



PERMANENT MISSION OF THE REPUBLIC OF KOREA
GENEVA

Geneva, 14 August 2013

Dear Mr./Ms. Special Rapporteurs and Chair-Rapporteur,

It is my pleasure to convey the response of the Government of the Republic of Korea to the 5 questions which were raised in your joint letter dated 11 June 2013 concerning the POSCO project in India.

I hope that the attached response will help you in understanding the current situation and be duly reflected in your reports to the Human Rights Council on this matter. If needed, we are ready to provide further information or clarification .

Please accept, Mr./Ms. Special Rapporteurs and Chair-Rapporteur, the assurances of my highest consideration.

Enclosure : as stated.

A handwritten signature in blue ink, appearing to read '최석영' (Choi Seok-young).

CHOI, Seok-young
Ambassador, Permanent Representative

Ms. Maria Magdalena Sepulveda Carmona, Special Rapporteur on extreme poverty and Human Rights

Ms. Raquel Rolink, Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

Mr. Pavel Sulyandziga, Chair-Rapporteur, Working Group on the issue of human rights and transnational corporations and other business enterprises

Mr. Oliver De Schutter, Special Rapporteur on the right to food

Mr. Maina Kiai, Special Rapporteur on the rights to freedom of peaceful assembly and of association

Mr. Anand Grover, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Ms. Margaret Sekaggya, Special Rapporteur on the situation of human rights defenders

Ms. Catarina de Albuquerque, Special Rapporteur on the human right to safe drinking water and sanitation

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**The Government of the Republic of Korea's Response to
the Communication from Special Procedures of the Human Rights
Council on 11 June 2013, concerning the POSCO project in India**

Q1. Is the Government of the Republic of Korea in possession of any further information concerning the accuracy of the alleged facts?

The Korean government does not possess direct information concerning the accuracy of the claim.

According to the reports by our embassy in New Delhi, which quote information from the officials of the Government of the Indian state of Odisha and local media, it appears that site clearance work for the POSCO project has been underway peacefully.

Meanwhile, a small number of Korean NGO activists and Indian human rights activists who have opposed the POSCO project argued during a meeting with the relevant officials of the Korean government that the human rights of some residents in the region, such as access to healthcare and education, have been violated as alleged in the claim submitted to the Special Procedures.

Q2. Has the Republic of Korea directly or indirectly supported the forementioned activities of POSCO in India, for example through risk insurance provided by a Government funded export credit agency or any other means?

The Korean government has not provided POSCO with support related to this project.

Currently, the Odisha provincial government is in the process of purchasing land and POSCO is attaining mining rights. Therefore, the investment project of POSCO has not been launched in a full scale yet.

Q3. What measures, including policies, legislation, regulations, and adjudications, has the Government of the Republic of Korea taken to prevent, investigate, punish, and redress human rights abuse by business enterprises within its territory and/or jurisdiction?

Corporate activities taking place within the jurisdiction of the Republic of Korea are subject to the civil and criminal law of the country. For criminal cases, natural persons generally take legal responsibility for the crimes. The individual offender is criminally liable for any corporate activities that constitutes a crime under the *Criminal Act* and other special criminal law, and therefore is subject to investigation and prosecution.

In addition, regarding certain acts specified in the relevant legislations, if the representative of a legal person, any agent, employee, or other employed person of the legal person or any other private individual has committed an offense in connection with their official tasks, not only shall the offender himself be punished accordingly but also the said legal person or private individual shall be punished by a fine as they neglected to pay adequate attention and supervise the related task in a due manner.

By law, the jurisdiction of the Republic of Korea is exercised in cases of 1) crimes committed within the Korean territory, 2) crimes committed abroad by Korean nationals, 3) crimes committed abroad by foreigners against Korea or its nationals, 4) crimes, listed in the Article 5 of the *Criminal Act*, committed abroad by foreigners, 5) crime of genocide, crimes against humanity, and war crimes under Rome Statute of the International Criminal Court committed by foreigners who are present in Korean territory.

The *Civil Act* states that any person who causes losses to or inflicts injuries on another person by an unlawful act, willfully or negligently, shall be bound to make compensation for damages arising therefrom (Art. 750), a person who has injured the person, liberty, or reputation of another or has inflicted any mental anguish to another person shall be liable to make compensation for damages arising therefrom (Art. 751), and a person who has caused the death of another person shall be liable for damages to the lineal ascendants, lineal descendants and the spouse, even where no economic damages exist as a result thereof (Art. 752). The *Act* also sets forth, as regards the capacity of a legal person to commit an unlawful act, that a legal person shall be liable for any damages done to other persons by its directors or other representatives in the performance of their duties and that if any damage has been caused to other persons as a result of an *ultra-vires* act of a legal person, those members, directors, and other representatives who have supported a resolution for such *ultra-vires* act, or have carried it out, shall be jointly and severally liable for the damages caused thereby (art. 35). Accordingly, in case there arises an unlawful act which imposes the responsibility of compensation for damage according to the *Civil Act* as regards the business activities of a corporation, the corporation shall assume the responsibility of compensation for damage.

Regarding civil cases, such as compensation for damage, the *Civil Procedure Act* recognizes the jurisdiction of the domestic court in the cases of foreign corporations with an office or place of business in the Republic of Korea, taking the address of that office or place as its general forum in principle (Art. 5 para. 2), however the *Private International Act* stipulates that a domestic court shall have the international jurisdiction when a party or a case in dispute is substantively related to the Republic of Korea (Art 2). The Supreme Court, in consideration of these provisions, ruled that the international jurisdiction should be reasonably determined, based on the substantive relationship between the forum and the party or a case in dispute, thereby establishing the standard for the exercise of jurisdiction and the application of domestic law.

The Commercial Act

The government of the Republic of Korea prevents and remedies human rights violations arising from corporate activities through the *Commercial Act* and other individual statutes. These are separate from the compensation from unlawful acts as defined in the Civil Act. In a case where a company causes damage to others, including human rights violations arising from its business activities, the *Commercial Act* mandates that the company pay damages, and if the director is liable for neglecting to perform his or her duties intentionally or by gross negligence, the director and the company are jointly and severally liable to compensate for the damage (Art. 401 para. 1 of the *Commercial Act*). Also, in cases where a representative member, such as the representative director, has caused damage to another person by his or her act of business administration of the company, the company and the representative member are jointly and severally liable for the compensation (Art. 210 of the *Commercial Act*). These provisions act to make up for the consequences of damage inflicted by corporate activities, including human rights violations, and to provide strong protection for the victims.

In relation to the above provision, the Supreme Court stated that “if the act in question is, in its form, the type that can be accepted as an act of performance of a professional duty by the corporate representative”, it constitutes such an act even if it was done to satisfy the personal interests of the representative or in violation of the provisions of the statute (The Supreme Court Judgment on 23 March 1990, 89 DaKa 555). This represents a broad view of the liability of the company and its representatives.

The Labor Standards Act and other labor-related statutes

The *Labor Standards Act* stipulates the prohibition of forced labor against the free will of the worker (Art. 7), of discriminatory treatment on the basis of

gender, nationality, religion, and social status (Art. 6), and of violence to a worker (Art. 8). In addition, to prohibit the violation of human rights of employees, the various systems for the protection of employees including minimum wage, 30-day notice before termination, retirement grants for long-term employees, the priority re-hiring system for former employees, and the employment guarantee for the temporary workers are adopted in labor-related statutes.

Other statutes related to the corporate activities

There is no specific provision for the social responsibility of corporations. However, the *Chemicals Control Act*, expected to come into effect in 2015, requires the businesses dealing with toxic chemicals to obtain license, constituting a departure from the previous system of registration, and imposes an obligation to submit a statement of impact assessment, which evaluates the impact of the business on the surrounding people and environment, to the Minister of Environment for consideration before establishing the facilities for that business. Additionally, various measures are being adopted for the prevention of human rights infringement including the judicial recognition of the right of the residents to demand suspension and prohibition of drilling operations for the sake of their life, health, and other interests (The Supreme Court Judgment on 25 September 2008, 2006 Da 49284).

The jurisdiction of domestic court for activities of multi-national company

If a domestic company violates the human rights of the nationals within and outside the country, steps may be taken based on the legal principles of the relevant statutes including the *Commercial Act*, tort, and unfair labor practice under civil law and labor law. In the case of multi-national companies, however, such provisions under domestic law that prohibit human rights violations should be applied through the exercise of state jurisdiction, and the Supreme Court ruled on this subject in a case where the victims of compulsory draft and forced labor during the Japanese colonial era and their bereaved family filed a claim for damages against the responsible Japanese company in the domestic court (Supreme Court Judgment on November 14, 2012, 2009 Da 22549).

In the above case, the Court, taking all circumstances into account, recognized the jurisdiction of the domestic court in relation to the dispute between the victim of forced labor and the Japanese company, and refused to give effect to the judgment against the plaintiffs given by the Japanese court on the same case, for the reason that approving that judgment in domestic court would run contrary to good morals and other social order of the Republic of Korea.

Q4. What policy, legal, regulatory, and/or adjudicatory measures has the Government of the Republic of Korea taken to encourage or require that

business enterprises domiciled in its territory or jurisdiction, including POSCO, meet their responsibility to respect human rights throughout their operations? In addition to such measures, has the Government provided guidance to business enterprises on how to respect human rights throughout their operations? This may include measures and/or guidance on, inter alia, conducting human rights due diligence, meaningful consultations with potentially affected stakeholders, and addressing and mitigating any negative impacts?

The Korean government is operating a national contact point (NCP) for implementation of the OECD Guidelines for Multinational Enterprises* including human rights protection issue.

* A recommendation aimed at encouraging multinational companies domiciled in the OECD member countries to contribute to a positive development of economy, human rights, environment, and society.

The Korean NCP has continuously carried out education and promotion activities to raise awareness of the OECD Guidelines among Korea's multinational enterprises.

Details of the Guidelines are available on the website of the Ministry of Trade, Industry and Energy in order that multinational enterprises have easy access to the Guidelines whenever necessary.

Q5. What judicial, administrative, legislative or other steps has the Government of the Republic of Korea taken to ensure that victims of business-related human rights abuse by companies domiciled in the Republic of Korea have access to remedy?

Relevant stakeholders or other complainants such as NGOs can file their complaints to the Korean NCP when they think business activities of a Korean multinational enterprise are in violation of the Guidelines.

If additional investigation shows any violation of the Guidelines, the NCP makes recommendations as appropriate to the multinational enterprise after coordination and mediation between the parties.

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