Submission to the UN Committee on Economic, Social and Cultural Rights for the follow-up procedure

South Korean Human Rights Organizations Network

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Table of Contents

INTRODUCTION

The Committee on Economic, Social, and Cultural Rights (CESCR) adopted its concluding observations after the Consideration of the Fourth Periodic Report of the Republic of Korea (E/C.12/KOR/CO/4) on 6th October 2017, and requested the government to provide information on the implementation of the recommendations made by the Committee in paragraphs 18 (a) (business and human rights), 23 (non-discrimination legislation) and 41 (trade union rights) within 18 months, in accordance with the follow-up procedure.

Though the due date was 6th April 2019, the Government of the ROK missed the deadline. Moreover, the government's report has no concrete plans towards the progressive realization of the economic, social, cultural rights of the people. We, therefore, convey the following opinions of civil society organizations on the situation after the Fourth Periodic Report of CESCR.

Business and Human Rights

National Action Plan on Business and Human Rights

- Ministry of Trade, Industry and Energy, the department in charge of the Republic of Korea's National Contact Points, did not participate in discussion with NGO for the establishment of Business and Human Rights NAP. Majority of opinions from NGO were neither reflected.

- Though the government is guaranteeing corporate's responsibility to respect human rights as one of its policy tasks in the Business and Human Rights NAP section, specific procedures are not suggested. That is, how the government will treat companies that are not taking their human rights respect responsibility is not mentioned.

- Human rights management of public enterprises and public institutions, Human Rights Due Diligence are being included in the NAP. Still, how to apply Human Rights Due Diligence to private companies where human rights violations are actually happening frequently, especially medium and small businesses and Korea companies overseas, is not treated.

- Although human rights management is introduced to the public enterprise of public institutions, specific plans of how to apply Human Rights Due Diligence, including human rights impact assessment, to them regarding ODA projects are not mentioned. The government is taking their stance of researching how to introduce human rights impact assessment to ODA projects, in the 3rd NAP. However, to 'research' seems to mean that they will not actually implement HRIA in ODA projects during the 3rd NAP process.

- To prevent violation of local workers' human rights by Korean companies overseas, the government is planning to establish a cooperation system with related domestic and foreign institutions. However, detailed plans of what government department will establish the cooperation system for who with whom is lacking.

- It is hard to find cases when Korea NCP made recommendations that substantially helped victims since their establishment. Regarding the constitution and management of NAP, civil society and trade union's participation is still not being institutionally guaranteed.

About Korea government's report

- The Korea government should clearly define the role and goal of 'Human Rights Management' and 'Corporate Sustainability Management.'

- Specific plans of how to apply "Human Rights Management Standard Guidelines," announced to be made by the Ministry of Justice, is not treated. This is due to the absence of a particular department that will take charge of practicing Business and Human Rights NAP, implementing or meditating overall related policies. In order to overcome this problem, the office of the Prime Minister should manage the issue.

Non-discrimination legislation

1. The government has not taken any steps to adopt a comprehensive anti-discrimination law.

2. In February 2018, the government responded as 'noted' rather than 'accepted' to the 18 recommendations for the enactment of the Comprehensive Anti-Discrimination Law during the UPR process and stated "Given the social controversy around non-discrimination grounds, it is necessary to have enough consideration for public sympathy and social consensus."[1]

3. In the follow-up report, the government replied that it included the modification of various anti-discrimination legislation as the policy task of the third NAP, but the relevant contents of the third NAP were very abstract content such as to study legislative cases at home and abroad. Also, it is virtually identical to what was published in the Second NAP (2012-2016) and has not been developed at all. It is a severe problem that no detailed plan for the enactment of the anti-discrimination act includes specific process, even though the third NAP is a basic human rights plan covering five years from 2018 to 2022.

4. In particular, the government has pointed out that the public perception of non-discrimination grounds like sexual orientation and gender identity is low and has referred to 'the social controversies over the prohibited grounds including sexual orientation' as the difficulty of adopting the Anti-Discrimination Act in answer to the list of issues to the Committee.[2] The Committee recommended awareness-raising efforts to people and legislators regarding discrimination and referred General Comment No. 20 as a basis for the interpretation of the principle of non-discrimination, and that the 'other status' of Article 2 (2) of the Covenant includes disability, nationality, sexual orientation, and gender identity.

5. The government's follow-up report does not report the implementation of these recommendations. The government does not take any action to raise awareness of people and legislators on the grounds for discrimination, including sexual orientation and gender identity, but instead avoids explicit reference to LGBTI rights.

[1] A/HRC/37/11/Add.1 (Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review) para.18

[2] E/C.12/KOR/Q/4/Add.1 (Replies of the Republic of Korea to the list of issues) para.18

6. Notably, in the third NAP, the items related to human rights of ‘people with diseases and LGBTI people,' which existed as a separate chapter in the first and second NAPs, were deleted. In the process of establishing the third NAP, LGBTI human rights organizations and civil society strongly objected to such deletion attempts. However, the Ministry of Justice stated that 'There are not many sexual minority policy tasks, so there is no need to organize them separately.' and it was finally removed. LGBTI human rights groups believe that the government felt pressure from anti-LGBTI hate groups and backed off LGBTI human rights policies.

7. The opposition based anti-LGBTI bias continues, but the government, instead of trying to improve the situation, removed all LGBTI human rights policies. Moreover, it made no official reference to anti-discrimination law and there's no effort to pursue the policy. Thus, as the government avoids its duties, it is continuing to strengthen the opposition against LGBTIs and anti-discrimination law.

Trade union rights

1. No effort has been made by the State party to ratify the ILO convention 87 & 98

Ratification of ILO convention No. 87 and No. 98 as the most effective way to respect trade union rights under Article 8 of the Covenant has never been implemented by the State party. As stated in its report, the State party is in a position that the amendment of contradicting laws should be done before the ratification. However, instead of proposing an amendment bill based on the recommendations by the ILO and UN, it has been repeating, "The government will support when the social partners reach an agreement on law revision." This attitude of the government opened the way for the employers' organizations to propose a series of regressive amendments to violate the principle of freedom of association. Eventually, the State party failed to take measures for the ratification, attributing the lack of social consensus.

However, the Article 60(1) of the Constitution permits the President to conclude and ratify treaties related to legislative matter with the consent of the National Assembly, and the revision of the law is not a prerequisite for ratification. Trade Unions and civil society have continuously urged the government to commit to avail itself of the ILO's supervisory mechanism to bring domestic laws in conformity with the international labour standards by ratifying the very fundamental conventions before the arbitrary revision.

2. Guaranteeing freedom of association for all and law revision to prevent interference to the trade union activity

The 1.58 million of temp agency workers and 2.5 million of workers in non-standard forms of employment (dependent workers/"specially employed workers") are denied their trade union rights according to the Article 2 of TULRAA. The substantial employer for the temp agency worker (employer of user company) has no responsibility as an employer for workers in its multilayered subcontracting and supply chain while they can easily deter these workers from forming unions and acting collectively by closing the subcontracting companies or terminate the contract with its suppliers. "The specially employed" or dependent workers have organized themselves and conducted various activities to improve their working conditions but have faced serious repression by employers and even by the government on the grounds that they don't correspond to the definition of worker under the Article 2 of TULRAA. To guarantee the freedom of association of these

workers is the expansion of the definitions of “worker” and “employer” under the Article 2 of TULRAA, but this has never dealt with in the amendment which was mentioned by the State party in its report (Paragraph 12).

The State party stated that the government is working on an amendment of the TULRAA and other Acts to expand the range of workers who can exercise the right to freedom of association including the dismissed, the unemployed and some category of public servants. However, the revision bill submitted by the ruling party lawmaker Ms. Han, Jeong-ae on December 28, 2018 put additional ban on the dismissed workers’ right to be elected as a delegate or elected officers of trade union or to be included in union activity including collective bargaining process while it allows the dismissed to maintain union membership. Article 12 of the TULRAA, which provides the discretionary power to the public authority in the process of union certification, is still untouched. The revision bills of the AEOPOU and AEOTU still limit the range of public servant who can join and form unions based on function, task, and position.

3. Repression on trade union rights by bargaining channel unification system under union pluralism

The existing bargaining channel unification system was established under the assumption that all the trade unions are organized at the enterprise level. Employers divide the bargaining unit, which is allowed in the current law, to hinder the power of unity of trade unions organized at the industry level or impede the bargaining process itself and finally to avoid the application of the collective bargaining agreement signed at the industry level. In case a bargaining unit is divided by an employer, then it is impossible to be reunified again. Under the current system, multiple unions in the same bargaining unit should submit the number of members they represent in case they want to participate in the bargaining channel unification process. It is the employer who can decide whether the bargaining is done through the unified channel or separately, and this allows the employer to choose separate bargaining in case a pro-employer union is a minority. According to the current TULRAA, the trade union can obtain the right to bargain and right to strike only in case they participate in the bargaining channel unification process. Recently, the Supreme Court decided in case there is only one single union in a bargaining unit, it has the right to bargain without unification process, but the Ministry of Employment and Labour is still in a position that even single union should go through the bargaining channel unification process to obtain a right to bargain. In this

situation, the bargaining channel unification system should be abolished to guarantee the bargaining rights for all unions, but no effort has made in this regard.