

Press Release

The Korean NCP should be condemned for exonerating Samsung Heavy Industries from its responsibilities for the Martin Linge Project crane accident

From: The Samsung Heavy Industries Martin Linge Project Crane Accident Workers Support Team

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The Korean NCP should be condemned for exonerating Samsung Heavy Industries from its responsibilities for the Martin Linge Project crane accident.

1. On October 26, 2022, the Korean National Contact Point (hereinafter "Korean NCP") established by the OECD Guidelines for Multinational Enterprises issued its Final Statement for the specific instance of the Samsung Heavy Industries Martin Linge Project crane accident (hereinafter "Accident"). The Complainants (Samsung Heavy Industries Martin Linge Project Crane Accident Workers Support Team and Korean Transnational Corporations Watch) find the Korean NCP's Final Statement completely failed to address and comfort the pains and sufferings of the affected workers but only exonerated Samsung Heavy Industries (hereinafter "SHI") from its responsibilities for the Accident.

2. On May 1, 2017, a tragic crane crash took place in the SHI's Geoje Shipyard while building the Martin Linge platform. The Accident left dozens of workers killed or injured. Many of workers who were present at the site are still suffering from physical and psychological trauma.

3. The NCPs established by the OECD Guidelines for Multinational Enterprises (hereinafter "Guidelines") are considered a meaningful non-judicial grievance mechanism to provide remedies for the victims adversely affected by violations of the Guidelines and seek for measures to prevent recurrence of similar incidents through Good Office process. However, in this instance, neither the Good Office process nor the Final Statement of the Korean NCP provided meaningful remedies for the affected workers and recommended SHI to take responsibility of developing and implementing preventive measures.

4. During the mediation process, the complainants requested SHI to take responsibility for the Accident by actively participating in efforts such as: delivering formal and sincere apologies for the victims and affected workers; developing and implementing remedies for the victims who were not counted in the official statistics and the workers who observed the Accident and have been suffering from its trauma; establishing a community supporting system to provide treatment and rehabilitation for the affected workers, prevent industrial accidents, and found a counselling and consulting center for serious industrial disasters; and developing the OECD due diligence guidance for the shipbuilding industry for safety and health of workers.

5. In its Final Statement, the Korean NCP did not comment about whether the Korean NCP found SHI violated the Guidelines relating to the Accident at all. Instead, the Final Statement stated that the Korean NCP confirmed the following: 1) SHI issued a letter of regret by the name of the SHI's CEO the next day of the Accident; SHI instructed a risk assessment of safety measures after the Accident; SHI compensated the victims and bereaved families of the victims; and SHI expressed its plan to operate a psychological counselling system for the affected workers during the Good Office process. As a result, the Korean NCP's Final Statement gives a false impression that the measures undertaken by SHI were proper and adequate. The Complainants strongly protest the Korean NCP's conclusion of illegitimately and unfairly exonerating SHI from its responsibilities.

6. In detail, we, the Complainants believe the Korean NCP's Final Statement is problematic for the following reasons:

- It misrepresents that a sincere apology was made to the victims

Without any comment about the root cause of the Accident and who was responsible for the Accident, the Korean NCP described a letter of regret that SHI distributed to the public through media immediately after the Accident as SHI's apology for the victims. However, the letter of regret was no more than SHI's press release to the general public, noting an accident occurred in its workplace. The letter was far from offering a sincere apology for the victims. The letter even did not recognize SHI's responsibility for the Accident. It only stated that SHI offered deep regret and comfort for the victims and SHI was planning to investigate the cause of the Accident. Nevertheless, the Korean NCP's Final Statement falsely stated that SHI apologized to the victims.

- It did not address SHI's failures in taking up adequate safety measures

The courts of Korea found SHI guilty of violating the relevant provisions of the Occupational Safety and Health Act by failing to fulfil its duties for safety measures and industrial disaster prevention measures (Supreme Court Decision 2020 Do 3996, decided on Sept. 30, 2021; Changwon District Court Decision 2021 No 2515, decided on June 23, 2021). These decisions clearly confirmed that SHI's safety measures were not adequate at the time of the Accident, constituting violations of the positive laws of Korea, specifically, the Occupational Safety and Health Act. Therefore, it is not disputed that the shortfall of SHI's safety measures at the time of the Accident is a violation of the Guidelines.

Nevertheless, the Korean NCP's Final Statement contains not a single comment about whether SHI's lack of safety measures constitutes the violation of the Guidelines even after noting that the Korean domestic courts convicted SHI for violating the Korean domestic laws in the Accident. The Korean NCP's Final Statement instead noted that SHI took up a few safety measures "in the wake of" the Accident.

To ensure effective implementation of the Guidelines, the Korean NCP should assess the involvement and responsibilities of SHI in the Accident and determine whether SHI violated the Guidelines. Based on such assessment and determination, the Korean NCP should identify and request SHI necessary measures to mitigate and address adverse impacts pursuant to the

Guidelines. However, the Korean NCP abandoned its mandates by failing to make any determination about the involvement and responsibility of SHI as well as SHI's violation of the Guidelines in relation to the Accident. The Korean NCP's recommendations to SHI are no more than empty recitation of what was required for SHI by the domestic positive laws of Korea and the Guidelines.

- No recommendation was made relating to remedies for victims

More than five years have already passed since the Accident, but SHI is still "considering" remedial measures for victims. SHI has not advanced toward taking up any measures in practice. The Complainants have persistently criticized lack of support for the affected workers resulting from SHI's passive stance on the matter throughout the Good Office process. However, the Korean NCP completely disregarded the Complainant's argument and acted on the sidelines on the matter by merely recommending SHI to provide remedies "if additional victims left off the list are further identified in the future." The Korean NCP completely disregarded the reality that the victims, the bereaved families of the victims and all the affected workers who are still in the pain and suffering from both physical and psychological trauma due to the Accident.

- The Korean NCP failed to ensure participation by and engagement with civil society stakeholders including workers support centers

The Complainants have consistently requested SHI take responsibility and build solidarity not only for the direct/indirect victims of the Accident but also for any potential victims of industrial accident and occupational disease in the shipbuilding industry as a main player in the industry, and develop and implement effective remedial measures by providing treatment and rehabilitation programs and creating a local support mechanism. In addition, with reasonable doubts about the effectiveness of remedial measures and due diligence "unilaterally" led by SHI, the Complainants have urged for meaningful participation by and engagement with civil society organizations such as workers support centers to have what the victims really want be fully reflected in the process.

However, the recommendations made by the Korean NCP failed to ensure opportunities and room for workers support organizations to be effectively involved in the process of developing and implementing remedial measures, and conducting due diligence by SHI. Such a result is the direct opposite of what the Guidelines encourage and emphasize – active participation by and engagement with workers, main stakeholders to ensure corporate compliance with the Guidelines.

7. Finally, the Complainants want to express our regret that the Korean NCP carried out the Good Office process in a rather perfunctory way, making full and sincere discussions impossible. During the process, the mediators hardly made any efforts to encourage and facilitate dialogue between the parties. The mediators simply told the parties to take care of themselves. Such a passive stance of the Korean NCP significantly compromised productive discussion and resolution through the Good Office process. Nevertheless, the Korean NCP painted a picture of itself as the genuine mediator by saying that it is regretful to see the process broke down despite their efforts. The Complainants could not help laughing.

8. More than 5 years already have passed since the Accident. However, many workers are still suffering from both physical and psychological trauma of the Accident and have difficulties in returning to a normal life. The Korean NCP should have acted to its mandates of encouraging multinational enterprises to comply with the Guidelines with recommendations to SHI to provide practical remedies for the victims and affected workers and take up effective measures to prevent recurrence of similar accidents. However, as previously stated, the Korean NCP's Final Statement only exonerated SHI from its responsibilities for the Accident by omitting any assessment or determination about whether SHI's safety measures were proper and enough at the time of the Accident as well as whether SHI's conduct constitutes a violation of the Guidelines. If the Korean NCP cannot dare to decide any violations of the Guidelines with the excuse of being a non-judicial mechanism, we, the Complainants would like to ask whether the Korean NCP itself is really satisfied with the result not only failing to give confidence in the process to the complainants but also failing to motivate the respondent companies to better comply with the Guidelines.

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The Samsung Heavy Industries Martin Linge Project Crane Accident Workers Support Team

The Korean Transnational Corporations Watch