



The Xe Pian-Xe Namnoy Dam Disaster: Situation Update Two Years On

Devastation wrought by the dam collapse. Mekong Watch, December 2018.

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Introduction

On 23 July 2018, an auxiliary dam of the Xe Pian-Xe Namnoy Hydropower Project in Laos collapsed, unleashing a wall of water that left 49 people dead and 22 missing. The collapse displaced thousands of people, flooding homes and villages. Over 7,000 people in 19 villages in Attapeu province experienced losses and long-term damage to houses, property, and farmlands. The floodwaters extended far downstream and across the border into Cambodia, affecting an estimated 15,000 people, damaging farms and destroying livestock and property.¹ The devastating incident received global attention and an outpouring of donations and humanitarian aid.

¹ Inclusive Development International and International Rivers, *Reckless Endangerment: Assessing Responsibility for the Xe Pian-Xe Namnoy Dam Collapse*, July 2019.

www.internationalrivers.org/sites/default/files/attached-files/reckless_endangerment_final_for_web.pdf

In the aftermath of the dam collapse, important questions were raised regarding the causes of the disaster and the liability of the project's developers and investors. The incident brought to the fore the risks and inequities in the government policy to promote hydropower development across the country despite extensive evidence of harm to people and the environment.

Two years on, construction is complete and the project is operational, exporting electricity generated to Thailand. Meanwhile, thousands of people who lost family members, homes, land and livelihoods in the collapse remain in difficult conditions and without answers or accountability from those responsible for the disaster. Displaced families continue to reside in temporary housing and face food and water shortages. Many are yet to receive full compensation for the losses and harm suffered. In Cambodia, there has been no official recognition of the damage caused by the disaster or compensation for those affected.

Information regarding the causes of the Xe Pian-Xe Namnoy disaster remains opaque as do the lines of accountability. Following the incident, the Lao government commissioned an Independent Expert Panel to investigate the cause of the collapse. The panel's findings pointed to construction flaws.² The independent investigation report was rejected by the project developers. However, they have yet to offer any other credible or evidence-based explanation. The full report of the investigation has not been published.

Despite the extensive damage caused by the disaster, the project's construction schedule experienced little delay. While the failed saddle dam 'D' was replaced, the other saddle dams, which are likely to face similar risks of instability, are not known to have been replaced or reinforced as of mid 2020. No information has been publicly disclosed by the power company or Lao authorities on steps taken to ensure the overall safety and integrity of the structure. The project's current operations -- with the causes of the collapse unaddressed -- raise serious concerns over the risk of further failure.

The project developers and investors have failed to meaningfully respond to repeated requests for information from civil society organizations and the United Nations' Office of the High Commissioner for Human Rights (OHCHR). Little information is publicly

available regarding the project's insurance payout, expenditure of donations and relief funds, determination and allocation of compensation and provision of land and new housing. Transparency on these issues is essential in order to ensure that affected people are able to fully recuperate losses and harms and secure dignified, self-reliant livelihoods, in accordance with their right to remedy.

The Situation for Survivors

Displaced families remain in four temporary camps while they await the construction of new villages and homes. In these transitional housing areas, where people have now lived for close to two years, cramped, overcrowded and uncomfortable conditions are the norm.

According to recent reports, 111 permanent housing structures are now under construction, with 'donated' materials provided by United Nations agencies and support from Thai state and Japanese aid agencies.³ A construction contract for building the remaining houses -- approximately 700 within three new consolidated relocation sites -- is under negotiation between the Lao government and SK Engineering and Construction (SKEC), one of the project's lead developers. While the timeline is uncertain, the new housing and infrastructure is not expected to be completed before 2022.

While there have been no reported cases of serious illness, available information indicates that water shortages are chronic in the displacement camps, causing persistent sanitation challenges. Community members also report heightened social tensions within and between households, fuelled by the difficult conditions, stress, and uncertainty in their capacity to sustain economic and social well-being in the years ahead.

Livelihoods and food security remain a challenge. After a long delay, some families have received assistance to clear damaged farmland of mud and debris, so that it is cultivable. Authorities have announced replacement land allotments for families residing in the temporary camps, but clearing and cultivation of these allotments is not yet permitted. Affected families therefore remain largely reliant

² Vientiane Times, 'Investigators: Dam collapse not a "force majeure" event', 29 May 2019. <www.vientianetimes.org.la/freeContent/FreeContent_Investigators.php>

³ PNPC, Environment and Social Progress in Sanamxay: Overall Summary Report, 12 June 2020.



Homes and belongings of families destroyed in the dam collapse. Mekong Watch, December 2018.

on subsistence allowances paid by authorities, or donor-provided humanitarian relief.⁴ Payment of the allowances, consisting of 250,000 kip (approx 28 USD) and 20 kg of rice per person each month, has been inconsistent, with families not receiving them every month, and reporting uncertainty over when to expect them. Community members have also reported that the allowance is inadequate for survival and that the rice supplied is often substandard, better suited as livestock feed.

Community members have not been included in meaningful consultations or planning processes to develop the new housing structures and villages. It is not clear whether the new homes, infrastructure and land allotments will be adequate to enable the Lao and ethnic minority / indigenous peoples affected by the project to live dignified and self-reliant lives. Communities and development agencies have raised questions about whether the available water sources and land will be sufficient to meet people's needs. Meanwhile, the track record of the project operator, Xe Pian-Xe Namnoy Power Company (PNPC), and its shareholders, remains tarnished by the record of

the project's initial resettlement site on the Bolaven Plateau, where people have consistently faced dire hunger, water insecurity, lack of sufficient housing and electricity, and land impoverishment.

Early project plans proposed the establishment of a project-level grievance mechanism, in compliance with international standards, including Asian Development Bank (ADB) and International Finance Corporation (IFC) safeguard policies.⁵ This has not been implemented. Instead, PNPC and its shareholders recommend that project-affected people submit concerns to government authorities, using the 'traditional' state-based structures already in place.⁶ There is currently no process to enable people to have their claims and concerns resolved through an independent channel offering protection from the risk of reprisals. This means that the project lacks a clear accountability process, and places people in a position in which they could face punitive action for raising complaints. Further, there is no mechanism to support the Cambodian villagers downstream along the Sekong River who incurred losses and harm when the saddle dam collapsed. They are left without any means of recourse.

⁴ According to government statements, the allowances will continue from September 2019 to December 2021. Vientiane Times, 'Attapeu flood victims getting monthly allowance of 250,000 kip', 11 November 2019. <www.vientianetimes.org.la/freeContent/FreeContent_Attapeu_246.php?fbclid=IwAR2BFkn421_sTSpA1w-rwMJ2Ux88G4M-0hszZ6rpYGqeuGHBLBoiy0yxUepw>

⁵ PNPC's 'Resettlement and Ethnic Peoples Plan' (Sept 2013) specifically references adherence to IFC performance standards and provides grounds for the development of a grievance mechanism: <www.pnpc Laos.com/images/PDF/EnvSocialDoc/REPDP/Chapter1/REPDP_Chapter_1_Introduction_Final_Sept_13.pdf>

⁶ See: PNPC Response to UN Communication, 12 June 2020, p. 8: <<http://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gld=35334>>



Thitipan Pattanamongkok/ Sarakadee Magazine, December 2018.

Dam Safety: Unresolved Questions

Following the dam collapse, and during the government-sponsored investigation, development of the Xe Pian-Xe Namnoy project continued. Rather than putting construction and operations on hold and suspending the project to ensure the safety of people living in the surrounding areas, the project developers sought to fulfil contractual obligations to operationalise the project and export electricity to Thailand by the first quarter of 2020.

The integrity and structure of the Xe Pian-Xe Namnoy project remains a serious concern. Despite earlier reports that the other saddle dams -- alongside the failed saddle dam 'D' -- would be replaced with concrete, the project developers have not disclosed any information regarding structural changes or material reinforcements made to ensure the integrity of the project. A transparent assessment is required to ascertain potential ongoing risks posed by the soil conditions and foundations at the project site.⁷

When the saddle dam collapsed in 2018, people reported receiving little or no warning before floodwaters inundated homes and villages. Following the tragedy, there is still no updated information regarding steps taken to ensure an effective early warning system for populations at risk of further failure in Laos or further downstream in Cambodia, and no clear public communications to delineate lines of accountability.

Close to 100 families continue to reside in areas around saddle dams E and F and the Xe Namnoy Reservoir. Not only would they face severe consequences if the structure were to crack and breach, but there has been no assessment process or information regarding potential sites for resettlement and self-reliant livelihoods, if these villages are forced to relocate due to project impacts or another dam failure.

⁷ Richard Meehan & Douglas Hamilton, 'Xe Pian-Xe Namnoy: Land stability and dam failure on the Bolaven Plateau, Laos', AGU The Landslide Blog, 11 September 2019. <<https://blogs.agu.org/landslideblog/2019/09/11/xo-pian-xe-namnoy/>>

Lack of Transparency and Accountability

The Xe Pian-Xe Namnoy dam collapse and its aftermath have been characterized by a lack of information transparency and unwillingness on the part of project stakeholders to answer questions or engage with those seeking answers and accountability. These issues and concerns were documented in the mission report of the UN Special Rapporteur on Human Rights and Extreme Poverty following his visit to Laos in March 2019.⁸

In April 2020, a group of UN experts wrote to the governments of Laos, Korea and Thailand and relevant business stakeholders in the project urging them to address ongoing human rights violations experienced by the survivors of the dam collapse.⁹ As of July 2020, limited replies have been received from the actors involved in the project.¹⁰

In response to inquiries enclosed in the UN experts' letter, on 12 June 2020 PNPC provided a reply outlining the funds that they are in the process of providing to the Lao government and survivors, totalling US\$97.5 million. They reported that funds have been disbursed as relief and compensation to survivors and unspecified business operations that incurred lost assets, and as payments to several unidentified business contractors

and government departments to repair and rebuild infrastructure and clear land. Incorporated into the US\$97.5 million total is a reported US\$50 million liability insurance payout.

In November 2019 the Lao Minister of Mines and Energy reported to the National Assembly on the receipt of the insurance funds in a state bank account,¹¹ but little details are available regarding disbursement. In addition to compensation, extensive international assistance in the form of donations and humanitarian relief has been provided to the Lao government to support the victims of the dam collapse. These funds are managed by the National Disaster Management Committee, but limited information is publicly available as to how the funds are expended.

Both PNPC and people living in the temporary camps have reported that compensation for lost assets is being provided on a per household basis, allocated and calculated by government and company personnel through undertaking interviews with each family. However, ongoing negotiations over the timelines for disbursing the full amounts of compensation has left survivors, including local village leaders, in the dark about when and if promised funds will materialize.¹²

⁸ Philip Alston, UN Special Rapporteur on extreme poverty and human rights, Visit to the Lao People's Democratic Republic, Human Rights Council 41st session, 20 June 2019. A/HRC/41/39/Add.2. <http://chrj.org/wp-content/uploads/2019/06/A_HRC_41_39_Add.2.pdf>

⁹ This included letters to the project company (PNPC), its shareholders SKEC, Ratch Group, Korean Western Power Company (KOWEPO) and the Lao State Holding Enterprise (LHSE). They also sent letters to the Thai and Korean banks that helped finance the estimated US\$1.02 billion project, including Krung Thai Bank, the Bank of Ayudhya, Thanachart Bank, along with the Export-Import Banks of Thailand and Korea: United Nations Office of the High Commissioner for Human Rights (OHCHR), Lao dam disaster: UN rights experts call for justice two years on, 29 April 2020. <www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25839&LangID=E>

¹⁰ Only PNPC, Krung Thai Bank, and the Lao and Korean governments have issued replies, which have been published: PNPC Response to UN Communication, 12 June 2020: <<http://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gld=35334>>; Krung Thai Bank response to UN Communication, 16 June 2020: <<http://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gld=35348>>; Lao PDR Response to UN Communication, 16 July 2020: <<http://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gld=35426>>; Republic of Korea Response to UN Communication, 6 July 2020 <<http://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gld=35415>>.

¹¹ Land Issues Working Group - YouTube, Minister of Energy and Mines reported about XPXN dam collapse at NA 2019', 21 November 2019. <www.youtube.com/watch?v=NW7o7LNVKlg&feature=youtu.be>

¹² Radio Free Asia, 'Survivors of Laos' Worst Dam Disaster Still Struggling Two Years Later', 22 July 2020. <www.rfa.org/english/news/laos/xe-pian-xe-namnoi-two-year-07222020211103.html>. See also: Mekong Watch, Fact-sheet: Xe Pian-Xe Namnoy Hydropower Project, March 2020 <<http://www.mekongwatch.org/PDF/FS-XPXNN.pdf>>.



Rows of transitional homes where displaced communities continue to reside. Mekong Watch, December 2018.

Although PNPC and Lao authorities have provided general explanations regarding the allocation of close to US\$100 million, there is no publicly available, disaggregated information accounting for how expenditures are being disbursed and tracked, or whether they will be subject to an independent audit. There is no process to support claims for reparations in accordance with people's right to remedy. The steps taken to date lack clear, time-bound commitments to ensure long-term livelihoods recovery and an open and transparent process for land and watershed restoration to rehabilitate areas that are critical to social, cultural and economic well-being.

Civil society organizations monitoring the dam collapse have repeatedly sought to engage the business stakeholders involved in the project, including the project's developers, investors, financiers and insurers,¹³ seeking responses to letters, opportunities to engage in dialogue, and submitting concerns in person to headquarter offices. Very limited response has been received to date.¹⁴

The Korean Civil Society Taskforce Team for the Xe Pian-Xe Namnoy Dam Collapse has also attempted to ensure the accountability of the dam's construction contractor, SK Engineering and Construction, and operator, Korea Western Power (KOWEPO). In June 2019, the Taskforce submitted a complaint to the Korean OECD National Contact Point (NCP), an oversight body that sits within the Korean government.¹⁵ The complaint alleges violations of the OECD Guidelines on Multinational Enterprises¹⁶ with respect to human rights, environmental protection and disclosure, and was accepted by the NCP in October 2019. However, neither SK E&C nor KOWEPO cooperated in resolving the complaint. As July 23rd 2020, the Korean NCP issued formal notification that mediation would be discontinued due to the companies' refusal to engage in the process.

¹³ The details of business stakeholders and their involvement in the project were outlined in the report by Inclusive Development International and International Rivers, *Reckless Endangerment: Assessing Responsibility for the Xe Pian-Xe Namnoy Dam Collapse*, July 2019.

<www.internationalrivers.org/sites/default/files/attached-files/reckless_endangerment_final_for_web.pdf>

¹⁴ Business and Human Rights Resource Center, 'Laos: Groups demand accountability from companies as well as insurers for collapse of Xe Pian-Xe Namnoy dam'.

<www.business-humanrights.org/en/laos-groups-demand-accountability-from-companies-as-well-as-insurers-for-collapse-of-xe-pian-xe-namnoy-dam>.

¹⁵ Korean National Contact Point of the OECD Guidelines on Multinational Enterprises, *Cases: Korean Civil Society Task Force Team v. SK E & C etc.*

<www.ncp.or.kr/servlet/kcab_ency/info/4001?pageno=1&seq=32&SEARCHTYPE=TITLE&SEARCHTEXT=>>

¹⁶ OECD Watch, *South Korean Civil Society Task Force vs. SK E&C.*

<http://complaints.oecdwatch.org/cases/Case_551>

Recommendations

The project developers and business actors involved in the Xe Pian-Xe-Namnoy project, together with the Government of Laos, and investor home state governments of Korea and Thailand, must immediately ensure that:

- Clear and detailed information is publicly disclosed in Lao, English and Korean languages on reinforcement measures to ensure the long-term stability of each saddle dam, supported by evidence-based information regarding the integrity of the entire complex. Specific and timely communication systems must be in place for alerting staff, state/provincial institutions and communities, in Laos and Cambodia, in case of any future structural failures, with a clear delineation of lines of responsibility. Until such time, dam operations should be suspended.
- An internationally credible claims process is established for families in both Laos and Cambodia affected by the failure of saddle dam 'D' to allow recovery of the full worth of reported losses, free of the threat of reprisals, in line with the right to remedy as outlined in the UN Guiding Principles on Business and Human Rights (UNGPs) and other international conventions.
- Credible, verifiable data is publicly disclosed -- and regularly updated -- to account for funds allocated and disbursed to each affected village. This should include immediate relief support, construction of temporary and permanent housing, infrastructure, resolution of housing, land, water and food supply problems, and compensation offered to recuperate other household assets and lost livelihoods. Disclosures should include compensation provided to affected businesses in the area, payments to specific businesses and state enterprises associated with resettlement and recovery efforts, and funds for watershed and land rehabilitation.
- An independent third-party negotiation team is engaged to address the concerns of the group of families whose subsistence relies on the land near Saddle Dams E and F, by the Xe Namnoy reservoir in Paksong District, Champasak Province, to ensure, at a minimum, community access to land and resources in the surrounding area and recognition of their customary rights, as indigenous peoples, over sacred areas of forest and burial grounds.



Thitipan Pattanamongkok/
Sarakadee Magazine,
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