



For the review of the Republic of Korea's 4th State Report on the International Covenant On Economic, Social and Cultural Rights (ICESCR)

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Corporate for All

Committee of Labor at MINBYUN-Lawyers for a Democratic Society

Friends of The Earth Korea/ Korea Federation for Environmental Movement

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1. Introduction and Context

An unprecedented political scandal of the Park Geun-hye government's collusion with big conglomerates (Chaebol) first revealed in October 2016 led more than 10 million people (in the cumulative number) to take to the street. People's protest later named "candlelight revolution" brought the impeachment of President Park Geun-hye on March 10, 2017 and the new Moon Jae-in government took office on May 9, 2017.

The CESCR issued the List of issues in relation to the fourth periodic report of the Republic of Korea (hereafter the LOI) on March 3, 2017, shortly before the impeachment. The UN Working Group on Business and Human Rights which made its official country visit to Korea in May 2016 before the scandal, submitted its country visit report to the UN Human Rights Council on May 1, 2017. The newly elected president Moon Jae-in took part in the G20 Summit in July 2017, which issued G20 Leaders' Declaration encompassing significant comments on "Sustainable Global Supply Chains¹".

The Moon Jae-in government presented itself as a product of candlelight revolution for economic justice. Therefore, Korean NGOs had high expectations for the new government to recognize the international community's heightened demands for business and human rights and take an improved position to the CESCR review this time. However, it is regretful to find no significant changes in the statements by the Moon administration on the UN WGBHR's report and the CESCR LOI.

This NGO report is to present additional information regarding the Korean government's reply to the CESCR LOI, in particular on business and human rights issues.

In its reply to the LOI, the Korean government stated as follows:

14. Appropriation of land is permitted exclusively for public-interest operations, for which the public need is recognized, and not for commercial operations. It is mandated that the opinions of the Central Land Appropriation Committee and landowners are heard before the right to acquire land is granted so as to strictly verify the public nature of the proposed operation and to ensure procedural fairness. It is also obligated that such a public-interest operation seeking to appropriate land must have its project operator engage in a good-faith consultation to specify compensation obligations and that the land, etc. may be expropriated or used only when an agreement is not reached among the relevant parties.

15. A national contact point (NCP) was established within the Ministry of Trade, Industry and Energy in December 2000 and started operation in May 2001. It is committed to a fair implementation of the OECD Guidelines for Multinational Enterprises, and encourages multinational companies, through responsible business management, to follow ethical standard for respect for human rights and compliance with regulations related to labour, environments, and consumer protection and, thereby, to contribute to economic and social development and protection of environment. Upon the NHRCK's recommendation regarding the composition of the members, the NCP was restructured several times to have representatives in the public and private sectors, Cooperate Social Responsibility experts, and labour and

¹ https://www.g20.org/Content/EN/_Anlagen/G20/G20-leaders-declaration.pdf?__blob=publicationFile&v=11

arbitration experts. In March 2017, the Government applied for OECD peer-review, which is expected to take place in 2019.

2. Information relevant to due diligence

It seems that the government misconstrued the intention of the CESCR. While the CESCR requested the Korean government to provide information on measures to ‘apply the principle of “due diligence” throughout their operations, including when acting abroad, in particular in the extractives sector and commercial operations involving the appropriation of land’, the government only explained about the process of land appropriation. In fact, there is no law or regulation for mandatory implementation of human rights impact assessment in Korea. Therefore, human rights impact assessment is not being conducted not only for domestic projects but also for overseas projects including the Korean government-led ODA projects. Moreover, human rights related factors are not considered in ODA projects.

The Export-Import Bank of Korea (Eximbank) is an executor of the Korea Economic Development Cooperation Fund (EDCF) which manages projects undertaken with overseas assistance loans.

As described in the report of the UN WG on Business & Human Rights², Eximbank announced its EDCF Safeguard Policy in 2016. There had been no consultation with civil societies in the drafting process of safeguard policy. The EDCF Safeguard Policy is limited to environmental and social risks, with the aim of ensuring the environmental and social sustainability of EDCF funded projects³. The policy does not meaningfully consider the need to protect and promote human rights, and as a result Eximbank operates widely and without accountability for the human rights impacts of its work⁴.

When the government does not conduct human rights impact assessment, there is no incentive for business enterprises to do so. The incentive to implement human rights impact assessment for overseas extractives projects is of course none. Consequently, no case where human rights impact assessment was implemented has been reported up to now. For special projects operated in Korea, environmental impact assessment is required. However, civil society organizations have strongly criticized for the relevant provisions’ failing to meet international standards and the poor performance if conducted. The conflicts surrounding the construction of high-voltage power transmission towers in Miryang⁵ clearly demonstrated the issues. A number of high-voltage power transmission towers had been constructed with the aim of supplying power from a newly built nuclear power plant to the metropolitan area. Residents in the affected communities had protested against the project for more than 10 years. During the process, one resident burned himself to death in protest. Despite this tragedy, the Korea Electric Power Corporation (KEPCO) pushed the project, insisting it passed environmental impact assessment including a public hearing to collect the consent of affected communities. In fact, only about 120 out of more than 20,000 residents participated in the public hearing. The majority of

² 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 (A/HRC/35/32/Add.1) para. 36.

³ Korea Eximbank, EDCF Safeguard Policy 2016.

⁴ See the NGO report submitted by ISHR-KTNC Watch before the LOI for cases where due diligence was not applied.

⁵ Report of the Special Rapporteur on the situation of human rights defenders on her mission to the Republic of Korea (A/HRC/25/55/Add.1) paras. 75-78.

affected community members were not aware of the public hearing while the participants did not fully understand for what the public hearing was held. This shows the public corporation KEPCO did not take the process of collecting opinions of affected communities seriously, but conducted it only to meet environmental impact assessment requirement.

As Korean companies without any experience of applying due diligence in their operations have entered overseas extractive projects, several cases have been already under the international criticisms for their involvement in human rights abuses⁶.

The Overseas Resources Development Business Act⁷ stipulates that the government should provide subsidies and financing services upon business' submitting overseas resources development plan and supervise the project. However, the Act has no provision on due diligence including human rights impact assessment. Starting from overseas resources development projects with high risk of human rights abuses, the government should have the application of due diligence mandatory for governmental subsidies and financing services.

3. Information relevant to National Contact Point

Up to date, more than 20 cases⁸ have been submitted to the Korean NCP. Only two cases –those of Hydix and Asahi Glass –passed the initial assessment in 2016. In these cases, the mediation process failed to facilitate an agreement between the parties, and so no remedy was made available for victims.

The biggest drawback of the Korean NCP is that the government has not fully accepted and implemented recommendations by the UN, the National Human Rights Commission of Korea (hereafter the NHRCK), and civil society.

Under the current structure, there is no room for the engagement of trade unions or civil society organizations. The UN WGBHR in its country visit report stated that “the composition and the location of the national contact point need to retain the confidence of all stakeholders, including civil society and trade unions⁹”, and recommended to “increase the independence and visibility of the national contact point as well as its human and financial resources; expand its scope to give it a clearer and more ambitious mandate¹⁰”.

As a response to the UN WGBHR's report, the Korean government stated that “to reflect various opinions of multi-stakeholders, the Korean NCP has reorganized its committee to include the Ministry of Environment (ME) and the Ministry of Employment and Labour (MOEL) as stated in the report. Furthermore, in February 2017 we appointed additional experts in the field of labour relations and

⁶ One of the most notorious case is POSCO-India project. See the joint report by ISHR and KTNC Watch submitted to the CESCR before the LOI for more details.

⁷ http://elaw.klri.re.kr/kor_service/lawView.do?hseq=39447&lang=ENG

⁸ The Korean NCP does not provide the exact number of specific instances received and processed.

⁹ 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 (A/HRC/35/32/Add.1) para. 54.

¹⁰ *Ibid.*, para. 76.

arbitration in an effort to better accommodate the views of multi-stakeholders¹¹”.

It is highly doubtful whether the “multi-stakeholders” referred by the government include trade unions and civil society. There was neither consultation with nor notification to trade unions and civil society organizations in appointing the alleged “experts in the field of labour relations and arbitration”. Korean civil society including the KTNC Watch found out the appointment of these experts only after the NCP secretariat informed a member of the KTNC Watch network in private in April 2017. The Korean NCP has never made the information on its committee members to public even after its official website¹² was launched in January 2014.

Professor Lee Sang-hee, the alleged labour law expert appointed by the government in February 2017 upon the recommendation of the NHRCK is not known to trade unions. Professor Lee joined the labour committee of the then ruling Saenuri Party (the party of impeached Park Geun-hye, it is later renamed as the Liberty Korea Party) in August 2012¹³ and has been in favor of businesses rather than trade unions in many issues. For example, he advocates for facilitating irregular workers and dispatched workers system while opposing the introduction of labour directors by the Seoul Metropolitan City government. If Professor Lee was indeed appointed “in an effort to better accommodate the views of multi-stakeholders” as claimed by the government, it can be interpreted that trade unions and civil society are not included in the multi-stakeholders.

The Korean NCP is unique in emphasizing the role of “arbitration”. It is difficult to understand why the Korean NCP commissioned its secretariat to the Korean Commercial Arbitration Board (hereafter the KCAB). The KCAB is a private organization specialized in providing arbitration for commercial disputes. The implementation of the OECD Guidelines for Multinational Enterprises is the state obligation. There is no other NCP which has its secretariat in a private organization. The official website of the Korean NCP is operated by the KCAB website. It is likely that anyone who has no understanding of the OECD Guidelines misinterprets that the KCAB is the Korean NCP.

While the Procedural Guidance of the OECD Guidelines stipulates that NCPs offer and facilitate access to conciliation or mediation¹⁴, it is not the core mandate of NCPs. Instead, NCPs’ main mandate is explaining why an NCP had chosen a conciliation or mediation process and providing recommendations based on the Guidelines when a mediation or conciliation process failed to reach an agreement. The Korean NCP did not fulfil its mandate in the two cases of mediation despite its strong emphasis on arbitration.

In part, this is due to problems in the mediation process and a lack of political will on the part of the NCP. For example, in the Hydys case, the company refused to take part in the mediation by the NCP because lawyers working for Korean Metal Workers’ Union were included as counterparts in the mediation. The lawyers were in fact fully eligible as participants, because they were one of the

¹¹ 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: comments by the State (A/HRC/35/32/Add.3) para. 14.

¹² http://www.kcab.or.kr/servlet/kcab_encp/info/2100

¹³ <http://www.labortoday.co.kr/news/articleView.html?idxno=112915>

¹⁴ “d) offer, and with the agreement of the parties involved, facilitate access to consensual and non-adversarial means, such as conciliation or mediation, to assist the parties in dealing with the issues”, OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES 2011 EDITION © OECD 2011, 73p.

complainants of the case. However, instead of taking any efforts to reconcile the dispute, the Korean NCP closed the case, simply saying the two parties failed to reach an agreement.

Given the situation, the Korean government's appointment of an arbitration expert not a due diligence expert for the NCP raises question on whether the government intends to make the NCP an arbitration agency.

The recent remarks by the public officer in charge of the NCP increased the suspicion. On July 28, 2017, the Korean government held a meeting with civil society representatives in preparation of the upcoming UPR review. Deputy director Jo Young-won of Overseas Investment Division, the Ministry of Trade, Industry & Energy who is in charge of the Korean NCP participated in the meeting and on the question about the NCP, responded as follows: "Remedies should be provided by business enterprises. The role of the NCP is limited to arranging meetings between parties. Identifying violations of the OECD Guidelines is not its mandate. I don't understand why labour and civil society organizations keep demanding participation in the NCP when they are already engaged with the NCP as complainants. I don't understand to which extent they request to participate in the NCP." He continued to say that "the Korean NCP is performing well now. There is no problem to be improved before the peer review scheduled in 2019."

As noted above, the new Korean government has not shown any improved approach in preparing the CESCR and UPR review, at least in terms of its position to the NCP, even after the UN WGBHR clearly recommended the reform of the NCP. The Korean government only repeats the fact that it applied for a peer review as its effort for change. Strong recommendations from the CESCR should be issued in order to motivate the government.

4. Suggested Recommendation

- **The Korean government should accept the UN Working Group on Business and Human Rights' recommendations and establish National Action Plans on Business and Human Rights accordingly.**
- **The Korean government should urge the Eximbank to implement safeguards against adverse human rights impact in relation to the projects it funds and consult with civil society about the safeguards. Such safeguards should be based on international human rights standards such as the Guiding Principles, ILO labour standards and the Convention on the Rights of the Child, and take into account the Sustainable Development Goals and the OECD Guidelines for Multinational Enterprises.**
- **The Korean government should reform the NCP in a way to fully guarantee the engagement of multi-stakeholders before the 2019 peer review.**