

Submission to the UN Committee on Economic, Social and Cultural Rights

Parallel Report

# Korea's Extraterritorial State Obligations on ICESCR

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

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## 1. Introduction

### 1.1. Extraterritorial State Obligation of Korea

Korea which ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1990 are obliged to respect, protect and fulfil the rights shined by ICESCR. And the obligation extends to extra territory as the Maastricht Principles articulate. Furthermore, the extraterritorial state obligation has been more critical as the human rights impacts by multinational corporations increased.

In this respect, the 3rd and 4th concluding observations of UN Committee on Rights of the Child (CRC) also recommended on the extraterritorial state obligation as follows in 2011.

“The Committee notes that there is no comprehensive legislative framework regulating the prevention and mitigation of adverse human rights impacts of companies’ activities, neither in the State party territory nor abroad. In particular the Committee further notes with concern that: The State party is importing products from countries, which are under investigation by the ILO (and the European Parliament) for reportedly using forced child labour, thus becoming complicit with a serious breach to child rights”

Since 2011, Korean Transnational Corporations Watch (KTNC watch), which is a network composed of various civil society organizations working on business and human rights has conducted several site visit investigations on human rights violations committed by Korean companies overseas.

### 1.2. Methodology

This report highlights the four cases out of the site visit investigations conducted by KTNC watch member organizations and the methodology taken for those four cases is as follows.

#### **Palm Oil in Indonesia**

In 2016, after completing desk research from media reports and related materials on palm oil plantation run by **PT Ghandaera Hendana and PT Inecda, two subsidiaries of Samsung Construction & Trade (Samsung C&T)**<sup>1</sup>, APIL attorneys -Jongchul Kim, Sejin Kim, and Myungkwang Lee- who had formed an investigation team along with activists from Seruni, an Indonesian women’s rights group, conducted field investigations in Jakarta, Pekanbaru and Pelalawan (First investigation: November 10-15, 2 Second nvestigation: November 20-23, and 3<sup>rd</sup>: December 4-7), where they visited palm oil plantations run by the Samsung C&T subsidiaries, and other locations of interest. They also met and interviewed NGO activists, college professors, workers, local residents including indigenous people, Korea Trade Investment Promotion Agency (KOTRA) officers, and Korean Consulate officials.

#### **Cotton in Uzbekistan**

After researching cases of Korean corporations’ Human Rights violations in Uzbekistan through related literature, from September 24 to October 4, 2013, attorneys JongChul Kim, Sejin Kim, and Lee Il, from APIL, along with Minchul Kim from the Center for Good Corporations, travelled to Uzbekistan, visiting major cities including Tashkent, Bukhara, Jizzax, and Samarkand. During field investigation, they 1) conducted interviews with experts and local activists; 2) visited offices

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<sup>1</sup> [http://trading.samsungcnt.com/EN/trading/gn/607000/popup.do?branch\\_id=30115](http://trading.samsungcnt.com/EN/trading/gn/607000/popup.do?branch_id=30115)

of Korean corporations, **Daewoo Textile LLC.<sup>2</sup> (a subsidiary of Posco Daewoo), Global Komsco Daewoo (GKD, a joint venture of Korea Minting and Security Printing Corporation)<sup>3</sup>** to interview managers and employees; 3) visited schools and cotton fields - sites where forced labor most frequently takes place, and 4) talked to the Korean Ambassador to Uzbekistan at the Embassy.

### **Electronics in Mexico**

In 2015 and 2016, Donghyun Kim (attorney, KLPH) and Jongchul Kim, Sejin Kim (attorney, APIL) along with activists, Felipe Burgueño Gonzalez and Hugo Mendoza from local labour rights NGO called CEREAL<sup>4</sup> conducted field visit investigation. They visited Tijuana, Mexicali, Guadalajara, Mexico City and Querétaro from 1 to 12 September, in 2015 meeting with thirteen workers in **Samsung Electronics Mexicana, a subsidiary of Samsung Electronics** and 15 workers in **Ohsung Electronics<sup>5</sup>, a supplier of LG electronics**, the commerce officer in Korean Consulate and the director general in Mexico office of Korea Trade-Investment Promotion Agency (KOTRA). After the first investigation, they sent a letter requesting information from Samsung Electronics Mexicana and Ohsung Electronics. Upon receiving the companies' responses and identifying areas of discrepancy, attorney Hugo Mendoza from CEREAL visited Tijuana and Mexicali again to confirm the facts from 11<sup>th</sup> to 18<sup>th</sup> August, in 2016 by having additional interviews with more than fifty-two workers of Samsung Electronics Mexicana and in Ohsung Electronics.

### **Fish in Distant Waters**

From October 2014 to March 2016, Attorneys of APIL along with the ROK Office of International Organization for Migration(IOM) conducted a comprehensive research on human rights situations facing migrant crews in Korean fishing vessels in distant waters including visiting coastal areas in the ROK as well as sending countries such as Philippines, Viet Nam and Indonesia. The research has three components: literature review, field interviews, and policy discussions. First, they looked at existing literature, from sources within and outside the ROK, concerning the human rights of migrant fishermen. Second, they interviewed approximately 70 migrant fishermen with working experience on the Korean fishing vessels. Interviews were also conducted with 20 Korean manning companies and recruitment companies in the countries of origin of the migrant fishing crews, representatives from domestic and foreign fishermen labor unions, civil society organizations, and relevant government officials. Lastly, they engaged in a series of policy dialogues with key ROK administrative and legislative officials with the Human Rights Network for Migrant Fishermen.

### **1.3. The Convention rights at Issue**

Through above mentioned investigations, we found that by breaching the extraterritorial state obligations, the government of ROK failed to respect and protect human rights provided by Article 2 (2) (non discrimination), 7 (the right to the just and favorable working conditions), 8 (the right to form and join trade unions), 10 (protection to the family and child), 11 (the right to adequate standard of living including food, clothing and housing), 12 (the right to physical and mental health), 13 (the right to education), and 15 (cultural rights) of the Convention.

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<sup>2</sup> <http://en.daewootextile.com/>

<sup>3</sup> [http://english.komsco.com/contents/product/product\\_0300.do](http://english.komsco.com/contents/product/product_0300.do) "KOMSCO has established an affiliate company as a joint venture. The company (GKD, GLOBAL KOMSCO DAEWOO) is located in central Asia, in Uzbekistan, which is known as one of the largest cotton exporting countries. With our engineering assistance and expertise, this company produces high quality cotton pulp so that KOMSCO can maintain a secure source for its products whenever needed regardless of price changes"

<sup>4</sup> <http://www.cerealgd.org>

<sup>5</sup> [http://www.ohsunghq.com/osg\\_eng/sub03/sub05\\_02.aspx](http://www.ohsunghq.com/osg_eng/sub03/sub05_02.aspx)

## 2. Case 1: Palm Oil in Indonesia

### 2.1 Background

Korean companies have significant operations in the Indonesian palm oil industry. LG International Corp. in Kalimantan, western part of Indonesia (16,000-ha palm), started operating in October 2013, and Daewoo International in Papua has been operating since September 2011 (36,000-ha palm). Daesang Holdings, the holding company of Daesang Group, had acquired PT Sintang Raya (a local company) in November 2009 (11,130-ha palm) and has been operating in Kalimantan. And Samsung C&T was the first among Korean general trading companies to run a palm oil plantation in Indonesia. It incorporated S&G Biofuel Pte Ltd. in July 2008 as a joint enterprise with Athena Holdings which had been active in the palm oil industry, and acquired PT Ghandaera Hendana (hereinafter PT Ghandaera) and PT Inecda from an Indonesian company called Ghanda. According to financial reports from the company (as of June 30, 2016), **Samsung C&T owns 63.16% of shares of S&G Biofuel Pte Ltd. while 12.63% S&G Biofuel Pte Ltd are owned by Samsung C&T Singapore Pte.Ltd., a wholly owned subsidiary of Samsung C&T. In turn, S&G Biofuel Pte Ltd. owns 95% each of PT Ghandaera and PT Inecda.**<sup>6</sup> Thus, Samsung C&T has since been operating a 24,000 ha (40% the size of Seoul City) palm oil plantation in Riau Province of Sumatra Island through these subsidiaries. These plantations produce 344,000 tons of palm oil per year (2015), as well as 81,000 tons of crude palm oil (46,200t by Ghandaera; 35,807t by Inecda, 2015).

### 2.2. Adverse Human Rights Impacts

Palm oil plantations have numerous adverse consequences in its process of developing and harvesting of land, which incur significant environmental damage such as destroying forest and reducing biodiversity. However, the report will focus more on the violations of rights of workers as well as local communities, stipulated by Article 2 (2) (non discrimination), 7 (the right to the just and favorable working conditions), 10 (protection to the family and child), 11 (the right to adequate standard of living including food, clothing and housing), 12 (the right to physical and mental health), 13 (the right to education), and 15 (cultural rights) of the Convention.

#### 2.2.1. Suffering of Local Communities

##### **Land conflict between indigenous people and the subsidiaries of Samsung C&T**

The palm oil plantation of PT Inecda is located in a subdistrict called Rakit Kulim, where indigenous people called *Talang Mamak* have lived. Talang Mamak consists of 29 tribes of which the tribes, *Talang Parit* (700 people) and *Talang Sungai Limau* (20,000 people) live in/near the area of the Inecda plantation. According to maps that identify the location and boundaries of the land belonging to each tribe of the indigenous people community<sup>7</sup>, PT Inecda plantation extends to villages of Talang Sungai Limau and Talang Perit. A substantial area of PT Inecda coincides with the communal land which has been belonged to the indigenous peoples.<sup>8</sup> More problematically, the maps suggest that PT Inecda only has the Hak Guna Usaha (HGU, the rights to cultivate), to a very limited part of the total land that the plantation occupies. The indigenous people allege that it is unclear under what right PT Inecda is operating the plantation in areas not

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<sup>6</sup> <http://www.samsuncnt.com/eng/report/inspectionInfo.do>

<sup>7</sup> It is made with the help of a civil society organization called Samdahna. <http://www.forestpeoples.org/partners/samdahna-institute/Aman>

<sup>8</sup> Recently, there was an important decision from the Indonesian Constitutional Court recognizing native peoples' ownership claim to land; Batin Irsan, the leader of the Talang Parit people, was one of the most important witnesses at the trial.

covered by the HGU. Samsung C&T responded in December 12 and 16, 2016 to two-time demands by the investigation team of APIL to clarify what right the company has on the areas exceeding the HGU-approved boundaries that “Talang Mamak indigenous people reside outside the legally approved operations area of the plantation, and their residence area does not coincide with the land of the corporation.” However, one of the leaders from the indigenous people told that they had also requested the General Manager of PT Inecda to show them the exact boundaries of the HGU area, but were denied.

### **Water scarcity and pollution**

Palm oil is known to have the highest productivity per area among various plant-based oil and thus, palm oil trees absorb enormous amount of water in order to transform water into oil. Therefore, corporations make multiple artificial canals in the plantation to send the river water to various clusters of trees. An average palm oil plantation structure is divided into multiple blocks, which are packed with trees and has canals about a meter wide nearby. Since palm oil trees absorb most of the water flowing past the plantation from river, there is almost no water left to flow downstream. According to interview with one of Talang Mamak indigenous people, there used to be big rivers - Sungai Belilas, Danau Tiga, Pebedaran Kacing, and Pebedaran Gedang - inside PT Inecda, as well as a large lake/pond; all of them have now dried up since 2008. The indigenous people are now having difficulty even accessing non-drinking water as well as getting drinking water. Seriously all the wells also have dried up, to the point fifty meters deep. Therefore, residents are forced to use stored rainwater or buy water not only for drinking but for everyday use like washing. However, water for survival costs too much to afford for the locals - “pure water” costs 4,000 rupia per gallon and “clean water” which is provided by the government costs 500 rupia per gallon. According to one of locals, she buys 1,000 liters of drinking water every four to five days. Moreover, even the water obtained these ways is not clean. This is because sold water also comes from the river flowing past the plantations, which appears to be polluted by the chemicals used in plantations; washing with that water causes skin or stomach diseases.

### **Serious threat to indigenous people’s survival**

The emergence of Inecda plantation has disabled life of indigenous people by posing a serious threat to their right to basic sustenance. For the sake of plantation, the forest, which was the basis of livelihood for the locals and especially the indigenous people for generations, was destroyed thereby endangering their survival. The indigenous leader describes the invasion as follows:

*“We hunted or fished for food. We cut down trees to build houses. We grew rice in different areas of the forest. We can’t do any of that anymore. In the forest, there used to live 1,334 species of animals, and 1,032 kinds of herbs. Now, the river disappears within a month of summer. There used to be big rivers called Sungai Belilas, Danau Tiga, Pebedaran Kacing, and Pebedaran Gedang near the plantation – now, the rivers are all gone, so we can only fish from time to time in the canals. We used to find gaharu tree to use in religious rituals, collect honey, and make furniture or baskets from rotan trees to use and sell. Not anymore. We also had materials for red dye and jernang (used as medicine), but no longer. We can’t even grow rice anymore, so we have to buy food. Our ancestors used the land for survival, and we have a duty to pass it on to our children and grandchildren, but we can’t... We can’t find gaharu trees anymore, so we need to find a substitute for our religious rituals. Since we’re doing rituals without gaharu, the person performing the ritual could die.”*

Indigenous people now should buy necessities including food, but do not have an income. Only a very few grow rubber or palm oil trees under the silent approval of PT Inecda, and most are unemployed. Only 9-29 people (out of 700) are hired by PT Inecda, mostly working as security personnels. Children of indigenous people, especially girls, cannot access education because of

poverty; many girls are married off between the ages of eleven and thirteen, as soon as they graduate from elementary school. Not only is the indigenous people's right to survival threatened, but their culture and religion are also being invaded. Their sacred grave site (called Keramat Danau Tiga) near the Danau Tiga River, in which many ancestors of Talang Mamak were buried and indigenous used to perform religious rituals praying for sickness has been ruined with palm oil trees.

### **Breaking up the unity of indigenous people communities to discourage efforts to claim communal right to land**

According to testimonies from indigenous people, the subsidiaries of Samsung C&T has been bribing individuals for the purpose of discouraging efforts to claim communal right to land. PT Ghandaera Hendana and PT Inecda largely buys two groups of people with money, one of which are people who spy on key activists who fight to reclaim land and for the right to survival. For instance, PT Inecda pays a few indigenous (who are not employees at the plantation) every month to keep an eye on and report on people on the watchlist. Batin Irasan, the leader of the Talang Parit people, told the team that even his close relative living next-door is watching him in exchange for 800,000 rupia from PT Inecda. Another group that PT Inecda buys is the indigenous people leaders, for dissuading them from demanding the right to land or sustenance. Some are paid regularly, or are permitted to grow palm oil or rubber trees inside the plantation.<sup>9</sup>

## **2.2.2. Suffering of Workers in Palm Oil Plantations**

### **Child Labor**

In the response to the KTNC Watch's request for information, Samsung C&T suggested that it strictly monitors compliance with the ban on child labor.<sup>10</sup> In direct contrast to Samsung C&T's answers, the investigation team could see November 12, 2017 that an elementary school child was working with his father at the PT Ghandaera plantation, picking grains of palm oil fruits, putting them in a bag, and moving them during field visit. And there are more interviews to reveal the truth that child labor is not exceptional at PT Inecda. To look into the child labor occurring at PT Inecda and PT Ghandaera, there are several noteworthy aspects. First, palm oil plantations where children were found are not safe places at all. Snakes appear because of the abundance of mice; use toxic chemicals for weeding; and involve dangerous tasks like picking palm oil fruits from a tall tree using sharp tools. Indeed, workers had been hurt by falling palm oil fruit bundle, some even turning blind from the accident. Second, more seriously children's working tasks are very risky with scarce safety equipment, i.e. cutting weed, giving fertilizer, spraying chemicals, picking palm oil fruits, and transferring fallen palm oil grains into bags. Third, workers at the plantation do not appreciate the seriousness of the problem of child labor as the workers candidly talked about their using child labor in various interviews. Fourth, supervisors did not scrutinize children brought by workers inside the plantations either because they were not being diligent, or were turning a blind eye. Lastly, underlying the reason why workers bring their children into dangerous plantation is because the daily quota ("target") is set too high, and not meeting the target results in deductions from pay. Workers not only brought their children, but also their spouses, to help them meet their target. Supervisors were aware of this happening, but reluctant to address child labor because they also have an interest in ensuring workers to meet their targets.

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<sup>9</sup> Interview with one leader who has been receiving a monthly payment from PT Inecda for years without working.

<sup>10</sup> "The plantation corporations use fingerprint recognition technology to prevent people from proxy work. To prevent [child labor] cases - which the company bans - we have a system in place whereby the supervisor, human resources manager, and security personnel continuously monitor not only each of our operations sites, but also our partner companies." December 16, 2016 response of Samsung C&T.



### **Endangered health and safety in Labor**

Chemicals used at the plantations are mostly fertilizers, insecticides, herbicides and chemicals used inside factories in processing palm oil fruits. According to interviewee who has been working in the plantation told that he lost consciousness while working with fertilizers. The worker couldn't receive treatment or compensation but rather got his salary reduced. Since the workers in the plantation are afraid of losing job, they have to put up all the threat of industrial incident or any kind of damage. The most problematic is herbicides. The Samsung C&T subsidiaries use round-up and Gramoxone. Round-up is used for long weed, and Gramoxone is used to kill non-palm oil trees near the palms, because it is much stronger. Gramoxone which is commercial name of paraquat, is a super toxic herbicide also known as "the Green Devil" because it does not have an antidote, and is fatal to human health. United States and European Union banned its use a long time ago, and the ROK made it unlawful to use (or even store) it after 2012. Nonetheless, Gramoxone was being widely used in both PT Ghandera and PT Inecda. Employees in the part of spraying Gramoxone as herbicide, told that she had skin problem like itchy skin and her companion had a nosebleed while working with Gramoxone. Despite toxicity and danger of using those plantation chemicals, the company either failed to equip workers with proper safety equipment, or did not adequately supervise the use of safety equipment. One worker in charge of fertilizers and palm oil harvests said that for safety equipment, they have to buy our own masks and gloves. And another worker who supervises 42 workers in the plantation, testified that none of the workers under his supervision wear goggles, and neither do other harvest workers. He said that the company should change the goggles to ones that don't get scratched or fogged up, and helmets should be changed every year.

### **No formal contracts, arbitrary dismissal and low wages with frequent deductions**

Most workers testified that they had signed some form of a contract, but had not received a copy of it; did not know whether there was a contract; never signed a contract; or had some memory of signing a contract, but did not understand most of its content. And they also testified that arbitrary dismissals became more frequent after Samsung C&T acquired the plantations. None of the PT Ghandera and PT Inecda workers were receiving wages lower than the minimum wage for Riau Province. However, the wages were extremely low, the salary rose in very small increments, and bonuses for overtime work were scarce. However, penalties were imposed for small mistakes at work, resulting in deductions from the already-low wages. In particular harvest workers received penalties for leaving palm oil fruit bundles on the trees, or for leaving the seeds on the ground; for every seed left on the ground, 500 rupia was deducted from the monthly pay. There is the most important and fundamental problem vis-a-vis daily allocated production quota or "target". By principle, break time and working hours are flexible - once targets are met, workers can have break times and finish their daily work at any time, but if the target is not met, there are deductions from the wages. But as it was discussed in an earlier section related to child labor, either because this target is too high or the basic salary is too low, workers ended up bringing even their spouses and children to avoid deductions or to receive bonuses. There are lots of interviews of workers in the plantation regarding quota testifying that even though they work additionally over hours and even in holidays to meet the target, they never get bonuses. The exact target amount differs depending on the type of labor, season or plantation according to interviews with various workers; in all cases, the amount is too high for a daily quota. Among workers the research team met, harvest workers, for example, have a daily quota of 850kg, workers in charge of spraying herbicide have to spray 20-25 liters, with fertilizer have a target of 23 bags, each 50kg and workers who remove weed have to work around 66 trees as daily quota.

### **Living conditions inside plantations**

Since the plantations are so large, many workers were living inside plantation dormitories that the company provides. However, the living conditions of these dorms were extremely poor, especially in terms of water, housing, and surrounding environment (particularly the areas near the factory). Workers living inside both of PT Ghandaera and PT Inecda have problem with water scarcity so that they dig wells individually to get water, or buy drinking water, or go to river to get water for washing even though it is far away from the residence and polluted with chemicals. The workers' housing was also very terribly managed. One worker said that housing for workers has been changed since Samsung C&T came to PT Inecda, which is not really a house but more like a barrack. And some of them are located very near the factory; people living there suffer from the loud noise coming out of the factory that fumes out black smoke, as well as foul smell from the facility for purifying palm oil residue. However, a more serious problem is how the plantations purify the final mud-like organic residue (called POME, Palm Oil Mill Effluent) left after processing palm oil at the factory. POME is thrown out into water puddles between the factory and the workers' housing, and then flowed out with water. This process emits a significant amount of methane gas, pollutes the surrounding water, and is inherently dangerous (for example, people could fall in). Nonetheless, other than a 'no entry' sign, safety measures were largely lacking.

### **2.3. Measures taken by the Government**

The government of ROK, in particular, Korea Forest Service, has encouraged and supported Korean companies to invest in plantation projects like palm oil plantations in Indonesia in the name of Developing Oversea Forest Resources in order to "have competitive edge over forests around the world and secure sustainable supply of raw materials from the forests".<sup>11</sup> And for this purpose, the government of ROK even has dispatched forestry officers to Korean embassy in Indonesia in which Korean companies have developed the widest Overseas Forest Resources of 309,000ha. In comparison with facilitating investment of Korean companies into palm oil plantation, however, the ROK government has not done anything to carry out its extraterritorial state obligations to protect the Convention rights breached by PT Ghandaera and PT Inecda, the subsidiaries of Samsung C&T and on the contrary the Korean National Pension Fund invested in Samsung C&T, as a result, holding 5.78% share of the company.

### **2.4. Suggested Recommendations**

In order to comply with its extraterritorial state obligations to protect the Convention rights, we urge the government of ROK to:

- address the negative impacts of business activities of Samsung C&T subsidiaries, PT Ghandaera and PT Inecda on the Convention rights of Talang Mamak indigenous people in Indonesia,
- investigate child labour in the palm oil plantations operated by Samsung C&T subsidiaries PT Ghandaera and PT Inecda in Indonesia,

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<sup>11</sup> [http://english.forest.go.kr/newkfsweb/html/EngHtmlPage.do?pg=/esh/intl/UI\\_KFS\\_0401\\_010100.html&mn=ENG\\_14\\_04\\_01](http://english.forest.go.kr/newkfsweb/html/EngHtmlPage.do?pg=/esh/intl/UI_KFS_0401_010100.html&mn=ENG_14_04_01)

- investigate water scarcity of local community including indigenous people suspectedly caused by palm oil plantations operated by Samsung C&T subsidiaries PT Ghandaera and PT Inecda in indonesia,
- investigate on usage of banned toxic pesticides, Gramoxone or Paraquat by the Samsung C&T subsidiaries, PT Ghandaera and PT Inecda and its environmental and human rights adverse impacts,
- ensure Samsung C&T to comply with the Convention rights in terms of working and living conditions of workers employed by the subsidiaries of the company, PT Ghandaera and PT Inecda in Indonesia,
- ensure that significant task of the forestry officer in Korean embassy in Indonesia be monitoring human rights and environmental impact assessments be done by Korean companies which attempt to operate in palm oil plantations in Indonesia.

### **3. Case 2: Cotton in Uzbekistan**

#### **3.1. Background**

There are several reasons why Uzbekistan was selected as a field investigation site. Firstly, Uzbekistan's Human Rights situation has one of the world's most vulnerable. President Karimov who recently died had been in power for over 20 years, during the period of time in which few Human Rights expert from the United Nations had ever been allowed to visit. In the past decade, due to Uzbekistan's lack of proper governance and their possible implication in serious Human Rights violations, European firms have largely withdrawn their investments. However, the ROK has consistently maintained or increased their foreign direct investment (FDI): from the 2011/2012 Korea Trade-Investment Promotion Agency (KOTRA) report on Korean firms investing abroad, we can see that the number of Korean corporations operating in Uzbekistan stands at 70, a number inferior only to Russia in the entire Commonwealth of Independent States. Among many human rights issues, related literature in particular, one from international organizations like the ILO and international NGOs such as Human Rights Watch, Cotton Campaign and Uzbek German Forum has repeatedly brought forth the seriousness of child/adult forced labor in Uzbekistan.

#### **3.2. Adverse Human Rights Impacts**

The Uzbek government orchestrates forced labor in cotton fields, adversely affecting the rights of its people. In the high human rights risk environment, not only Korean private owned company like Daewoo textile LLC., a subsidiary of Posco-Daewoo, but also GKD a joint venture of a state-owned enterprise, Korea Minting and Security Printing & ID Card Operating Corporation (KOMSCO)<sup>12</sup> has been complicit with these human rights abuses by continuing buying the tainted cotton from Uzbekistan without conducting their due diligence to prevent and mitigate human rights abuses directly linked to their operations, though not caused by the corporation.

Furthermore, the government of ROK, in the case of forced labor in Uzbekistan, by breaching the extraterritorial state obligations fails in respecting as well as protecting the rights stipulated by the articles 7 (just and favorable working condition), 10 (protection to the family and child), 12 (physical and mental health), and 13 (right to education) in the Convention.

##### **3.2.1. State Orchestrated Forced Labour in Cotton Fields**

###### **Continued Use of Forced Labor in Uzbek Cotton Sector**

Due to the international pressure, the Uzbek government does not systematically mobilize children to harvest cotton since 2012; however, the use of forced labor of adults, especially employees from the public sector, is still widespread. In 2014, it was reported that Uzbek government increased the use of forced labor of adults to pick cotton, apparently to compensate for reduced numbers of children. According to the report released in August 2015, the Uzbek government forcibly mobilized approximately 500,000 people for weeding and preparing in the cotton field during the spring of 2015.<sup>13</sup>

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<sup>12</sup> [http://english.komsco.com/contents/introduce/introduce\\_0100.do](http://english.komsco.com/contents/introduce/introduce_0100.do) "sole manufacturer of Korean currency"

<sup>13</sup> Uzbek-German Forum for Human Right, "Uzbek Government Continued Systematic Forced Labor to weed the Cotton Fields in 2015," August 2015, <http://uzbekgermanforum.org/wp-content/uploads/2015/09/Weeding-Report-2015.pdf>

The government imposes penalties to farmers who fail to meet cotton production quotas. Regional and local leader, *hotkims*, bear responsibility for mobilizing labor to harvest cotton and perform spring fieldwork, and these officials, in turn, impose mobilization quotas on public sector officials in lower levels. During the 2015 and 2016 cotton harvests the Uzbek government required farmers to grow cotton and mobilized students, teachers, medical workers, other government employees, and private-sector employees to harvest cotton, all pursuant to government policy and under threat of penalty. The penalties threatened and imposed by a broad range of state authorities include job loss, loss of child welfare benefits and other welfare payments, academic penalties for students, including expulsion from school, and threats of prosecution and violence.

### **Negative human rights impact of forced labor on children**

In 2013 the research team found evidences about the forced child labor in the cotton fields. The people the team met were the students of kolleji, which is equivalent to a Korean high school (grades 10 to 12), attended by students aged 15.75 to 18.5 years; in other words, most students are still children. In an interview with the investigation team, a student from Tashkent said, “students have no choice but to go [to the cotton fields], since they would unofficially be kicked out of the school if they don’t.” And when the team visited one of kolleji, every students and teachers went out to the adjacent cotton fields and the school classrooms were filled with beds for the purpose of accommodating students during the forced labor periods.

Recent evidence shows that child labor continued to be a problem during the cotton harvest, despite the number was curtailed. The report says that in 2015 and 2016, some schools forced children as young as 10 and 11 years old to pick cotton. In some regions, local authorities forcibly mobilized children, particularly in the later weeks of the harvest, to meet quotas assigned by the same central government authorities that simultaneously decreed that children should not be forced to pick cotton.<sup>14</sup>

Even when children are not forced to work in the fields, they are stripped of their right to learn by having their teachers be sent into forced labor, just like other forced adult laborers. According to the 2013 Report of the research team, with the exception of Tashkent where teachers are usually called on rotation for a 10-day cycle, in provinces outside of Tashkent, including Naboi and Jizzax, there were only 10 or so teachers left in the schools, while others were all called out to the fields. Furthermore, a new form of paid child labor has also emerged where some forced adult laborers intentionally hire children as their replacements, since the children would usually accept a lower compensation.

### **Threat to activists working on the forced labor issues**

The 2013 Uzbekistan Field Investigation Report published by APIL details the state orchestrated labor in several provinces of Uzbekistan. According to the report, the Uzbek had actively refused to disclose the fact that forced labor exists in cotton fields. The report includes interviews and observations made in four different cities - Jizzax, Burkhar, Tashkent (including Yangibozor), and Yangiyul. When the team from APIL visited the cotton fields to conduct investigation, strict surveillance was used to conceal forced labor. For example, the investigation team was denied access at times to the cotton fields in Yangzibozor, Tashkent, as the security guards there and the police who arrived later arrested the members of the investigation team. The team nevertheless still managed to confirm the existence of forced labor in cotton fields.

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<sup>14</sup> Uzbek-German Forum for Human Right, “Uzbek Government Continued Systematic Forced Labor to weed the Cotton Fields in 2015,” August 2015, <http://uzbekgermanforum.org/wp-content/uploads/2015/09/Weeding-Report-2015.pdf>

The Uzbek government has continued to take a defensive position on forced labor as it claims forced labor does not exist, sometimes taking a measure as drastic as arresting a campaigner against forced labor ahead of an international meeting where she was scheduled to give evidence on human rights violations. The arrested activist is Elena Urlaeva, a veteran activist who was beaten by police and taken to a psychiatric clinic in Tashkent.<sup>15</sup>

### **3.2.2. Involvement of Korean companies**

#### **Global Komco Daewoo (GKD), a joint venture of KOMSCO and Daewoo Textile LLC.**

The cotton pulp manufacturing company, GKD, is a consortium whose parent company is a Korean state-owned enterprise, KOMSCO which has been the sole manufacturer of Korea currency and security paper such as banknotes, gift certificates and passport pages. After a long period of negotiations, KOMSCO took over a cotton pulp production plant in Yangiyul from KOGOZI (KOGOZI is an Uzbek company in which the Uzbek government used to have 25% of shares). KOMSCO who is 65% shareholder of GKD formed the consortium with Daewoo Textile LLC. which has the other 35%. Most of the cotton pulp produced by GKD is sold to KOMSCO, but some are sold to private companies as well. As its production has constantly increased, the cotton pulp produced by GKD in 2014 accounts for 14% of the domestic market.<sup>16</sup>

#### **Daewoo Textile LLC., a subsidiary of Posco Daewoo**

Posco Daewoo has the 100% shares of Daewoo Textile LLC. which has two cotton yarn manufacturing factories in Bukhara and Fergana in Uzbekistan respectively. The Bukhara plant only manufactures cotton yarn, but the factory in Fergana also manufactures some types of fabric. China is the biggest destination of the firm's products; others include Europe, Iran, and even Korea (although the amount sent to Korea, which is transported through Russia, is rather miniscule). Japan also receives some fabric. Daewoo Textile LLC. purchases 50,000 or 60,000 tons out of 1 million tons of cotton cultivated yearly in Uzbekistan, which is 5% of all of Uzbekistan's cotton in a year; they then use the cotton to manufacture around 45,000 tons of products. As for the process of purchase according to the Daewoo Textile LLC, they annually report to the Uzbek government the amount of cotton they need; they negotiate the price as the average between the international market price (Index A) and the price desired by the Uzbek government (Index UZB).

There is a substantial link between forced labor of the Uzbek government and the business activities of the two Korean companies. As mentioned above, the issue here is not whether a corporation has directly caused forced labor, but instead whether the corporations have not taken adequate steps to 1) ensure that forced labor does not exist in its operations, 2) avoid "contributing" to human rights violations and "address violations when they occur", 3) prevent or mitigate human rights violations directly linked to their operations, products, or services by a business relationship, even when the company has not "contributed to" or caused the human rights violation; and 4) carry out risk-based due diligence to identify, prevent, and mitigate "actual and potential" human rights violations. The Korean corporations have neglected all the above-mentioned responsibilities, thus have failed in doing their due diligence to recognize and mitigate the human rights violation caused by forced labor.

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<sup>15</sup> <http://www.reuters.com/article/us-uzbekistan-cotton-arrest-idUSKBN16A1YO>

<sup>16</sup> Press Release, MP Maengwoo Park, Oct. 14, 2014.

### 3.3. Measures taken by the Government

The issue of the complicity of KOMSCO in forced labour in cotton field by the Uzbekistan government was dealt in the annual Parliamentary Inspection of the relevant government body in 2012 and 2013. And a specific instance against Daewoo International (now Posco Daewoo) was filed with the ROK NCP under the Ministry of Trade, Industry and Energy, and later it was dismissed at the initial assessment in 2015. Therefore, the government of ROK has been well aware of the fact that Korean companies have been involved in the forced labor in Uzbekistan.<sup>17</sup> However, while the government of ROK has recommended to Uzbekistan government in Universal Periodic Review (UPR) in 2013 by saying "Strengthen its monitoring system to eliminate possibility of forced child labour in cotton production"<sup>18</sup>, it failed to comply with its obligations to respect and protect the Convention rights breached by forced labour orchestrated by Uzbekistan government, which is a business partner of Korean state owned company, GKD and privately owned company, Daewoo Textile LLC., which is a subsidiary of Posco Daewoo domiciled in the territory or/and jurisdiction of ROK. On the contrary, the government of ROK granted a loan amounting to 8,000,000 USD to Daewoo Textile LLC. through Export-Import Bank of Korea<sup>19</sup> and built a Textile Techno Park in Tashkent of Uzbekistan with financial support from the Ministry of Trade, Industry and Energy in 2016.<sup>20</sup>

### 3.4. Suggested Recommendations

In order to comply with its extraterritorial state obligations to protect the Convention rights, we urge the government of ROK to:

- stop KOMSCO from making Korean currency with the tainted cotton pulp produced by GKD which has been complicit in forced labor in Uzbekistan until the elimination of forced labor is identified with a measurable method,
- stop Export-Import Bank of Korea from granting a loan to Daewoo textile LLC. which has been complicit in forced labor in Uzbekistan until the elimination of forced labor is identified in a measurable method,
- stop the Ministry of Trade, Industry and Energy from granting Overseas Development Aids to the government of Uzbekistan which has been orchestrating the forced labor until the elimination of forced labor is identified in a measurable method.

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<sup>17</sup> <http://www.koreatimes.co.kr/www/common/printpreview.asp?categoryCode=316&newsIdx=147819>

<sup>18</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/154/79/PDF/G1315479.pdf?OpenElement>. 133.44.

<sup>19</sup> See the audit report of Posco Daewoo, <http://www.daewoo.com/eng/auditReport.do>

<sup>20</sup> <http://www.uzbekistan.or.kr/en/uzbekistan-to-create-textile-industrial-park/>

## **4. Case 3: Electronics in Mexico**

### **4.1. Background**

As of August 2014, an estimated two hundred and fifty Korean corporations operate in Mexico.<sup>21</sup> Electronics is one of the largest industry in which Korean corporations operating. The following is some of the Korean electronics companies in Mexico: Samsung Electronics Mexicana (SAMEX, Tijuana), LG Electronics Mexico (LGEMX, Estado Mexico), Hyundai Translead (HT, Tijuana), Samsung SDI(Tijuana), Samsung Electronics Mexico(Mexico D.F.), LG Electronics Monterrey Mexico (Monterrey), LG Electronics Reynosa(Reynosa), Samsung Electronics Mexico (SEM, Queretaro). The reason Mexico was selected for site visit investigation is not only that Korean electronics corporations were very active in the country, but also that in the cases of Korean companies, failing to pay wages, dismissing workers unlawfully, abusing employees and interfering with labor union formation have been repeatedly reported in foreign media in the last five years. Some of such media reports concerned: Korean manager at a partner firm of Samsung Electronics beating a Mexican worker<sup>22</sup>; A female employee at HD Electronics, a supplier of LG Electronics, having both of her hands severed while at work.<sup>23</sup> The investigation team visited both Samsung Electronics Mexicana in Tijuana (SAMEX) and Ohsung Electronics in Mexicali, a supplier of LG electronics Mexico.

### **4.2. Adverse Human Rights Impacts**

Following compilation of interviews with workers in Tijuana as well as Mexicali demonstrates that Samsung Electronics Mexicana and LG Electronics Mexico violate the Article 2 (2) (non discrimination), 7 (the right to just and favorable working condition), 8 (the right to form and join trade unions), 11 (the right to adequate standard of living including food, clothing and housing), and 12 (the rights to physical and mental health) of ICESCR.

#### **4.2.1. Human Rights Violations by Samsung Electronics**

##### **Absence of labor union**

Most interviewees who worked at Samsung Electronics Mexicana had never heard of labor unions or collective bargaining at the company, much less elected union leaders or had union fees deducted. When asked why they did not attempt to form a union, some of the workers expressed fear of dismissal, while two of them reported knowing people who had been fired for trying to establish a union.

In response, Samsung Electronics Mexicana alleged that it did have a labor union, but failed to answer when such union was established, and who the union leaders were. By contrast, every additional interviewee during the second investigation in August 2016 insisted that there is no labor union at Samsung Electronics Mexicana. The workers added that they had not seen anyone even attempting to establish a trade union recently.

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<sup>21</sup> The content below was referenced from Soon-Sung Kim, Korean Corporations in Mexico and Major Issues, Latin America Regional Issue Paper No. 6, 2014, p.11.

<sup>22</sup> <https://www.youtube.com/watch?v=ObbL2j7DAog>

<sup>23</sup> <https://www.theguardian.com/commentisfree/2015/jun/11/lost-hands-making-flatscreens-no-help>



### **‘Working Hours Bank’ system and involuntary overtime work.**

Workers from Samsung Electronics Mexicana responded that overtime allowance is paid by a ‘working hour bank’ system, by which workers are forced or allowed to go home early when the workload is light, and such accumulated hours of early leave then offsets the overtime working hours when extra work is needed. Moreover, all Samsung Electronics Mexicana interviewees reported that they were working more than 60 hours per week, a few even 69 hours per week. Some worked more than 20 hours in overtime per week, while one reported working overtime almost every day. With regards to day/night shifts, four workers said that unexpected changes to the shifts happened frequently, particularly when there were large orders.

For three reasons, overtime work was not de facto voluntary at Samsung Electronics Mexicana. First, workers faced risks of dismissal or negative evaluation for refusing overtime work. Second, the wages were so low that overtime work is necessary for survival. One worker from Samsung Electronics Mexicana even put it this way: “I would like to work overtime more frequently to support my family, but there’s extra work to do only from mid-August to mid-December, so I can’t do overtime as much as I want.” Third, as discussed in conjunction with the ‘working-hours-bank’ system, if an employee worked for less than 8 hours one day, the unworked hours are counted against overtime calculations later, forcing workers to stay overtime without proper compensation.

### **Restriction of using bathroom and choosing vacation time**

A worker during the first investigation said that some production lines limit the number of restroom visits. And 80% of workers interviewed during the second investigation also claimed that going to the restroom is restricted to one to three times a day, while the other 20% was allowed to use the restroom only once a day.

Furthermore, all interviewees from Samsung Electronics Mexicana reported that they cannot take vacations when they want, but must take them in December when the orders are low. According to the interviewees of the second investigation, to workers’ requesting days off during the week, the head manager reportedly had said that “personal matters should be dealt with on Saturdays and Sundays.”

### **Subcontracted workers**

In Mexico, the ratio of subcontractors is particularly high in the electronics industry, accounting for 30-60% of all workers. One Samsung Electronics Mexicana worker declared that out of 36 workers at his production line, 20 are employed directly by Samsung Electronics Mexicana, while the others are subcontracted. The federal Labor Law holds that subcontracted workers cannot be hired for the same jobs held by direct employed workers. Nonetheless, the subcontracted workers at Samsung Electronics Mexicana were all doing the same task as the directly employed, i.e. working at product assembly. At Samsung Electronics Mexicana, subcontracted workers face various types of discrimination. They were easily fired, especially in the period immediately after mid-December when orders dramatically decrease. Furthermore, they received lower wages and worse treatment than directly employed workers despite performing the same jobs; their schedules also changed more frequently.

#### **4.2.2. Human Rights Violations by LG Electronics Mexico**

##### **‘Working Hours Bank’ system and involuntary overtime work.**

As in Samsung Electronics Mexicana, overtime allowance in Ohsung Electronics is paid by a ‘working hour bank’ system, and overtime work is not de facto voluntary. Ohsung Electronics employees testified that because the daily wage of 110-150 pesos was too low, they could not help but work overtime. Due to such structural coercion, Ohsung Electronics workers reported that they were working “complete shifts” (full-day shifts) on Saturdays, and consistently working overtime during the week as well.

Also, as Samsung Electronics Mexicana, workers of Ohsung Electronics also could not set their own vacation dates, but had to rest for one week at a time designated by the company; but the company does not pay wages during vacations, so overtime working hours overset the absence during vacation.

##### **Ill treatment and poor working condition**

Workers of Ohsung Electronics suffer from inhumane treatment of their managers, including verbal abuse and physical harassment. One of the workers testified: “This female Mexican manager often yells at newly hired workers for not doing well, or tell workers that they don’t do a good job because they are fat. She calls people ‘ugly’ and ‘shapeless.’” Some Ohsung Electronics workers reported being barred from entering the factory and forced to return home for being late by one minute.

Physical violence from Korean managers was also described: "Mr. Lee, a molding manager, insults workers by pulling on our nose when there is a defective product. Last year, one employee protested this insulting behavior and got beat up. Mr. Lee even grabs things from the production line and throws them at our faces.”

The interviewees of Ohsung Electronics also reported its awful working condition. Ohsung Electronics had half-hour lunch breaks, which in practice translated into 25 minutes because workers had to return 5 minutes early. There was not enough space for eating inside the factory, forcing workers to eat outside in the heat. Drinking water was lacking, and only one men’s bathroom and three women’s bathrooms were available for 200 workers.

##### **Occupational safety problem**

Ohsung Electronics does not make de facto efforts to protect its workers from possible danger caused by strong chemicals and industrial accidents. One Ohsung Electronics worker testified that she performed welding all throughout her pregnancy. Another worker had fingers damaged from using strong chemicals like solvent, alcohol, acetone, silicone, and paint. Others echoed these issues of occupational safety saying that "We often feel dizzy when we’re dealing with chemicals or welding, but the company doesn’t give us any safety equipment. When we requested them, the Korean manager told us that we don’t have the right to have them." "When there are inspectors coming from outside, the company gives us gloves and masks in advance, only to take them away when the inspectors are gone."

### **4.3. Measures taken by the Government**

The government of ROK has failed to carry out its obligations to protect the Convention rights breached by Korean companies, Samsung Electronics and Ohsung Electronics, which is a supplier of LG Electronics Mexico, even though Korean National Pension Fund has 9,14% (in 2016) of total shares of Samsung Electronics who is the 100% shareholder of its subsidiary, Samsung Electronics Mexicana<sup>24</sup> and 7.1% (in 2017) of LG Electronics<sup>25</sup> who also has 100% share of LG Electronics Mexico.<sup>26</sup>

### **4.4. Suggested Recommendations**

In order to comply with its extraterritorial state obligations to protect the Convention rights, we urge the government of ROK to:

- address the negative impacts on workers by business activities of Samsung Electronics and LG electronics through their subsidiaries and supplier in Mexico,
- ensure Samsung Electronics and LG electronics to comply with the Convention rights in terms of working conditions and the right to trade union of workers employed by their subsidiaries and supplier.

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<sup>24</sup> [http://images.samsung.com/is/content/samsung/p5/global/ir/docs/170331\\_2016\\_Business\\_Report\\_vF.pdf](http://images.samsung.com/is/content/samsung/p5/global/ir/docs/170331_2016_Business_Report_vF.pdf), p74.

<sup>25</sup> <http://www.lg.com/global/investor-relations/reports>

<sup>26</sup> LG Electronics Mexico S.A. DE C.V (LGEMS)

## 5. Case 4: Fish in Distant Waters

### 5.1. Background

According to the Food and Agriculture Organization of the United Nations, the Republic of Korea's fishery and aquaculture output is 1.77 million ton, an increase of 200,000 tons from 2013 output (1.58 million ton). The value of this output is estimated to be approximately USD 4.4 billion, ranking the ROK as the world's 13<sup>th</sup> largest fishing nation.<sup>27</sup> What is not reflected in these statistics is that most of the workers on Korean fishing vessels are migrants. In fact, 70 per cent of fishermen on Korean distant water fishing (DWF) vessels are migrant workers in 2016. Although migrant fishermen have been working in large numbers on Korean vessels for nearly three decades, there has not been any attention paid to their issues either in the media or in academia. This changed in June 2011 when 32 Indonesian fishermen on the *Sajo Oyang 75*, (a DWF vessel that was operating in the New Zealand's waters) escaped the vessel and asked the Government of New Zealand for protection. The fishermen claimed that they had been subject to verbal and physical abuse, sexual assault and they had not been paid any wages. As the condition of migrant fishermen's human rights on Korean DWF vessels rose to the surface in 2011, the National Human Rights Commission of Korea (NHRCK) issued recommendations on reforms on the ROK fishing industry. And the Ministry of Oceans and Fisheries (MOF) accepted the recommendations and supplemented them with its own solutions. However, despite the increased public and institutional awareness on the issue, almost no significant improvements have been made to the conditions of many migrant fishermen.

From the legal perspective, it is true that Korean flagged fishing vessels in distant waters are not included as 'extra territory' since they are under the jurisdiction of ROK. However, it is also undeniable that the distant water fishing vessels are physically apart from the mainland of ROK which makes the government's access to those vessels no less easy than the access to the extra territories. Furthermore, migrant fishermen employed by Korean fishing companies are recruited by local recruitment companies in the countries of origin. And in the process of recruitment, the migrant fishermen are already manipulated by the recruitment companies, which, in turn makes the migrant workers more vulnerable to the exploitation of the Korean vessels as detailed below.

### 5.2. Adverse Human Rights Impacts

The violations of human rights of the migrant fishermen in distant water fishing vessels can be largely divided into two categories based on the stage of the migration process: manipulations in the process of recruitment by local companies, and exploitations in the process of employment by Korean fishing companies. The infringement in the process of recruitment and employment are related with the rights provided by the Article 2 (2) (non discrimination), 7 (the right to the just and favorable working conditions), 11 (the right to adequate standard of living including food, clothing and housing), 12 (the right to physical and mental health) of the Convention.

#### 5.2.1 Manipulation in Recruitment

Although there are some variations in the degree of the manipulations depending on how strictly local recruiting companies are regulated by their governments, migrant fishermen normally tend to be the targets of vulnerability from the very beginning of the recruitment. The reasons for their vulnerability can be largely categorized into the three: high recruitment costs

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<sup>27</sup> See <http://www.fao.org/3/a-i5555e.pdf>.

including security deposits, the problems surrounding recruitment and labor contracts, and the abrupt departure with passport confiscated after long waiting.

### **High Recruitment Costs including Security Deposits**

International regulations on ethical or fair recruitment stipulate that the recruitment fee should not be borne by the migrant worker. However, the reality was far removed. Migrant fishermen paid various fees along the recruitment process, including security deposit that tied the workers down to the vessel until the end of the contract. Most migrant fishermen incurred debt to pay these fees, thereby being put in an extremely vulnerable position from the very start.

The recruitment companies charged migrant fishermen a variety of fees for work on DWF vessels. Usually, training and miscellaneous fees were not as high, and what burdened migrant fishermen the most are the security deposit and service fees. In the case of DWF vessels, migrant fishermen from the Philippines did not pay security deposit and service fees because the Government of Philippines legally prohibited recruiting agencies from collecting such fees. Indonesian fishermen, on the other hand, paid service fee ranging from USD 70 to USD 180 and security deposit ranging from USD 2,000 and USD 2,300 to the recruiting agencies. The Government of Viet Nam has set a ceiling of the service fee as one month's wages for one-year contract. However, a Vietnamese migrant worker whom the research team interviewed reported paying USD 670 in service fees to the recruiting agency for a two-year contract even though his monthly salary was a mere USD 210. Similarly, although Vietnamese law limits the security deposit at USD 1,500, one Vietnamese worker said he paid between USD 2,500 and USD 3,000 in security deposit, and the amount in excess of USD 1,500 was paid back to family members only after he boarded the vessel. Migrant fishermen who board DWF vessels for the first time, especially those from Viet Nam and Indonesia, usually got loans to pay for the recruitment fee. The high recruitment fees incurred before the employment not only made migrant fishermen vulnerable, but also left workers prone to forced labor/human trafficking conditions by putting financial pressure (through, *inter alia*, the security deposit) on the worker as detailed below.

### **Problems surrounding Recruitment and Labor Contracts**

A recruitment contract (between the local recruiting company and the worker) was distinct from a labor contract (between the vessel owner and the worker). In the case of DWF vessels, regardless of the country of origin, migrant fishermen the research team interviewed had signed the contract a day or two before departing the country without fully understanding the terms. In other words, many migrant fishermen signed the contract under extreme pressure with the suggestion that they would lose the opportunity if they did not agree to the terms. Moreover, the standard contract itself – prepared or approved by the government of the country of origin – had many clauses that are unfavorable to the worker, while the recruiting company coerced the worker to sign an even more unfair contract. Moreover, regardless of the country of origin, none of the migrant workers had received a copy of their recruitment contracts.

Labor contracts are also not without severe flaws. In the case of DWF vessels, the labor contract must be signed before the worker leaves his country of origin because the fishing companies must report its hiring of foreigners to the Regional Office of Oceans and Fisheries of ROK, and the worker needs to get a visa to enter ROK. However, none of the migrant workers we interviewed reported signing a labor contract before departing for the ROK. This raises the possibility that someone signs the labor contract on behalf of the fisherman (without informing the latter), or gets the worker to sign the contract without explaining any of its content.

### **Abrupt Departure with Passport Confiscated after Long Waiting**

Workers on DWF vessels from all countries of origin waited for a long period of time with their passports confiscated, even before a recruitment contract was concluded. Recruitment companies explained that they seized the passports to prevent workers from applying to other recruitment companies at the same time. This effectively robs workers of their freedom and opportunity to seek alternative employment. Workers typically waited from six months to more than a year without knowing when they may be able to find a position and leave, before suddenly being told to get ready within a week. They then signed the contract a day or two before leaving their home country. Because these workers had already paid a fee to the recruiting agency, and have lost the opportunity to be hired elsewhere during their long waiting period, they had no choice but to sign the unfavorable recruitment and labor contracts under extremely short notice.

### **5.2.2. Exploitation in Employment**

Migrant fishermen working on the distant water fishing (DWF) vessels are suffering from several problems such as but not limited to long working hours, health and safety problems low and unequal wages, physical abuses, and general discrimination. It must be noticed that these violations and exploitations of their rights are possible due to the fundamental loophole or short of legal protections as well as the lack of willingness to enforce the existing laws by the government of ROK.

#### **Long working hours, low and unequal wages and no overtime payment**

Recruitment and labor contracts for DWF vessels are completely silent on working hours, and the Seafarers' Act of ROK does not place a limit on the hours of work. Though labor on DWF vessels is necessarily unpredictable and irregular to a certain extent, there is no justification for an unlimited number of working hours. Migrant fishermen work grueling, inhumane hours on DWF vessels; some reported working 12 hours a day, but most interviewees suggested they worked for an average of 18 to 20 hours, even reaching 22 hours during busy periods.

The average wages of migrant fishermen on DWF vessels were remarkably lower than their Korean counterparts despite of the same amount of working hours. For instance, while Korean fishermen's monthly minimum wage is 1,437 USD (in 2016) and monthly average wage is 5,833 USD (in 2015), the monthly minimum wage of migrant fishermen, which is usually the same as monthly average wage of them, is 457 USD (in 2016). Seafarers' Act in the ROK dictates that the minimum wage of fishermen is determined by the annual announcement of the Minister of Oceans and Fisheries. Minimum wage for Korean fishermen is set accordingly at USD 1,437 (2016). However, minimum wage for migrant fishermen is determined through an entirely different process of labor-management agreement, by fishing companies and Korean fishermen's labor union, both of whom have conflicting interests with migrant fishermen. Consequently, the minimum wage used to be considerably low in the past, but now meets the ILO minimum wage. However, most vessels even failed to abide by the ILO minimum wage; some migrant fishermen we interviewed were paid a mere USD 250 a month. Moreover, recruiting companies in the Philippines and Indonesia were deducting approximately 5 USD per month for management fee from their wages.

The most discriminatory and exploitative factor in wage determination is that the migrant fishermen receive a fixed salary, while Korean fishermen are part of a so-called profit-sharing system (Bohapje in Korean) whereby they divide the net profit among themselves. Therefore, migrant fishermen are not only entirely excluded from the profits, but the system incentivizes Korean workers to increase work hours of migrant workers.

It is not just that the clause about overtime payment does not exist in most of the labor and recruitment contracts for migrant fishermen working on DWF vessels, but also that none of the migrant fishermen under contracts that does capitulate existence of overtime payment did not receive the promised money for overtime working. There were some workers who were orally promised a variety of bonuses when they signed the recruitment contract, and decided to board DWF vessels, despite the low salary, in hopes that the bonuses would make up for the lack of pay. However, it is difficult to enforce the promise of overtime pay; the amount is unpredictable because it varies significantly by vessel or by operation, and the fishing company has complete discretion on the type and content of bonuses.

### **Physical abuse and discrimination**

The research team found out, after years of investigation and interviews, that physical abuse against migrant fishermen occurred frequently on DWF vessels. The types and reasons for the violence varies by case, but some of the examples are as follows: Korean crewmen usually hit a migrant worker's face, head, butt, or legs with hands or feet; some would go further using fishing gear, knives, or scissors for violence. In most cases, the consequence was not major enough to be considered an injury, but some instances were so serious that migrant fishermen were left bleeding or bedridden for days; others even contemplated suicide because of constant beatings. As with verbal abuse, Korean fishermen justified their exercise of physical violence by blaming migrant fishermen for being slow, vomiting, or not doing their work well, as well as for being impolite – such as refusing to do errands for or bowing to them. The problem must have been worsened since migrant fishermen on DWF vessels had no recourse for such violence other than asking the captain for help, but their plea was rarely accepted.

Sajo Oyang 75 (2011) is the landmark case illustrating the physical abuse against migrant fishermen on Korean flagged DWF vessels. A group of Indonesian fishermen resorted to reporting physical abuse including sexual assault on the Korean vessel, Sajo Oyang 75, to the Indonesian Embassy in the ROK, prompting the Indonesian government to announce a temporary moratorium on sending fishermen to the ROK.

The Article 6 of the Labor Standards Act prohibits discrimination based on nationality, and Article 22 of Act on Foreign Workers' Employment, etc. also requires employer not to discriminate or unfairly treat any person on the ground that he/she is a foreign worker; Article 5 of the Seafarers' Act applies Article 6 of above Labor Standards Act. However, migrant fishermen told the research team countless stories of the discrimination they had experienced. First, migrant fishermen were under much worse living conditions than their Korean counterparts, and were sometimes even given leftover food from Koreans. Similar discrimination extended to the use of bathrooms, toilets, and water. One of migrant fisherman the team interviewed highlighted the discrimination by saying that "They only gave us one set of working clothes, and it was difficult to wash it with seawater because the clothes are drenched in sweat and salty seawater. But unlike us, The ROK officers used clean water from the showers to wash their clothes. Even though there were many more of us (migrant fishermen) than were Korean fishermen, we were all forced to use one bathroom as a group. Even the toilets were different. Koreans' toilets were modern, while ours didn't even have a flush."

### **Physical, social and financial coercion**

Normally, one can leave the job position or go back to one's homeland if one dislike the working conditions. However, this is not the case for the most migrant fishermen on Korean DWF vessels. As previously mentioned, Korean employers under the loopholes of legal system exploit the migrants' vulnerabilities, which have been made as early as the recruitment process at their home countries. Such coercion has physical as well as social and financial dimensions.

Due to docking costs money, companies often require the main vessel to stay offshore, transporting the fish and supplying necessities through other ships. Because of such practice of transshipment, migrant workers cannot leave or ask for outside help even in the face of severe exploitation, abuse and discrimination; there are no means of communication on the seas for migrant fishermen other than the satellite communication tools which are not available to migrant fishermen. Some vessels stayed away from the dock at just enough distance so that migrant fishermen could not go ashore even when they arrived at the port. Sometimes Korean manning companies forced the worker to stay in the Institute of Welfare and Education for Distant Water Migrant Fishermen at the cost of the vessel-owning company, which is a de-facto detention center. Migrant fishermen detained in the institute cannot leave the premises freely. There are surveillance cameras near the first-floor exit; the building is full of CCTVs; the floor on which migrant fishermen stay are locked with iron-barred windows and doors; and a guard watches them constantly. Such serious infringement on the migrant fishermen's right to physical liberty without any legal basis is a grave human rights violation in and of itself. As thus, these physical segregations prevent workers from escaping exploitation, abuse and discrimination in the workplace.

As discussed earlier, the recruiting companies confiscated the passport and other personal documents of migrant fishermen being recruited for DWF vessels. Those documents were returned to the migrant briefly upon departure from their country of origin but were taken away by the Korean manning agency or the captain immediately upon arrival; they were then kept away from the worker until the employment ends. Without their passports and documentation, it is difficult for migrant fishermen to seek help.

Except for those from the Philippines, all migrant workers on DWF vessels paid a huge sum of money to the recruiting agency as security deposit. Therefore, despite experiencing exploitation and abuse during employment, most migrant fishermen had no choice but to stay on the vessel for fear that they would not get back their security deposit. Yet, there was another avenue of financial pressure: predetermination of the amount of damages. The recruiting agency usually had a contract with the Korean manning agency which required the former to pay a penalty fee to the latter for migrant fishermen who desert the workplace. And to protect themselves, the recruiting agency included a clause on predetermination of the amount of damages in the recruitment contract with the migrant worker. Even in the Philippines, where the recruiting agency does not receive fees or a security deposit from the migrant fisherman, there is a separate contract that obligates the worker to pay around USD 1,760 if he deserts the workplace before the end of his contract. The provision on predetermination of the amount of damages serves as a measure of putting financial pressure on the migrant fisherman to prevent him from leaving the vessel. One of Filipino migrant fishermen we interviewed stated that he could not leave conditions of exploitation and abuse because of the liability for damages.

Furthermore, Korean vessels owners often withholding payments to prevent migrant workers from leaving the workplace. On DWF vessels, the practice of withholding a certain amount of wages to discourage migrant fishermen from leaving the vessel was widespread. Some withheld months' worth of wages, while others withheld a portion of the salary throughout the contract period. The withholding was done by the recruiting companies, or the fishing companies. Aside from those from Vietnam and Indonesia, migrant fishermen from the Philippines (who do not have a security deposit) also had their wages withheld.



### **5.3. Measures taken by the Government**

Governments of the country of origin have the jurisdiction to regulate the recruiting agencies within the territory. As for DWF vessel, however, the government's' means of regulation are limited to issuing license and developing/monitoring a blacklist of recruiting agencies. Such measures do not affect unlicensed recruitment companies or illegal intermediaries. While Seafarers' Act of ROK obliges fishing companies to employ a fisherman introduced by local recruitment companies satisfying standards of Maritime Labour Convention, the standards have not yet been specified by the decree of the Minister of Oceans and Fisheries.

The Seafarers' Act of ROK prohibits forced saving or deposit to compensate for predetermined damages and clearly states the principle of direct payment to workers. However, in reality due to the lack of regulation, the recruitment companies do collect the deposit to compensate for damages; and wages are delayed, withheld, or indirectly paid through recruiting companies.

Even though all these serious violations on migrant fishermen in which the Korean DWV fishing companies have been directly and indirectly involved, the government of ROK has been given a huge amount of subsidies to the DWV fishing companies amounting to approximately 280,000,000 USD in 2012<sup>28</sup> along with the investment of the Korean National Pension Fund, to the extent that the Fund were holding 6.79% of total shares of Sajo Industries and 10% of Dongwon industries which are the two biggest Korea DWF companies.

As thus, the government of ROK has violated its obligations to protect the Convention rights of migrant workers breached by local recruitment companies in the country of origin of migrants by failing in properly regulating the Korean DWF companies to which on the contrary, the government of ROK has given subsidies and invested through the Korean National Pension Fund.

### **5.4. Suggested Recommendations**

In order to comply with its extraterritorial state obligations to protect the Convention rights, we urge the government of ROK to:

- assess the exact amount of recruitment cost and its specific breakdowns paid by migrant fishermen through in-depth interview with migrant fishermen by types of fishing vessel,
- include clauses for the protection of migrant fishermen's rights in the Distant Water Fishery Act that can solve problems that have been raised in regards to human rights violation of migrant fishermen,
- Issue decree to specify verification process of recruiting agencies to examine if the agencies fulfill the standards of Maritime Labour Convention, in order to implement the Article 113-2 of Seafarers' Act,
- share information on migrant fishermen system with sending country government,

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<sup>28</sup> <http://m.greenpeace.org/korea/Global/korea/publications/reports/oceans/2013/oct-2013-subsidy-report-kor.pdf> p8.

- develop a policy roadmap to implement ‘Employer Pays Principle’ in coordination with the sending countries and revise relevant legislation to implement the ‘Employer Pays Principle’,
- with various leverage including subsidies ensure the Korean fishing companies to conduct the due diligence to identify, prevent and mitigate the violation of the Convention rights of the migrant fishermen by their business partners, the local recruitment companies.
- strengthen the human and financial resources of the labour inspection to enable it to perform its functions effectively and to take effective measures to Increase labour inspection on the infringements of the Convention rights of migrant crews in Korean fishing vessels operating in distant waters,
- take steps to hold exploitative fishing companies accountable and to compensate victims.

## 6. Conclusion

### 6.1. Conclusion with Summary Table

Even though engaged Korean companies, victimized people, the way the companies are complicit with the violations of the Convention rights of victims, place where the violations occurred, the list of violated Convention rights, the relationship between companies at issue and degree of commission or omission of the government of ROK are all different depending on cases as you find the below table, the four cases in this report all illustrate well how the government of ROK has failed to comply with its extraterritorial state obligations to respect (in GKD case of cotton in Uzbekistan) and protect (in all other cases) the Convention rights.

case	Case1: palm oil in Indonesia	Case2-1: cotton in Uzbekistan	Case2-2: cotton in Uzbekistan	Case3-1: Electronics in Mexico	Case3-2: Electronics in Mexico	Case4: Fish in Distant Waters
responsible Korean company	Samsung C&T	KOMSCO	Posco Daewoo	Samsung Electronics	LG Electronics	Fishing Companies
subsidiary or joint venture	PT Ineca and PT Ghandara	Global Komsco Daewoo	Daewoo Textile LLC.	Samsung Electronics Mexicana	LG Electronics Mexico	N/A
supplier and business partner	N/A	Uzbekistan government		N/A	Ohsung Electronic in Mexico	Local recruitment companies
victim	Indonesia workers and indigenous people	Uzbekistan People forced to work in cotton field.		Mexican workers	Mexican workers	Migrant fishing crews
violated rights	Article 2 (2), 7, 10, 11, 12, 13 and 15	Articles 7, 10, 12, and 13		Article 2 (2), 7, 8, 11 and 12		Article 2 (2), 7, 11, 12
Korean National Pension Fund investment to responsible Korean company	5.78% in 2016	6.15% in 2016	6.15% in 2016	9.14% in 2016	7.1% in 2017	e.g. 6.79% of Sajo in 2016 and 10% of Dongwon
credit by the Export-Import Bank of Korea /public subsidy to responsible Korean company	N/A	N/A	8,000,000USD in 2016.(credit)	N/A	N/A	280,000,000 USD in 2012. (subsidy)
characteristics of obligation	obligation to protect	obligation to respect	obligation to protect	obligation to protect	obligation to protect	obligation to protect

## **6.2. The ROK' report on extraterritorial state obligation**

In response to the question relating to the list of issues on extraterritorial state obligation, the government of ROK answered as follows, which sounds like missing the point.

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

The NCP is not the only issue about extraterritorial state obligation, but the National Contact Point (NCP) has not been effective in resolving human rights violations either. Ever since its establishment, Korean NCP has never served as good offices between the relevant parties but dismissed most of cases without reviewing the merits.

## **6.3. Additional Generic Recommendations**

The concrete recommendations were suggested to address the noncompliance of extraterritorial state obligations by the ROK government specific to the cases. The following is the more generic recommendation along with the case specific recommendations suggested above to guarantee the Republic of Korea to comply with extraterritorial state obligations to respect, protect and fulfil the Convention rights.

In order to comply with its extraterritorial state obligations to protect the Convention rights, we urge the government of ROK to:

- ensure that the Korean National Pension Funds undertake systematic and independent human rights impact assessments, establish effective monitoring mechanisms and guarantee accessible complaint mechanisms for violations of the Convention rights by enterprises domiciled under the jurisdiction of ROK which are operating in abroad,
- ensure that Export-Import Bank of Korea undertake systematic and independent human rights impact assessments, establish effective monitoring mechanisms and guarantee accessible complaint mechanisms for violations of the Convention rights by enterprises domiciled under the jurisdiction of ROK which are operating in abroad,
- review the operation of the NCP and take measures of reform to ensure independency, expertise, enforceability in order to offer effective remedy to the victims of the human rights violations by the Republic of Korean corporations' activities overseas,
- develop a national action plan on business and human rights reflecting the Committee's general comment No. 24 (2017) to install regulatory framework for companies operating

in the State party to ensure that their activities do not negatively affect the enjoyment of the Convention rights,

- impose a duty on companies to report on their policies and procedures to ensure respect for human rights and providing effective means of accountability and redress for abuses to Covenant rights,
- adopt “appropriate legislative and administrative measures” to ensure legal liability of companies domiciled under the jurisdiction or ROK, regarding violations of Convention rights in their operations abroad, committed directly by these companies or resulting from the activities of their subsidiaries or business partners where these companies have failed to exercise due diligence,
- provide the accessible remedies for the victims of the Convention rights violations committed by enterprises domiciled under the jurisdiction of ROK which are operating in abroad.