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The Permanent Mission of the Republic of Korea to the United Nations and other International Organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights (OHCHR) and has the honor to convey herewith the response of the Government of the Republic of Korea to the Joint Communication from Special Procedures (AL KOR 3/2020).

The Permanent Mission of the Republic of Korea to the United Nations and other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights (OHCHR) the assurances of its highest consideration.

Geneva, 6 July 2020

Office of the United Nations High Commissioner for Human Rights (OHCHR)
Palais des Nations, CH-1211 Geneva 10, Switzerland



Response of the Government of the Republic of Korea
to the Joint Communication from Special Procedures (AL KOR 3/2020)

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

Basic Position of the Government of the Republic of Korea (ROK)

The ROK government expresses once again its sympathy for many victims of the collapse of the auxiliary dam ‘Saddle D’ of the Xe Pian-Xe Namnoy Hydropower Dam located in Attapeu province of the Lao People’s Democratic Republic (“Lao PDR”) in heavy downpours.

Although the ROK government is not a direct party to the Xe Pian-Xe Namnoy Hydropower Project (“Project”), the ROK government has, by closely cooperating with the Government of the Lao PDR, continuously supported the conduct of a fair and objective investigation into the Project and has exerted its necessary efforts to facilitate communication among concerned parties of the Project.

In addition, the ROK government has endeavored to strengthen its development assistance to the Lao PDR along with the humanitarian assistance to the residents in the damaged villages.

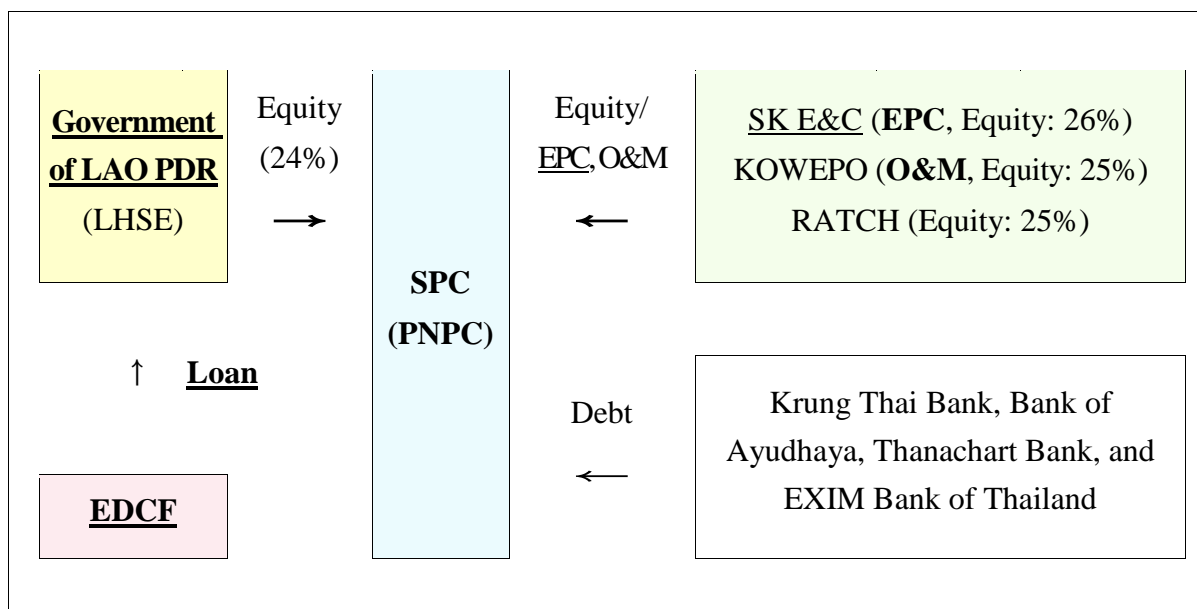
Structure of the Xe-Pian Xe-Namnoy Hydropower Project and the ROK’s Efforts to Assist Rehabilitation and Restoration

The Project was aimed at reducing poverty and galvanizing sustainable development of the Lao PDR through electricity exports.

The Project was also built on a large-scale Public-Private Partnership (“PPP”), in which the Lao government and private enterprises participated for efficient project implementation. After its approval in 2015, the Economic Development Cooperation Fund (“EDCF”), the Korean government’s ODA agency for concessional loans, provided a PPP loan to the Ministry of Finance of Lao PDR (“MOF”) to finance the equity investment of Lao Holding State Enterprise (“LHSE”) to the SPC (“PNPC”) for approximately USD 80.8 million. Clearly, the EDCF is not a member of the syndicate consisting of four Thai banks including Krung Thai Bank, as mentioned in the Joint Communication AL KOR 3/2020, and only participated in the Project as an indirect party to finance the equity investment led by the Lao government. In the same vein, the loan agreement (“Loan Agreement”) between the EDCF and the Lao government stipulates that the Lao government must fulfill all necessary

environmental and social responsibilities within the scope of shareholding and furnish the EDCF with relevant reports. Please refer to the chart below for further details of the Project structure.

< Note 1. Structure of the Xe-Pian Xe-namnoy Hydropower Project >



As shown above, the EDCF indirectly supported the equity investment of the Lao government on the Project and thus had no authority for direct management over the Project and liability arising out of operations thereunder. However, the ROK government has made diverse efforts to assist identifying and investigating the cause of the dam collapse as well as restoring and reconstructing the damaged parts since Korean enterprises participated in the construction.

The ROK government, for instance, dispatched its experts four times to the Lao’s National Investigation Committee (“NIC”) at the request of the Lao government and continued to assist the Lao government in ensuring a fair and objective investigation into the collapse by frequently and closely communicating with the Lao government through the Korean Embassy in the Lao PDR.

The ROK government has also striven to strengthen development assistance to the Lao PDR along with the humanitarian support for the residents in the affected villages. The ROK government dispatched the Korea Disaster Relief Team three times—a total of 63 staffers—and provided 1.77 million US dollars in cash and in kind, sending 1,000 tons of rice through the ASEAN Plus Three Emergency Rice Reserve (APTERR) to the Laotians. As for the mid to long term project, the ROK government has been funding a grant aid (worth USD 12

million) on “Integrated Recovery Program in Attapeu Province, Lao PDR” from 2019 to 2023.

Future Plans

The ROK government acknowledges that the negotiations on the compensation for damage caused by the dam collapse are currently at the final stage. The ROK government will continue to provide support for the settlement of compensation as well as reconstruction of affected areas by ensuring smooth communication among concerned parties. To this end, the ROK government will spare no efforts to cooperate with the Lao government through diplomatic channels.

2. Please describe how the Government is investigatng, independently and/or in collaboration with Government of Lao PDR, the role of Korean business enterprises (in particular Export-Import Bank of Korea, SK E&C, and Korea Western Power Company) in the dam collapse with a view to holding accountable those responsible for the collapse, resulting in loss of lives and livelihood of local villagers and indigenous communities.

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As an ODA donor, the ROK government has continued to assist the Lao government in a fair and objective investigation of the Project, in which Korean enterprises participated. For instance, the ROK government dispatched its experts four times to work with the NIC at the request of the Lao government and has maintained a cooperative relationship with the Lao PDR through the embassy and other diplomatic channels.

As Korean enterprises took part in the construction, the ROK government will continue to exert its multifaceted efforts toward the reconstruction and restoration of the affected dams in Laos.

<Note 2. Humanitarian Assistance for Reconstruction and Restoration by the Korean Government and Private Sector>

■ **Assistance from the Korean government**

- **(Relief Team)** 3 rounds of dispatch of Korea Disaster Relief Team (KDRT) (63 people in total from July 26 to August 23, 2018)
- **(Cash and In-kind)** Provision of 1.77 million US dollars in cash and in kind
- **(Rice)** Provision of 1,000 tons of rice through the ASEAN Plus Three Emergency Rice Reserve (APTERR)
- **(KOICA's Grant Aid)** Implementation of the "Integrated Recovery Program in Attapeu Province, Lao PDR" (2019 to 2023, USD 12 million)

■ **Assistance from the Private Sector**

- Humanitarian aid & relief activities, including contributions of more than USD 10 million by SK, USD 1 million by KOWEPO, USD 45,000 by DGB Financial Group, and relief goods equivalent to USD 46,000 by Dong-A ST Co., Ltd.

3. Please highlight the steps that your Excellency's Government has taken, or in considering to take, to protect against human rights abuse by Korean business enterprises, ensuring that business enterprises domiciled in its territory and/or jurisdiction conduct effective human rights due diligence to identify, prevent, mitigate and account for how they address their impacts on human rights throughout their operations (including abroad), as set forth by the UN Guiding Principles on Business and Human Rights.

National Action Plan for the Promotion and Protection of Human Rights

The ROK government established the 3rd National Action Plan for the Promotion and Protection of Human Rights ("NAP") for 2018-2020 that encompasses all ministerial policies related to human rights and put an emphasis on introducing a separate chapter on business and human rights, entitled "a society where nurtures human rights-friendly business activities with joint efforts. The details of the 3rd NAP including the chapter on business and human rights were solidified based on the recommendations by the National Human Rights Commission of Korea, public hearings to collect the opinions of the general public, and several meetings between public officials and civil societies.

This newly inserted chapter focuses on policy tasks in connection with business and human rights. The core task of which is to institutionalize business and human rights principle, and its subtasks include the followings: i) to secure corporate responsibility to protect human rights; ii) to formulate and implement a comprehensive policy for sustainable management; iii) to consider social responsibility in public procurement; iv) to secure consumer safety in everyday products; v) to support gender-equal management of companies; vi) to protect human rights through the cooperation with multilateral international organizations; and vii) to

make efforts to prevent human rights violation against local workers at Korean companies operating aboard.

And also, the ROK government will enhance a policy to improve the effectiveness of problem-solving and remedy process in order to more actively monitor any negative impacts of business on human rights and to make companies hold its cooperate accountability.

National Contact Points (NCP) Activities

Furthermore, the ROK government as a OECD member state established the Korean NCP (“KNCP”) to better implement the *OECD Guidelines for Multinational Enterprises* (“the OECD Guidelines”). The KNCP provides good offices to handle issues of specific instances arisen from implementing the Guidelines, whereby concerned parties would engage in a voluntary manner.

4. Please describe the guidance, if any, that the Government has provided to Korean 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. Please indicate whether any guidance was provided with regards to the duty to obtain free and informed consent of indigenous peoples prior to the approval of the project on their traditional lands, as per the UN Declaration on the rights of indigenous people’s rights.

Standard Guidelines by Ministry of Justice

Ministry of Justice of the Republic of Korea has developed *Standard Guidelines on Business and Human Rights* that suggest ways for private companies to implement the international human rights norms related to “business and human rights” in reality and also plans to publish and distribute its final version to companies in the first half of this year. The Guidelines are intended to articulate the ROK government’s expectation on business activities to meet the international standards as such in the *UN Guiding Principles on Business and Human Rights* as well as to urge companies to voluntarily materialize business and human rights in their practices. The Guidelines were drafted based on the international standards including the *UN Guiding Principles on Business and Human Rights* and *OECD Guidelines for Multinational Enterprises* along with the opinions collected from civil societies and federations of enterprises. The Guidelines also include business and human rights, human rights due diligence, and problem-solving and remedy procedures for victims.

EDCF Environmental and Social Impact Assessment

During the assessment of the Project from 2014 to 2015, the EDCF reviewed the environmental and social impacts based on the Environmental and Social Impact Assessment (“ESIA”) Report prepared by the PNPC, whose content reflects the both standards of the partner country and international community (e.g. the Safeguard Policies of the IFC and the ADB). Throughout the process, the EDCF confirmed its strict mitigation measures for social and environmental impacts and further conducted a third-party review by the Lender’s Independent Engineer (“LIE”), Parsons Brinkerhoff, and external experts from Samil PwC, Dr. Kottelat, and Soonchunhyang University, at el. After the review, the EDCF recommended the PNPC prepare and take advance measures to compensate resettlement of residents associated with construction of the dams and to support their lives.

Also, the EDCF continued to monitor the fulfillment of these mitigation measures through the quarterly progress reports submitted by the Lao government, in accordance with the Loan Agreement.

With the EDCF Safeguard Policy introduced in 2016, the EDCF ensured stakeholder participation in projects by holding public hearings and other consultations. The borrower was also requested to provide the EDCF with a separate Indigenous People’s Plan (“IPP”) on areas where a project may either directly or indirectly affect the dignity, human rights, livelihood or culture of the indigenous peoples. Also, by applying the World Bank’s Safeguard Policy, the EDCF recommended the partner country prepare the Free, Prior and Informed Consent (“FPIC”) of affected indigenous peoples.

KNCP Activities

The KNCP raises public awareness of the *OECD Guidelines* as well as introduces procedure for a specific instance with various ways, including publishing and distributing casebooks, organizing presentations, setting up promotional booths, maintaining its official website both in Korean and English and advertising via media outlets. Such KNCP activities have contributed to Korean business enterprises’ understanding on the need to respect for human rights throughout their operations.

5. Please provide information regarding the measures that your Excellency’s Government is taking, or considering to take, to ensure that those affected, by the overseas activities of private as well as state-owned Korean companies involved in the dam collapse, and have access to effective remedies as per the UN Guiding Principles.

KNCP Good Offices

Meanwhile, as a complaint is accepted, the KNCP provides good offices as a discussion platform to help both complainant and respondent engage in dialogues and reach a mutually acceptable agreement.

Private International Law

The ROK government notes that in case a party or a case in dispute is substantively related to the Republic of Korea, a Korean court shall have the international jurisdiction under Article 2(1) of the Act on Private International Law. Accordingly, any victims may bring a civil suit in Korea by proving there existed unlawful acts under the jurisdiction of the Korean court, set forth in the Act on Private International Law. Nonetheless, acknowledging some practical difficulties when the victims living abroad wish to file a suit to the court of the Republic of Korea to receive remedy of damage, the ROK government plans to review similar policies in foreign countries and actual cases related to compensation for damage to resolve such difficulties.

6. Please provide information regarding measures that your Excellency's Government has taken, in response to the recommendation provided in the Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its visit to the Republic of Korea in 2016, in particular on Korean enterprises' operating overseas.

Corporate Responsibility

The ROK government puts efforts to encourage public institutions including public companies to seek corporate responsibility to protect human rights. Public institutions under all government ministries and metropolitan municipalities have also been evaluated on the business and human rights criteria in their management performance since 2019 (assessed in 2020).

As for central public institutions, the business and human rights criteria were added to the existing "ethical management" item, which in particular assesses efforts and activities to respect human rights including human rights education and remedy procedure of human rights violation. Local public institutions newly inserted the "business and human rights" item apart from the "ethical management." This "business and human rights" item evaluates a system or practices related to business and human rights including public declaration or public announcement of business and human rights values and the human rights impact

assessment), institutions' efforts for and results of implementation and public disclosure of business and human rights projects, and feasibility of institutionalizing the remedy procedures.

These above-mentioned measures were based on the recommendation by the National Human Rights Commission of Korea to insert and expand business and human rights related items in business assessment on public institutions and to implement business and human rights in their practices based on the *Manuals on Business and Human Rights for Public Institutions*.

In addition, the Working Group on Business and Human Rights on its visit to the Republic of Korea in 2016 recommended the ROK government establish non-financial reporting requirements to include references to human rights including human rights due diligence processes, and in response to it, the ROK government completed the preparation of the *Standard Guidelines on Business and Human Rights*, which include the recommendation to highlight the content on human rights due diligence in human rights reporting, and plans to distribute the said Guidelines this year. Also, the ROK government will carry out an additional research in the first half of this year on institutionalizing the disclosure of non-financial information of corporations in relation to human rights.

KNCP Activities

As a follow-up to the recommendations by the Working Group, the KNCP raises awareness of the OECD Guidelines among multinational enterprises in Korea and Korean businesses in overseas markets through diverse channels, such as organizing presentations, maintaining its official website in both Korean and English, advertising via media outlets, and publishing and distributing casebooks.

Moreover, the KNCP also guarantees the term of office as well as transparent selection process of the NCP commissioners, conducts an initial assessment and substantive review separately, promotes good offices to participating parties and adopts the final statement with appropriate recommendations, with many other ongoing efforts.

7. Please describe what additional steps your Excellency's Government has taken to ensure that the Korean Export-import Bank engages in human rights due diligence, in line with Principle 4 of the UN Guiding Principles and the OECD Common Approaches to Export Credit.

The Export-Import Bank of Korea ("KEXIM") is an ODA implementing agency that has been entrusted by the Ministry of Economy and Finance ("MOEF") to manage and operate

the EDCF. KEXIM provides concessional loans to eligible countries on the OECD Development Assistance Committee (“OECD DAC”) list of ODA recipients to support their economic development and welfare.

Moreover, MOEF of Korea requires KEXIM to conduct assessments of the implementation plan and feasibility of the projects requested by partner countries and to send the assessment results to MOEF.

Through KEXIM, MOEF endeavors to fulfill its responsibilities and duties on cross-cutting issues recommended by the OECD DAC, such as environment, gender equality, human rights and governance, which must be considered in the implementation of development assistance.

During project evaluation, MOEF of Korea requires KEXIM to help partner countries anticipate and preemptively manage potential risks by assessing the extent that a project would cause to the biodiversity and socioeconomic environment based on its internal regulation such as the Safeguard Policy. /end/