

Allegation Letter on Xe-Pian Xe-Namnoy Hydropower Dam Collapse

1. Summary of Xe-Pian Xe-Namnoy Hydropower Dam Collapse Case

- On July 23, 2018, one of the five auxiliary dams of the Xe-Pian Xe-Namnoy Hydropower Dam in Attapeu province, the southeastern state of Laos, collapsed, causing five billion cubic meters of water to inundate 6 villages that left severe flood damages as far as Cambodian villages bordering Laos. Therefore, many local residents lost their lives or went missing, and more than 6 thousand people were displaced. We believe that the related actors in the Xe-Pian Xe-Namnoy dam project, such as Lao government that failed its responsibility to maintain safety while preventing human rights infringement by the companies within its borders as well as by the inappropriate decision-making, substandard construction process and incompetent crisis handling by Korean government and Korean companies, which were involved in making investment to Xe-Pian Xe-Namnoy Hydropower Project and which handled actual construction and management of the dam, have all contributed to the serious and extensive human rights infringement of numerous local residents. As such, we urge that the appropriate steps launch a truth commission, to press governments and related companies to provide victims with adequate compensation for their loss and to prepare recurrence prevention measures to be taken as soon as possible.

2. Submission of Information

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3. Victims

- Mr. Noun Moul is a 56-year-old resident of O Chay village, Siempang district, Stung Treng province, Cambodia. Mr. Noun Moul has six children. Due to the dam collapse, Mr. Noun Moul has sustained substantial losses because 3 hectares of his farmland was flooded under water, leaving him unable to grow vegetables such as cassava, corn or bean.
- Mr. Chek Vy is a 29-year-old resident of Teak Team village, Siempang district, Stung Treng province, Cambodia with one child. Mr. Chek Vy has incurred financial damage due to the dam collapse, among others loss of more than 10 livestock as well as having 1 hectare of farmland being flooded under water.
- Mr. Kong Lean is a resident of Nhang Som village, Siempang district, Stung Treng province, Cambodia. He has incurred financial damage due to the dam collapse, losing livestock such as chickens and ducks as well as having 3 hectare of farmland being flooded under water.
- All the victims above are residents of Cambodian villages located downstream of the river, where the collapsed dam was built. The three villages suffered substantial damage due to the dam collapse disaster. However, none of the above victims received any compensation for the damage or assistance.
- All the victims above expressed their consent to be named in this allegation letter.

4. Perpetrators & related entities

- There exist various related actors to recognize in Xe-Pian Xe-Namnoy dam collapse disaster: Lao government that has a duty to monitor the project developer companies' activities within its border and to guarantee the safety of its people; PNPC that has a duty to supervise the constructor as an ordering organization; Korean government, which is a fund provider that has a duty to monitor any human rights violation by the Korean companies' overseas activities; and SK Engineering and Construction as a constructor. We urge the related actors to take appropriate measures to address and remedy their share of liability in the disaster.

1) Lao government

- Principal agent in charge of the safety management within Laos border and the prevention of human rights violation by businesses and enterprises. Made a concession agreement with PNPC and received concessional EDCF loan in credit assistance from the Korean government
- 2) Korean government
 - Provided EDCF loan to Xe-Pian Xe-Namnoy Hydropower project as part of their ODA (Official Development Assistance) program
 - 3) SK Engineering & Construction (SK E&C)
 - Shareholder of PNPC (holding 26% of the total share); Constructor for hydropower station
 - 4) Korea Western Power Company (Wholly-owned subsidiary company of KEPCO (Korea Electric Power Corporation))
 - Shareholder of PNPC (holding 25% of the total share); Expected to operate and maintain the power plant after the completion of construction
 - 5) Ratchaburi Electricity Generating Holding Public Company (Subsidiary company of Electric Generating Authority of Thailand (EGAT))
 - Shareholder of PNPC (holding 25% of the total share); in charge of construction supervision
 - 6) Laos Holding State Enterprise, a state-owned company
 - Shareholder of PNPC (holding 24% of the total share)
 - 7) Export-Import Bank of Korea
 - Financed 80.8 million dollars with a concessional EDCF loan in credit assistance to the Lao government
 - 8) Krung Thai Bank, (Thai commercial bank)
 - Project financing
 - 9) Bank of Ayudhaya, (Thai bank)

- Project financing

10) Mitsubishi UFJ Financial Group

- Holding 76.8 percent share of Bank of Ayudhaya. Many in the management position are Japanese, including the current CEO of the bank

11) Export-Import Bank of Thailand

- Project financing

12) Xe Pian-Xe Namnoy Power Company (PNPC)

- Special-purpose entity in charge of Xe-Pian Xe-Namnoy Dam development

13) Electricity Generating Authority of Thailand (EGAT)

- Power Purchase Agreement (PPA) 90%

14) Electricité du Laos (EdL)

- Power Purchase Agreement (PPA) 10%

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I. Case summary

On July 23, 2018, one of the five auxiliary dams of the Xe Pian-Xe Namnoy Hydropower Dam in Attapeu province, the southeastern state of Laos, collapsed, causing five billion cubic meters of water to inundate 6 villages that left severe flood damages as far as Cambodian villages bordering Laos. Consequently, many local residents lost their lives or went missing, and more than 6 thousand people were displaced¹.

The official name of the collapsed dam is 'Saddle D.' SK Engineering & Construction, a Korean construction company, was responsible for the construction of Xe-Pian Xe-Namnoy dam. Xe-Pian Xe-Namnoy dam project was launched in 2013 by Xe Pian-Xe Namnoy Power Company (PNPC), a special-purpose corporation established by a joint venture with SK Engineering & Construction Korea Western Power Company, Ratchaburi Electricity Generating Holding of Thailand, and Laos Holding State Enterprise, a state-owned company. The largest shareholder of PNPC is SK Engineering & Construction, which holds 26% of the whole shares. Because Korea Western Power Company holds 25% of PNPC shares, Korean companies own 51% of the total share of PNPC².

The Xe-Pian Xe-Namnoy Hydropower project is a mega-project with an investment of 1 billion dollars and a construction cost of 780 billion won. In particular, the Export-Import Bank of Korea is closely linked to the project by financing 80.80 million dollars with a concessional EDCF loan in credit assistance to the Lao government³.

The construction of the dam was expected to produce 1,879 gigawatts of electricity annually. Ninety percent of the electricity produced was to be exported to Thailand⁴. This project has been promoted as part of Laos' 'Battery of ASEAN' policy, where the Lao government seeks to export electricity to neighboring Asian regions as the Lao government boosts its

¹ "Collapse of Laos dam constructed by SK E&C..." "Many died, hundreds missing", Yonhap News, 2018. 7. 24. <https://www.yna.co.kr/view/AKR20180724150353084?input=1195m>

² "Two months after the Laos dam collapse, the village has disappeared", sisain, 2018. 10. 16. <https://www.sisain.co.kr/?mod=news&act=articleView&idxno=32946>

³ Ministry of Strategy and Finance press release, 『First Approval of EDCF Aid in 2015』, 2015. 5. 19.

⁴ "Hundreds missing and several dead after huge dam collapse in Laos", July 24, 2018. https://www.washingtonpost.com/news/worldviews/wp/2018/07/24/a-huge-dam-in-laos-collapsed-washing-away-6000-homes/?noredirect=on&utm_term=.50a15a26afc2

‘hydropower dam project.’ The Lao government has been pushing for more than a dozen dam construction projects with foreign investors such as Thai, Korean and Chinese companies and planning to export generated electricity to neighboring countries. However, the problem is that the damages caused by the Lao government’s implementation of ‘Battery of ASEAN’ policy will be suffered by local residents, while the economic gains from these projects will go mostly to outsiders⁵.

II. Issues concerned

At the end of October 2018, Lao government, as it stops the search operation for the missing, made an official announcement that 43 people had been killed and 28 people had gone missing due to the Xe-Pian Xe-Namnoy dam disaster. However, many have raised questions on the credibility of the figures released by the Lao government, suspecting that the Lao government could have lowered the figures in order to continue promoting ‘Battery of ASEAN’ policy⁶.

UN Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect, Remedy’ Framework (UN Guiding Principles)⁷ account for the state’s duty to protect individual human rights infringements from corporations within its borders, and the corporate responsibility to refrain from infringing on other people’s human rights, while respecting human rights by remedying any negative impact on human rights it may find itself accountable for⁸. Concerning the dam collapse, it is safe to say that SK Engineering & Construction as a constructor and the government of Korea, where its headquarter is located, have failed to fulfill their responsibility or duty as explained in the UN Guiding Principles.

1. Corporate Responsibility to Respect Human Rights

⁵ "Laos dam collapse hits communities who already lost homes, livelihood", 25 July, 2018.
<https://www.reuters.com/article/us-laos-accident-landrights/laos-dam-collapse-hits-communities-who-already-lost-homes-livelihoods-idUSKBN1KF0OD>

⁶ "Two months after the Laos dam collapse, the village has disappeared", sisalN, 2018. 10. 16.
<https://www.sisain.co.kr/?mod=news&act=articleView&idxno=32946>

⁷ UN, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, (2011) UN Doc. HR/PUB/11/04.

⁸ UN Guiding Principles, Article 1, Article 11

The companies involved have not abided by their 'responsibility to respect human rights' as per the UN Guiding Principles.

(1) Inadequate response such as delayed evacuation

First and foremost, Guiding Principle 13 contains that business enterprises have the responsibility to avoid causing or contributing to an adverse impact on human rights through their own activities and to address such negative impact in case they occur. If it is established that business enterprises have caused or contributed to adverse impacts, they should take the legitimate steps to provide disaster relief or to cooperate in providing relief activities⁹. According to JRC(Joint Research Centre of European Commission) scientist's analysis, the most severely affected areas were hit 7 hours after the collapse took place¹⁰. According to the report submitted to Congress member Kyunghyup Kim by SK Engineering & Constructions at the government audit held in last October, SK Engineering & Construction had noticed 10.3cm subsidence in the dam on July 19, 2018, few days before the disaster, and had also received a report from PNPC of the cracks occurred on the upper part of Saddle D dam at 8:30pm on July 22, 2018, the day before the disaster. SK Engineering and Construction asserts that they had immediately contacted the local authorities on July 23, 2018, to evacuate villagers downstream. However, there is no sufficient information on the evacuation process implemented by SK Engineering & Construction¹¹. Further, they had not reported the damage to the provincial government until noon the next day¹².

Moreover, Article 17 of the UN Guiding Principle states that in order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. For the process of assessing impacts, Article 18-21 of the UN Guiding Principle includes that the business enterprise should take into consideration the nature and context of the operation and undertake meaningful consultation with potentially affected individuals as well as other relevant stakeholders. Yet, just the fact that there were people who had no knowledge of dam's

⁹ UN Guiding Principles, Article 22

¹⁰ "JRC analysis assists response to Laos dam collapse", EU Science Hub, 3 August, 2018.
<https://ec.europa.eu/jrc/en/news/jrc-analysis-assists-response-laos-dam-collapse>

¹¹ "Lao Dam Collapse Caused by Heavy Rains, Faulty Construction: Minister", Radio Free Asia, 26 July, 2018. <https://www.rfa.org/english/news/laos/minister-07262018170732.html>

¹² "A Day Before Laos Dam Failed, Builders Saw Trouble", The New York Times, 26 July, 2018.
<https://www.nytimes.com/2018/07/26/world/asia/laos-dam-collapse.html>

existence among the local residents who had suffered damage¹³ gives one reason to have strong doubt on whether there really has occurred a meaningful consultation.

(2) Substandard Construction

SK Engineering & Construction, as a constructor of the dam, is arguing that what has happened is ‘the overflow of the auxiliary dam due to heavy rainfall,’ while Korea Western Power Company gave an explanation that it was ‘a dam collapse due to ground subsidence.’ Meanwhile, on July 27, 2018, Khammany Inthirath, Minister of Energy and Mines, raised the possibility of substandard construction by saying in a media interview¹⁴ that “The auxiliary dam probably already had cracks on it, and water leaking through such cracks must have widened the cracks to eventually cause the dam to collapse.”

According to the environmental social impact assessment, “the precipitation record for the affected area is often reached as much as 4,000mm per year, and the record shows that there were 1,200mm of rainfall in July 2009.” In addition, <SBS Seeking Truth 그것이 알고 싶다> pointed out that, in 2017, when it rained 800mm, the water level did not rise more than two meters. SK Engineering & Construction has been claiming that the cause of the dam collapse disaster must be ‘the overflow due to heavy rainfall,’ insisting that there had been record-high rainfall over the few days preceding the dam disaster, before there were over 400mm of rainfall the day before. However, such claim is lacking in persuasiveness¹⁵.

Two of the supporting evidence for showing a strong possibility of substandard construction are the structure of the constructed dam and reduction of the construction period.

¹³ Interview with residents from damaged area, “Radu Phon, the truth behind the village disappeared – natural disaster or man-made disaster”, 『Seeking Truth: 그것이 알고 싶다』 Episode 1144, SBS, 2018. 11. 10.

¹⁴ “Lao Dam Collapse Caused by Heavy Rains, Faulty Construction: Minister”, Radio Free Asia, 26 July, 2018. <https://www.rfa.org/english/news/laos/minister-07262018170732.html>

¹⁵ Interview with Kerry Sieh (Earth Observatory of Singapore), “Radu Phon, the truth behind the village disappeared – natural disaster or man-made disaster”, 『Seeking Truth: 그것이 알고 싶다』 Episode 1144, SBS, 2018. 11. 10.

First of all, Saddle D dam's type is an earth fill dam with a dike constructed of soil and stone¹⁶. The earth fill dam is theoretically at risk of collapse when it reaches the full water level where water is filled to the full capacity¹⁷. Richard Meehan, a former dam constructor and former adjunct professor at Stanford University's School of Engineering, asserted that the dam collapse had occurred since the failure by internal erosion, which construction defects such as inappropriate foundation preparation, bad grouting, and high-risk design configurations had caused¹⁸. Also, in an interview with <Seeking Truth 그것이 알고 싶다>, he pointed out that even though old rocks in the tropical zone were very fragile, the dam was built with red dirt, like bauxite, which is very brittle¹⁹. In his report, it is found that naturally fragile basalt ridge line supported the collapsed dam, and rapidly increased water level had weakened the foundation of support, eventually causing the dam to collapse²⁰. Actually, Professor Kyungdu Oh mentioned in his interview with <Seeking Truth 그것이 알고 싶다> that a 'core,' is necessary for an earth fill dam to prevent water infiltration which may eventually cause internal erosion, but that such 'core' was not found in Saddle D²¹.

Korean experts have also raised the possibility of the piping phenomenon. Underground soils can often be eroded by flowing water if serious cavities, cracks in the rock, or other openings appear. This type of underground erosion creates an open path for water flow, which is called 'piping.' Prevention of piping phenomenon is a critical factor to be considered in designing a safe dam. Changguen Park, a civil engineering professor at Catholic Kwandong University, argued that Saddle D dam collapse showed a classic example of piping phenomenon²².

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- ¹⁶ "NGO Coalition Boycotts Prior Consultation Process For Proposed Lao Dam", Radio Free Asia, 24 August, 2018. <https://www.rfa.org/english/news/laos/ngo-coalition-boycotts-prior-consultation-process-08242018164442.html>.
- ¹⁷ "Laos fearing a glitch in 'Battery of Southeast Asia' policy", sisain, 2018. 10. 16. <https://www.sisain.co.kr/?mod=news&act=articleView&idxno=32922>
- ¹⁸ "'I Think All Those People Are Dead': Laos Dam Survivors Seek Word of Neighbors", The New York Times, 27 July, 2018. <https://www.nytimes.com/2018/07/27/world/asia/laos-dam-survivors.html>
- ¹⁹ Interview, "Radu Phon, the truth behind the village disappeared – natural disaster or man-made disaster", 『Seeking Truth: 그것이 알고 싶다』 Episode 1144, SBS, 2018. 11. 10.
- ²⁰ "New space data offer instant clues to cause of deadly Laos dam disaster", Blume Earthquake Engineering Center, Stanford University, 26 October, 2018.
- ²¹ Interview with Prof. Kyungdu Oh(Graduate School of Military Science, Dept. of Civil Engineering), "Radu Phon, the truth behind the village disappeared – natural disaster or man-made disaster", 『Seeking Truth: 그것이 알고 싶다』 Episode 1144, SBS, 2018. 11. 10.
- ²² Interview, "Radu Phon, the truth behind the village disappeared – natural disaster or man-made disaster", 『Seeking Truth: 그것이 알고 싶다』 Episode 1144, SBS, 2018. 11. 10.

Also, the height of the dam should be designed with all possibilities of various disasters in mind. Jaehyun Park, a civil and urban engineering professor at Inje University, pointed out that if the dam had been properly constructed, overflow should not have occurred²³. In case an overflow still occurs, the probability of dam construction being a substandard construction with not enough consideration given PMP (probable maximum precipitation) becomes much higher, which in turn necessitates SK Engineering & Construction to prove that the rainfall had been severe enough to exceed PMP²⁴.

(3) Suspicion on change of design and excessive shortening of the construction period by SK E&C possibly out of the pursuit of profit

At the 2018 government audit by Strategy and Finance Committee, congress member Kyunghyup Kim raised a suspicion that Xe-Pian Xe-Namnoy dam collapse was caused by imprudent change of design and excessive shortening of construction period by SK Engineering & Construction's pursuit of profit²⁵. Export-Import Bank of Korea could be seen to have essentially encouraged shortening of construction period by including a conditional provision of 4,800,000-dollar bonus for early soaking when EXIM closed a contract of 80.8 million dollars with a concessional EDCF loan in credit assistance to the Lao government.

According to the office of congress member Kyunghyup Kim, even though SK Engineering & Construction began the dam construction in November 2013, after the seven-month delay from its original construction schedule, the early soaking started on time to satisfy the conditional provision for a bonus payment. Not even that, the soaking period itself was also shortened from six months to four months, which raised a suspicion that the construction period was shortened in order to secure an early soaking bonus of 20 million dollars. Another suspicion raised is the change in dam design possibly to increase constructor profit. In the course of Laos dam construction, the height of auxiliary dams was decreased on average 6.5 meters when compared to the original design. In fact, the internal documents from SK Engineering & Construction show repeated mention of 'Implementation of V/E (value engineering) for securing an additional profit of 19 million dollars.' Such suspicion of SK

²³ Interview, "Radu Phon, the truth behind the village disappeared – natural disaster or man-made disaster", 『Seeking Truth: 그것이 알고 싶다』 Episode 1144, SBS, 2018. 11. 10.

²⁴ Radu Phon, the truth behind the village disappeared – natural disaster or man-made disaster", 『Seeking Truth: 그것이 알고 싶다』 Episode 1144, SBS, 2018. 11. 10.

²⁵ Press release <Laos dam disaster is a total man-made disaster born out of SK's greed and Park Government> Office of Congress member Kyunghyup Kim, 2018.10.15

Engineering & Construction incurring poor construction itself through deliberate shortening of the construction period and early soaking has been raised since right after the dam collapse. However, SK Engineering & Construction is not releasing the relevant materials that contain information on original design, actual design and construction process even to the office of congress member, insisting that those are ‘confidential documents.’ It should also be noted that some of the news reports that contained the story of SK Engineering & Construction’s efforts in ‘shortening of the construction period,’ or its success in ‘securing the early soaking bonus’ have been deleted.

2. State responsibility to respect human rights

The government of the Republic of Korea, as a member of the United Nations (UN), has a duty to comply with the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*. Moreover, Korean government, as one of the main investors for Xe-Pian Xe-Namnoy dam in Laos, is an actor directly concerned, who should carry out a thorough investigation on the Xe-Pian Xe-Namnoy dam disaster and take necessary and responsible measures.

Xe-Pian Xe-Namnoy construction in Laos is an Official Development Aid(ODA) project funded by taxpayers’ money to support the end of poverty and to implement humanitarianism. Also, this project was the very first Public-Private Partnership(PPP), where Economic Development Cooperation Fund(EDCF) was committed along with Korea Western Power Company, a state-owned company, and SK Engineering & Construction, a privately-owned company. As this is an ODA project, the Korean government has a duty to carry out thorough and responsible management. However, the Korean government is displaying a very irresponsible attitude in handling the disaster.

(1) Appropriateness in project selection process

According to the <The Republic of Korea’s Country Partnership Strategy for the Lao People’s Democratic Republic>, regarding cooperation in the energy sector, it provided that Laos enjoyed 91.48% of electricity supply rate as of 2015-2016, reaching the national development goal of supplying electricity to 90% of Lao people. However, it also stated that some areas are still disconnected from the electricity transmission network and power

generation capacity is unable to meet full national demand. Electricity is partly imported in border regions from neighboring countries such as Thailand, Vietnam and China to satisfy its need. As such, Korean government has set its strategic goal for support in the energy sector to be ‘improving quality of life and laying out foundation for higher income through increase in electricity supply rate²⁶. However, Xe-Pian Xe-Namnoy dam construction project did not suit the Korean government’s aim in formulating the strategy. Most of the electricity generated from Xe-Pian Xe-Namnoy dam was to be exported to Thailand, and the local residents were to benefit only insignificantly from the dam project. In fact, Lao government has been exporting most of the electricity generated through ‘Battery of ASEAN’ project to neighboring countries²⁷. Given such a situation, it is strongly doubt whether the business feasibility analysis done by the Korean government in deciding on Xe-Pian Xe-Namnoy dam project was proper, and whether the dam project served the project goal sought through the direction of support for each focus area.

This is not the only issue we are concerned about. The Korean government did not observe proper procedure when it decided to support the Xe-Pian Xe-Namnoy dam project. For the international development cooperation project proceeded by Korean government, 「Framework Act on International Development Cooperation」directs that the International Development Cooperation Committee under the Prime Minister’s Office reviews the project proposal. However, the Xe-Pian Xe-Namnoy Hydropower project was not included in 「2015 International Development Cooperation Comprehensive Implementation Plan」, and consequently, no budget was allocated for the project. As such, Ministry of Economic and Finance made internal decision to confirm four of credit support projects for developing countries in 2015 and went on to pay 58.1million dollars to Xe-Pian Xe-Namnoy dam project in December of the same year, which was done in a hurried manner and without taking proper steps to go through National Assembly’s deliberation on the budget.

(2) Commitment to thorough investigation and appropriateness of such fact-finding mission

²⁶ Relevant authorities of Korean government, 『Laos National Cooperation Strategy』 (2016. 12.) p. 23.
https://www.odakorea.go.kr/ODAPage_2012/T02/cps/pdf/CPS_Laos.pdf

²⁷ “Dam failure clouds Laos’ dream of becoming regional power force”, Nikkei Asian Review, 29 July, 2018.
<https://asia.nikkei.com/Economy/Dam-failure-clouds-Laos-dream-of-becoming-regional-power-force>

There are further doubts on whether the rainfall data²⁸, which were included in the disaster report provided by SK Engineering & Construction after the dam collapsed, adequately reflect what had happened in addition to the issues mentioned above pointed out in this petition. In order to carry out a fair investigation, it is necessary to have an independent fact-finding organization conduct professional and transparent, excluding any actors related to the dam collapse, such as constructor. However, the accident investigation board, which the Lao government has been taking the lead, has not released any relevant information, such as the progress of the investigation or how the investigation board was made up. Also, the fact that the investigation process is under way without any proper representation of local residents or the participation of civil society. The Korean government ought to make a demand on the Lao government for disclosure of information and guaranteed involvement of local residents in the investigation process. Moreover, the Korean government itself should clarify any and all suspicions surrounding the dam collapse disaster, while taking responsible measures to remedy the situation.

During the 2016 UN Working Group investigation, the Korean government was urged “to raise awareness and build capacity for civil servants and lawmakers on the obligations and responsibilities of the Government and business enterprises, including State-owned enterprises, to prevent and address adverse business-related human rights impact, in line with the Guiding Principles”, “to provide guidance on the steps that leading companies should take to ensure that human rights are respected throughout their activities”, “to provide guidance concerning companies’ overseas activities and regulate such activities” and “to underline the expectations in relevant policies that business enterprises must respect human rights throughout their operations and conduct human rights due diligence in relation to their domestic and international operations²⁹.” As one can see from the suggested recommendations, corporation-related human rights abuses have consistently existed in Korea, which makes it be one of the urgent tasks for Korea as a responsible member of the international community.

²⁸ “Radu Phon, the truth behind the village disappeared – natural disaster or man-made disaster”, 『Seeking Truth: 그것이 알고 싶다』 Episode 1144, SBS, 2018. 11. 10.; Provided by Office of congress member, Kyunghyup Kim of Democratic Party, SK Engineering & Construction, 『Laos disaster report』

²⁹ *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*, UN Doc. A/HRC/35/32/Add.1, 1 May, 2017. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/108/65/PDF/G1710865.pdf?OpenElement>

Prior to the 2016 recommendations, the Korean government has stated in its 2013 response to the UN inquiry on the unfair nature of the project carried out by POSCO in India that it was possible to apply domestic law to hold POSCO accountable for illegal acts committed in foreign territory³⁰. This indicates that the Korean government did not fulfill its duty to respect human rights even though it had realized its ability to penalize corporations for their inhumane actions committed overseas.

Korean government's attitude towards the Xe-Pian Xe-Namnoy dam disaster is not in accordance with the government stance as it was portrayed in its 2013 response to the UN or 2016 Recommendations by the UN Working Group. To accomplish speedy and accountable response to the Xe-Pian Xe-Namnoy dam disaster, Korean government should explain its position on the alleged suspicions raised over the dam project and should propose its plan for fact-finding mission, inquiry into criminal and civil liability, investigation strategy to assess damage, compensation plan as well as recovery and reconstruction plan based on the international human rights standard.

III. Conclusion

It is predicted that the Lao government will complete its investigation by January 2019. We strongly expect that a clear and fair investigation should be conducted to address adverse human rights impacts related to the dam failure. *As 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*³¹, business enterprises should comply with the responsibility to respect human rights by adopting a human rights policy, and carry out human rights due diligence to identify, prevent, mitigate, and account for how adverse human rights impact is addressed. Also, business enterprises should work closely with civil society to listen carefully to the issues concerned and seek to find information on the human rights risks. Furthermore, it is crucial to create an environment where victims can speak openly about the damage suffered and where they can seek and receive appropriate relief measures. If SK E&C is

³⁰ *The Government of the Republic of Korea's Response to the Communication from Special Procedures of the Human Rights Council on 11 June 2013, concerning the POSCO project in India*, 14 August, 2013. <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gld=29949>

³¹ *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*, UN Doc. A/HRC/35/32/Add.1, 1 May, 2017. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/108/65/PDF/G1710865.pdf?OpenElement>

found to be liable for the dam collapse, the company should admit its responsibility and take steps to implement remedial actions commensurate with their share of liability. The Korean government should not only implement recovery plan but also do its best to take an active part in fair and transparent fact-finding inquiry as well as taking appropriate measures to the person in charge and preparing and implementing a compensation plan for the victims from the affected area.