

On behalf of the Complainant; Siemenpuu Mekong Group & Friends of the Earth Finland

16 April 2013

To: Ministry of Employment and the Economy
Committee on Social and Corporate Responsibility

Ref: Specific Instance about Pöyry Group services in the process of the Xayaburi hydropower project in Lao PDR

Complainant's response to the statement given by the Ministry of Environment (Jan 10, 2013) and to Pöyry's response (Feb 15, 2013)

The Complainant discusses the Ministry of Environment (MoE) statement and the Pöyry response in more detail in the key document submitted to the Ministry of Employment and the Economy on April 3, 2013.

The view presented by the Ministry of Environment (MoE) supports the Complainant's view on the role of Pöyry's services to the Lao government. Like the Complainant, the MoE does not consider Pöyry as a decision-maker or a leading developer, but strongly acknowledges the responsibilities Pöyry has in the light of the company's actions.

This is highlighted when MoE states that Pöyry may be considered to have had "the opportunity to influence the content [...] and schedule for commencement of" dam construction. MoE further "is of the opinion that Pöyry should have been aware of its prestige [and leverage] and, accordingly, attempted to exert influence [...] ensuring [...] all measures necessary for obtaining additional information [...] and to minimise [...] environmental effects had been carried out." Furthermore, "the Ministry of the Environment pays attention to Pöyry's possibilities to influence the content of the commission and the manner in which the customer ensures that interest groups are consulted", which is seen as a matter of particular importance in the Xayaburi project.

The MoE highlights, in accordance with the complaint, that the OECD Guidelines are applicable to Pöyry's actions. Firstly, "[c]ompanies should try to prevent or reduce adverse effects in situations in which the companies themselves have not contributed to the creation of these adverse effects but wherein the effects nevertheless are directly linked to said companies' operations, products, or services via business relationships." Secondly, "[c]ompanies should take action to prevent or reduce the foreseeable environmental effects of their processes, commodities, and services and to prevent or minimise harm to the environment even in the event that no absolute certainty as to the effects of the actions exists." Thirdly, "[i]n order to comply with the directives, a company should, in the opinion of the Ministry of the Environment, even restrict its freedom to agree on the content or duration of a business relationship, in some cases."

As we have brought up in the Complaint and as the MoE statement supports, specific actions by Pöyry has had a significant role and possibility to affect the way the project has been pushed forward by the Lao government in violation of international law and the 1995 Mekong Agreement.

Complainant's concerns on Pöyry's response to the MoE statement

Pöyry's response to the statement indicates that Pöyry has either completely misunderstood the allegations in the Complaint or knowingly tries to divert attention from its de-facto role and actions in the Xayaburi dam project. This concern also highlights the role and responsibility of the Finnish National Contact Point and the OECD Guidelines, as the company seems to have

thoroughly inadequate internal mechanisms for dealing with environmental, governance and social concerns and a breakdown of due diligence, leading the company to disregard its responsibility and consequences of its own actions. In this perspective, Pöyry's refusal to discuss the Complaint with the Complainant or to engage in meaningful dialogue about its specific actions so far in the framework of the Specific Instance is both surprising and a worrying signal.

Pöyry in its response reiterates that it is not in a position, where it can make decisions about the project. However, as the Complainant and later communications, including the statement by MoE, have made clear, Pöyry's actions have had considerable influence over the project, e.g. through its Compliance Review. For instance, the Lao Government has repeatedly stated in the media that it follows completely its renowned and independent consultancies, of which Pöyry is the main actor. This information about the role of Pöyry actions is in the public domain.

To this extent Pöyry's critique of the MoE statement misses the point. Pöyry argues that "[t]he Guidelines are very clear about the fact that they are not intended to shift responsibility from the entity potentially causing an adverse impact to an enterprise that it has a business relationship with. Pöyry was, therefore under no obligation to engage stakeholders of the project on its clients ... behalf". However, the Guidelines are also very clear about the fact that even though an enterprise is not causing an adverse impact, it is expected to not to contribute to such behaviour through its business relationship and also to try to mitigate the impact through the business relationship.

Through its services Pöyry has undermined a process of further consultation instead of supporting or recommended it to go on. Particularly, the Pöyry Energy report has been foreseeably used by the Lao government to halt the consultation process (PNPCA) and to fast-track financing, approval and construction of the Xayaburi hydropower project, without the company demonstrating how it has even tried to use its leverage to mitigate or hinder such use. Instead of recommending improving opportunities of stakeholders to participate to the Lao government, as the Complainants recommend, Pöyry thereby undermines the possibilities of stakeholders, at all levels, to participate in a key process regarding the future of the Lower Mekong Region. (See pages 33-34 in the Complaint.) The complainants would have expected the company to demonstrate how it has engaged its client, instead of rejecting responsibility altogether.

Pöyry's "build now, fix problems later" approach, alongside downplaying trans-boundary impacts and claiming that the negative impacts can be mitigated, Pöyry undermined the other MRC member countries' rights to understand how the dam poses a risk to their own territories, e.g. through conducting a proper trans-boundary EIA before the commencement of construction.

Secondly, as we have demonstrated in the Complaint, Pöyry's involvement has justified a dangerous and highly risky project to go forward, without full insight of its impacts ensured. Pöyry served as the Lao government's primary justification for continuing with construction, contrary to the recommendations of the MRC and scientific experts. This harm is considerable and in opposition to what Pöyry argues in its response, this harm cannot be mitigated by the technical benefits that Pöyry argues that its involvement also provides.

Thirdly, Pöyry claims that there may be scientific disagreement on whether studies on certain impacts can be carried out while the construction work is on-going. We have not received any indication that Pöyry followed a scientific method in reaching its conclusions. Pöyry concluded with confidence that the dam would not have negative environmental and social impacts, despite lacking the basic baseline data on which to base this conclusion. To our knowledge, no Mekong River Basin scientists have publicly supported Pöyry's work, whereas a number of respected

researchers have issued critique. The complainants argue that it would be Pöyry's task to demonstrate that such “scientific disagreement” exists.

Pöyry also in its reply highlights new tasks of 18 January 2013 that it sees demonstrating how it has engaged with stakeholders. As part of its new contract as “Government of Lao Engineer” the complainants argue Pöyry still holds significant leverage vis-à-vis the schedule and content of the Xayaburi dam. This entails a continuously high level of responsibility and influence for the company. The complainants see that this makes it possible i.e. for the company to call for several studies to be conducted before the flow of the Mekong River is further altered.