



Final Statement of the Complaint under the OECD Guidelines concerning Palm Oil Plantation Development in Indonesia

1. The Situation and Background of the KNCP

The OECD Guidelines for Multinational Organizations (hereinafter referred to as the “Guidelines”) are voluntary, non-binding recommendations established with a view to minimizing the adverse impact of MNEs activities and enhance responsible MNE business conduct.

The Korean Government has been operating the Korean National Contact Point (hereinafter referred to as the “KNCP”) to promote the Guidelines and handle specific instances for MNEs based in or operating in Korea.

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

The decision of a multinational enterprise to participate in good offices procedures does not imply that its activities do not comply with the Guidelines. Furthermore, the KNCP shall not compel any parties participating in good offices procedures to make a concession, waive their legal rights or violate the law.

2. Details of the Complaint

Four civic groups, namely KTNC Watch, PUSAKA, SKP-KAMe and WALHI Papua (hereinafter referred to as the "Complainant"), submitted a complaint and an additional response to the KNCP against POSCO International, the Korean National Pension Service (hereinafter referred to as the "NPS") and the Export-Import Bank of Korea (collectively referred to as the "Respondents") regarding the development and production of palm oil at palm oil plantations in Indonesia on 19 December 2019 and 9 March 2020 respectively. The complaint to Export-Import Bank of Korea is not subject to the scope of the guidelines, so the contents of the objection related to that bank shall not be described.

2-1. POSCO International

- POSCO International had an adverse impact on the environment (forests and drinking water sources) and the lives of local residents while undertaking its palm oil project in violation of human rights and environmental guidelines;
- POSCO International caused deforestation and discharged waste from palm oil processing plants during the project, degrading the water quality of the Bian River and damaging the biodiversity;
- POSCO International failed to obtain free, prior and informed consent (FPIC) from the residents of Papua regarding the project that may affect their livelihood; and
- POSCO International is required to compensate the damages incurred, adopt and implement palm oil production policies without deforestation and exploitation as well as devise measures to protect the right to water

2-2. The NPS

- The NPS failed to exert its influence and conduct human rights due diligence even after it, as an institutional investor, recognized issues raised during the project of POSCO International;
- The NPS failed to take action concerning the project even though environmental issues are classified as investment risks in the investment prospectus of POSCO International; and
- The NPS is required to engage in human rights and environmental issues raised during the project of POSCO International and reflect the environmental impact and countermeasures against the infringement of rights in its foreign investment policies

3. The Respondents' Position

The NPS and POSCO International submitted their responses to the KNCP on 11 February 2020 and 12 February 2020 respectively. The complaint to Export-Import Bank of Korea is not subject to the scope of the guidelines, so the contents of the objection related to that bank shall not be described.

3-1. POSCO International's Position

- POSCO International has fully assessed any adverse impacts the project may have on the environment, considered them in its decision-making process and taken necessary measures.
- The project has not had any adverse impact on the water quality of the Bian River and it has disclosed relevant information related to the water.
- PT.BIA, the project owner and a subsidiary of POSCO International, engaged in faithful

dialogue and consultations with all stakeholders on this project in advance.

- The Complainant's claim has not been fully substantiated and further consideration of the complaint would not necessarily contribute to the purposes and effectiveness of the Guidelines. On the contrary, it would only impose an unreasonable and improper burden on the enterprise. In fact, the Respondent is actively verifying its compliance with the OECD Guidelines.

3-2. The NPS's Position

- The NPS has established the Responsible Investment Principles under the Guidelines for the Operation of the National Pension Fund and thereby considered factors such as ESG regarding investment targets in order to increase the profits of the fund over the long term and in a stable manner. In cases where corporate values or shareholder rights of the enterprise are likely to be damaged regarding ESG or other such matters, the NPS engages in activities with shareholders such as dialogue in accordance with the Guidelines on the Stewardship Activities of Trustees under the National Pension Fund and the Guidelines on the Stewardship Activities of Domestic Stock Trustees under the National Pension Fund.

4. Proceedings of the KNCP

In accordance with the Guidelines, the NCP makes an initial assessment after it accepts the complaint. To determine whether the issue is bona fide and relevant to the implementation of the Guidelines, the NCP will take 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

In accordance with the Procedural Guidance, the KNCP reviewed the initial assessment based on the documents submitted by both parties and made the following conclusions on 18 September 2020.

- The KNCP has reviewed all factors to be considered in the initial assessment based on the materials submitted by the parties. The KNCP concludes that there is a need to facilitate dialogue between the parties to help them resolve the issues raised by the Complainant and that the issues merit further consideration and coordination, given that the issues are material and both parties are actively responding to the procedure. However, the Export-Import Bank of Korea shall be excluded from the coordination procedure arranged by the KNCP as the bank is not subject to the Guidelines due to the following reasons:
 - ① The bank is a public organization that is governed by a special law and dedicated to public purposes. This specific instance is applicable to policy financing under the Government's Comprehensive Plan for Overseas Agricultural Development
 - ② Receiving interest under the OECD Export Credit Arrangement shall not be deemed commercial activities considering relevant precedents involving the Korea Resources Corporation (KORES) and others
 - ③ In light of the cases of export credit agencies in Finland and the Netherlands, the practices of the Export-Import Bank of Korea are not subject to the Guidelines
- The initial assessment is the process to determine whether the NCP can help the parties interact and resolve the issues, not the process to determine whether the respondents have violated the Guidelines.

According to the Procedural Guidance, NCPs shall have additional consultations with the parties

regarding the issues raised and offer good offices as part of efforts to informally contribute to resolving the issues if the issues are subject to further consideration. In this respect, the KNCP organized a three-member Mediation Committee to support the resolution of the issues by the parties and requested the voluntary and proactive engagement of the parties.

The committee consists of Sang-Hee Lee (Professor at Korea Polytechnic University, member of the Adjudication Committee at the National Labor Relations Commission) as the chair, Sang-Tae Yeo (Dean of Korea Polytechnics Seoul Gangseo Campus, member of the Mediation Committee at the Gyeonggi Regional Labor Relations Commission) and Jae-Chang Oh (lawyer at Haemaru Law Firm), all of whom are members of the KNCP.

The KNCP arranged a preliminary meeting between the Complainant and POSCO International to gather the opinions of both parties regarding the mediation process and their positions on 28-29 July 2020.

The initial Mediation Committee meeting was held on 20 August 2020 with the participation of all stakeholders, including a Complainant based in Indonesia participating online. The chair of the committee declared that the procedure may be terminated if the committee is not deemed to be neutral (e.g. the committee recommends either party to make a unilateral concession) or if either party believes that an additional mediation process is not required, as this meeting was held based on their voluntary participation.

During the meeting, the Complainant called on POSCO International to provide translated copies for better understanding among local residents, and establish a direct channel for complaints regarding forest conservation at the community level, rather than the national level.

In response, POSCO International presented its NDPE policy as a solution for the issues raised by the Complainant and had discussions on the challenges related to representation arising from the diverse composition of local residents.

The NPS asked the Complainants to take into account the fact that it has created an ESG assessment process for issues such as human rights and climate change, and disclosed the assessment criteria as well as the fact that it is conducting its stewardship activities in good faith in favor of national pension subscribers and others.

The second Mediation Committee meeting was held on 2 December 2020 with the participation of the Complainant (including two local participants joining online) and POSCO International. The Complainant suggested that local residents should be able to live without forests in terms of economic self-sufficiency, education, health, etc., and at the same time called for improvement works involving different stakeholders.

POSCO International stated that it is drafting regional support policies and plans to provide an Indonesian translation for better understanding among local residents. Furthermore, the Respondent asked for the clarification of differing opinions between local people accompanying the Complainant and their representatives, and this request was accepted by the Complainant.

On 4 June 2021, the Complainant submitted the clarified mediation proposal for sharing as agreed at the second meeting. On 23 June 2021, the third Mediation Committee meeting was held with the participation of all stakeholders. Failing to agree on the mediation proposal, however, the Complainant submitted the following updated proposal on 30 June:

POSCO International shall,

- exclude the attendance of soldiers and police officers at public hearings;
- share relief measures and information related to water quality submitted to the RSPO with regard to relief for deforestation areas;
- ensure the participation of PUSAKA, SKP-KAMe and others at public hearings;

- continue sharing information on the progress and outcome of public hearings in such a way that local people can confirm this information; and
- ensure that a Korean personnel from the headquarters of POSCO International attends public hearings at least once a year and reviews the progress in person

The NPS shall,

- manage environmental and social issues arising from the palm oil project in Indonesia by POSCO International, an investee, through the Fiduciary Liability Committee and share the aforementioned information with stakeholders; and
- actively reflect issues such as environmental degradation and human rights violations perpetrated by the investee, especially deforestation, loss of biodiversity, and the absence of FPIC, into its ESG assessment items as part of efforts to expand its ESG investment

On 9 July 2021, POSCO International responded as follows:

- For the project area, the central and local governments may decide whether or not to allow soldiers and police officers to attend public hearings for public safety reasons. Therefore, the Respondent and PT.BIA are not permitted to involve themselves in the decision making and any subsequent measures shall be made in accordance with the Guidelines.
- The disclosing of the RSPO's planned proposal that is currently under the assessment and approval process by the Respondent may have an adverse impact on the approval process and delay the procedure, which would not meet the purpose of the assessment process. This is based on the premise that the Respondent listens to the opinions of stakeholders and guarantees their engagement during the implementation of a compensation plan.

- In principle, the Respondent shall not engage in profit sharing for residents or disputes to ensure that such disputes are minimized. Therefore, the Complainant's request for ensuring the participation of specific NGOs, such as PUSAKA and SKP-KAMe, and not local residents in public hearings is hardly acceptable due to the risk of delays in public hearings and further disputes. However, outside experts with proven expertise and neutrality will be invited to share opinions depending on the nature of each matter, upon the consent of local residents.
- Semiannual NDPE implementation reports and annual implementation plans have been disclosed in the English and Indonesian languages. Since the progress has been shared with local residents through the plasma union, the requirements of the Complainant are already being undertaken by the Respondent.
- If a personnel from the headquarters is compelled to attend public hearings, there is likely to be an adverse impact that goes against the original purpose of a public hearing: swiftly resolve the challenges in accordance with local circumstances.
- Regardless of the termination of the NCP procedure, POSCO International is committed to carrying out its plan to minimize environmental concerns and protect human rights with regard to the palm oil project in Indonesia without any setbacks. POSCO International is also committed to complying with the NDPE policy implementation plan and interacting over concerns reasonably raised by all stakeholders in good faith and in a transparent manner.

On 13 July 2021, the NPS responded as follows:

- The NPS has carried out ESG monitoring as well as regular and occasional ESG assessments on domestic listed stocks as well as POSCO International. It has also conducted stewardship activities in accordance with the procedure by reporting the monitoring and ESG assessment outcomes to the Fiduciary Liability Committee and facilitating remedial measures, and disclosed such activities within the scope of disclosure.

- The NPS has already reflected environmental and human rights issues into its ESG assessment items, which are available on its website. For other ESG issues, the NPS may decide whether to reflect them in accordance with its procedure for improving ESG assessment criteria.
- With respect to two of the requirements from the Complainant, the stewardship activities of the NPS are deemed to have met the needs of the Complainant.

5. Conclusion

The NCP complaint procedure offers good offices to the parties for further consultations and informally contributes to resolving issues rather than determining whether any party has violated the Guidelines, which requires the voluntary engagement of MNEs and stakeholders.

The KNCP therefore decided that it was appropriate to offer good offices to the parties in its initial assessment. The KNCP contributed to raising awareness of the Guidelines among the Respondents and improving environmental, social and human rights outcomes in the region through autonomous dialogue between both parties as well as three official Mediation Committee meetings.

Notwithstanding the efforts of the KNCP to facilitate an agreement even after the mediation meetings, the KNCP regrets that both parties failed to reach a full agreement on the final mediation proposal. This situation does not merit further mediation procedure. Nevertheless, having seen some convergence of opinions and that the procedure contributed to providing a forum for discussions between the parties on issues in accordance with the Guidelines, the KNCP believes that both parties recognized the need to listen to the opinions of local people and establish a system for in-depth dialogue with local residents.

In an additional investigation, the KNCP confirmed that POSCO International has compiled best practices of the Guidelines through Standard Operating Procedures (SOPs); Free, Prior and Informed Consent (FPIC); adoption of the NDPE policy including the establishment and

implementation of the environmental conservation plan; and the Roundtable on Sustainable Palm Oil (RSPO) certification acquired during the procedure. The KNCP expects that POSCO International will utilize the NDPE policy, the RSPO criteria as well as the Guidance for Responsible Agricultural Supply Chains jointly developed by the OECD and the Food and Agriculture Organization (FAO).

In an additional investigation, the KNCP confirmed that the NPS has established an ESG assessment system through the Fund Operation Committee and the Fiduciary Liability Committee which include members recommended by stakeholders (e.g. labor or civic groups) as per the National Pension Act. The NPS has joined two global cooperation organizations for institutional investors, namely the International Corporate Governance Network (ICGN) and the Asian Corporate Governance Association (ACGA) in order to comply with the Stewardship Code. The KNCP believes that the NPS is able to integrate its ESG assessment system with responsible business conduct standards under the OECD Guidelines by utilizing the OECD Guidelines and the Responsible Business Conduct Due Diligence Guidance for Institutional Investors.

The KNCP shall close the procedure for this specific instance, with the following recommendations for POSCO International and the National Pension Service:

POSCO International shall,

- (1) establish a consultation channel to deal with issues raised by the Complainants and continue its interaction;
- (2) faithfully explain its efforts to resolve the issues, such as consultations with local residents over this specific instance, compensation and improvement measures, to the Complainant;
- (3) implement the "No Deforestation, No Peat, No Exploitation" (NDPE) policy and the Roundtable on Sustainable Palm Oil (RSPO) criteria and ensure that the OECD Guidelines for Multinational Enterprises, the OECD Due Diligence Guidance for Responsible Business Conduct

and the Guidance for Responsible Agricultural Supply Chains are considered during the due diligence process; and

(4) submit a performance report six months after the receipt of this Final Statement.

The NPS shall,

(1) establish a consultation channel to deal with issues raised by the Complainants and continue its interaction;

(2) ensure that the OECD Guidelines for Multinational Enterprises, the OECD Due Diligence Guidance for Responsible Business Conduct, the Responsible Business Conduct for Institutional Investors and others are considered during the due diligence process in order to improve the ESG assessment system; and

(3) submit a performance report six months after the receipt of this Final Statement.

It was meaningful that both parties participated in the good offices procedure of the KNCP and worked together to resolve the issues. As such, this instance would have emerged as a best practice pursued by the OECD Guidelines for Multinational Enterprises if both parties participated in the KNCP's mediation process in a more active manner, took a flexible stance during consultations and eventually reached an agreement.

13 January 2022

Korean National Contact Point