



**Initial Assessment of the Korean NCP
for the OECD Guidelines for Multinational Enterprises
Complaint regarding the Rohingya in Myanmar**

14 July 2021

1. Introduction

The OECD Guidelines for Multinational Enterprises (hereinafter “the Guidelines”) are a set of voluntary and non-binding recommendations aimed at minimizing adverse impacts from the activities of multinational enterprises and strengthening their responsible business conduct.

The government of the Republic of Korea (ROK) established and is operating the Korean National Contact Point (hereinafter “the KNCP”) to promote the Guidelines and to handle specific instances regarding the activities of multinational enterprises which are based or operating in the ROK.

The KNCP offers good offices for parties to resolve issues raised in specific instances in accordance with the Implementation Procedures of the Guidelines. These procedures are to be used only upon agreement of the parties and their commitment to participate in good faith during the procedures.

The decision made by multinational enterprises to participate in the good offices procedure

does not necessarily mean that they have conducted any activities that are not in accordance with the Guidelines. Furthermore, the KNCP shall not advise any party involved in the procedure to concede or reserve their legal rights, or coerce them to violate any laws.

2. Progress of the Specific Instance

The KNCP received complaints issued by the Korean Civil Society in Solidarity with the Rohingya (KCSSR) and the Korean Transnational Corporation Watch and Justice for Myanmar (hereinafter collectively referred to as the "Complainant") against five enterprises, POSCO, Inno Group, Pan-Pacific, Hotel Lotte and Daesun Shipbuilding & Engineering on 16 December 2020, and against POSCO International on 26 February 2021.

A. POSCO C&C

The Complainant issued a complaint against POSCO on 16 December 2020. However, POSCO C&C requested that the party be changed, citing the fact that POSCO C&C, not POSCO, constituted the party involved in a Myanmar limited partnership. The Complainant therefore agreed to change the party to POSCO C&C on 6 January 2021.

POSCO C&C, the Respondent, submitted its response to the KNCP on 2 February 2021. The Complainant then submitted additional comments to the KNCP on 26 February 2021. Again, the Respondent submitted its response on 24 May 2021 and the Complainant submitted secondary, additional comments on 9 June 2021.

B. Inno Group

The KNCP called on Inno Group to submit a response on 5 February 2021. Inno Group, as a

respondent, thereafter submitted its response to the KNCP on 10 February 2021. The Complainant submitted additional comments to the KNCP on 3 March 2021 and the Respondent submitted an additional response to the KNCP on 18 March 2021.

C. Pan-Pacific

Pan-Pacific, a Respondent, submitted its response to the KNCP on 29 December 2020. The Complainant submitted additional comments to the KNCP on 15 January 2021 following which the Respondent submitted an additional response on 21 January 2021.

D. Hotel Lotte

The KNCP called on Hotel Lotte to submit a response on 5 February 2021 and again on 26 February. However, Hotel Lotte failed to submit any response to the specific instance.

E. Daesun Shipbuilding & Engineering

Daesun Shipbuilding & Engineering, a Respondent, submitted its response to the KNCP on 7 January 2021. The Complainant submitted additional comments to the KNCP on 25 January and the Respondent submitted an additional response on 4 February. The Complainant submitted secondary, additional comments on 25 February and the Respondent submitted its response on 9 March.

F. POSCO International

POSCO International, a Respondent, submitted its response to the KNCP on 8 April 2021. The

Complainant submitted additional comments to the KNCP on 26 April and the Respondent submitted its response on 20 May.

3. Details of the Specific Instance

A. Common Issues

Respondent enterprises have a business partnership with MEHL which allows MEHL to transfer the resulting profits into the pockets of the Myanmar military, contributing to human rights violations against the Rohingya minority in Myanmar.

Respondent enterprises have violated several international standards such as International Human Rights Law, International Humanitarian Law, the Arms Trade Treaty, the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises; have poorly managed their supply chains by failing to prevent or mitigate the impact thereof on human rights; have not fully committed to implementing human rights obligations externally and internally through a corporate code of conduct; and have failed to carry out transparent human rights due diligence procedures including human rights impact assessments and grievance mechanisms.

B. POSCO C&C

POSCO C&C and MEHL, which operates the military regime's pension fund by paying out dividends, have established two joint corporations, Myanmar POSCO C&C Company and Myanmar POSCO Steel Company, which contribute to human rights abuses by the military and violate international standards on human rights. POSCO C&C has also violated the Guidelines by failing to terminate its business partnership with MEHL promptly and has not fully abided by the code of conduct on human rights (see Guidelines IV. Human Rights, V. Employment and

Labour Relations).

C. Inno Group

Inno Group and MEHL, which operate the military regime's pension fund, have jointly operated multiple enterprises such as Myanmar Inno International, Myanmar Inno Line and Hanthawaddy Golf & Country Club, which contribute to human rights abuses by the military in Myanmar (see Guidelines IV. Human Rights).

D. Pan-Pacific

Pan-Pacific and MEHL, which operates the military regime's pension fund by paying out dividends, have jointly operated Myanmar Wise-Pacific Apparel Yangon (MWY). Furthermore, its subsidiary, Myanmar Wise-Pacific Apparel Bago (MWB), has paid ground rent to MEHL, contributing to human rights abuses by the military (see Guidelines IV. Human Rights).

E. Hotel Lotte

Hotel Lotte is a partner in a project which constructed a hotel on military-owned land in Yangon, Myanmar under a build-operate-transfer (BOT) contract, with an 18.49% stake. The hotel was constructed under a BOT contract.

F. Daesun Shipbuilding & Engineering

Daesun Shipbuilding & Engineering has built landing platform docks (LPD) for Myanmar's military regime, contributing to human rights abuses by the military (see Guidelines IV. Human

Rights).

G. POSCO International

POSCO International supplied landing platform docks (LPD) to the military in Myanmar in 2019 by signing a contract with the military and a subcontract with a shipbuilder, Daesun Shipbuilding & Engineering, in violation of the Arms Trade Treaty, which contributed to improving the military's combat capabilities. Furthermore, the Respondent has been negligent in preventing or mitigating human rights violations (see Guidelines II. General Policies, IV. Human Rights).

4. Opinions of the Respondents

A. POSCO C&C

The alleged violation of several international standards including International Human Rights Law, International Humanitarian Law and the Arms Trade Treaty has not been backed by specific rules. The Complainant has also acknowledged that such standards shall not be directly applied to enterprises. The UN Guiding Principles on Business and Human Rights (UNGPs) which were referred to by the Complainant are voluntary and non-binding recommendations for enterprises.

The UN report only suggests a reasoning regarding the human rights situation in Myanmar, but failed to confirm the association between their business partnership with MEHL and human rights violations.

It is not enough to state that there are entities negatively affecting human rights with

reference to simple transactions or tax payments. Such contributions should be substantial enough to bring about negative implications, but the Complainant has failed to provide reasonable evidence in this regard.

This case is related to the assessment of activities conducted by a foreign government that do not fall within the KNCP's jurisdiction or political issues overseas. Furthermore, the Guidelines prohibit NCPs from improperly involving themselves in domestic politics (see Guidelines II. A. Article 15).

Prior to this complaint, POSCO C&C had ceased paying dividends to MEHL and enquired into how the already paid dividends were spent. Meanwhile, the Respondent has been considering measures to prevent such dividends from being spent on violating human rights in the future.

B. Inno Group

Hanthawaddy Golf & Country Club, Myanmar Inno International and Myanmar Inno Line include stakes owned by MEHL but have never paid dividends to MEHL since no profits were made. It is believed that those enterprises are rather contributing to promoting human rights by creating jobs for workers in Myanmar and improving their welfare.

C. Pan-Pacific

Pan-Pacific has terminated its business partnership with MEHL by acquiring the shares of its joint venture, Myanmar Wise-Pacific Apparel Yangon (MWY).

Myanmar Wise-Pacific Apparel Bago (MWB), a subsidiary of the Respondent, should maintain its land lease contract with MEHL since maintaining the employment of local workers is of the

utmost importance.

D. Hotel Lotte

Hotel Lotte failed to submit any opinion or response with regard to this case.

E. Daesun Shipbuilding & Engineering

Daesun Shipbuilding & Engineering has only signed a contract with POSCO International to build and deliver multi-purpose support vessels (MPSV). However, the shipbuilder has never had direct business relations with the military in Myanmar or MEHL, and has therefore never contributed towards profiting the Myanmar military or MEHL.

F. POSCO International

The ships POSCO International delivered to Myanmar are unarmed civilian ships built for restoration and humanitarian relief in natural disaster-hit areas upon the request of the Myanmar government. These multi-purpose support vessels (MPSV) do not constitute a warship under the Arms Trade Treaty and their use for purposes other than those for which they were intended cannot be foreseen or controlled once exported. There is no scope for POSCO International to involve itself in the Myanmar government's vessel operation after building and delivering those ships.

The Arms Trade Treaty (ATT) regulates the international trade of conventional weapons between countries, not enterprises. Therefore, the ATT is not subject to specific instances of NCPs which handle any violation of the Guidelines.

The fact that ships were exported does not necessarily prove that POSCO International has caused or triggered human rights abuses by the military.

Even before the specific instance was raised, the Respondent had been in the process of establishing company-wide guidelines for human rights management and developing detailed procedures. Going forward, a stricter evaluation process of relevant authorities is expected to be applied.

5. Review by Evaluation Factor

The KNCP has put together specific instances separately raised by the Complainant and reviewed their initial assessments given that the Complainant and the rationale of each specific instance are identical and the Respondents are closely connected with one another.

In compliance with the Procedural Guidance in the Guidelines, the NCP makes an initial assessment once a specific instance is received. The initial assessment is a process to determine whether the issue raised is bona fide and relevant to the implementation of the Guidelines. In making an initial assessment, the following six factors are taken into account.

- . the identity of the party concerned and its interest in the matter
- . whether the issue is material and substantiated
- . whether there seems to be a link between the enterprise's activities and the issue raised in the specific instance
- . the relevance of applicable law and procedures, including court rulings
- . how similar issues have been, or are being, treated in other domestic or international proceedings
- . whether the consideration of the specific issue would contribute to the purposes and

effectiveness of the Guidelines

Accordingly, the KNCP considered these factors based on the documents submitted by the parties.

1) The identity of the party concerned and its interest in the matter

The Korean Civil Society in Solidarity with the Rohingya (KCSSR) and the Korean Transnational Corporation Watch and Justice for Myanmar which are collectively referred to as the Complainant are civic groups advocating for human rights in Myanmar and have an interest in the identity of the party concerned and the matter.

POSCO C&C, a coated-steel manufacturer, is a multinational enterprise which has established Myanmar POSCO C&C in Myanmar.

Inno Group, a travel and terminal operator, is a multinational enterprise which operates a range of businesses, such as finance, real estate development, manufacturing, construction and leisure in Myanmar.

Pan-Pacific, an apparel and materials manufacturer, is a multinational enterprise which operates its offices and local subsidiaries in countries such as Indonesia, China, Vietnam and Myanmar.

Hotel Lotte, which was established as a tourist hotel business, is a multinational enterprise operating franchise hotels in Russia, Vietnam, the US and Myanmar.

POSCO International is a multinational enterprise which runs trade, resource development, infrastructure development and operation businesses in a variety of industries through overseas networks. With regard to this case, the Respondent has built and delivered ships to the military in Myanmar.

With regard to this case, Daesun Shipbuilding & Engineering has delivered ships under a domestic contract with POSCO International. As a domestic enterprise without any subsidiary or branch office overseas, Daesun Shipbuilding & Engineering has its headquarters and shipyard located in Busan, Korea. It therefore does not constitute a multinational enterprise which is established in multiple countries and is interconnected to the extent that it is able to coordinate business activities in different ways. Therefore, this shipbuilder shall not be subject to specific instances under the Guidelines.

Therefore, all Respondents except Daesun Shipbuilding & Engineering are multinational enterprises with an interest in the specific instances raised.

2) Whether the issue is material and substantiated

The Complainant claimed that the Respondents, POSCO C&C, Inno Group, Pan-Pacific, Daesun Shipbuilding & Engineering and POSCO International, have violated Chapter IV (Human Rights) of the Guidelines. With regard to this, the Respondents submitted their responses and relevant materials.

Violations of the human rights of the Rohingya, one of the issues raised by the Complainant, have been discussed by international organizations including the UN. Human rights organizations such as Amnesty International have also published reports on this important issue.

Among the Respondents, POSCO C&C, Inno Group, Pan-Pacific and Hotel Lotte submitted materials on their business partnerships with MEHL as evidence regarding the human rights issue. Based on these submitted materials, however, it is unlikely that business activities related to their business partnerships with MEHL are directly associated with the Myanmar military regime's policies on the Rohingya minority group. Applying the Guidelines to the regime's acts that are unrelated to the business activities of the Respondents shall not fall under the authority of NCPs.

In addition, the Complainant included the fact that POSCO International has built and delivered ships to the Myanmar government as well as evidence that the delivered ships have been converted into warships for the Myanmar Navy as opposed to their intended purposes. However, further evidence of a connection between POSCO International and the Rohingya issue has not been submitted.

3) Whether there seems to be a link between the enterprise's activities and the issue raised in the specific instance

The Guidelines stipulate in the Commentary on General Policies that any "contribution" to a negative impact should not be interpreted as an insignificant or marginal contribution, but as an activity which may encourage or incentivize other businesses to have a negative impact.

The Rohingya human rights issue raised by the Complainant is attributable to the Myanmar government which is in conflict with the minority group. On an empirical basis, it is difficult to claim that this issue would not have occurred if it were not for the business activities of POSCO C&C, Inno Group, Pan-Packfic or Hotel Lotte. It is therefore unlikely that the business activities of the Respondents have had any negative impact on the Rohingya.

Furthermore, Daesun Shipbuilding & Engineering has only built and delivered ships to another Respondent, POSCO International, and has never had direct business relations with the

Myanmar government. POSCO International exported ships with the permission of the Defense Acquisition Program Administration (DAPA). Given that there is no evidence of a connection between the ships exported following the government actions and the Rohingya issue, the conversion of those ships into warships does not equate to the Respondent having contributed to human rights violations.

4) The relevance of applicable law and procedures, including court rulings

The Complainant also raised this same issue at the UN Working Group on Business and Human Rights, the National Human Rights Commission, and others. Relevant procedures are therefore in progress which shall not affect the specific instance process of NCPs.

The Arms Trade Treaty (ATT) is an international treaty that regulates the international trade of conventional weapons between countries. NCPs therefore do not have any authority to determine whether a country has violated the ATT.

5) How similar issues have been, or are being, treated in other domestic or international proceedings

In a specific instance raised by CEDHU and Mining Watch Canada against Corriente Resources in 2014, Canada's NCP highlighted that the issue of forced deportation and forced dispersal of demonstrations raised by both complainants was associated with Ecuador's government policies and administrative actions, and that there was no obvious correlation between the issue and the enterprise's policies and actions. Eventually, the NCP closed the issue in its initial assessment by stating that the purpose of the Guidelines lies in ensuring the better activities of enterprises and that applying the Guidelines to any state actions does not fall within the authority of Canada's NCP.

In a specific instance raised by Human Rights Law Centre and Raid against a security company named G4S in 2014 which had allegedly violated human rights while operating refugee camps under a contract with the Australian government, Australia's NCP stated that it is not the role of a NCP to take action which may be interpreted as commenting on government policies or laws where the issue concerned may constitute a stance on government policy. Citing the above reasons, the NCP closed the issue in its initial assessment.

In 2014, the Korean Transnational Corporations Watch (KTNC Watch), Cotton Campaign and Anti-Slavery International raised a specific instance against Korea Minting and Security Printing Corporation (KOMSCO), Daewoo International and companies which have invested in Daewoo International (POSCO, the National Pension Service of Korea (KNPS) and Norges Bank Investment Management), citing that the respondents violated the Guidelines by continuing to purchase cotton even though they were aware of the Uzbekistan government-led forced labor at cotton farms. In the view of the KNCP, the respondents were unlikely to have breached due diligence duties required by the Guidelines or contributed to child labor and forced labor, and did not appear to be able to use any leverage over the Uzbekistan government. Citing the above reasons, the KNCP closed the issue in its initial assessment.

In 2013, the Bahrain Watch and Americans for Democracy and Human Rights in Bahrain (ADHRB) raised a specific instance against Daekwang Chemical Corporation which had allegedly exported tear gas to Bahrain in violation of the Guidelines. In addition, in 2018, Samy Badibanga, a liberal party politician of the Democratic Republic of the Congo and seven others raised another specific instance against a Korean enterprise named Miru Systems which had exported electronic voting machines to the DRC in violation of the Guidelines. The KNCP stated that the respondents concerned did not constitute a multinational enterprise which consists of businesses operating production facilities or sales facilities in multiple foreign countries as well as in the country where it was established. Citing the above reasons, the KNCP closed the issue in its initial assessment.

6) Whether the consideration of the specific issue would contribute to the purposes and

effectiveness of the Guidelines

The role of NCPs is to provide a venue for discussions and help the parties involved seek out solutions. However, consideration should be given to the fact that the Guidelines deny any inappropriate involvement of enterprises in local politics (see Guidelines II. A. 15) and stipulate that observance of domestic law is a top priority for businesses, and nothing can therefore supersede or overrule domestic law (see Guidelines I. 2.).

Since the purpose of the Guidelines lies in preventing or minimizing any negative impact of business activities, NCPs cannot judge whether shareholders' use of dividends beyond business activities is appropriate or not. Furthermore, engagement in any activity that may be interpreted as commenting on Myanmar's government policies or laws shall not constitute the role of NCPs.

In consideration of the human rights situation in Myanmar, POSCO C&C stopped paying out dividends to MEHL and is reconsidering their business partnership. Inno Group made it clear that it will strive to resolve the issue with a greater focus on the human rights of its workers despite having never paid out dividends to MEHL. Pan-Pacific terminated its joint venture with MEHL. POSCO International has adopted a series of measures as required by the Complainant, including the establishment of guidelines for human rights management and development of detailed procedures.

Given the abovementioned details, further assessment of these specific instances is unlikely to contribute to the purpose and benefits of the Guidelines.

6. Conclusion

Based on the materials submitted by both the Complainant and the respective Respondents,

the KNCP has determined that there is no real benefit in performing further procedures such as additional research or arbitration with regard to the issue raised by the Complainant. Nevertheless, the KNCP would like to express its concerns over the recent situation in Myanmar and contribute to the stability of the country by handling responses from the Respondents in good faith. The KNCP hereby closes the specific instance procedure.

14 July 2021

Korea National Contact Point (KNCP)