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 situation of human rights defenders; 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

Ref.: AL OTH 64/2022
(Please use this reference in your reply)

18 July 2022

Dear Mr. Serewiwattana,

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 situation of human rights defenders; 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 44/15, 46/7, 43/14, 43/16, 41/15, 44/13 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 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 have received information concerning the involvement of your company in the collapse of an auxiliary dam in Attapeu province. We recall the background information received, which is already described in a joint allegation letter addressed to the Government of the Lao PDR (JAL LAO 1/2020 of 17 April 2020),

which the present communication follows upon. 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-mentioned 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.

We are grateful for your company's reply to the above communication. 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 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 (see LAO 2/2020, to which your company replied on 19 October 2020).

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, with serious impacts on their rights to adequate housing and to 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 reprisals reportedly faced by the affected communities or their spokespersons 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. In addition:

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

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

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

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

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

6. Please provide information on whether your bank publicly discloses how it is addressing human rights risks and impacts connected with investment activities.

7. Please kindly provide information on how Export-Import Bank of Thailand does not impact negatively the work of human rights defenders, specifically in light of the recommendations provided to Businesses in the report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on the adverse impact of business activities on human rights defenders (A/HRC/47/39/Add.2), which recalls for States and businesses the normative and practical implications of the Guiding Principles on Business and Human Rights in relation to protecting and respecting the vital work of human rights defenders.

We would appreciate receiving a response within 60 days. Beyond 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 annual report on communications to be presented to the Human Rights Council.

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

Please accept, Mr. Serewiwattana, the assurances of our highest consideration.

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

David R. Boyd
Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

Balakrishnan Rajagopal
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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Cecilia Jimenez-Damary
Special Rapporteur on the human rights of internally displaced persons

Olivier De Schutter
Special Rapporteur on extreme poverty and human rights

Pedro Arrojo-Agudo
Special Rapporteur on the human rights to safe drinking water and sanitation

Annex
Reference to international human rights law

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."

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.

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 caused or contributed to adverse impacts. Moreover, the commentary of 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".

We would like to recall the thematic report of the Working Group on the issue of human rights and transnational corporations and other business enterprises (ref. A/HRC/32/45) examining the duty of States to protect against human rights abuses involving those business enterprises that they own or control. In particular, we would like to highlight the following conclusions and recommendations:

> 88. All business enterprises, whether they are State-owned or fully private, have the responsibility to respect human rights. This responsibility is distinct but complementary to the State duty to protect against human rights abuses by business enterprises. This duty requires States to take additional steps to protect against abuses by the enterprises they own or control. This goes to the core of how the State should behave as an owner and the ways in which its ownership model is consistent with its international human rights obligations.
>
> 101. State-owned enterprises should strive to be role models and fully meet their responsibility to respect human rights.
>
> 102. To do so, they should adopt appropriate policies and processes to address abuse, including a policy commitment, human rights due diligence and remediation mechanisms when harm occurs, which are integrated throughout their operations.

The Committee on Economic, Social and Cultural Rights has described the core content of the right to food in its General Comment No. 12. 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).

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 Universal Declaration of Human Rights, article 11.1 of International Covenant on Economic, Social and Cultural Rights (ICESCR) and article 17 of the International Covenant on Civil and Political Rights (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.

With respect to the right to health, 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).

General Comment No. 14 (2000) of the Committee on Economic, Social and Cultural Rights describes the normative content of article 12 of ICESCR. 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 also 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.

Finally, we would like to draw your attention to the report on the visit to Lao PDR of the Special Rapporteur on extreme poverty and human rights, Philip Alston (A/HRC/41/39/Add.2). On the conditions of those affected by the Xe-Pian Xe-Namnoy dam collapse, he recommended for monthly allowances to be increased and paid on time, for victims to be genuinely consulted, fertile land to be provided and counselling to be made available.