

UN Working Group on Human Rights and
Transnational Corporations and Other Business Enterprises,
Office of the High Commissioner for Human Rights UNOG-OHCHR,
CH-1211 Geneva 10, Switzerland

THE LETTER OF APPEAL
to the United Nations Working Group on the issue of human rights
and transnational corporations and other business enterprises
(UNWG)

**Concerning South Korean corporations' linkages to Myanmar military-owned conglomerate
MEHL and human rights violations committed by the military in Myanmar**

November 2020

Dear Members of the Working Group,

We appreciate the Working Group's efforts to ensure that the business and human rights agenda remains a high priority among international policy-makers, businesses and other stakeholders. We applaud the Working Group's efforts in formulating international standards, and are grateful for its commitment to working closely with civil society organisations and activists on the ground.

INTRODUCING AUTHORS

The following is a joint submission from two coalitions and an activist group, Korean Civil Society in Solidarity with Rohingya, Korean Transnational Corporation Watch, and Justice for Myanmar.

Korean Civil Society in Solidarity with Rohingya

This is a coalition of civil society groups with aims to raise public awareness on Rohingya's human rights conditions and campaign for advocacy in the Republic of Korea. The members include Asian Dignity Initiative, Korean House for International Solidarity, Jesuit Research Center for Advocacy and Solidarity, JPIC Committee, New Bodhisattva Network, Incorporated Organization Silcheon Bulgyo, and Korea Committee For Overseas Community Organization.

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Korean Transnational Corporation Watch

This is a coalition of civil society groups with aims to monitor human rights violations committed by multinational corporations and to promote rights of victims. The members include Advocates for Public Interest Law, Corporate for All, Committee of Labor at MINBYUN-Lawyers for a Democratic Society, Gonggam Human Rights Law Foundation, Korean Confederation of Trade Unions, Korean House for International Solidarity, Korean Lawyers for Public Interest and Human Rights, Friend of Earth Korea

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Justice for Myanmar

This is a covert group of activists dedicated to improving the lives of all the people of Myanmar, by exposing the systemic causes of inequality, violence, war crimes, and crimes against humanity. Justice For Myanmar aims to pressure individual businesses and investors from countries around the world to divest from Myanmar and deprive the military of profits they receive.

- Contact details: Yadanar Maung. partners@justiceformyanmar.org

PARTIES concerned including Perpetrators and related entities

The following are duty-holders with linkages to the Myanmar Economic Holdings Limited (MEHL) and the Myanmar Armed Forces – and therethrough the ongoing human rights violations occurring in Myanmar.

POSCO

Founded in 1968, POSCO is a South Korean incorporated steel-making corporation which is counted among the world's largest steel-makers by market-value. It has operations in 52 countries, with 164 overseas subsidiaries and offices – two of which are joint-ventures in Myanmar with MEHL.

INNO GROUP

Inno Group, incorporated in 1991, is a South Korean corporation that has been conducting business in Myanmar for the past 14 years. The corporation has three joint-ventures in Myanmar with MEHL.

PAN-PACIFIC

Established in 1972, Pan-Pacific is a South Korean incorporated clothing-manufacturer which exports its products to major brands around the world. The corporation has one joint-venture in Myanmar with MEHL.

LOTTE Corporation

Established in 1967, with LOTTE hotel established in 1973, LOTTE Corporation operates and holds equity in LOTTE Hotel, Yangon, leased on land from the Myanmar Armed Forces.

Deasun Shipbuilding and Engineering Co. Ltd.

Established in 1945, Deasun Shipbuilding and Engineering is a South Korean incorporated ship-builder, whose majority shareholder is the state-owned Korea Eximbank, who has an 83.03% controlling stake.¹

ROK Government

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https://www.koreaexim.go.kr/site/inc/file/fileDownload?dirname=/board/62&filename=202005221736371583357063083.pdf&orinalname=KOREA_EXIMBANK_Annual_Report_2019.pdf

The Republic of Korea Government has a duty to monitor any human rights violation by Korean incorporated entities operating transnationally. However, to date there exists very limited guidance in law and policy for corporations who seek to respect human rights throughout their operations – both at home and abroad.

In this submission we want to bring to your attention the linkages between a number of South Korean investors, MEHL and the Myanmar Armed Forces. With this submission we want to call for greater accountability for the communities affected by the Myanmar military's human rights abuses in the country and asks the Working Group to:

- ensure that the Republic of Korea Government take positive steps in responding to human rights abuse within their territory/jurisdiction committed by third parties, such as businesses;
- urge the Republic of Korea Government to more clearly formulate its guideline for South Korean incorporated businesses who operate abroad (especially in conflict-affected areas) through effective policy and legislation; and
- call upon South Korean incorporated businesses, who are directly linked to the MEHL and the Myanmar Armed Forces, to sever all ties.

1. BACKGROUND

Myanmar:

Myanmar has been ruled by military dictatorships since 1962. Rigged elections held by the military regime (also known as the Tatmadaw) in 2010 brought in a new military backed government. This transition saw a change from direct military dictatorship to a limited democracy in which the military has been able to maintain power and privilege. During the elections in 2015, the National League for Democracy (NLD) won a landslide victory, resulting in normalised relations with the international community.

Under the military-drafted 2008 Constitution, the civilian government is forced to share power with the Myanmar military and therefore has limited power. The military itself is exempt from any democratic oversight. The military remains in control of key areas including the police, security services, prisons, border affairs and has influence over the justice system and civil service. The military is also guaranteed 25 percent of the seats in parliament, meaning that they can veto any efforts to make the current Constitution more democratic. As a consequence, the military is beyond the control of any civilian government and continues, to this day, to commit serious human rights violations with total impunity – many of which violate International Law, and could be classified as genocide, war crimes and crimes against humanity.

These crimes are also enabled by the 2008 Constitution which further institutionalises 'race' discrimination by limiting protection from discrimination to those classed as 'citizens' under the 1982 citizenship law.² According to the 1982 Citizenship Law nationals of Myanmar are narrowly defined and limited to Kachin, Kayah, Karen, Chin, Bamar, Mon, Rakhine or Shan and other ethnic groups classified as having settled in any of the territories included within the State as their permanent home.³ This excludes several ethnic minorities, including all Rohingya from citizenship and thus leads to loss of protection and access to their fundamental rights.

² Constitution of the Republic of Myanmar 2008, Chapter 8:
<<https://www.wipo.int/edocs/lexdocs/laws/en/mm/mm009en.pdf>>

³ Burma Citizenship Law, 15 October 1982, available at: <https://www.refworld.org/docid/3ae6b4f71b.html> [accessed 4 November 2020]

This became particularly evident to the world in August 2017, when the Myanmar military undertook ‘clearance operations’ that killed thousands and forced more than 900,000 members of the Rohingya minority to seek refuge in Bangladesh. Satellite imagery analysed by Human Rights Watch shows that circa 288 villages were totally or partially destroyed during military operations.⁴ In 2019, the UN Independent International Fact-Finding Mission on Myanmar released its final report, finding that the 600,000 Rohingya still in Rakhine State of Myanmar remain under “a threat of genocide”.⁵

Despite continuous calls from the international community, the Myanmar Government remains unwilling to address the root causes of the crisis, including the systematic persecution and violence, statelessness and continued military impunity. De facto leader Aung Suu Kyi and her civilian government has thereto categorically rejected UN human rights investigators’ pursuit of accountability for human rights violations and led Myanmar’s defence of charges of genocide before the International Court of Justice.

MEHL and the Myanmar Armed Forces:

A key component to the military’s stronghold in the country is Myanmar Economic Holdings Public Company Ltd (MEHL), which is owned by military units and active and former military personnel. It was founded by the military in 1990 and continues, to this day, to be a well-established conglomerate which is active within many industries, ranging from garment production, to jade mining, manufacturing and tourism.

In August 2019 the UN Independent International Fact-Finding Mission on Myanmar released an investigative report on the Tatmadaw’s economic interests, focusing heavily upon MEHL and its ties to the military. The report discovered that military-led businesses including MEHL had contributed to a significant amount of revenue for the Myanmar military, and provided financial support for its operations which violated International Human Rights Law and International Humanitarian Law.⁶ In addition to profits from military-owned conglomerates, the Fact-Finding Mission found that real estate rental is a source of revenue for the Myanmar Armed Forces. The report also highlighted businesses that sell arms and dual use goods to the Myanmar military after 2016, finding that “arms transfers could have a direct and reasonably foreseeable impact on the human rights situation in Myanmar.”

Moreover, in September 2020, Amnesty International published a report providing new information about the ties between MEHL and the Myanmar military, using information provided by Justice For Myanmar. The report relies upon one leaked and one public document: the first is a filing lodged by MEHL with Myanmar’s Directorate of Investment Company Administration in January 2020, which states that MEHL is owned by 381, 636 individual shareholders who are all serving or retired personnel, as well as 1,803 institutional shareholders.⁷

The second document is a copy of a confidential MEHL shareholder report from fiscal year 2010-11, which provides information about the identities of MEHL’s shareholders and the annual dividend payments that shareholders received between 1990 and 2011. During this 20 year period

⁴[Human Rights Watch, Burma: new satellite images confirm mass destruction, October 17 2017:](https://www.hrw.org/news/2017/10/17/burma-new-satellite-images-confirm-mass-destruction)
<<https://www.hrw.org/news/2017/10/17/burma-new-satellite-images-confirm-mass-destruction>>

⁵ OHCHR, *Myanmar’s Rohingya Persecuted, Living under Threat of Genocide, UN Expert Say*, 16 September 2019:
<<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24991&LangID=E>>

⁶ A/HRC/42/CRP.3

⁷ Amnesty International, *Military Ltd: the company financing abuses in Myanmar*, 2020:
<<https://www.amnesty.org/download/Documents/ASA1629692020ENGLISH.PDF>>

the total dividend payments made to all shareholders was approximately 18 billion US dollars, at the official exchange rate. Of this amount, MEHL transferred circa 16 billion US dollars to military units.⁸

MEHL's shareholders include military units, such as the Western Command, which were directly implicated in crimes under international law and other serious human rights violations in the country. The Western Command oversaw military operations in Rakhine State (2016-2017) when the crime of genocide took place.⁹

According to the 2010-11 shareholder report, previously mentioned, 95 separate military units under the Western Command are shareholders of MEHL (from which they receive dividends), which ultimately shows that there is a direct linkage between MEHL and the ongoing human rights violations committed by the Myanmar army.

2. FOREIGN CORPORATIONS WITH TIES TO MEHL

Overview:

The Myanmar Armed Forces and their controlling entities operate in collaboration with foreign corporations. In many cases these are joint ventures, with the foreign partner and MEHL both owning shares in a Myanmar-registered business. MEHL also partners with foreign companies by setting up profit-sharing agreements through which MEHL receives a certain percentage of profits without formally owning shares in the local corporation. According to Amnesty International (2020), in both structures the foreign partners generally operate the corporations, with MEHL providing certain benefits to the partnership linked to its status as one of the most powerful conglomerates in Myanmar.

The 2019 UN-Fact Finding Mission found that any foreign business activity involving the Myanmar military, including MEHL, poses a high risk of contributing to, or being linked to violations of international human rights law and international humanitarian law and "(a)t minimum, these foreign companies are contributing to supporting the Tatmadaw's [Myanmar military] financial capacity".¹⁰ Importantly, the Mission states that foreign corporations involved with the Myanmar military and its conglomerates, such as MEHL, should "sever their relationships with these enterprises in the light of the information presented in (the) report and should ensure that they are fulfilling their corporate responsibility to respect human rights".¹¹

The 2019 UN Fact-Finding Mission reports that there exists, at least, 14 joint-ventures and 44 foreign corporations with ties to Tatmadaw business activities.¹² Thereto, with the 2020 Amnesty International report, additional information has surfaced regarding the nature of the Myanmar military and MEHL linkages, as well as how foreign corporations, having joint-ventures with MEHL, are addressing the situation.

South Korean corporations with ties to MEHL and the Myanmar Armed Forces:

⁸ Amnesty International, *Military Ltd: the company financing abuses in Myanmar*, 2020: <<https://www.amnesty.org/download/Documents/ASA1629692020ENGLISH.PDF>>

⁹ Asian Dignity Initiative, 20 Village Genocide reports, 2018-19, available at <https://www.adians.net/blank-6>

¹⁰ A/HRC/42/CRP.2, para. 5

¹¹ A/HRC/42/CRP.2, para. 146

¹² A/HRC/42/CRP.2, para. 5

While recognising that this is an issue of global scale, for the purpose of this submission, we are focusing specifically on South Korean incorporated enterprises and their connections to MEHL and the Myanmar military. The following South Korean corporations currently have business-ties to the MEHL and the Myanmar military:

- **POSCO** is one of the world's largest steel-makers and has two joint ventures with MEHL: **Myanmar POSCO C&C Company Ltd.** (70% held by POSCO) and **Myanmar POSCO Steel Company Ltd** (70% held by POSCO). In addition, POSCO is the lead developer and majority shareholder of Lotte Hotel, Yangon (55.47% POSCO International, 26.03% POSCO E&C) on land owned by the Ministry of Defence in Yangon.¹³ It was built under a build-operate-transfer lease for 70 years.¹⁴

The **National Pension Service** of Korea is the largest shareholder in POSCO, controlling 12.19% of the company as of June 2020.¹⁵ POSCO is the sixth biggest holding of the National Pension Service.¹⁶ POSCO's largest foreign shareholder is BlackRock Advisors, domiciled in the USA, which controls 5.23% of POSCO as of June 2020.¹⁷

In its communications with Amnesty International, POSCO states that there is no way for corporations to monitor or verify the use of dividends paid out to the shareholders, and that its joint ventures have not paid any dividends to MEHL since 2017.

In addition, POSCO, in a response dated on 12 November 2020 to an open letter sent by Korean Civil Society in Solidarity with Rohingya and Korean Transnational Corporation, iterated that MEHL had responded that dividends in question were never used for any human rights violations. POSCO furthered that it would reconsider paying dividends and to change the joint venture relationship with MEHL once Amnesty International finds concrete evidence to prove its accusations.

POSCO's response seems problematic because it only relies on an answer from MEHL while it failed to acknowledge the findings of the UN and its human rights bodies, as well as international human rights organizations, including the fact that the Western Command and its subordinated combat units operated, since 2016, committed mass killings and injury, arson, rape and property theft against Rohingya civilians, among other crimes.

- **INNO GROUP LTD** has been conducting business in Myanmar for more than a decade, and currently operates several joint-ventures with MEHL in Myanmar, including **Myanmar Inno International Ltd.** (44% held by Inno), **Myanmar Inno Line Company Ltd.** (61% held by Inno) and **Hanthawaddy Golf and Country Club Ltd** (37% held by Inno). Thereto, **Inno Packaging Company Ltd.**, owned by the Inno Group Ltd., rents space in Pynmabin Industrial Zone which is owned by MEHL.

In its communications with Amnesty International, INNO Group claims that links cannot exist because its joint ventures have not paid any dividends to MEHL since they have not yet started to generate any profits.

¹³ <https://www.frontiermyanmar.net/en/lotte-yangon-hotel-opens-at-site-overlooking-inya-lake/>

¹⁴ https://www.poscoenc.com:446/eng/pr/press_release_view.asp?hDOC_ID=293

¹⁵ <http://www.posco.com/homepage/docs/eng6/jsp/irinfo/stock/s91b4000199c.jsp>

¹⁶ https://fund.nps.or.kr/jsppage/fund/mcs_e/mcs_e_04_01_01.jsp

¹⁷ <http://www.posco.com/homepage/docs/eng6/jsp/irinfo/stock/s91b4000199c.jsp>

On 13 October 2020, Korean Civil Society in Solidarity with Rohingya and Korean Transnational Corporation Watch sent a joint open letter to Inno Group to ask for its official policy and follow-up measures regarding the findings of Amnesty international. It has failed to respond.

- **PAN-PACIFIC CO LTD** makes clothing, bedding and food which it exports to a range of major brands around the world. Today, the corporation has one known joint-venture with MEHL; **Myanmar Wise-Pacific Apparel Yangon Company Ltd** (55% held by Pan-Pacific). Additionally, **Myanmar Wise-Pacific Apparel Bago Co Ltd**, a solely-owned subsidiary of Pan-Pacific Co. Ltd., operates in Inndagaw Industrial Zone which is owned by MEHL.

In its communications with Amnesty International, Pan-Pacific provided that MEHL received an average of 75,000 USD a year as dividends for the past three years, in addition to the fees paid by Pan-Pacific to lease the land – owned by MEHL – where they operate. Pan-Pacific also states that it has decided to terminate its relationship with MEHL, and that by September 2020 it would have taken over MEHL’s share in their joint venture (which has not yet happened). Even if Pan-Pacific takes over MEHL’s shares, there is a high risk that MEHL will continue to directly or indirectly benefit the Myanmar military through land leases.

On 13 October 2020, Korean Civil Society in Solidarity with Rohingya and Korean Transnational Corporation Watch sent a joint open letter to Pan-Pacific to ask its official policy and follow-up measures regarding the finding of Amnesty international report. It has failed to respond.

- **LOTTE CORP** is a major conglomerate in food, retail, tourism, finance, chemicals and manufacturing. LOTTE is a partner in the LOTTE Hotel, Yangon project, holding 18.49% ownership. The hotel is built on Ministry of Defence-owned land in Yangon, leased on a build-operate-transfer basis.
- **DAESUN SHIPBUILDING AND ENGINEERING CORP:** As a shipbuilding business, Daesun manufactured and sold a Landing Platform Dock (LPD) to the Myanmar Armed Forces, which the Myanmar Navy commissioned on December 24, 2019. According to Jane’s,¹⁸ the ship is the largest in the Myanmar Navy with a length of 122 metres and capacity to carry two Mil Mi-17 helicopters, around 250 troops and 15 vehicles. It was launched in Busan around July 2019. The LPD may be classified as a warship under the Arms Trade Treaty, of which South Korea is a signatory.

The Export-Import Bank of Korea (Eximbank) is the largest shareholder in Daesun Shipbuilding and Engineering, owning 83.03% of the company. Eximbank was established in 1976 to support international trade and investment. Eximbank is majority owned by the Government of the Republic of Korea (holding 66.43% equity). Other shareholders are the Bank of Korea (9.81%) and the Korea Development Bank (23.76%). The bank is the trustee of two public funds: The Economic Development Cooperation Fund and the Inter-Korean Cooperation Fund.¹⁹

¹⁸ <https://www.janes.com/defence-equipment-intelligence/update-myanmar-navy-commissions-its-first-lpd-amphibious-assault-ship/>

¹⁹

https://www.koreaexim.go.kr/site/inc/file/fileDownload?dirname=/board/62&filename=202005221736371583357063083.pdf&orinalname=KOREA_EXIMBANK_Annual_Report_2019.pdf

3. ROK'S OBLIGATION UNDER INTERNATIONAL LAW

International Legal Framework

International Law include rules, norms and standards which are generally accepted in relations between nation states. It establishes a common framework to guide states across a range of domains such as human rights, trade and war. Historically, in International Law, there is no general rule that corporations are responsible for their international wrongful acts. However, International Law standards may be incorporated into domestic law that regulates individual and corporate activity in a number of circumstances.

(a) International Human Rights Law:

International human rights law (IHRL) obligates States to respect and protect the human rights of people in their territory or under their jurisdiction. The obligation requires State actors not to violate human rights, and includes ensuring that the activities of corporations do not result in human rights abuses. The obligation is to ensure these human rights protections apply to civil and political rights (as prescribed by the ICCPR) and economic, social and cultural rights (as prescribed by the ICESCR).

(b) International Humanitarian Law:

International humanitarian law (IHL) is a set of rules which seek to limit the effects of armed conflict. It protects persons who are not or are no longer participating in the hostilities, and restricts the means and methods of warfare. States which are parties to the Geneva Conventions and its Protocols have a duty to ensure respect for IHL and its regulations. While not directly applicable to corporations, IHL should be an important point of reference when undertaking human rights due diligence, especially for entities operating in conflict affected areas.

- **International Court of Justice (Gambia v Myanmar):** In November 2019 Gambia filed a Memorial against Myanmar at the ICJ for the alleged crime of genocide against the Rohingya. In January 2020 the ICJ unanimously passed legally binding provisional measures requiring the Government of Myanmar to take all steps in its power to prevent acts of genocide, including killings, affliction of serious mental and bodily harm and other acts listed in the Genocide Convention. The Government of Myanmar is expected to file a counter-memorial at the ICJ on 23 July 2021 in response to the Gambia genocide allegations. The Memorial and Counter-Memorial will not be made public for the duration of the trial, which is expected to last for several years.
- **International Criminal Court (Bangladesh/Myanmar investigation):** The International Criminal Court (ICC) confirmed that it would begin investigations into alleged crimes against humanity, including deportation, other inhumane acts and persecution committed against Rohingya since October 2016. The court, in 2018, confirmed its jurisdiction over the crime of deportation, which was completed in Bangladesh, an ICC member country, as well as other related crimes.²⁰

(c) Arms Trade Treaty (ATT)

The ATT restricts the trade in conventional arms, which include warships, and requires export and import assessments.²¹ The ATT prohibits arms exports when there is knowledge that items could be used in the commission of genocide, war crimes and crimes against humanity, and for serious

²⁰ See: <https://www.icc-cpi.int/bangladesh-myanmar>

²¹ Arms Trade Treaty 2.1 and 4

violations of the Geneva Convention.²² Under state obligations for national arms controls, states must independently assess the potential for arms to contribute to conflict and facilitate serious violations of international human rights law.²³

(d) Voluntary frameworks for corporate accountability:

In the absence of hard law instruments holding corporations accountable for adverse human rights impacts, several voluntary initiatives have evolved.

(aa) UN Guiding Principles on Business and Human Rights: The most well-known, and with the greatest up-take among both state and non-state actors, is arguably the UN Guiding Principles on Business and Human Rights (UNGPs). While being a voluntary standard, the UNGPs are based on IHRL (the International Bill of Rights), reinforcing commitments already made by states in the international community. The UNGPs instruct states to “protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.”²⁴ States should also “set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations”.²⁵

(bb) OECD Guidelines for Multinational Enterprises: The OECD Guidelines for Multinational Enterprises are an annex to the OECD Declaration on International Investment and Multinational Enterprises and are recommendations providing (voluntary) standards for responsible business conduct for transnational corporations. The Guidelines cover several areas for business ethics, including – for instance – human rights and environment. Each adhering country has to set up a National Contact Point (NCP), which is responsible for the implementation of the Guidelines on a national level.

(cc) UN Global Compact: The UN Global Compact is a non-binding UN pact to encourage businesses worldwide to adopt sustainable and socially responsible policies, and to report on their implementation. The Compact is a principle-based framework, stating ten principles covering areas including human rights, labour, the environment and anti-corruption.

The Republic of Korea: Legal Obligations and Policy Commitment

The Republic of Korea has an obligation under IHRL to protect, promote and fulfil human rights. To date, the Republic of Korea is party to seven of the nine core international human rights treaties, as well as having ratified a total of 29 ILO Conventions.

The Republic of Korea is a member of the Organisation for Economic Co-Operation and Development (OECD), and enterprises incorporated in the country should adhere to the human rights standards set out in the OECD Guidelines for Multinational Enterprises. The country has an active National Contact Point (NCP) in place, however concerns about conflicts of interests have been raised in previous complaint procedures, due to the fact that it is housed in the Ministry of Trade, Industry and Energy.²⁶

²² Arms Trade Treaty 6.3

²³ Arms Trade Treaty 7

²⁴ UN Guiding Principles on Business and Human Rights, Principle 1

²⁵ UN Guiding Principles on Business and Human Rights, Principle 2

²⁶ See for instance: OECD Watch, *Earthrights International et al vs KOGAS*, October 2008: <https://complaints.oecdwatch.org/cases/Case_149>

The UNGPs are generally implemented at state-level, through National Action Plans (NAPs). The Republic of Korea has shown commitment to implement the UNGPs by including a business and human rights chapter in its NAP on human rights (published 2018)²⁷. However, during its country visit in 2017 the UNWG recommended that a separate NAP on business and human rights should be developed. Since this is yet to occur, little assistance seems to be available for transnational corporations who seek to respect human rights both at home and abroad.

4. VIOLATION AND NON-COMPLIANCE OF ROK GOVERNMENT AND COMPANIES

International standards:

Corporations need to comply with national laws, as well as international human rights standards. In this situation, South Korean incorporated enterprises operate in Myanmar, a country with ongoing conflict and weak governance. It is thus advised that, since national laws do not meet requirements of international human rights standards, these corporations are obligated to comply with international law and adjoint voluntary standards (such as the UNGPs) instead. Nonetheless, POSCO, for instance, withholds that since they started its business in Myanmar there has been no human rights violations by its subsidiaries under both international and domestic laws.

South Korean corporations, such as those mentioned above, should seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships with MEHL and other entities controlled by the Myanmar Armed Forces. In this particular instance it is apparent that POSCO, LOTTE Corp, INNO Group and Pan-Pacific have not adequately overseen their supply and investment chain, showing little interest in taking effective responsibility for preventing or mitigating any adverse human rights impacts linked to their operations in Myanmar. As indicated by the UN Fact-Finding Mission in 2019, all business-ties with the Myanmar military, including MEHL, should be severed. While, for instance, Pan-Pacific, has suggested that they would terminate their relations with MEHL no evidence has been provided that this has occurred.

Human Rights Commitments:

There is also a need to communicate their human rights commitments, internally and externally, through corporate codes of conduct. The level of details vary greatly; while POSCO provides that it strives to comply with international human rights standards, citing the UNGPs, UN Global Compact and the OECD Guidelines for Multinational Enterprises as initiatives they adhere to, Pan-Pacific merely refers to 'values of ethical management' without actually specifying what those values are.

Human Rights Due Diligence (HRDD):

Effective and meaningful HRDD should be understood as a business process through which the enterprises actively seek to prevent, identify, mitigate and account for how they address and manage their potential/actual adverse human rights impacts – on an *ongoing* basis. In its communications with Amnesty International, Pan-Pacific states that its subsidiary Wise-Pacific conducts third-party audits (e.g. Betterwork, BSCI and SMETA) on a regular basis and results are communicated with stakeholders in a transparent manner.

Little tangible information is found on this issue on the corporations' websites. For instance, POSCO states that it may conduct due diligence on management activities that might violate human rights, however 'at its own discretion'.

²⁷ Global NAPs: <<https://globalnaps.org/country/south-korea/>>

(a) Human Rights Impact Assessments:

It is unclear if any of the corporations have taken steps to undertake a human rights impact assessment (HRIA) before and during its operations in Myanmar. Pan-Pacific, in its communications with Amnesty International does not provide a clear answer as to whether it undertook any due diligence prior to entering a relationship with MEHL in 2012.

The general lack of international and domestic guidelines around non-financial reporting makes it possible for leading corporations, such as these, to perform non-transparent and top-down investigations – or simply not undertaking any at all. Ideally, an impact assessment should draw upon internal and/or independent external human rights expertise and involve meaningful consultation with potentially affected groups (such as minorities) and other relevant stakeholders.

(b) Grievance Mechanisms:

Lastly, in order to effectively address any actual adverse human rights impacts, operational-level grievance mechanisms should be readily available for anyone who has been adversely affected by corporate operations.

Having established that there exists an indisputable link between MEHL and the Myanmar military, we argue that by conducting business with, or maintaining business relationships with the conglomerate, these enterprises are running a real risk of being directly linked with the ongoing human rights abuses currently taking place in the country. POSCO, LOTTE Corp, INNO and Pan-Pacific should thus take accountability for their linkages with the MEHL and Myanmar military's ongoing human rights violations and terminate all ties. By doing so it also sets a much-needed precedent for other transnational enterprises which also have supply and investment chains in the country.

5. Conclusion

Per its mandate, we therefore ask the Working Group to, firstly, engage with the governments of the Republic of Korea and Myanmar, and the businesses included in this submission, drawing their attention to the facts of this particular situation including the applicable international human rights norms and standards and steps needed to cease violations of human rights in Myanmar, remediate abuses that have occurred and prevent further abuses, including cutting ties with the Myanmar military and military-owned entities.

Secondly, considering the grave human rights violations taking place in Myanmar, and the systemic failings of the said businesses to uphold human rights within their operations in Myanmar, we encourage the Working Group to make a public statement that clarifies the obligation of businesses to cut ties with the Myanmar military and military-owned entities, including MEHL.

Yours Faithfully,

***Korean Civil Society in Solidarity with Rohingya
Korean Transnational Corporation Watch
Justice For Myanmar***
