Alternative Report to the Committee on Economic, Social and Cultural Rights

On the occasion of consideration of Follow-up to Concluding Observations for Republic of Korea during the 66th Session

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Submitted by



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Korean Government's Failure to Implement Recommendations on Business and Human Rights from CESCR

This report focuses on ROK Government's follow-up measures on the business and human rights based on the Concluding Observations from the Committee on Economic, Social and Cultural Rights in October 2017. Despite the adoption of the Third National Action Plan, measures adopted by the Ministry of Justice, some legislations for the consumer protection and human rights management by the public institutions it is insufficient for the Government to implement the recommendations regarding business and human rights by the Committee.

1. Issues with the National Action Plan

a. Lack of the meaningful participation by the CSOs during the formulation of NAP

The Committee has emphasized the importance of the role of the civil society organizations during the design of the NAP in realization of Covenant rights in the context of business activities. [1] However, the ROK Government failed to have the effective and meaningful participation by the CSOs as any of the opinions suggested by the CSOs during the 'public hearing' sessions were not reflected in the final version of the NAP.

When the Ministry of Justice was drafting the NAP, instead of disclosing the draft of the NAP publicly, they sent the draft only to the CSOs they had invited to the public hearing sessions. Therefore, it was impossible for the parties not invited to the sessions to provide the comments on the draft. It was not even clear how the Ministry of Justice selected the CSOs they sent the invitation to the public sessions.

Upon the request to provide the opinions to the draft, KTNC Watch sent the comprehensive policy suggestions for the NAP on business and human rights before the public hearing session and asked to forward each suggestion to the relevant agencies. However, among the fifteen Government agencies that KTNC Watch had requested to consider the issues, officers from only four agencies attended the public hearing session; moreover, it was not even clear whether the suggestions were forwarded to the agencies who did not attend to the meeting.

Furthermore, any of the opinions made by KTNC Watch was not reflected to the policy tasks for the NAP on business and human rights announced. Thus, despite the public hearing sessions held, there was no effective and meaningful participation by the CSOs during the formation of the NAP.

b. No institutional framework for the implementation and monitoring of the NAP

It is the view of the Committee that it is imperative for the NAP on business and human rights to set specific and concrete targets, allocate responsibilities across actors, and define the time frame and necessary means for their adoption.[2] However, there is no specific plans established to carry out the tasks stipulated in the NAP.

[1] E/C.12.GC/24, para. 59
[2] Ibid.

For the ten tasks set, without designating the responsible implementing agencies, it remains uncertain that the tasks stipulated in the NAP would ever been enforced in the reality. The NAP also lacks to see the timeframe and it is impossible to evaluate the progress of the implementation of the NAP.

<Institutionalization of Human Rights Management>
① Secure corporate responsibility on human rights
② Establish and implement measures for corporate sustainability management
③ Public procurement considering social responsibility
④ Secure consumer safety on consumer products
⑤ Support corporate with gender equality management
⑥ Protect human rights through multilateral international organizations
⑦ Prevent human rights violations to local workers in Korean companies overseas
<Enhance the Effectiveness of Grievance Settlement·Relief Process>
① Relieve damage of humidifier disinfectants and prevent recurrence
② Run consumer friendly recall system
③ Enhance the effectiveness of government-based remedy

<Tasks for the Third NAP in the business and human rights chapter>

Thus, it is difficult to conclude that the adoption of the NAP ensures the full realization of the Covenant rights in the context of business activities.

2. Insufficient remedial mechanism

a. Fail to adopt the comprehensive measures for the effective remedies

It is the view of the Committee that various measures to be adopted to ensure the right to effective remedy and reparation for the victims of corporate abuses both domestic and transnational. However, the legislations provided by the Government are not enough to address obstacles in accessing effective remedies.

In order to deal with the various challenges, different measures are required such as establishing parent company or group liability regimes, providing resources to support the remedial procedures, and facilitating access to relevant information by mandatory disclosure laws.[3] However, all the measures suggested by the Government - enactment of *Special Act on Remedy for Damage Caused by Humidifier Disinfectants* for victims and families of the toxic humidifier disinfectants, running a consumer-friendly recall system and potential revision on *Securities-Related Class Action Act* - only focus on the remedies available for 'the consumers,' and fail to employ various policies to facilitate the effective remedies.

It is still very difficult for the victims of the transnational corporate abuses to access to the remedy without the concrete system to support those victims of extraterritorial activities of the Korean companies. For example, the owner of SKB, a Korean sewing firm based in Indonesia, ran away without paying wages to more than 3,000 employees in October 2018. When this case was reported in March 2019, the President Moon instructed to "fully cooperate with Indonesian police for a quick settlement of the case and to check whether there are similar cases involving

[3] Ibid., para. 44-45.

Korean companies in Southeast Asian countries."[4] After the President's order, the officers from the Ministry of Labor visited Indonesia and conducted the labor management lectures to the Korean business owners and met Minister of Labor in Indonesia; however, they did not meet the workers who were still demonstrating at the factory site and the workers were not possible to access to remedy even after the visit by Korean officials.

Thus, though the President showed his interest in specific case of the transnational corporate abuse, it was rather ad hoc measures and was not enough for the victims of transnational corporate abuses to access to remedy due to the lack of system established to support those victims.

b. Deficiencies in Korean NCP

The Committee has recommended to the Government clearly to improve the impact, transparency, inclusiveness and effectiveness of the NCP through the promotional activities and proactive mediation in accordance with human rights standard.[5] However, no enhancement has been made in terms of effective non-judicial remedy for the victims of extraterritorial human rights violations by Korean corporations.

For example, among the 35 specific instances submitted to the NCP since its inception in 2000 until May 2019, there is not a single case stating that the involved Korean company violated the OECD Guidelines. In regards to such decisions, Korean NCP stated that "the role of the KNCP is to contribute to the purposes and effectiveness of the OECD Guidelines by offering a forum for discussions and assisting the parties concerned to address the issues raised in order to find solutions,"[6] insisting that it is not the responsibility of Korean NCP to make a decision whether or not a corporation has violated the OECD Guidelines.

However, it is also difficult to see that NCP has been offering a forum for discussion or assisting the parties either. Out of the 35 specific instances submitted, NCP has provided its good offices only to three cases, in two of which the parties submitted the specific instance and the corporations involved were unable to come to an agreement and closed the case without having reached a conclusion.[7]

Besides failing to provide the proper remedy to the victims, such approach of NCP goes against its very purpose of promoting OECD Guidelines. Deciding whether the enterprise in question has or has not violated the Guidelines allows other parties to review if similar activities of other enterprises could be in violation of the Guidelines. In doing so, NCP fails to contribute to the promotion of the Guidelines and thereby fails to prevent human rights violations by reserving decisions on violation of the OECD Guidelines. Hence, the Korean NCP has continued to be the insufficient remedy mechanism for the victims of the victims whose rights are infringed under the Covenant extraterritorially.

3. Issues with Public Financial Institutions

It was recommended by the Committee that public financial institutions should consider the Covenant rights both domestic and international operations. However, there is no system to

[4] KBS World Radio, "Moon Instructs Cooperation With Indonesia's Investigation into S. Korean Biz Owner" (2019. 3. 7) http://world.kbs.co.kr/service/news_view.htm?lang=e&Seq_Code=143499

[5] E/C.12/KOR/CO/4, para. 18(d)

[6] KTCW etc v. KEXIM, Daewoo E&C, Initial Assessment of the Korean NCP for the OECD Guidelines for Multinational Enterprises (2019. 1. 18)

[7] The Workers' Union of Corning Inc. v. Corning Inc. (2018. 10), Labour relations in Korea (Asahi) (2016.12), Labour Relations in Korea (Hydis)(2016. 12)

implement the human rights due diligence for the loans, aids, and grants from the public financial institutions to prevent or mitigate the violations of the Covenant rights.

a. Investment to coal projects

Korean public financial institutions are actively supporting the coal projects both in domestic and oversea. Public financial institutions including the National Pension Service (NPS, USD 2.2 billion), Korea Development Bank (KDB, USD 1.7 billion) and Nonghyup Financial Holdings (USD 3.4 billion) have invested 8,344 USD by 2017 on domestic coal projects. On the other hand, Korea Export-Import Bank (KEXIM), Korea Trade Insurance Corporation (K-SURE) and Korea Development Bank (KDB) have invested 8,333 USD on oversea coal projects by 2017.[8]

Country	Project Name	Export Credit Provided	Export Credit Amount	Loan Agr't Executed	Parties participating in project	Total Loan (contemplated) Amount (USD million)
Indonesia	Cirebon 1	O	Not disclosed	O	Doosan Heavy, KOMIPO, Samtan	238
	Cirebon 2	O	Not disclosed	O	Hyundai Const., KOMIPO, Samtan	522
Vietnam	Mong Duong 1	O	Not disclosed	O	Hyundai Construction	510
	Mong Duong 2	O	Not disclosed	O	Doosan Heavy, PoscoPower	589
	Thai Binh 2	O	Not disclosed	O	Daelim Corporation	600
	Vinh Tan 4	O	Not disclosed	O	Doosan Heavy	455
	Song Hau	O	Not disclosed	O	Doosan Heavy	480
Chile	Cochrane	O	Not disclosed	O	POSCO E&C	100
India	Mundra UMPP	O	Not disclosed	O	Doosan Heavy	700
Morocco	Jorf Lasfar	O	Not disclosed	O	Daewoo E&C	EUR 260 million (USD 308 million)
Total						USD 4,502 million (KRW 5.1 trillion)

< KEXIM Financing of Overseas Coal Power Plants by 2017>[9]

Though severe damages to the environment as well as to the local communities are expected around the coal-fired power plants, the ROK Government does not have any system to review the investment in terms of considering the infringement on Covenant rights. For example, the local communities in Cirebon Unit 1, the first coal-fired power plant in the region in West Java, Indonesia established by Korean investors, have been suffering for the substantial loss in salt production, farming and fishing due to the thermal, water and air pollution caused by the plant.[10] Despite evident damages to the environment and local communities, Korean public institutions is still considering providing the finance to new coal power plants in Suralaya, Java in Indonesia.

b. ODA to dam projects

The Korean Government financed 80.8 million USD with a concessional Economic Development Cooperation Fund (EDCF) loan in credit assistance to the Lao Government for the Xe-Pian Xe-Namnoy Hydropower project as part of their ODA (Official Development Assistance) program

[8] Solutions for Our Climate, Financing Dirty Energy (January 2018), p.3
[9] Ibid., p.18
[10] Fair Finance Guide International, The unheard protests of people in Cirebon, Indonesia (2019. 4. 10)

in 2015. Despite the concerns regarding negative impacts to the environment and to the local communities as well as unreliable result of environmental assessment were raised by CSOs and MP Kim Hyun-mi, the ROK Government decided to execute the loan anyway.[11]

In addition, Korea Export-Import Bank made a contract in 2012 with the Philippine government to provide 250 billion won of the EDCF, the largest amount in Korean EDCF history, for the Jalaur River Multi-purpose Project Stage II (JRMP II). Even though the Korea Export-Import Bank alleges that they have applied EDCF Safeguard policy to JPMP II, indigenous people still insist the violation of Covenant rights by lack of 'Free, Prior, and Informed Consent (FPIC)' procedure, disregarding the potential risk of earthquake at the project area.

Korean CSOs submitted the specific instances to Korean NCP against Korea Export-Import Bank for violating the Covenant rights by providing ODA to JPMP II project. However, NCP dismissed the case at the initial assessment for the reason that 'a concessional loan provision for the project is not considered to be an international investment or a commercial activity,' and the Guidelines are not applicable to KEXIM.[12]

c. Public loan to agroforestry resources business

The Korean Government operates a loan program under the Overseas Agricultural and Forest Resources Development and Co-operation Act to finance the development of agricultural products abroad.[13] However, there is no effective procedure during the loan review process to review whether the Covenant rights have been or/and can be violated by the projects they financially assist.

For example, it has been reported that environment destruction, land disputes with local residents

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[11] People's Initiative for Development Alternatives, ODA as not only support, but responsible cooperation! - A Statement on the tragic collapse of a dam in Laos (2018. 7. 25)

[12] KTCW etc v. KEXIM, Daewoo E&C, Initial Assessment of the Korean NCP for the OECD Guidelines for Multinational Enterprises (2019. 1. 18)

[13] Overseas Agricultural and Forest Resources Development and Cooperation Act, Act No. 15077, November 28, 2017, https://elaw.klri.re.kr/kor_service/lawView.do?hseq=46212&lang=ENG.
Article 25 (Financial Instruments) 1 of the Overseas Agricultural and Forest Resources Development Co-operation Act
① The Government may provide loans for any of the following funds to the operators of overseas agricultural resources development projects, overseas agricultural resources development investment companies and investment companies specialized in development of overseas agricultural resources under Article 11, and overseas forest resources development investment companies and investment companies specialized in development of overseas forest resources under Article 22-2 to facilitate promoting the development of overseas agricultural or forest resources:
1. Funds necessary for acquiring a business permit necessary to develop overseas agricultural or forest resources and for agricultural or afforestation projects;
2. Funds for installing and operating facilities necessary to develop overseas agricultural or forest resources;
3. Funds for leasing or purchasing land necessary to develop overseas agricultural or forest development;
4. Other funds prescribed by Presidential Decree, which are necessary to facilitate developing overseas agricultural or forest resources.
② Matters necessary for financing under paragraph ① shall be prescribed by Presidential Decree.
③ Where it is impossible for the operator of an overseas agricultural resources development project or the operator of an overseas forest resources development project financed under paragraph ① 1 to repay a loan following a failure of the said project, he/she may be fully or partially exempted from the principal and interest thereof by the Government, as prescribed by Presidential Decree. <Amended by Act No. 13032, Jan. 20, 2015>

and infringement of labor rights have all occurred in relation to the palm oil plantations being operated by Korean corporations in Indonesia. [14] However, the Government had provided the loans amounting to USD 51.5 million to these Korean companies doing palm oil business in Indonesia without proper screening procedure.[15] In case of POSCO Daewoo, for instance, though it was disinvested by the GPFG and APG for deforestation, fire and loss of biodiversity at their operation site,[16] the Government still granted the loans to them for palm oil projects in Indonesia.[17]

Thus, it is undisputable that the Korean Government has failed to establish the system to implement the human rights due diligence at the public financial institutions, and the loans, aids, and grants provided by those institutions are linked to the violations of the Covenant rights.

4. Issues with human rights management

The Committee highlights the importance of human rights impact assessment to be considered in the various situations from investment trading to business activities impacting indigenous people.[18] However, it is unclear whether the human rights management adopted by the public institutions can address infringements of Covenant rights in the diverse contexts of business activities.

For example, the Korea Rural Community Corporation and the Korea Forestry Promotion Institute, the public institutions under MAFRA and the Korea Forest Service each, which have adopted the declaration of human rights management. Both declaration of human rights management states that they shall consider the human rights of the locals in the business areas[19]; the declaration by the Korea Forestry Promotion Institute also stipulates that it needs to protect the environment during the business activities.[20] However, when they review the loan application to finance the development of agroforestry products abroad, there was no such system to review the human rights of the locals in the business areas, and even decided to provide the loans to the corporations linked to environmental destruction and human rights violations in Indonesia.[21]

Furthermore, on July 23, 2018, one of the five auxiliary dams of the Xe-Pian Xe-Namnoy Hydropower Dam in Attapeu province, the southeastern state of Laos, collapsed causing severe flood damages as far as Cambodian villages. Due to the incidents, many local residents lost their lives or went missing, and more than six thousand people were displaced. However, Korea Export-Import Bank (KEXIM), which was supposed to adopt the human rights management, did not take any measures to provide the remedies to the victims.

Thus, despite the adoption of the human rights management, the public institutions still fail to implement the human rights due diligence throughout their operations.

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[14] KFEM and APIL, “Does Spring Come to Stolen Forests” (2019. 5), pp. 30-39.

[15] Ibid., p.45

[16] Ibid., p.35

[17] POSCO DAEWOO had received KRW 30.5 billion from Ministry of Agriculture, Food and Rural Affairs by 2018 and KRW 4.9 billion from Korea Forest Service in 2019.

[18] E/C.12.GC/24, para.13, 17.

[19] Korea Rural Community Corporation, Operational Guideline of the Human Rights Management Article 9; Korea Forestry Promotion Institute, Implementation Guidelines of Human Rights Management Article 9

[20] Korea Forestry Promotion Institute, Implementation Guidelines of Human Rights Management Article 10

[21] KFEM and APIL, Supra note 14, p.45