remedy for victims of the dam collapse, please describe how the Government is investigating, independently and/or in collaboration with the Government of Lao PDR, the role of Japanese business enterprises (in particular, Mitsubishi UFJ Financial Group), with regard to the absence of effective remedies.
4. Please highlight the steps that your Excellency's Government has taken or is considering to protect against human rights abuses by Japanese business enterprises, and ensure that business enterprises domiciled in its territory and/or jurisdiction are conducting effective human rights due diligence to identify, prevent, mitigate, and account for the human rights impacts of their activities and throughout their operations (including abroad), as set forth by the UN Guiding Principles on Business and Human Rights.
5. Please describe the guidance, if any, that the Government has provided to Japanese business enterprises on how to respect human rights throughout their operations in line with the UN Guiding Principles. This guidance may include measures, inter alia, conducting human

rights due diligence, consulting meaningfully potentially affected stakeholders, and remediating any negative impacts.

6. Please provide information regarding the measures that your Excellency's Government is taking or considering to ensure that those affected by the overseas activities of private companies involved in the dam collapse have access to effective remedies, as per the UN Guiding Principles.
7. Please provide information as to whether there is an established insurance claims process with which affected people can receive compensation payments. If so, please elaborate on how your Excellency's Government has been facilitating access to remedy via this claims process and what steps have been taken by your Excellency's Government to ensure that affected people are aware of the existence of this coverage and of their right to make claims. If such an insurance claims process is not in place, kindly explain why such mechanism has not been resorted to.

We would appreciate receiving a response within 60 days. Beyond this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting website. They will also subsequently be made available in the annual report on communications 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.

Please be informed that a letter on the same subject has also been sent to the Governments of the Lao People's Democratic Republic, Singapore, the Republic of Korea, Thailand, and the United States of America, as well as to other companies involved in the abovementioned allegations.

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

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Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, we wish to draw your Excellency's Government's attention to 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.

Moreover, we would like to recall articles 11 and 12 of International Covenant on Economic, Social and Cultural Rights (ICESCR). They stipulate the rights of everyone to an adequate standard of living, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and to the enjoyment of the highest attainable standard of physical and mental health.

With regard to article 12, the Committee on Economic, Social and Cultural Rights (CESCR) adopted General Comment No. 14. This general comment 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. The Committee 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). It 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).

The CESCR has also 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).

In its General Comment 15 on the right to water, CESCR explains that the right to water is considered implicit in articles 11 and 12 of ICESCR, covering the right to an adequate standard of living and health, respectively. The Committee has affirmed that the human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. Furthermore, the Committee stated that environmental hygiene is an aspect of the right to health encompassing taking steps on a non-discriminatory basis to prevent threats to health from unsafe and toxic water conditions (para. 8). In addition, in July 2010, the UN General Assembly adopted a resolution that "recognized the right to safe and clean drinking water and sanitation as a human right essential for the full enjoyment of life and all human rights" (GA res 64/292).

The right to adequate housing is a central component of the right to an adequate standard of living and is protected in articles 11 of ICESCR and 17 of ICCPR. According to 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 para. 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.

In a report to the General Assembly, the Special Rapporteur on the right to adequate housing has specified key obligations of States in disaster response concerning the right to adequate housing (A/66/270, para. 64). Furthermore the Human Rights Council has urged States in resolution 19/4 to ensure in the context of post-disaster settings “that all affected persons, irrespective of their pre-disaster tenure status and without discrimination of any kind, have equal access to housing that fulfils the requirements of adequacy, namely the criteria of accessibility, affordability, habitability, security of tenure, cultural adequacy, suitability of location, access to essential services and respect for safety standards aimed at reducing damage in cases of future disasters”.

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, 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).

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 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. In this regard, Japan has a duty to ensure that foreign businesses operating within its territory respect human rights by taking steps to prevent as well as investigate, punish, and redress abuses through legislation, regulations, policies, and adjudication. Furthermore, Japan has an obligation to ensure access to effective remedial mechanisms for persons whose rights have been violated by business activities within its territory. States are required to take appropriate steps to “prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication” (Guiding Principle 1). This requires States to “state clearly that all companies domiciled within their territory and/or jurisdiction are expected to respect human rights in all their activities” (Guiding Principle 2). In addition, States should “enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights [...]” (Guiding Principle 3). The Guiding Principles also require States to ensure that victims have access to effective remedy in instances where adverse human rights impacts linked to business activities occur.

Additionally, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

We would also like to refer your Excellency's Government 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. Similarly the Principles on Housing and Property Restitution for Refugees and Displaced Persons (E/CN.4/Sub.2/2005/17) specify in article 2.1 that “displaced persons have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land and/or property that is factually impossible to restore as determined by an

independent, impartial tribunal.” In regard to the requirement to ensure durable solutions for internally displaced persons, we furthermore recall the provisions of the IASC Framework on Durable Solutions for Internally Displaced Persons.

Furthermore, we would like to refer to the Guiding Principles on Extreme Poverty and Human Rights, particularly Principles G and H. Principle G specifies the State’s obligations to provide accessible and culturally adequate information about all public services available to persons living in poverty and their rights regarding these, and to ensure that public services and programmes affecting persons living in poverty are designed and implemented transparently. Principle H adds that policymakers and other public officials are accountable to persons living in poverty, and that States must ensure them the right to an effective remedy through judicial, quasi-judicial, administrative and political mechanisms as well as procedures, including adequate and accessible complaints mechanisms, to prevent, identify and counteract corruption.