



**Submission to 60th session of the Pre-sessional Working Group of the
Committee on Economic, Social and Cultural Rights**

List of Issues for the Republic of Korea

This is a joint submission by the International Service for Human Rights and KTNC Watch, comprised of the following organisations:

Advocates for Public Interest Law
Corporate for All
Committee of Labor at MINBYUN-Lawyers for a Democratic Society
Gonggam Human Rights Law Foundation
Korean Confederation of Trade Unions
Korean House for International Solidarity
Korean Lawyers for Public Interest and Human Rights

Introduction and Context

The deepening public distrust of the governance and economic systems in the Republic of Korea (ROK) is both a symptom and a result of government failures to meet its obligations in respect of the Covenant. This is particularly true with regard to human rights violations and abuses linked to business enterprises, both within the ROK and abroad.

In the ROK, family-owned businesses called *chaebol* exert undue influence over not only their companies but also the entire economy. Nevertheless, both those *chaebols* and their controlling families do not take responsibility for any wrongdoing. They have enjoyed near impunity as official discourse privileges their contributions to national economic growth. In general, these contributions are valued significantly more than the need to act to fulfil business responsibility to human rights.

Economic justice has been a big issue in Korea for years and the recent corruption scandal which ensnared many high-profile figures including President Park Geun-hye and Korea's largest conglomerates such as Samsung, Hyundai, and Lotte made the public get to the streets every weekend demanding fundamental economic reform among deepening income inequality.

The Committee has recognized in prior Concluding Observations, and broadly in its draft General Comment on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities, that the scope of State obligations to respect, protect, and fulfil economic, social and cultural (ESC) rights extends to both domestic and overseas activities of business entities.¹

This submission urges the Committee to consider, in developing the List of Issues to be transmitted to the ROK government (ROKG) ahead of its 4th periodic review at the 62nd session, the specific actions that the government could take to improve its compliance with the Covenant in the areas of:

- Occupational safety and health
- Access to information and access to remedy
- Freedom of association and the right to form and join trade unions
- Protection of human rights defenders and the creation of an enabling environment for their work
- Prevention of and remedy for adverse human rights impacts of Korean companies operating overseas

Information relevant to General Provisions

In its 4th periodic report to the Committee, the ROKG claims that it has increased overseas development assistance to 2.26 trillion won in 2014, of which 36.7 percent went to loans (para. 12). However, these loans do not include effective human rights safeguards. 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. Eximbank announced its EDCF Safeguard Policy in 2016. However, the EDCF Safeguard Policy is limited to environmental and social risks, with the aim of ensuring the environmental and social sustainability of EDCF funded projects.²

¹ CESCR, General Comment on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities (E/C.12/60/R.1) para. 12.

² Korea Eximbank, EDCF Safeguard Policy 2016.

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 work.

One important example is the the Jalaur River Multipurpose Project in the Philippines. According to the ROKG, the Jalaur River Multipurpose Project (Stage II) is the first EDCF project in the Philippines and the largest ever undertaken by EDCF (USD 207.9 million).³ It was launched following the signing in 2012 of a Memorandum of Understanding between the governments of South Korea and the Philippines for the construction of new dams and expansion of irrigation systems. The project is expected to require the displacement of three communities whose lands will be submerged, while approximately 17,000 members of 16 indigenous communities will be directly and indirectly affected.⁴

However, there has been strong resistance from local communities in Iloilo Province including the indigenous people of Tumandok. According to a local NGO Jalaur River for the People's Movement, the project contractors and the governments involved have failed to hold consultations with those affected people. They also claim that the involuntary resettlement already began, without either adequate compensation or a clear resettlement plan. Moreover the construction of dam will damage indigenous people's ancestral domains including their burial grounds.

Eximbank officials have said that the Jalaur dam would be a pilot project of the EDCF Safeguard Policy even before the policy itself was made public. The fact that the affected communities of the pilot project are claiming that the mega dam project will endanger their lives, livelihood and future calls into question whether the EDCF Safeguard Policy is appropriate and well-implemented in practice. The UN Working Group on Business and Human Rights (WGBHR) expressed their concern over the absence of human rights safeguards of Eximbank in their Statement at the end of their 2016 visit to the Republic of Korea.⁵

Information relevant to Specific Provisions

1. Occupational health and safety and Access to Information (Articles 7b, 12b and 12c)

Committee recommended a range of actions in its last review to strengthen government efforts to improve health and safety in the workplace, including by 'providing adequate training on occupational safety and working conditions to labour inspectors, employers **and employees.**' (EC.12/KOR/CO/3, para 18).

In its 4th periodic report, the government highlighted efforts to 'enhanc[e] workers' safety and health awareness,' including through regional, in-house and sectoral education programs; outreach to SMEs; and a 'technical guidance program that taps into specialized private sector institutions in accident prevention... with a focus on businesses with higher risk of accidents.' The role of the Ministry of Employment and Labour has also been enhanced to include safety management plans, including for subcontractors. The government reports a decrease in industrial accidents of 13.7% in 2014 (E/C.12/KOR/4, para 67-68).

From January 2016, when the first victim was identified, to January 2017 a total of eight methanol

³ The Export-Import Bank of Korea, EDCF Annual Report 2012, p.20.

⁴ <http://www.peoplepower21.org/English/1439598>

⁵ The UN WG on BHR, Statement at the end of visit to the Republic of Korea by the United Nations Working Group on Business and Human Rights, 1 June 2016.

poisoning accidents have been reported. All of the victims – who are in their 20s or 30s – developed diseases and disabilities consistent with methanol poisoning, including eyesight loss and brain damage, while they were working in third-tier suppliers for Samsung Electronics and LG Electronics.

On January 14, 2017, Kim Ki-cheol, aged 31, died of leukemia after working 6 years in a Samsung semiconductor factory. He was the 79th Samsung semiconductor worker who died of occupational disease. To date, over 200 cases of occupational disease were identified among Samsung semiconductor factory workers.

Lack of **access to information** is a key issue creating conditions for these occupational accidents and diseases. Workers are completely unaware of the hazardous nature of products they work with, such as methanol; they neither received notifications of the substance's danger nor had on-board orientation regarding the danger of their work. Companies claim that they cannot share information about the products they use, citing 'trade secrets'.

Challenges to access to justice also mean that workers have little ability to receive compensation or assistance. However, neither Samsung Electronics and LG Electronics recognize the responsibility to directly monitor their second and third tier subcontractors, saying that they are capable of monitoring only their first tier subcontractors, whom they have a direct contract, not subcontractors behind the first tier⁶. This makes it hard to ensure adequate compensation, in particular from SMEs at the bottom of the supply chain.

Because the burden of proof is on victims, it is also expensive, if not impossible, to prove responsibility by a company. Only 10 out of 56 workers who have applied for occupational safety compensation from the government have won compensation since 2008⁷.

In 2016, a total of 14 workers lost their lives during their work at a shipyard of Hyundai Heavy Industry. The number of the deaths drastically rose up from 3 deaths in 2015. Moreover nine out of total 14 deaths were subcontracted workers. However, Hyundai Heavy Industry refused responsibility for the death of subcontracted workers.

UN experts have recently addressed these issues, both in terms of safety and of remedy.

Special Rapporteur on Hazardous Substances and Wastes, Baskut Tuncak, spoke about the important role of the public authorities in improving the occupational safety and health practices of companies, saying that 'States have a duty, and businesses a responsibility, to ensure that information about hazardous substances is available and accessible'. He continued, recommending that the government 'ensure that health and safety information about hazardous substances is never confidential' (A/HRC/33/41/Add.1).

After its recent official visit to the Republic of Korea, the Working Group on Business and Human Rights 'expressed concern about reports of high levels of industrial accidents; insufficient health and safety precautions in the workplace; difficulties in accessing remedy for victims at home and abroad'⁸. The WGBHR experts also cited the use of subcontract labour at the Hyundai Heavy Industry's shipyard as a case in point and recommended that 'in order to improve health and safety conditions, HHI and other business operations with a high risk of industrial injury should find ways to

⁶ Information cited from replies by Samsung Electronics to inquiries from trade unions and civil society, March 2016.

⁷ <https://www.apnews.com/ea1b8280b50b4ad3a9bdcd9def798914/2-words-keep-sick-Samsung-workers-from-data:-trade-secrets>

⁸ <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20042&LangID=E>

improve oversight and incentivize subcontractors to improve safety conditions”⁹.

Mr Tuncak emphasized in his country visit report that the Korean government should ‘ensure that victims have the information necessary to realize their right to an effective remedy in administrative and judicial systems’ (A/HRC/33/41/Add.1). The WGBHR made complementary points, noting the high burden of proof for victims. The experts recommended that the government review its legislation in order to ‘find a way to distribute the burden of proof more equally in cases where it is difficult for workers to prove wrongdoing or human rights abuse by an employer’¹⁰.

2. Freedom of association and human rights defenders (Art. 8.1a, 8.1c and General Comment 23 on the Right to Just and Favourable Conditions of Work)

A vibrant civil society, including a trade union movement, and an enabling environment for the work of human rights defenders is essential. The committee has recognized this globally in its statement of 7 October 2016 on the role of human rights defenders in promoting and protecting ESC rights.

This attention is sustained through the draft General Comment (E/C.12/60/R.1, to be discussed by the Committee on 21 February 2017), which recommends in paragraph 23 that ‘States Parties take all necessary measures to protect human rights advocates and their work and to refrain from imposing criminal penalties on them or enacting new criminal offences with a purpose of hindering their work’.

Although this is draft language, it is consistent and reinforces language in Concluding Observations of the Committee in the context of reviews of Viet Nam, Egypt, India, the Philippines, the Democratic Republic of Congo, Sri Lanka and Indonesia¹¹.

The Committee recommended in its last review of the Republic of Korea that the government ‘guarantee the right of all persons to form and join trade unions freely’ and ‘refrain[] from the use of the “obstruction of business” clause as a systematic recourse to weaken the right to strike, and also from the use of force beyond that which is absolutely necessary’(EC.12/KOR/CO/3, para 20).

In its 4th periodic report, the government claimed that it had elaborated, since its last review a series of responses to unfair labour practices, including amendments to the ‘Standards on Actions against Unfair Labour Practices’ to ‘allow the immediate initiation of an investigation’ (E/C.12/KOR/4, para 74).

They further note that for ‘justifiable industrial actions’ civil liability is limited, and that the Trade Union and Labour Relations Adjustment Act provides some protection against seizures targeting individuals. Specifically in response to ‘obstruction of business’ issues, the government emphasizes that the purpose of the clause is to avoid ‘suppressing and disrupting and employer’s free will’ (E/C.12/KOR/4, para 76-77).

Yoosung Enterprise Co., Ltd is a first-tier parts supplier to Hyundai Motors. It has continued to suppress the Yoosung branch of Korean Metal Workers’ Union by conducting lockouts; hiring private security guards to assault striking union members; abusive and discriminatory use of disciplinary measures; and filing a number of criminal and civil lawsuits against union members. Moreover, Hyundai Motors has interfered in the labour management relations of Yoosung with the single aim of busting the independent union even though Hyundai Motors has responsibilities to seek to prevent

⁹ Ibid.

¹⁰ <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20042&LangID=E>

¹¹ This list cites from footnote 44 of the draft.

or mitigate adverse human rights impacts by its first-tier supplier. In addition, the government failed to take prompt and appropriate measures to address illegal acts of the company while mobilizing the police to crack down on workers' collective actions and arrest union members.

As of January 2017, about 160 billion *won* worth of damages are due to workers by businesses as a result of compensation lawsuits, while 17.5 billion *won* of assets, including their monthly salary, is provisionally stayed just because the workers exercised their labour rights.

The WGBHR recently expressed concerns over reports of companies suing trade unions where industrial action has been taken and of wages being deducted from workers who go on strike to pay for the lost profits incurred following the industrial action. It recommended that 'workers should not have to meet the financial cost resulting from their legitimate defence of their employment rights and all companies should seek to understand the reasons for industrial action and adapt their management practices, rather than punishing protesters'¹².

Human rights defenders are regularly subjected to various forms of retaliation, including harassment and administrative fines, for their engagement protecting the ESC rights of victims.

- In the small coastal village of Gangjeong, local residents and human rights defenders have protested the construction of a naval base, part of a multi-purpose port, since work on the project began in 2007. They claim that the project would endanger the local environment, and especially wetlands known for their biodiversity.

The base was finally completed in February 2016, by which time around 600 people had been prosecuted over obstruction; the cases of crackdowns on demonstrations were highlighted by regional and international human rights groups¹³. Moreover, in March 2016, the South Korean Navy filed a reimbursement suit for the exercise of indemnity rights for the naval base, saying it is to 'hold those accountable for losses in taxpayer money from additional costs incurred due to the delay in the base's construction period owing to illegal obstruction of operations'. The claim amounted to USD 3.5 million, targeting 121 residents and human rights defenders, including 5 civil society organizations, who took action to oppose the naval base construction¹⁴.

- In another example, in 2005 the Korean Electric Power Corporation (KEPCO) entirely skipped the process of consulting with residents in the small farming village of Miryang, and proceeded with the construction of high-voltage power transmission towers. The conflicts between KEPCO and residents protesting the construction became so serious during 2011 that one villager self-immolated in protest in January 2012. Despite the opposition, construction continued. In October 2013, 3,000 police officers were dispatched to block all paths leading to the construction site; for 24 hours, they guarded the site and blocked residents from entering.

The construction of the last transmission tower began in July 2014. In total, more than 40 residents and human rights defenders have received fines totaling about USD 100,000; they are also being subject to judicial action for their struggle to stop the construction. KEPCO recently filed a civil lawsuit against nine residents and human rights defenders, demanding a total of USD 220,000 compensation for the delay of the construction in 2014.¹⁵

¹² The UN WGBHR, Statement at the end of visit to the Republic of Korea by the United Nations Working Group on Business and Human Rights, 1 June 2016.

¹³ See, for example, statements from the Asian Human Rights Commission and Amnesty International.

¹⁴ http://english.hani.co.kr/arti/english_edition/e_national/737518.html

¹⁵ <http://www.koreaherald.com/view.php?ud=20140611001259>

Special Rapporteur on Freedom of Peaceful Assembly and Association Maina Kiai visited the country in 2016. In his report to the Council, he echoed the Committee on Freedom of Association of the ILO, saying that ‘the right to form or join trade unions is guaranteed to all workers regardless of their occupation... it is not Government’s role to determine who can join trade unions’.

In 2014, the current Special Rapporteur on human rights defenders identified defenders working on ESC rights and minority rights, environmental defenders, and defenders who work in the area of business and human rights as three of the five most vulnerable groups of defenders, recommending that States pay particular attention to them. He dedicated his report to the UN General Assembly in October 2016 to the plight of defenders of land and the environment, and is expected to submit a report in October 2017 on defenders working in the area of corporate accountability.

3. Extraterritorial obligations and Korean companies operating overseas

The obligations on governments who have ratified the ICESCR do not stop at their borders. Korean transnational corporations operate with relative impunity and have been involved in the following cases that have directly impacted the enjoyment of economic, social and cultural rights by workers and affected communities.

- Cambodia

In December 2013, garment workers in Cambodia took to the streets demanding an increase of the minimum wage to USD 160 per month. From 2-3 January 2014, the Cambodian authorities violently suppressed the protests, resulting in at least five deaths.

Korean factories are significant players in the Cambodian garment sector, and face many challenges regarding low wages and unsafe working conditions. However, in this case, Korean manufacturers not only disregarded the workers’ legitimate demands, but also both directly and indirectly requested the Cambodian authorities to crack down on the striking workers. After the strike, Korean garment manufacturers continued their efforts to suppress freedom of association by filing a compensation lawsuit against trade union leaders.

The ROKG failed to encourage Korean companies in Cambodia to comply with international standards, and looked the other way when these businesses undercut wages and working conditions. More worryingly, there have been allegations that the Korean embassy in Phnom Penh, on behalf of manufacturers, requested the Cambodian government to crack down on the strike.¹⁶ The Korean ambassador denied allegations of direct responsibility, saying that the embassy’s ‘top priority’ was the protection of Korean investment and citizens¹⁷.

- Uzbekistan

In 2015, the International Labour Organization reported that forced labour remained in cotton production in Uzbekistan, citing that while forced child labour seemed to have decreased, workers in the public education and health sectors were instead mobilized during the harvest and threatened with layoffs if they refused¹⁸. Both practices constitute serious violations of

¹⁶ Similar allegations that the Korean embassy in Myanmar intervened in strikes by requesting mobilization of the police to crack down workers’ strike were raised during a strike in early 2015. (<http://www.mmmtimes.com/index.php/national-news/13607-south-korea-urged-government-to-end-labour-protests.html>)

¹⁷ http://www.amrc.org.hk/sites/default/files/FFM-Cambodia-Report-022014-amrc_0.pdf

¹⁸ International Labour Organization, Third Party Monitoring of the use of child labour and forced labour

human rights; forced and forced child labour are prohibited by ILO conventions, and the conditions workers face in the fields also pose significant health risks.

Despite years of similar findings of ILO experts and significant action by global NGOs and trade unions, Korean companies, including the state-owned enterprise Korea Minting, Security Printing & ID Card Operating Co. (KOMSCO), have continued to purchase Uzbek cotton through a joint local subsidiary in Uzbekistan, KOMSCO Daewoo (GKD). Rather than cease sourcing materials produced by forced labour, KOMSCO repeatedly argues that the Uzbek government is responsible for forced labour, and that KOMSCO lacks leverage to end its use.

The ROKG has no systems that monitor or regulate appropriate procedures for identifying and remediating human rights violations occurring in Korean companies' supply chains, even when those companies are state-owned, public companies. In 2015, the Korean National Contact Point (NCP) considered a complaint filed about KOMSCO's relationship with Daewoo International and complicity in forced labour. The final statement released by the NCP highlighted efforts of KOMSCO and Daewoo International to establish 'internal guidelines on ethical management' and to coordinate with international organizations. On these grounds, the NCP ultimately dismissed the complaint, despite acknowledging that 'the Uzbekistan government and public corporations which compel forced labour in its cotton sector are on the same supply chain with KOMSCO and Daewoo International, [and] therefore it is difficult to deny a connection between their business operations and issues raised against them'.

- Indonesia

Samsung C&T has operated palm oil plantations totaling 24,000ha on Sumatra Island, Indonesia since 2008. Among many adverse human rights impacts of the plantations – including threatening the livelihoods of indigenous people, causing water shortages for local residents, and employing toxic chemicals – a recent report highlighted very concerning direct adverse impacts in the form of child labour.

A recent field research found that child labour is widespread. Local workers on palm oil plantations are often not aware of the seriousness of child labour, while supervisors often turn a blind eye. In fact, excessively high daily quotas mean that many workers rely on their own children to contribute in the fields, in order to avoid falling short of targets and suffering resulting deductions in pay. Compounding the problem is the fact that children are often engaged in dangerous tasks of cutting weeds, distributing toxic chemicals, picking palm oil fruits, or gathering fallen fruits, and delivering heavy fruit bags; much of this could be considered hazardous child labour, prohibited by the ILO and the government of Indonesia.

When presented with the research findings, Samsung C&T only replied that they 'have a systematic monitoring system'.

- India

In 2005, Korean Pohang Iron and Steel Company (POSCO) signed a Memorandum of Understanding with the Orissa government in India to construct a 12 million ton capacity steel plant and to launch related mining projects. However, on the 4,000 acres of 'government-owned' land provided by the Orissa government for the POSCO project, there are indigenous communities who have dwelled in the region for generations. The communities were divided by the POSCO project, and tensions led to a series of violent outbreaks between villagers, and

between some villages and the police; in one case this culminated in blocking access to certain villages based on opposition to the project.

Recognizing the serious human rights violations related to the project, a number of the UN Special Rapporteurs issued a joint press release in October 2013¹⁹. In the statement, they declared that the project 'must not proceed as planned without ensuring adequate safeguards and guaranteeing that the rights of the thousands of people are respected'. The experts also clarified that 'POSCO has a responsibility to respect human rights, and the Republic of Korea, where POSCO is based, should also take measures to ensure that businesses based in its territory do not adversely impact human rights when operating abroad'.

Although the Indian government had the primary duty to protect the rights of those threatened by the project, the ROKG also failed to ensure that POSCO acted in respect of human rights. Government officials provided a general theory that civil responsibility based on the Commercial Act, and penal responsibility based on the Criminal Act, could be applied to multinational corporations, but failed to take any action to prosecute or fine the company.

Once again, the Korean NCP dismissed the relevant complaint, this time claiming that a determination by the NCP risked creating a situation where the corporation would be put in conflict with actions or decisions by Indian courts and the regional and national governments.

As these and many more cases show, the Korean government has not put in place an effective system to build awareness of human rights responsibilities of companies, nor created incentives (such as through public procurement) for businesses to act responsibly. Instead, they have often acted in favor of their public- and private-sector economic interests, and in opposition to human rights obligations.

National Implementation

It is critical that the Korean government put in place strong, independent, inclusive, and transparent institutions to ensure respect for ESC rights. In respect of business activities, these include:

- The National Human Rights Commission of Korea

Previously, the Commission (NHRCK) has been the subject of Committee comments, in which the Committee reminded the government of its 'responsibility to ensure that the National Human Rights Commission of Korea remains compliant with the Paris Principles', and that they take action to strengthen and expand the Commission's mandate, allocate sufficient resources, and allow filing of individual complaints (EC.12/KOR/CO/3, para 8)

The 4th periodic report lists a number of improvements made to the NHRCK that include broader investigative power, implementation plans, staff increases and changes in the nomination and appointment processes, and engaging on advocacy around a range of civil, political, economic, social and cultural rights issues (EC.12/KOR/4, para 6-8).

The NHRCK has argued that the goal of developing the Guidelines and Checklists on Human Rights Management is to encourage public corporations to voluntarily comply with the

¹⁹ OHCHR Press Release: India: Urgent call to halt Odisha mega-steel project amid serious human rights concerns (2013.10.1)

guidelines. It also cites this as one of its achievements in the area of business and human rights. However, some of the public corporations which implement the guidelines are reported to be involved in severe human rights violations.

While the NHRCK does not have authority to investigate all kinds of human rights violations perpetrated by private enterprises by law, it can provide urgent relief upon request, regardless of whether the perpetrator concerned is a public or private entity. However, in practice it has been at best passive in responding to urgent relief requests by victims of adverse human rights impacts from corporate actions.

In order to improve the effectiveness of the NHRCK's role in promoting business and human rights, it is important to guarantee the independence and diversity of its commissioners by establishing a transparent selection procedure, inclusive of civil society, for its commissioners.

The ROKG also should respect recommendations made by the NHRCK and take appropriate measures to integrate them in laws, regulations and practices. The NHRCK Act may need to be revised to enable it to investigate human rights abuses committed by not only public corporations but also private enterprises, and to enable it to provide appropriate remedies for the victims or recommendations to the defendants accordingly. In this regard, the WGBHR also suggested that 'the mandate of the NHRCK could be usefully expanded to enable it to consider all business related human rights harms caused by private enterprises, not just issues relating to discrimination, as is currently the case'²⁰.

- The OECD National Contact Point

Up to date, more than 20 cases have been submitted to the Korean NCP. Only two cases – those of Hydis 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.

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 Hydis 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 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.

While the Korean NCP described itself as an 'independent expert body,' the composition of the Korean NCP is far from independent. As of January 2017, the Korean NCP is composed of four members from the government, including its chairperson, and three members from the private sector. The three civil society members are from the Korean Institute for Industrial Economics and Trade, the Korean Standard Association, and KOTRA – all organisations who have close ties to the government and cannot accurately represent Korean civil society. Independent civil society groups and trade unions are not allowed to be involved in the NCP member selection process.

It is imperative that the ROKG reform the Korean NCP's structure to guarantee full engagement with civil society, including labour rights groups and trade unions, so that it can fulfil its

²⁰ The UN WGBHR Statement at the end of its visit to the Republic of Korea, 1 June 2016.

mandates effectively.

- National Action Plan on Business and Human Rights

The ROKG has primarily focused on Human Rights National Action Plans. The first (2007-2011) and second (2012-2016) plans did not address business and human rights-related contents. The Ministry of Justice is responsible for developing the third NAP (2017-2020) and in this regard held a public hearing in September 2016. However, the announcement on the public hearing was posted on its website, with no other dissemination, and the draft NAP was not made public even at the public hearing. Civil society is unable to participate in the process, and indeed, as of January 2017, did not know the contents of the NAP, when it would be issued, or how it would be implemented.

A National Action Plan on Business and Human Rights (NAP) could play a role in filling in gaps noted above. Although the NHRCK developed its draft version of a NAP on BHR and submitted it to the government in 2016, that document has been criticized by civil society for its vague wording. It was developed in a process that did not fully involve Korean civil society and human rights defenders.

Furthermore, the primary responsibility for guiding enterprises toward recognition and implementation of their responsibility to respect human rights, which would be strongly aided by the adoption of a NAP on BHR, lies not with the NHRCK, but with the government. Sadly, as of January 2017, the government had not accepted or advanced any draft of the NAP on BHR.

- National Pension Service

South Korea's public National Pension Service (NPS) is the world's third-largest pension fund, behind Japan's and Norway's. The NPS has promoted socially responsible investment since 2006 and joined the investor initiative Principles for Responsible Investment in 2009. However, the NPS's performance demonstrates a lack of compliance with these principles.

As of the end of 2015, the proportion of SRI accounts for only 1.33% of the fund. In contrast, the fund invested about USD 3.8 billion in the manufacturer Oxy Reckitt Benckiser, a company found to have used toxic chemicals in humidifier sterilizers resulting in the death of over 1'000 people – mostly women and children – since 2002. After the ROKG recognized the role of the company in the deaths in 2011, rather than divesting from the company NPS continued, and indeed increased its yearly investments.

The UN WGBHR urged the ROKG to 'provide guidance with regard to the expectation that the NPS should apply a human rights due diligence approach across its investments,'²¹ recognizing that the NPS has not only failed to meet requirements for environmental and social governance.

Suggested Questions for the Committee to ask the ROKG

Does the government have a plan to adjust its legal and regulatory systems in accordance with international standards to clarify the legal obligations businesses to be responsible for human rights

²¹ The UN WGBHR Statement at the end of its visit to the Republic of Korea, 1 June 2016.

compliance throughout their supply chain? What specifically has the government's done to address the higher risk and lower protection by companies against human rights risks for non-standard and other vulnerable workers?

Does the government have a plan to strengthen existing legislation to ensure the right to know and facilitate access to information, especially regarding hazardous substances in workplace or products? What, if any, steps have been taken to limit the use of 'trade secrets' claims by businesses implicated in adverse human rights impacts?

How will the government reduce the burden of proof required by victims in compensation lawsuits?

What steps is the Republic of Korea taking, in consultation with the NHRI and with human rights defenders (HRDs) and other civil society actors, to develop and implement a national law and mechanism on the recognition and protection of HRDs?

What steps is the government taking to create an enabling environment for HRDs? What is the status of efforts to remove restrictions, amend laws and guarantee the right to freedoms of expression, association and peaceful assembly of journalists, activists, human rights defenders, and those who take part in demonstrations?

How will the government act to ensure that Korean-domiciled companies, and especially state-owned enterprises and trade and development agencies, have in place and effectively implement human rights policies and safeguards, and effective grievance mechanisms?

Please provide detailed information on the measures taken to ensure the independence of the NHRCK, in line with the Paris Principles, its mandate in relation to individual complaints, and its human and financial resources.

What steps is the government taking to ensure the effective designation and functioning of a standing National Mechanism for Reporting and Follow-up?