



*Permanent Mission of the Republic of Korea  
Geneva*

*Avenue de l'Ariana 1 P.O.Box 42, 1211 Geneva 20  
Tel: +41(0)22 748 0000 / Fax: +41(0)22 748 0001  
geneva.korea@mofa.go.kr*

KGV/395/2022

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 honour to transmit herewith the response of the Government of the Republic of Korea to the Joint Communication from Special Procedures, dated 15 July 2022 (AL KOR 3/2022).

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.

9 September 2022

Enclosed: as stated



Office of the United Nations High Commissioner for Human Rights (OHCHR)

**Response of the Government of the Republic of Korea**  
**to the Joint Communication from Special Procedures (AL KOR 3/2022)**

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

The Xe-Pian Xe-Namnoy Hydropower Project (“Project”) was implemented to reduce poverty and promote sustainable development of the Lao People’s Democratic Republic (“Lao PDR”) through electricity exports. The Project was built on a Public-Private Partnership (“PPP”), in which the Lao government and private enterprises participated for efficient project implementation.

After approving the Project in 2015, Korea’s Economic Development Cooperation Fund (“EDCF”), the Korean government's official development assistance agency for concessional loans, provided a loan to the Lao government (specifically, the Ministry of Finance of the Lao PDR) to indirectly support the equity investment of Lao Holding State Enterprise. The EDCF loan agreement states that the Lao government is to carry out necessary environmental and social responsibilities under the scope of the aforementioned equity investment and report the results to the EDCF. Under the project structure, the EDCF had no obligation to directly manage or be liable for the Project. However, given the participation of Korean enterprises in the Project, the Korean government has made diverse efforts to restore and reconstruct the damages from the dam collapse.

At the same time, the Korean government increased the amount for the EDCF Framework Arrangement signed with the Lao PDR, which will be used to rebuild infrastructures and address the mid-to long-term economic and social development needs of the Lao PDR. In addition, a new concessional loan was approved in December 2019 to help improve the living conditions of residents in the southern regions of the Lao PDR.

**2-3. 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. / Please provide information as to what measures and mechanisms exist to ensure the transparency of the compensation process. Noting in your precious response that your Excellency’s Government has been providing support for the settlement of compensation, please describe any steps taken to monitor and ensure that donations, supplies, and compensation payments reach their intended recipients; payments are paid on a**

**consistent schedule; estimates given on the damage incurred and actual compensation received by affected communities are consistent; and the application of certain processing fees are legitimate.**

*Cooperation with the Government of the Lao PDR*

The ROK government, closely working with the Government of the Lao PDR at all levels, has continued to engage in endeavors to ensure a fair and objective investigation into the incident. It has exerted efforts to support the affected residents, especially in facilitating negotiations on the compensation for damage, restoration and rebuilding, and ensuring swift humanitarian assistance.

Furthermore, the ROK government has been cooperating closely with the Lao government through the Korean Embassy in the Lao PDR in sharing information with the Lao government and ensuring that the aid provided by the ROK government can be effectively delivered to the affected residents.

*Compensation*

The Xe-Pian Xe-Namnoy Power Co. (PNPC), as the project company, and SK Ecoplant (which changed its name in May 2021 from SK Engineering & Construction), as the construction company, reached an agreement with the Attapeu Province on a compensation plan in April 2020. The Lao government approved this plan in August 2020.

<Breakdown of Compensation>

Compensation Type	Amount*		Use
	Local currency (million)	US\$ (million)	
Direct Compensation	475,392	55.4	Monetary compensation for the victims and the property damage
Indirect Compensation	353,123	35.85	For emergency relief (rice and living costs), new houses, etc.
Total	828,516	91.25	

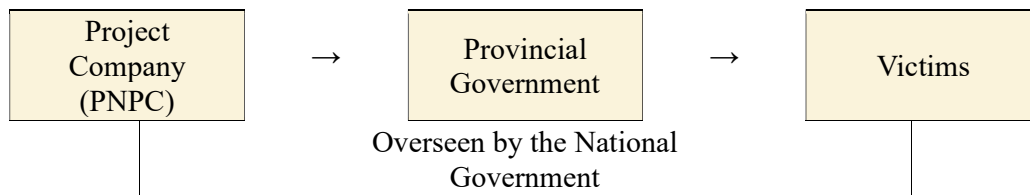
Data: PNPC

\*The exchange rate at the time when compensation plans were made in 2020 was used.

\*\*Additional payments for valuables, urns, and other claims will continue to be paid (target completion date: end of 2022)

The direct compensation (\$55.4 million) was provided directly to the victims as transfers from the project company to the victims' accounts at local banks. The indirect compensation (\$35.85 million) for food, living costs, public facilities, alternative farmlands, and residential housing support is being provided under the supervision of the Lao government.

Flow Chart of Indirect Compensation



The project company and the construction company agreed to provide construction costs for 700 permanent houses as part of the indirect compensation. In addition, the Government of the Kingdom of Thailand and the UN-Habitat Lao also decided to offer building costs for 46 and 66 houses, respectively.

The project company has indicated that as of August 2022, 565 of 700 houses, which are being built by a local construction company selected by the Lao government, were complete. The project company is not directly involved in this process and instead covers the construction cost for these houses through the Lao government. It has been noted that the travel restrictions due to COVID-19, rain, city planning, and other local conditions have caused a delay in the construction. However, currently the construction is 97% (or higher) complete as of August 2022.

Despite the limited information that the EDCF has on the compensation process as a party not directly involved, it has continued its support for prompt repairing and rebuilding process.

**4. Noting in your previous response that your Excellency's Government has been providing support for the settlement of compensation, please provide information as to whether there is an established insurance claims process through which affected people can receive compensation payments. If so, please elaborate on how your compensation payments. If so, please elaborate on how your Excellency's Government has been facilitating access to remedy via this claim's 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 this is the case.**

The insurance that covers the Project does not issue payments directly to the victims. There is no process for the victims to make insurance claims. Instead, the project company received an insurance payment of 50 million dollars, and the entire amount was delivered indirectly to the victims as part of the compensation packages it provided.

**5. 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.**

Under the provisions on international jurisdiction of the Act on Private International Law (Articles 2 through 15 thereof, etc.), in cases where the international jurisdiction of the Republic of Korea's courts is recognized, a person may file a suit to the courts of the Republic of Korea. Accordingly, the victims may vindicate that the international jurisdiction falls under the courts of the Republic of Korea and file a civil suit in domestic courts.

※ The entire amendment to the Act on Private International Law specified the standards for determining international jurisdiction (Article 2) and newly inserted the general provisions and 35 regulations by type.

**6-8. Noting in your previous response that your Excellency's Government plans to review policies in foreign countries in order to resolve the practical difficulties face by victims living abroad who wish to file a suit at the court of the Republic of Korea, please provide information regarding measures that your Excellency's Government has taken to implement this plan. / Please indicate the actions taken or planned by your Excellency's Government to strengthen the provisions in its National Action Plan (NAP) for the Promotion and Protection of Human Rights through explicit references to extraterritorial jurisdiction. / Please kindly provide information on how your Excellency's Government ensures that business enterprises under its jurisdiction, along with their operations, do not impact negatively the work of human rights defenders, specifically in light of the recommendations provided to States 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.**

*National Action Plan for the Promotion and Protection of Human Rights*

The Government of the Republic of Korea established and implemented the National Action Plan for the Promotion and Protection of Human Rights (NAP), a comprehensive plan of national human rights policies, and has reviewed the progress of the implementation every year. In the 3rd NAP (2018-2022), a separate chapter on business and human rights (chapter 8 Society to make efforts together for human rights-friendly corporate activities) was newly introduced. Still, the NAP does not address the issue of extraterritorial jurisdiction.

### *Guideline on Business and Human Rights*

The Government of the Republic of Korea published the Guideline on Business and Human Rights, based on the UN Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises, the Corporate Responsibility to Respect Human Rights (An Interpretive Guide), etc. The government distributed approximately 2,400 copies to companies listed on KOSPI, KOSDAQ, etc., and posted it on the website of the Ministry of Justice.

This Guideline was drafted to help various members of companies understand the core substance of business and human rights, the process of human rights due diligence, and remedy procedures. Distribution of the Guideline is expected to help medium-sized enterprises and SMEs in particular, to voluntarily settle human rights-based business management.

### *Bill of the Framework Act on Human Rights Policies*

Also, the Government is preparing to present the Framework Act on Human Rights Policies bill containing the corporate responsibility to respect human rights and the efforts of the central and local governments to prevent companies from violating human rights.

This bill stipulates that central and local governments shall prevent human rights violations committed by corporate activities by preparing the laws, regulations, and policies necessary to relieve the victims. The government shall prepare, distribute, and use the relevant guidelines and standards for the companies to fulfill the responsibility to respect human rights.

### *Measures by EDCF*

In 2012, the PNPC prepared a report evaluating the Project's environmental and social impacts, following the laws of the Lao PDR and international standards (namely, the IFC Performance Standards and the ADB Safeguard Policy). The EDCF also evaluated the environmental and social impacts through third-party and outside specialists prior to approving the Project in 2015.

In addition, the loan agreement with the Lao government stipulates that the Lao government is to fulfill its duties outlined in the Environmental and Social Impact Assessment, Resettlement and Ethnic People Development Plan, and Environmental Management and Monitoring Plan (EMMP) under the principle of good faith.

In accordance with the loan agreement, the EDCF received quarterly progress reports from the Lao government and has continually monitored the implementation progress of the EMMP. It should be noted that because the EDCF is not a direct party to the Project, it had limited information on the environmental and social responsibilities other than the documents and

announcements from the Lao government.

In addition, with the introduction of the EDCF Safeguard Policy in 2016 and its revision in 2020, respectively, the EDCF has evaluated and analyzed its projects' environmental and social impacts to minimize their adverse effects. Since 2016, all EDCF borrowers have been obliged to submit an evaluation report and progress updates on their projects' environmental and social impacts. According to the revised EDCF Safeguard policy, large-scale dam projects like this project must have a clear definition of the scope of indigenous people and, if necessary, allow a meeting between stakeholders and the indigenous people with a specialist present. This has ensured the establishment of an appropriate management plan with adequate compensation and assistance, e.g., a plan on land acquisition and resettlement, a plan on support for indigenous people, etc., in response to the possible negative environmental and social impacts the project can have, including the effects on human rights, livelihood, and culture.

#### *National Contact Point*

In accordance with the OECD Guidelines for Multinational Enterprises, the Korean government has been operating the National Contact Point (NCP) to promote the guidelines and handle specific instances for MNEs based or operating their businesses in the Republic of Korea. When a Specific Instance is filed for the activities of MNEs within the jurisdiction of the Republic of Korea, the Korean NCP offers “good offices” so that the parties involved can facilitate the resolution of the issues raised by the plaintiff.

## **9. Interim Measures**

### *Measures taken to halt and prevent the re-occurrence of human rights violations*

Saddle Dam D, which had been an earth-fill dam, has been reconstructed as a concrete dam as of December 2019. For Saddle Dams E and F, additional reinforcement was constructed to secure the stability of the dam and prevent leakage. In terms of ex post facto management, the warranty period has been extended from 2 years after construction, which would have expired in December 2021, to December 2025. Additional instruments have been installed for daily measurement to strengthen the subsidence management of the auxiliary dams.

<Pictures of the Auxiliary Dams>



*Liability investigation in case allegations are found to be true*

As mentioned above, the Project was a PPP project implemented under the leadership of the Lao government. The Korean government, therefore, has no legal authority to directly investigate the likelihood of dam collapse and identify who is liable.

However, the project implementing agency has constructed reinforcements on the auxiliary dams to prevent another collapse as of December 2019. At the same time, the Ministry of Energy and Mines of the Lao PDR has also suggested the need for legislation to ensure the sustainability and stability of the hydropower facilities, in addition to other measures taken to reduce the risk of collapse.

The Lao government has approved the compensation plan prepared by the project company and the construction company. This plan includes reconstructing the seven villages in the area significantly damaged by the collapse into four new villages along with farmland and living infrastructures.

The reconstruction project aims to give the villages the ability to self-sustain themselves from a long-term perspective. Most of the reconstruction is known to be complete as of July 2022.

<Details about the Seven Villages for Reconstruction>

Affected Villages	Number of Households	Population	Villages under Plan	Area (ha)
B.Mai	168	756	<b>B.Dong Bak-maihinkham</b>	120
B.Thahin	184	945		
B.Hinlath	154	678	<b>B. Hinlath-mai</b>	70
B.Tamayod	52	196		
B.Tasengchanh	103	505	<b>B.DoneBok</b>	60
B.Samoung-tai	75	331	<b>B.Pindong</b>	56



<b>Total</b>	<b>736</b>	<b>3,411</b>		<b>306</b>
--------------	------------	--------------	--	------------

/End/