



XE-PIAN XE-NAMNOY POWER COMPANY LIMITED

6th Floor Capital Tower, 23 Singha Road, Nongbone Village,
Saysettha District, Vientiane Capital, Lao PDR
Telephone: 021 455 025
Facsimile: 021 454 758

Ref. No.: PNPC-187/2020

Date: 12 June 2020

Ms. Beatriz Balbin

Chief, Special Procedures Branch
Office of the High Commissioner
United Nations Commission for Human Rights
Geneva, Switzerland

Subject: Response to OHCHR Letter No. AL OTH 9/2020 dated 17 April 2020

Dear Madam/Sir,

Refer to:

- OHCHR Letter No. AL OTH 9/2020 dated 17 April 2020.

The Xe-Pian Xe-Namnoy Power Co., Ltd. ("PNPC") hereby submits its responses (hereto attached) to the queries cited in the aforementioned letter.

Very Truly Yours,

For and on behalf of

XE-PIAN XE-NAMNOY POWER COMPANY LIMITED

Mr. Hyo Sik JANG
Chief Executive Officer

Attachment: Copy of PNPC Response to United Nations Commission for Human Rights

PNPC Clarifications on the UNHR Report and Responses to Questions

PART 1. Corrections and Clarifications on Misconceptions

Number	1
UN Report	<p>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</p>
Clarifications and Corrections by PNPC (Xe-Pian Xe-Namnoy Power Co., Ltd.)	<p>The volume of water discharged during the Incident was 500 Million tons and not 5 Billion tons as cited in the UNHR Report.</p> <p>The GOL (Government of Laos) was very conscientious in the efforts to locate, retrieve and identify the dead and missing. The daily reporting relative to the dead and missing during the search and recovery phase of the incident was very transparent. Corresponding death certificates for the dead were issued after a thorough verification process while death certificates for the missing were likewise issued after detailed verification and re-verification has been conducted and in accordance with existing and relevant laws and regulations relative to such. Eventually, the official number of dead was forty nine (49) and missing was twenty two (22).</p> <p>The factual number of people in temporary accommodations is three thousand two hundred twenty four (3,224) and not seven thousand (7,000) as cited in the UNHR Report.</p>

Number	2
UN Report	<p>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.</p>
Clarifications and Corrections by PNPC	<p>Despite the urgency of the situation during at that time, the temporary accommodations have been designed and constructed to respect and uphold the human rights of the affected people, including:</p> <ul style="list-style-type: none"> • Bedroom with fan for sleeping

	<ul style="list-style-type: none"> • Cooking area on the veranda • Water supply from borehole with header tank and water supply distribution system • Septic tanks and a support pump truck to pump out the septic tanks • Storm drainage and regular backfilling of potholes to prevent buildup of stagnant water • The GOL provided each household with monthly rice and cash allowances • PNPC is continually providing support to ensure (i) the regular conduct of waste management, (ii) pumping out of septic tanks and waste water and proper disposition thereof, (iii) funding of monthly rice and monetary allowances, (iv) electricity supply • The conduct of Integrated Mother and Child Health check-ups in the temporary accommodations on a regular basis. • An extension building of the Sanamxay Hospital was constructed and furnished to accommodate any additional potential patients from the temporary accommodations.
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Number	3
UN Report	<p>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.</p>
Clarifications and Corrections by PNPC	<p>GOL has established the Socio-Economic and Environment Impact Committee to manage the survey and compensation process which were conducted by the GOL, PNPC, and PNPC EPC Contractor.</p> <p>In mid-2019, 50% of each claim for losses directly to each household in 7 main impacted villages were provided while the correct amounts were being verified and finalized.</p> <p>Moreover, 100% of each claim for losses were directly provided to each household in the 12 minor impacted Villages while compensation payments of claims for losses by the Business sector were likewise completed.</p> <p>Currently, the final settlement of the remaining compensation payments are currently being implemented through village-level consultations.</p> <p>As part of the post-incident rehabilitation plan, PNPC and its EPC Contractor has funded UXO clearing and land clearing of over 2,140 hectares of new replacement agricultural lands. The clearing works has been 100% completed.</p> <p>In addition to the new agricultural lands, the PNPC and GOL conducted a survey of mud deposits in the flooded agricultural lands and agreed on a compensation amount to rehabilitate these lands. At the time of writing, removal of mud deposits in the existing agricultural lands is ongoing with over 50% progress. It is targeted that the people can grow rice and cash crops this year as well as continue to receive rice and money allowances through transitional assistance.</p>

Number	4
UN Report	There seems to be no transparent process or grievance mechanism to evaluate losses and offer reparations.
Clarifications and Corrections by PNPC	<p>The compensation process executed by Attapeu Provincial Departments, PNPC, PNPC EPC Contractor, Village Authorities and international recognized third party specialty company for loss adjustment is very transparent and consultative. Each claimant household has been individually interviewed and open consultation meetings were held in each village where compensation amounts and calculation were explained. Each meeting also served as venues for grievances and where queries are answered.</p> <p>Each household was given the opportunity to provide responses or feedbacks on the compensation amounts and or processes. Upon receipt of compensation payment, each claimant signed/signs a compensation receipt to confirm their satisfaction.</p> <p>To date, no claimant/s has refused to receive their agreed compensation payment/s. In the event a claimant is not satisfied despite receiving compensation, the claimant can avail of the grievance process provided by the GOL.</p>

Number	5
UN Report	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.
Clarifications and Corrections by PNPC	The root cause of the failure was conducted by the International Expert Panel (IEP) and presented to the GOL National Investigation Committee (NIC). PNPC is not in the position to comment on these.

Number	6
UN Report	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.
Clarifications and Corrections by PNPC	The PNPC cannot comment on any allegations involving other parties.

Number	7
UN Report	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.
Clarifications and Corrections by PNPC	Before the Incident, PNPC/SKEC continually issued evacuation warnings to the GOL and Village Authorities immediately after site inspection.

Number	8
UN Report	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.
Clarification and Correction by PNPC	<p>All individual household claimants were interviewed and consulted on their claims for losses. The amounts of compensation and calculations were explained to each household. GOL has a grievance mechanism to ensure that any issues and concerns are resolved to the satisfaction of every complainant.</p> <p>After each compensation payment/s was transferred to each respective household bank account, each household claimant signed/signs a compensation payment receipt. Ongoing reparations will follow the same procedure. To date, everyone has been satisfied with the compensation payment amount and no one has rejected.</p>

Number	9
UN Report	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.
Clarifications and Corrections by PNPC	<p>The GOL established a donation distribution system to support each affected household. All Project Stakeholders, the GOL, Domestic and International supporters and the local people have provided donations, assistance, coordination and cooperation.</p> <p>To ensure proper management of various relief items, the PNPC/SKEC funded the construction of warehouses in the provincial center and in each of the new villages for ease of storage and distribution (food, clothes, blankets, etc.).</p> <p>All donations were and are being used to ensure that needs of the affected people are met.</p>

Number	10
UN Report	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.
Clarification and Correction by PNPC	In addition to the development of the new agricultural lands, PNPC/SKEC is funding the removal of mud deposits in the villages and fields. Mud cleaning works are ongoing with over 50% progress.

Number	11
UN Report	<p>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</p>
Clarifications and Corrections by PNPC	<p>Since the Incident, Attapeu Provincial Departments, PNPC, SKEC, Village Authorities, and a third party specialty company claims loss adjuster. interviewed/assessed/consulted with each household claimant on their claims for losses and damages. Numerous open consultation meetings were held in each affected village and compensation amounts and calculations explained to each claimant household.</p>

PART 2. Responses to questionnaires

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| 1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations. |
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Please find above additional clarifications and corrections in PART 1.

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| 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. |
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As a Special Purpose Company established under the Lao Laws, PNPC has always observed all relevant Lao Laws and Regulations, including those laws and regulations to protect and uphold the human rights of the people of The Lao PDR. PNPC will continue to adhere to them.

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| 3. Please provide information on human rights due diligence steps, as set forth in the UN Guiding Principles, taken so far by your company in relation to the construction of the Xe-Pian Xe-Namnoy dam. In particular, please highlight how you have consulted the villagers and other stakeholders throughout the dam project. Please indicate whether any steps were taken with regards to obtaining free and informed consent of indigenous peoples prior to the approval of the project on their traditional lands, as per UN Declaration on the rights of indigenous peoples' rights. |
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PNPC assures that it has consulted with all the project affected people/people of ethnic groups and all other stakeholders in relation to the construction of the Xe-Pian Xe-Namnoy Hydroelectric Power Project within the framework of all relevant Lao Laws and Regulations, the provisions of the Concession Agreement and directives from the GOL. Without the prior consent of the villagers and all other stakeholders, construction would not have started.

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| 4. Please describe how your company is collaborating with the Government of Lao PDR and all other relevant stakeholders in conducting any 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. |
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PNPC has fully and closely cooperated with the National Investigation Committee (NIC) and the GOL to support in providing relevant and related information and conduct of site surveys/visits in order to conduct their investigations.

An independent external investigation was engaged by the GOL.

5. Please provide information regarding how your company cooperated with an investigation conducted by the National Investigation Committee into the the Xe-Pian Xe-Namnoy dam collapse.

Refer to PNPC response to No. 4 above.

6. 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.

The root cause of the failure was conducted by the International Expert Panel (IEP) and presented to the GOL National Investigation Committee (NIC). PNPC is not in the position to provide any comments on the investigation findings of the NIC.

Refer to PNPC response to No. 5 in PART 1.

7. Please comment on the allegation that the shortened construction time and alteration of design compromised the safety of the Xe-Pian Xe-Namnoy dam.

PNPC is not in the position to comment on this question.

8. Please describe the measures that your company has taken, or plans to take, to prevent recurrence of such disasters in the future.

The GOL has issued certifications for the Commercial Operation Date and the Owner's Engineer and Lenders' Technical Advisor have agreed to issue the Provisional Acceptance Certificate to the EPC Contractor. It means that the GOL, GOL Engineer, Owner's Engineer and Lenders' Technical Advisor have confirmed the stability of the dams and other structures/facilities of the Project.

PNPC, through its EPC Contractor, conducted a full and detailed dam safety review. The results were approved by Owner's Engineer, Lenders' Technical Advisor, the GOL, and the GOL Engineer.

Likewise, the PNPC has revised its Emergency Action Plan for Dams (EAP). It was reviewed and approved by the GOL, GOL Engineer, Owner's Engineer and Lenders' Technical Advisor.

9. Please provide information about measures taken by your company so far to provide for effective remedy (including compensation and rehabilitation) to the villagers and indigenous communities affected by the Xe-Pian Xe-Namnoy dam collapse. Please indicate to which extent villagers and indigenous communities were able to shape these measures to ensure they are adapted to their actual needs and traditional culture.

The GOL Provincial Disaster Management Committee (PDMC), PNPC and PNPC EPC Contractor conducted impact surveys in nineteen (19) villages (6 major impacted villages and 13 minor impacted villages). PNPC likewise engaged an internationally recognized third party consulting company for impact assessment. All activities conducted and decisions for the affected people were on a consultative basis with the affected people.

Each household were interviewed on their claims for losses and damages and their preferential needs during the impact assessment. Prior to payments of compensation claims for losses and damages, the PDMC, PNPC and PNPC EPC Contractor held numerous village-level consultations to define, quantify and qualify all claims. Based on these consultative meetings, individual interviews and impact surveys, the PDMC and PNPC came up with the compensation amounts which were again presented to the affected people for their confirmation. All parties involved are working towards resolving all remaining concerns and issues to complete the actual compensation and post-incident rehabilitation.

The GOL developed a Master Plan for the post-incident rehabilitation activities and the Master Plan includes works to build four new villages for all of the major impacted villages which consists of constructing new houses, sourcing out of water supply, construction of water systems, roads, provisions for electricity and construction of public infrastructure (i.e. schools, health centers, village halls, etc.). Work activities include the construction of temples to reflect the communities' traditional culture and the conduct of and support for traditional rites before and after every construction activity.

10. 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.

To manage and handle grievances throughout the construction and operations phases, the PNPC adheres to the GOL grievance procedure which is transparent, consultative, participatory and balanced. Traditional grievance resolution systems have been incorporated in the grievance mechanism.

The grievance procedure has several levels: village, district, provincial and central level. The grievance procedure is implemented jointly with the GOL and grievance committees established at each level. The approach is to try and resolve grievances at the village level through consultations with any aggrieved party/ies. Any grievance/s unresolved is forwarded to the next level, as the case may be.