

Business and Human Rights Review

- Republic of Korea

**Submission to 14th Session of the Universal
Periodic Review (UPR)**

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Submitted by

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1. Normative and Institutional Framework and Its Implementation

The Korean Constitution and Law

1. First of all, the Korean Constitution protects the right to pursue happiness. It also protects the right to strike, to organize, to bargain collectively, child labor, and minimum wage. Especially, the Korean Constitution has an Article, so called “the Democratization of the Economy”ⁱ. It states that international law shall behave ““given the same effect as the domestic law”. The Constitution and Labor Standard Act prohibits the forced labor and Labor Standard Act prohibits violence in working place.ⁱⁱ Pursuant to Article 22 of the Foreign Workers’ Employment, Etc. Act, “No employer shall discriminate or unfairly treat any person on the grounds that he/she is a foreign worker.”
There is no comprehensive legal framework that imposes human rights obligations on Korean corporations when they are operating overseas. According to the research of several law professionals, civil and criminal cases occurred in Korean companies overseas can claim a lawsuit to the Korean court. However, the actual lawsuit hardly occurs.

ILO Convention and Treaty

2. However, Korean government did not ratify ILO fundamental conventions such as 87, 98, 29, and 105. It also did not ratify ILO convention for indigenous people such as ILO convention 169. The state party did not still ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) as well.

OECD Guideline for Multinational Enterprises

3. Republic of Korea is a member of OECD. Korean government has operated National Contact Point (NCP) as OECD Multinational Enterprises Guideline since May 2001. However, Trade Union Advisory Committee to the OECD (TUAC) and NGOs have continuously pointed out that the performance of Korean NCP has severe problems. For instance, according to the TUAC’s 2008 report¹, TUAC criticized that the Korean NCP missed an opportunity to achieve a much earlier solution and to play a constructive role itself.
4. According to the Korean NCP’s 2011 annual report, one case is still in progress. The ongoing Phils Jeon(one of Korean enterprises in Philippines) case, was reported to Korean NCP on September, 2007. From 2007 to the present, Korean NCP did not take next step such as arbitration process or recommendation as its’ operational regulation.² The reason of delay is that the NCP need the time to check the local law process. The complaint should be judged only on the OECD Guideline for Multinational Enterprises. But Korean NCP only judge the

¹http://www.tuac.org/en/public/e-docs/00/00/01/70/document_doc.phtml

²http://www.khis.or.kr/spaceBBS/bbs.asp?act=read&bbs=p_file&no=401&ncount=146&s_text=&s_title=&pageno=1&basic_url=

case based on whether or not the company violated the Philippines local laws.

5. Moreover, the National Human Rights Commission of Korea (NHRCK) submitted a recommendation to the Ministry of Knowledge Economy that it is necessary to improve the composition and operation of the NCP on November 2011. The NCP still did not express their official opinion whether they will accept the recommendation from NHRCK or not.

National Human Rights Commission of Korea

6. Pursuant to the National Human Rights Commission Act, The National Human Rights Commission of Korea (NHRCK) conducts investigations into complaints of discriminatory act and any violation of the Right to Equality committed by legal entities, organizations or private individuals.ⁱⁱⁱ However, the acceptance rate of the companies and private organizations even dropped to 83.3 percent in 2009, compared to 95.5 percent in 2004. Such refutation trend of the companies and private organizations against NHRCK are continuing.
7. NHRCK announced that the Commission will focus on Business and Human Rights as a rising Human rights agenda around the Edinburgh Declaration on 2011. However, NHRCK has been showing passive response against significant human rights violations from Korean corporate since the current chairperson Hyun, Byung-Chul took office in 2009.³
8. NHRCK has investigated the discriminatory case which occurred in Korean vessel on New Zealand EEZ since last October 2011. Indonesian crews were harassed by Korean seniors, and did not receive their wages. This is the first case that NHRCK was able to investigate the human rights violation case of the Korean corporation overseas because Korean flag ship is regarded as part of the Korean territory. Additionally, New Zealand Government already has interested in this issue and published the Ministerial Inquiry report on February 2012⁴.

National Action Plan (NAP)

9. The first term (2007-2011) of Korean government's National Action Plan for the Promotion and Protection of Human Rights (NAP) omitted 'Business and Human Rights' from the human rights category. Korean government did not sincerely cooperated with civil society in the preparing process of the second term (2012-2016) of NAP. Thus, it is not clear if 'Business and Human Rights' will be included in the NAP category in the second term of NAP. Also, even if NAP includes 'Business and Human Rights' in the category, how will NAP deal with the issue is not predictable.

Official Development Aid (ODA)

³http://khis.or.kr/spaceBBS/bbs.asp?act=read&bbs=p_file5&no=82&ncount=82&s_text=&s_title=&ageno=1&basic_url=

⁴ <http://www.fish.govt.nz/NR/rdonlyres/1CD50F2C-5F55-481D-A3CB-9A7EC25CBE54/0/2012foreignchartervesselsreport.pdf>

10. Republic of Korea became a member of OECD Development Assistance Committee (DAC) in November 2009. However, Korea's international development assistance in 2011 was only 0.12 percent of Gross National Income (GNI) compare to 0.31 percent of DAC members' average. Especially, Korean corporations actively participate to ODA project through Public Private Partnership (PPP) without any human rights-based approach system. Korean government should become a member of International Aid Transparency Initiative (IATI) in order to increase the credibility of ODA process⁵.

2. Industrial and Corporate Framework and Its Implementation

Oversea Natural Resource Development Project

11. Pursuant to "Overseas Resource Development Project Act", Korean corporation should register its' project to the Ministry of Knowledge Economy, and then the Korean government may give financial aid, loan, and/or tax benefit to the company. Especially, in order to promote overseas resource development, Korean government has operated "Successive Loan Payment" system. Although national budget inputs this preference system for energy and resource corporations, Energy and Mineral resource Development Association of Korea (EMRD) has been the trust operation agent about the deliberation committee for Successive Loan Payment since 2009. EMRD established in 2008 and is composed of 65 companies, including public energy and resource corporations⁶. However, there are no human rights and environmental conditions in the deliberation process for Successive Loan Payment. This structure is insufficient to the transparency of payment and social responsibility. Korean government should introduce international standards of resource development and ask, at least, the corporations to observe these standards when Korean corporations apply to this preference system.
12. No Korean government agencies, corporations, and organizations join "Extractive Industries Transparency Initiative (EITI)", "Voluntary Principles on Security and Human Rights," and "Equator Principles." Considering the international commitment of Republic of Korea and the risks of resource development project on weak governance zone, the current behavior of Korean extractive industry is hardly understandable, and their present system requires urgent reforms.

Corporate Social Responsibility

13. Any Korean corporation does not explicitly include international human rights norms and standards in their CSR policy. According to NHRCK's research service report of 2008, among the Korean corporations taking part of the survey, the rate of conducting human rights impact assessments for new business or project was very low: 16.7 percent in domestic

⁵ <http://www.odawatch.net/issue/18096>

⁶ <http://www.emrd.or.kr/english/index.jsp>

project and 15.6 percent in overseas project. Companies were passive in reporting human rights policy, system and accomplishment. For instance, human rights policy on supply chain (written policy: 42.4 percent, actual compliance: 38.7 percent), respect of sovereignty and local culture in abroad operations (written policy: 43.8 percent, actual compliance: 53.1 percent), and avoiding complicity in human rights violations by others including host country (written policy: 36.4 percent, actual compliance: 50.0 percent) are some examples. They were also passive in dialogue with external stakeholders, especially with NGOs (35.7 percent). It has to be taken into consideration that corporations taking a given survey keep their CSR in a high level. Following that, it is inferred that the terminology of “Human Rights” is still new to Korean corporations even though most companies (93.5 percent) see the high possibility that in the long run human rights risk would significantly impact on their business.

14. According to “Corporation for All,⁷” only 3 corporations published CSR report and the number had been increased up to 130 until 2011. Nonetheless, most Korean corporations still regard CSR as a kind of charity work that only big companies are able to do even though NHRCK and NGOs tried to spread the concept of “Integrating Human Right into Business Management.^{iv}” For this reason, CSR reports of Korean companies only used to focus on the companies’ activities of social contribution.

UN Global Compact

15. Total 213 Korean corporations are members of UN Global Compact (UNGC) since April 2012. Among these members, 17 are public companies. However, 5 public companies already were expelled from UNGC although these companies joined UNGC on 2007-2008. If the company wants to sustain the membership of UNGC, the company only issues an annual Communication on Progress (COP) at the latest 12 months from the date of joining and every 12 months thereafter. Korean government has responsibility to promote and manage the public companies’ membership and the quality of COP. Moreover, Secretary-General of UN has expressed his special interest about UNGC and the role of Korean corporations.

UN Principles for Responsible Investment

16. Total 15 Korean organizations became signatories of UN Principles for Responsible Investment (PRI). However, the responses of Korean signatories are hardly found on UN PRI website. For instance, Korean National Pension Service (NPS) already signed UN PRI on 2009 but Korean NPS did not disclose its report to UN PRI website.⁸ Korean NPS is now one of the four biggest pension funds in the world and the biggest investor in the country’s domestic equity and fixed-income market. If Korean NPS will fully follow the principles of UN PRI, Korean NPS will implement important role to improve the CSR level of Korean companies.

⁷ <http://csr.action.or.kr/45762>

⁸ <http://www.unpri.org/report11/index.php>

3. Key Business and Human Rights Issues of Republic of Korea

Korean Worker's Compensation & Welfare Service

17. The Seoul administrative court overturned Korean Worker's Compensation & Welfare Service (KCOMWEL)'s erroneous judgment, finding the agency to be wrong in rejecting the link between leukemia and the workplace of two former Samsung semi-conduct workers on June 23, 2011. And then, KCOMWEL refused to accept the court's decision and appealed against it to a higher court of law on July 14, 2011. During the National Assembly audit of 2011, Mr. Chung Dong Young (a lawmaker from the Democratic Party) revealed that KCOMWEL had already submitted a document actively proposing an appeal to the Prosecutor three days before promising injured workers KCOMWEL would investigate the matter and stating that KCOMWEL was just following the wishes of the Prosecutor. The investigation by Mr. Chung revealed that KCOMWEL actively worked to undermine the court judgment and indicated that KCOMWEL was coordinated with Samsung on the matter. Apparently, KCOMWEL actively worked to avoid workers' compensation and even lied to injured victims about the entire process.⁹

Natural Gas Development Project in Myanmar

18. According to Earth Rights International, Daewoo International and Korean Gas Corporation's gas development of gas pipeline construction across Myanmar to China has started and the infringement of human rights is already being brought to the surface¹⁰. International and Korean NGOs continuously have pointed out that Gas project would face high risk of complicity about severe humanitarian crimes by Myanmar Military. Notwithstanding high possibility of infringement of human rights, a company called KMDC announced their huge Burma Gas Development project on 2011. Moreover, Korean government has promoted the investment of Korean companies and will start ODA program in Myanmar. Although there are progressive movements of democratization recently in Myanmar, Korean government and enterprises should not burden the Myanmar citizens with indiscreet investment.

Hanjin Heavy Industries & Construction Incorporated Philippines

19. Since Hanjin Heavy Industries & Construction Incorporated-Philippines (HHIC-Philippines) established a ship building facility in Subic, Philippines, many workers have been injured due to numerous industrial accidents as a result of unsafe and dangerous working conditions and furthermore, several workers' employment contracts have been terminated when they tried to establish a union. When Senate started legal investigations on industrial accidents that resulted in the deaths of many Filipino workers, Mr. Choi, Joong-Kyung, the former Korean Ambassador to the Philippines sent a letter to the President of Philippines Senate on February

⁹ <http://stopsamsung.wordpress.com/>

¹⁰ <http://www.earthrights.org/publication/burma-china-pipelines>

2009. In the letter, the former Ambassador Choi mentioned that “the investigations on industrial accidents might bring negative result to the relationship between the Republic of Korea and the Philippines”. The president of Hanjin Heavy Industries & Construction, Mr. Cho, Nam- Ho, also did not attend hearing of Philippines Senate. The government and corporation should respect host countries’ sovereignty.

POSCO Steel Plant in India

20. Pohang Iron and Steel Company (POSCO)’s project involving the investment of 120 billion USD for the development of iron-ore reserves in the Kandahar district of the Odisha State in India, and the establishment of a massive integrated steel plant along with harbor facilities sprawling over a total of 4004 acres of land, encountered vehement resistance from local residents and raised serious concerns regarding violations of Indian law and regulations¹¹. Especially, in January 2010, anti-POSCO project villagers began raising their voices concerning the visit to the POSCO steel plant project area by the Korean president and started protesting from January 26. Even though the Korean president did not visit Odisha, the villagers continuing their protest for four months had to face the violent subjugation by the police force that had been sent by the State government. More than 100 villagers were reportedly injured on May 15, 2010. Over the past 6 years, this project became a symbol of economic cooperation between India and Korea and also “Business and Human Rights” issues involving with forced land acquisition, indigenous people, and the dilemma between right to development and right to live. In order to resolve this dilemma, POSCO should reexamine its project through a democratic and peaceful way and ensuring they respect the opinions of residents.

Korean Garment Factories in South-East Asian region

21. To avoid high level of wages and cost, Korean textile and garment companies have moved their factories from Korea to developing countries. Especially, these companies preferred the weak governance zone such as Special Economic Zone on South-East Asian region. As the result, many workers are forced to accept severe working conditions and could not receive assistance from their state party. If workers tried to build a union, Korean companies used to terminate union leaders, mobilize police or goons, and closed the factory. There is no maternity protection system for female workers who occupied main labor force in these industries. It is difficult to protect their human rights under the current system. If Korean NGOs and trade unions submit OECD complaint to the NCP, Korean NCP used to reject these complaints because these companies mostly do not have headquarters in Republic of Korea. Korean government should resolve these governance gap through building the institutional system to fulfill due diligence of the corporations, and develop non state-based judicial mechanisms for the victims of these factories who could not easily access to remedy.

¹¹ <http://stoposco.wordpress.com/>

i Pursuant to the Korean Constitution, Clause 2 of Article 119, "The State may regulate and coordinate economic affairs in order to maintain the balanced growth and stability of the national economy, to ensure proper distribution of income, to prevent the domination of the market and the abuse of economic power and to democratize the economy through harmony among the economic agents."

ii The Korean Labor standard Act:

Article 7 (Prohibition of Forced Labor) No employer shall force a worker to work against his own free will through the use of violence, intimidation, confinement or any other means which unlawfully restrict mental or physical freedom.

Article 8 (Prohibition of Violence) No employer shall physically abuse a worker for the occurrence of accidents or for any other reason.

iii Pursuant to the definition of the National Human Rights Commission Act, The term "discriminatory act violating the right to equality" means any of the following acts committed without reasonable cause based on gender, religion, disability, age, social status, region of birth (including place of birth, first-registered domicile, one's legal domicile, and major residential district where a minor lives until he/she becomes an adult), national origin, ethnic origin, appearance, marital status (i.e., married, single, separated, divorced, widowed, and de facto married), race, skin color, thoughts or political opinions, family type or family status, pregnancy or birth, criminal record of which effective term of the punishment has expired, sexual orientation, academic background or medical history, etc.

(a) Any act of favorably treating, excluding, differentiating, or unfavorably treating a particular person in employment (including recruitment, hiring, training, placement, promotion, wages, payment of commodities other than wages, loans, age limit, retirement, and dismissal, etc.);

(b) Any act of favorably treating, excluding, differentiating, or unfavorably treating a particular person in the supply or use of goods, services, transportation, commercial facilities, land, and residential facilities;

(c) Any act of favorably treating, excluding, differentiating, or unfavorable treating a particular person in the provision of education and training at or usage of educational facilities or vocational training institutions; and

(d) An act of sexual harassment. <Established on July 29 of 2005>

iv "A Guide for Integrating Human Rights into Business Management" introduced this concept. This publication, a joint product of Global Business Initiative on Human Rights, the United Nations Global Compact Office, and the Office of the High Commissioner for Human Rights (OHCHR), offers practical guidance to companies that want to take a proactive approach to human rights within their business operations. <http://www.ohchr.org/Documents/Publications/GuideHRBusinessen.pdf>