

LAOS: UNDERTAKE A TRANSPARENT AND INDEPENDENT INVESTIGATION TO ENSURE EFFECTIVE REMEDIES FOR THE VICTIMS OF THE DAM COLLAPSE

COMPANIES, INVESTORS AND THE THAI AUTHORITIES
SHOULD ALSO BEAR RESPONSIBILITY

20 August 2018, Bangkok

We, the Thai BHR Network, call on the Lao Government to immediately undertake a transparent and independent investigation to ensure effective remedies for the victims of the dam collapse at the Xe-Pian Xe-Namnoy hydropower project. We also appeal the companies, investors and the Thai government to take immediate remedial and preventive steps to meet their responsibilities to those affected. In particular, we urge the Thai government, currently in the process of developing a National Action Plan (NAP) on Business and Human Rights, to include a strong commitment to enact a law establishing criminal liability for businesses operating in Thailand or Thai outbound investments causing human rights violations.

On 23 July 2018, the failure of one of the dams of the hydropower project under construction in Attapeu province in Southern Laos caused flash flooding, which inundated thirteen downstream villages. At least 39 people were killed, 97 officially [reported](#) missingⁱ, more than 1,100 people still [unaccounted](#) for as per the Lao authorities' dataⁱⁱ and thousands have been left homeless. The Network expresses its deep condolences to those killed and wishes for strength for the families of the missing and others affected.

The 410 MW hydropower project is being built by a Lao firm Xe-Pian Xe-Namnoy Power Co. Ltd. (PNPC). It has shareholdings from two South Korean companies – SK Engineering and Construction, Korea Western Power, Ratchaburi Electricity Generating Holding PCL of Thailand and Lao Holding State Enterprise of Laos.ⁱⁱⁱ Thai banks had 70% investment in the PNPC, which was going to export 90% of the electricity of the project to Thailand through the Electricity Generating Authority of Thailand (EGAT), a state-owned enterprise.^{iv} (See the structure of the PNPC in the diagram at the end of the statement).

While the businesses involved in building the project tried to [blame](#) heavy rainstorms for the collapse to promote it as a natural disaster,^v a Lao minister has [stated](#) that faulty construction caused the disaster and the businesses are responsible for compensating victims as per their concessionaire agreement.^{vi} The project has been a subject of grave concern since its inception among non-governmental groups and communities that had [highlighted](#) a number of failings in the



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project development,^{vii} including in the public consultation process and poor environmental impact assessments (EIAs), lack of trans-boundary impact assessments, and failure to meet international environmental and social safeguards standards. Concerns were also [raised](#) about the impact of resettlement of the communities from the project area.

Besides doubts on the quality of the companies' work, questions have been raised about the Lao authorities' handling of the disaster, including in warning the villagers and undertaking rescue and allowing access to the affected areas. While the two South Korean companies behind the 1.2 billion USD Lao firm project reported damage to the dam a day before the collapse, media reports suggest that the authorities failed to warn and evacuate the villagers from flood areas in a timely and effective manner.

Further, the Lao authorities have allegedly been [sluggish](#) in allowing access for rescue teams while the State-controlled media have been [vague](#) and [inconsistent](#) in its reporting of the damage. The Prime Minister has however [warned](#) to be conscious about veracity of the news of the collapse and suggested to follow state-owned media and disregard misinformation on social and foreign media. To compound the problem, his office issued a [notification letter](#) on 3 August 2018 that temporarily blocked access by individuals and entities to the dam area unless authorized by a relevant authority.^{viii}

The blockade has been extended until an investigation of the dam is finished and reparations are completed. Nevertheless, the local communities and others on the ground are revealing the truth of the situation and their struggles through social media. Now more than ever, voices of the affected communities are emerging and they are courageously spreading information of the reality on the ground so that the world does not forget them despite the government warning to minimise damages and loss. The Lao authorities' attempt to control outgoing information related to the dam collapse contravenes with the [outcomes](#) of a July 2018 landmark review of the Lao government's compliance with its legal obligations under the International Covenant on Civil and Political Rights (ICCPR), during which UN experts called on the government to promote plurality of opinions in the media and to guarantee their operations are free from "undue state interference".^{ix}

While engaged in the rescue and relief efforts along with the Lao authorities and security forces, among others, the Korean company building the dam, SK Engineering and Construction, has reportedly [said](#) that it would take responsibility if a formal investigation found it culpable. The Lao authorities are also investigating the cause of the collapse, as stated in another [report](#). The Lao [government](#) has also established two committees - one to investigate the reason for the collapse of the dam and the other to look into the responsibility of the stakeholders in charge. It has also suspended the consideration of new investments in hydropower projects in order to review its hydropower development strategy and plans.

While we welcome the steps taken by the Lao Government for investigation, we call on the Government and its concerned agencies to:



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- Immediately allow effective access to national and international rescue teams and independent media agencies to the affected areas to undertake relief works and truth-telling reporting as the authorities seemingly lack technical capacity or manpower to carry out efficient rescue operations and restrictions on access will impede effective investigation and remedy for the victims.
- Give particular attention to the needs of women, children and persons from indigenous and ethnic groups in relief and remedy since the project reports show significant population of indigenous and ethnic groups in downstream villages affected, including the [Talieng people](#).
- Request the concessionaire agreement to be made public to ensure transparency on the responsibility of each stakeholder involved in the Xe-Pian Xe-Namnoy Dam collapse.
- Ensure a transparent and independent investigation is undertaken to look into the causes as well as handling of the dam collapse so as to ensure accountability and effective remedy for those affected because the committees set up and overseen solely by the government authorities that were involved in granting the permission for the project might not be fully fair.
- Ensure access to effective remedies through an independent, transparent and accessible process, placing communities' needs and loss at the heart of remedy, and with outcomes in the form of compensation, rehabilitation or restitution for the harms to the community, their livelihood and environment.
- Draw lessons for its regulatory roles from the failures in this disaster and take urgent actions accordingly, including welcoming independent and qualified technical support.

Besides Lao authorities, the business enterprises involved in the project also carry the responsibility for the human rights impacts of the dam collapse in accordance with the UN Guiding Principles on Business and Human Rights - the globally agreed framework for human rights in business contexts. The Guiding Principles also require that the governments of the home countries of the enterprises take measures to ensure they respect human rights abroad. The Thai government bears particular responsibility in the case of the Xe-Pian Xe-Namnoy dam collapse because the investors include Thai banks and they are responsible for transboundary human rights violations in accordance with the 16 May 2016 and 2 May 2017 [Cabinet Resolutions](#).

We thus urge the Thai government to ensure that Thai companies and investments abroad do not cause human rights abuses as it is currently drafting a National Action Plan on business and human rights. Hence, we recommend including a strong commitment in the National Action Plan to develop and implement a law to make it mandatory for Thai companies and investors to carry out effective human rights due diligence, including human rights impact assessments with meaningful participation of affected communities, in their operations at home and abroad. Such a law should also establish criminal liability for businesses operating in Thailand or Thai outbound investments causing human rights violations.

Further, we urge the EGAT to cancel the power purchase agreement with the PNPC or at least suspend the agreement until effective remedies are provided for the harms caused by the dam collapse. The UN Guiding Principles require governments to take additional steps to protect human rights abuses by state-owned enterprises, so, the EGAT should lead such a practice. Thailand must,



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without delay, move away from its dependence on energy imports and move towards sustainable and environment-friendly renewable energy projects that respect human rights.^x As of 4 July 2018, Minister of Energy Dr. Siri Jirapongphan announced that Thailand has enough energy for the next five years. Thus, no need for new power plant^{xi} or purchase of energy abroad. We also request the National Human Rights Commission of Thailand to urgently conduct an investigation into the dam collapse, particularly in relation to the responsibility of the Thai companies, Thai investors, and EGAT, and recommend effective remedies for the affected communities.

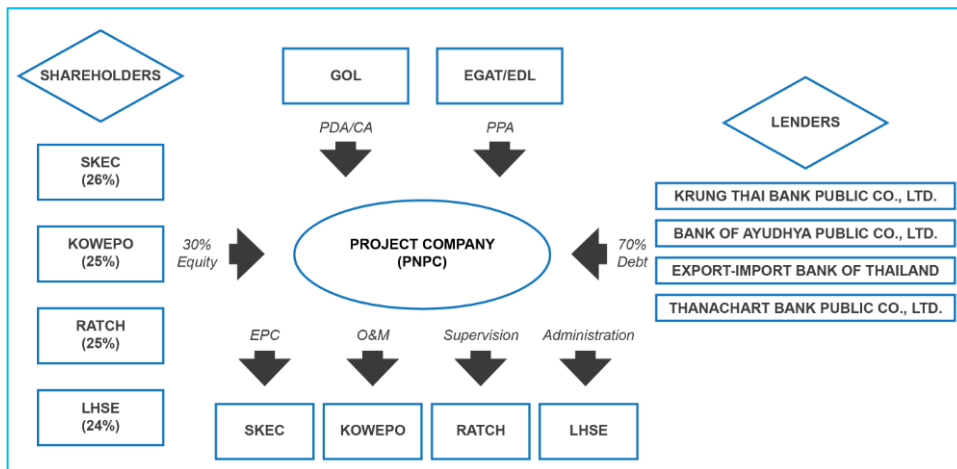
Xe-Pian Xe-Namnoy hydropower project is only one of the many dam projects along the Mekong River and its tributaries. There are serious criticisms of those projects for their impacts on the environment, ecosystems, livelihoods and communities of millions of people. The Mekong River Commission, established in 1995 to ensure that dams do not harm the river’s fragile ecosystem and affect villagers along the river, has been all but ineffective in preventing harms.

The dam collapse shows that Mekong dams might not be able to withstand the river’s wrath, particularly with extreme weather conditions. We thus call on the Mekong basin countries to come together to adopt strong environmental and human rights safeguards before building any more dams, particularly now that we have seen the significant impacts of the Xe-Pian Xe-Namnoy project, which was described, in its environmental impact assessment [report](#), as less harmful and more benign than most other large hydropower projects developed or proposed in Laos.

Very often, those projects are directly or indirectly supported by international financial institutions such as the Asian Development Bank, which was also reportedly considering the granting of a loan to the project. The consulting firm [reports](#) developing of the social and environmental assessment of the project to ADB standards but the project documents suggest otherwise, particularly in social impact assessment and plans.

We strongly urge companies, governments as well as investors to learn from the failure of various parties in the Xe-Pian Xe-Namnoy dam and should put environment and human rights to the highest consideration before profit.

Diagram of business structure of the PNPC (Source: website)



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About the Thai BHR Network

The Thai Business and Human Rights Network (TBHRN) is an informal, inclusive and intersectional coalition of human rights defenders, community leaders, researchers, academics, and non-governmental organisations from the local, national and regional spheres, who are joining hands to ensure local communities are central to the business and human rights response in Thailand. The Network engages in advocacy, dialogue, and monitoring of business and human rights commitments made by the Royal Thai Government, in particular in engaging in the development and monitoring of the National Action Plan on Business and Human Rights. More information on the TBHRN and its role can be accessed at <https://www.manushyafoundation.org/coalition-building-workshop-report>

About Manushya Foundation

Manushya Foundation is an Asia regional foundation promoting community empowerment to advance human rights, social justice and peace through a process of engagement, mobilisation and empowerment. With concern emerging on Business and Human Rights in Thailand, the bottom-up strategy of Manushya Foundation guarantees the empowerment of communities through a process of community led evidence-based research; the development of a national baseline assessment on BHR; and building capacity on BHR knowledge through the TBHRN, a unified national network comprising communities, academics and experts. For further information on the work of Manushya Foundation, visit <https://www.manushyafoundation.org>

Endnotes

- i http://www.vientianetimes.org.la/FreeContent/FreeContent_Attapeu188.php
- ii <https://www.aljazeera.com/news/2018/07/thick-mud-hampers-laos-flood-rescue-missing-180728110054375.html>
- iii <http://www.pnpclaos.com/index.php/en/about-pnpc/business-structure>
- iv <http://www.pnpclaos.com/index.php/en/project>
- v <https://www.straitstimes.com/asia/se-asia/laos-dam-collapse-dam-fractured-following-monsoon-rainfall-three-times-greater-than>
- vi <http://raosukunfung.com/2018/07/27/%E0%BA%84%E0%BA%B9%E0%BA%81%E0%BA%B1%E0%BB%89%E0%BA%99%E0%BA%99%E0%BB%8D%E0%BB%89%E0%BA%B2%E0%BB%80%E0%BA%82%E0%BA%B7%E0%BB%88%E0%BA%AD%E0%BA%99%E0%BB%84%E0%BA%9F%E0%BA%9F%E0%BB%89%E0%BA%B2-%E0%BB%80/>
- vii <https://www.internationalrivers.org/blogs/294/x-pian%E2%80%93xe-namnoy-affected-people-want-consultation-before-construction>
- viii <https://www.facebook.com/ThonglounSISOULITH/posts/1655355891242210>
- ix https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/LAO/CCPR_C_LAO_CO_1_31861_E.pdf
- x https://issuu.com/greenpeaceth/docs/krabi_coal_report-krabi-at-the-cros_2e1cbc91f46e40 (p.37)
- xi <https://www.ryt9.com/s/iq03/2851905>

