

Addressing Labor Rights Abuses at Overseas Korean Companies: The Role of the Korean State

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Abstract

Over the past few decades, Korean-owned companies have greatly expanded their operations overseas, especially in Latin America and Southeast Asia. One issue that has occasionally arisen as part of this outward expansion is the occurrence of abusive labor practices by Korean employers overseas. Overseas labor rights violations are one of the most difficult types of human rights problems to address, as oftentimes the host state lacks adequate legal mechanisms to address the violation, and international law does not directly regulate multinational corporations. Thus, many believe that the corporation's home state should play a role in addressing overseas labor rights issues. This article analyzes the reaction of the Korean government to such overseas labor abuses by Korean companies. It describes current extraterritorial laws that can be used to curb labor abuses, as well as the steps taken by the Korean government in promoting corporate social responsibility, managing the OECD Guidelines for Multinational Enterprises, educating overseas corporations in good labor practices, and assisting in resolving overseas labor disputes. It concludes with recommendations on additional steps the government can do more to reduce overseas labor abuses.

I. Introduction

In recent years, debate has raged in academic and advocacy circles over how best to prevent multinational companies from abusing the human rights of their employees in their overseas operations, especially in the developing world. These rights abuses can take many forms: discrimination; sexual harassment; use of forced or child labor; non-payment of wages; denial of the

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right to form a labor union, and many others. Given the widespread feeling that host-state regulation can sometimes be insufficient to prevent labor abuses, the debate has centered on discussion of the pros and cons of home-state (extraterritorial) laws, international law, and self-regulation (corporate social responsibility, or “CSR”). This debate has largely centered on European and North American companies, which are, along with Japanese companies, responsible for the lion’s share of investment in the developing world.

Over the past twenty-five years, however, an increasingly important contingent of Korean businesses—large and small—has spread across the developing world to set up factories and production facilities, taking advantage of the relatively low prevailing wages in these countries. These businesses have brought numerous benefits to the societies in which they operate, by providing employment opportunities, generating tax revenues for the host state, and in some cases transferring valuable skills and technologies that can be used for the host country’s economic development. At times, these companies have also been guilty of abusing the fundamental human rights of their employees.

This article will address the question of how best to eliminate these abuses, and, specifically, how the Korean State can better use its powers to ensure that Korean overseas companies respect basic labor rights. The article will be organized as follows. Section II will provide background on the issue of overseas labor abuses, and the different ways that they can be addressed both. Section III will take a closer look at five approaches that the State can address the issue of overseas labor abuses, analyze the effectiveness of the Korean government’s actions in each of these areas, and suggest future avenues for the government to take. These approaches are 1) extraterritorial legislation; 2) promotion of Corporate Social Responsibility (“CSR”) codes; 3) implementation of the OECD Guidelines for Multinational Enterprises; 4) educational efforts, and 5) alternative dispute resolution. Section IV will provide a brief conclusion.

II. Overseas Labor Abuses

Korean companies began to relocate production lines overseas on a large scale starting in the mid to late 1980s, due largely to liberalization of the

regulatory framework and increasing production costs in Korea stemming from rising wages and escalating land prices.¹⁾ Clothing and footwear producers were among the first to move overseas, largely to ASEAN countries.²⁾ Later, fabricated metals and electronics producers also opened many factories in Southeast Asia, and there was a massive growth in Korean investments in Latin America.³⁾

As Korean-owned overseas businesses became more and more successful, there were also an increasing number of reports of labor rights abuses. Some of the more serious and well publicized instances occurred in Guatemala, where the labor ministry called worker abuse “a very, very serious problem in Korean factories”⁴⁾ and Pakistan, where an International Labor Organization Committee upheld complaints that the freedom of association had been violated by Daewoo and asked the Pakistani government to investigate serious allegations of torture and imprisonment of workers on a road construction project.⁵⁾ However, reports of abusive management practices surfaced all over the world, and were covered by international media.⁶⁾

By 1996, in the wake of extended discussions about (largely domestic) labor practices that took place during and subsequent to Korea’s application for membership at the OECD, there was a feeling that some action should be taken to restrain the worst of the labor rights violators. Although the Korean government was still more concerned with domestic rather than overseas labor issues, there were some tentative steps towards promoting Corporate

1) See Sanghoon Ahn et al., *The Economic Impact of Outbound FDI and Trade: The Case of Korea*, paper presented at OECD Workshop on the Globalisation of Production: Impacts on Employment, Productivity and Economic Growth (Nov. 2005), available at <http://www.oecd.org/dataoecd/56/62/35629244.pdf>. Increasing labor unrest, changes in investment outflow regulations, and proximity to export markets (particularly in the case of Latin American production of goods for the U.S. market) also were seen as playing a role in the rise in Korean offshore manufacturing.

2) Dae Won Choi & Martin Kenney, *The Globalization of Korean Industry: Korean Maquiladoras in Mexico*, 9(17) *FRONTERA NORTE* 9 (1997).

3) *Id.*

4) Kurt Peterson, *Zones of Exploitation: Korean Investment in Guatemala*, 14(12) *MULTINATIONAL MONITOR* (1992), available at http://www.multinationalmonitor.org/hyper/issues/1992/12/mm1292_10.html.

5) Dan Biers et al., *Labor Complaints Could Prompt International Strife for Korea*, *WALL STREET JOURNAL*, Jul. 20, 1996.

6) *Id.*

Social Responsibility values in the private sector. In February of 1996, the Council of Korean Economic Organizations adopted a voluntary ten-point Code of Conduct for overseas investments which mandated that Korean businesses conduct cooperative labor-management relations on the basis of mutual respect and trust; maintain safe and cheerful workplaces that help prevent industrial accidents and boost productivity; and respect local culture, values and tradition.⁷⁾ Over the next few years, CSR began to make headway in Korean society, largely as a reaction to criticism that chaebol mismanagement was partly responsible for the heavy impact of the Asian financial crisis in Korea. In 1999, for example, the Federation of Korea Industries adopted a 'Charter of Business Ethics' that included a clause stating that "international companies are obligated to follow local economy standards and observe business ethics in the local economy as they would their own."⁸⁾ These initial CSR efforts were seen as being relatively ineffective, however.⁹⁾

Since the year 2000, Korean companies have continued to invest in production facilities abroad, and their presence has spread geographically to new areas such as the Middle East and Africa.¹⁰⁾ Unsurprisingly, allegations of labor rights abuses have continued as well. Recent labor abuses by Korean companies overseas have received negative coverage by the Korean press, including the particularly active online media sector.¹¹⁾ There has also been greater attention to overseas human rights abuses at the advocacy level. The Korea House for International Solidarity has since its founding in 2000 played a leading role in lobbying on behalf of overseas employees of Korean companies at both domestic and international fora, and in a number of cases

7) *Id.*

8) Federation of Korean Industries, *The Charter of Business Ethics*, available at <http://www.fki.or.kr/en/About/Charter1.aspx>.

9) The Charter of Business Ethics was criticized by Korean human rights as an ineffective publicity document that did little to reflect basic labor rights. See MI-KYUNG CHA, *THE STUDY OF GOVERNMENT RESPONSE ON KOREAN COMPANIES ABROAD* 132 (2003).

10) *South Korean Companies Invest Record Amount in Africa and Middle East*, PEOPLE'S DAILY ONLINE, Dec. 29, 2009, available at <http://english.people.com.cn/90001/90778/90858/90863/6855201.html>.

11) See, e.g., Simon Phillips, *Is Mexico a Frontier for Korea*, KOREA TIMES, Jul. 3, 2007, available at http://www.koreatimes.co.kr/www/news/special/2007/07/177_5875.html; *Oppression of Overseas Workers by Overseas Korean Corporations*, THE HANKYOREH, Sep. 5, 2007, available at http://english.hani.co.kr/arti/english_edition/e_editorial/234034.html.

the Federation of Korean Trade Unions and Korean Confederation of Trade Unions (Korea's main umbrella trade union groups) along with leading human rights groups such as Minbyun have been involved in advocating for the rights of both Korean and non-Korean workers at Korean companies overseas.

1. Techniques to Address Overseas Labor Abuses

Labor rights advocates in Korea and the West have struggled with the question of how best to ensure that multinational companies respect labor rights in developing countries. Generally, the first reaction to labor rights abuses is—and should be—to attempt to challenge the abuse in the courts of the host country. In many cases, this method is effective. However, many developing countries remain unable or unwilling to effectively enforce their own labor laws, or may simply lack labor laws that are strong enough to sufficiently protect workers' rights.¹²⁾ Outside of the host-state legal system, there are a number of other mechanisms that have been suggested as means of regulating overseas labor practices. Traditionally, these mechanisms have been analytically separated into three categories: home-state regulation, international law, and self-regulation. These regulatory techniques will be described in more detail below.

1) Extraterritorial regulation

Extraterritorial regulation refers to the use of legal mechanisms in the home country (i.e., the country in which the multinational company is based) to regulate that company's labor practices abroad. Extraterritorial laws in the labor field are rare and in general only used to counter particularly egregious practices or, in some cases, to cover cases where both the employer and the employee are nationals of the home country.¹³⁾ For example, Spain passed legislation allowing so-called 'universal jurisdiction' over certain crimes (that

12) Christen Broecker, "Better the Devil You Know": Home State Approaches to Transnational Corporate Accountability, 41 N.Y.U. J. INT'L L. & POL. 159, 161 (2008).

13) See, e.g., Civil Rights Act of 1991, Pub. L. No. 102-166, § 109, 105 Stat. 1071 (1991) (affirming extraterritoriality of U.S. anti-discrimination law).

could include labor abuses such as slavery) that take place outside of the country, regardless of the citizenship of the victim or perpetrator. In the United States, the Alien Tort Claims Act¹⁴⁾ (“ATCA”) gives U.S. federal courts authority to hear cases involving breaches of international law, including international human rights law. The ATCA has in isolated (and egregious) instances been used effectively to sue companies for their complicity in labor rights abuses (although it has not yet been successfully used to hold companies accountable for their commission of labor rights abuses).¹⁵⁾

In addition to such laws that are drafted specifically to apply to overseas human rights abuses, some countries have expanded the extraterritorial scope of domestic labor laws that generally apply within the country. In some cases, labor laws have been explicitly extended to a country’s nationals even when operating overseas. For example, in the United States, the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 explicitly provides for extra-territorial jurisdiction for the crimes of Peonage, Enticement into Slavery, Involuntary Servitude, Forced Labor, Trafficking, and Sex Trafficking where the alleged offender is a national or lawful permanent resident of the United States or is present in the United States.¹⁶⁾

2) Regulation by international law

There has been much debate over the years over whether corporations are ‘subjects’ of international law. The traditional view has been that international law does not apply directly to corporations.¹⁷⁾ In recent years, however, some scholars and human rights advocates have asserted that corporations are already subjects of international law.¹⁸⁾ This claim was espoused in the Draft

14) 28 U.S.C. § 1350 (2006).

15) See, e.g., *Doe v. Unocal*, 248 F.3d 915 (9th Cir. 2001).

16) 18 U.S.C.S. §§ 1581-91 (2009).

17) Jonathan I. Charney, *Transnational Corporations and Developing Public International Law*, 1983 DUKE L. J. 748, 753; Daniel C.K. Chow, *Limiting Erie in a New Age of International Law: Toward a Federal Common Law of International Choice of Law*, 74 IOWA L. REV. 165, 193 (1988) (“Under the orthodox theory, only nation-states can be the subject of international law.”); Carlos M. Vázquez, *Direct vs. Indirect Obligations of Corporations Under International Law*, 43 COLUM. J. TRANSNAT’L L. 927, 930 (2005) (“direct regulation of non-state actors remains a very narrow exception to the general rule that international law directly imposes obligations only on states and supra-national organizations”).

18) See generally, Emeka Duruigbo, *Corporate Accountability and Liability for International*

Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights in 2003, which affirmed that transnational corporations have the same human rights obligations as States¹⁹⁾ and that these obligations apply “equally to activities occurring in the home country or territory ... and in any country in which the business is engaged in activities.”²⁰⁾ The Draft Norms proved to be very controversial, and were eventually rejected by the Human Rights Commission, which appointed John Ruggie as Special Representative to the Secretary General on Human Rights and Transnational Corporations to study the issue in greater depth. In his subsequent reports, Ruggie essentially sided with the traditionalist view of international law, clarifying that international law currently imposes no direct obligations on corporations, although he noted that this may change in the future, given trends in international law towards greater involvement of non-state actors.²¹⁾

While corporations may not be direct subjects of international law, it is worth stressing that international law does in many ways mandate that States ensure that corporations respect human rights. The International Labor Organization (“ILO”) is the primary international labor standard-setting organization, and it has adopted dozens of international conventions that have been widely ratified around the world. In recent years, the ILO has concentrated attention in particular on its four ‘fundamental’ principles, which are 1) freedom of association and the effective recognition of the right to collective bargaining; 2) elimination of all forms of forced or compulsory labor; 3) effective abolition of child labor, and 4) elimination of discrimination

Human Rights Abuses: Recent Changes and Recurrent Challenges, 6 NW. U. J. INTL HUM. RTS. 222, 237-40 (2008).

19) *Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*, U.N. Doc. E/CN.4/Sub.2/2003/12 (May 30, 2003).

20) ECOSOC, Sub-Comm’n on the Promotion and Prot. of Human Rights, *Commentary on the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*, U.N. Doc. E/CN.4/Sub.2/2003/38/Rev. 2 (Aug. 26, 2003), at 4, cmt. (a).

21) The Special Representative of the Secretary-General, *Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises*, John Ruggie: *Business and Human Rights: Mapping International Standards of Responsibility and Accountability for Corporate Acts*, delivered to the Human Rights Council, U.N. Doc. A/HRC/4/35, at 15 (Feb. 9, 2007).

in respect of employment and occupation.²²⁾ As is commonly noted, however, the ILO is unable to enforce its standards, and must therefore rely on State parties to implement and enforce the labor norms in its many conventions.²³⁾

Many other human rights treaties also address labor rights. For example, the International Covenant on Civil and Political Rights prohibits slavery and forced or compulsory labor,²⁴⁾ and protects the right to join and form trade unions.²⁵⁾ The International Covenant on Economic, Social and Cultural Rights protects the right to “enjoyment of just and favourable conditions of work”²⁶⁾ as well as the right to form and join trade unions, and the right to strike “provided that it is exercised in conformity with the laws of the particular country”²⁷⁾ However, the degree to which human rights treaties apply extraterritorially is heavily debated (and varies depending on the treaty’s language).²⁸⁾

3) *Voluntary self-regulation*

Voluntary corporate social responsibility codes are seen by some as effective and practical ways to ensure that corporations respect basic labor rights, whether at home or abroad. According to former U.N. Secretary General Kofi Annan, CSR is a business concept pursuant to which corporations seek to responsibly address social and environmental issues

22) See Int’l Labour Org., *ILO Declaration on Fundamental Principles and Rights at Work* (1998), available at <http://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm>.

23) See Alan Hyde, *The International Labor Organization in the Stag Hunt for Global Labor Rights*, 3 *LAW & ETHICS HUM. RTS.* 153, 158 (2009); Lisa G. Baltazar, *Government Sanctions and Private Initiatives: Striking a New Balance for U.S. Enforcement of Internationally-Recognized Workers’ Rights*, 29 *COLUM. HUM. RTS. L. REV.* 687, 690 (1998).

24) Int’l Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976), art. 8.

25) *Id.*, art. 22.

26) International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976), art. 7.

27) *Id.*, art. 8.

28) For more details on this topic, see Hugh King, *The Extraterritorial Human Rights Obligations of States*, 9 *HUM. RTS. L. REV.* 521 (2009); Virginia Mantouvalou, *Extending Judicial Control in International Law: Human Rights Treaties and Extraterritoriality*, 9 *INT. J. OF HUM. RTS.* 147 (2005); Marko Milanovic, *From Compromise to Principle: Clarifying the Concept of State Jurisdiction in Human Rights Treaties*, 8 *HUM. RTS. L. REV.* 411 (2008).

raised in the course of business through support for international norms and sustainable practices.²⁹⁾ Among other norms, CSR often focuses on human rights, labor rights, and the rights of indigenous peoples; environmental stewardship; and transparency.³⁰⁾ While CSR has its roots in the 1960s, it spread throughout the corporate world in the 1990s and has further accelerated in the past few years.³¹⁾

Businesses have many different motives for engaging in CSR for many reasons, including reputational reasons, improving recruitment and retention of employees, and simply building a culture that values 'doing the right thing.' In some (but not all) cases, CSR policies are able to increase a company's profitability, thus creating a so-called business case for CSR.³²⁾

In the early years of corporate social responsibility, corporations tended to focus their efforts on philanthropy, and in particular on charitable contributions to their home communities.³³⁾ More recently, the trend has been for companies to adopt corporate codes of conduct, which often address labor right issues, along with many other concerns, including accurate reporting; prohibitions on self-dealing; responsibility to communities, communities; sustainability, and supervision of supply chains.³⁴⁾ These corporate codes come in many shapes and sizes. Some are global in scope, such as the OECD Guidelines for Multinational Enterprises, the ISO 26000 Social Responsibility Standards, and the United Nations Global Compact. In addition, there has been a proliferation of industry-specific codes and firm-specific codes, although the firm-specific codes tend to be much more prevalent for large companies than for small and medium-size enterprises.

In many instances, these codes have proven controversial. Without adequate monitoring mechanisms, it is difficult to tell if a company is genuinely

29) Gare Smith, *An Introduction to Corporate Social Responsibility in the Extractive Industries*, 11 YALE HUM. RTS. & DEV. L.J. 1, 2 (2008).

30) *Id.*

31) Michael Hopkins, *Corporate Social Responsibility: An Issues Paper*, International Labour Office, Working Paper No. 27 (2004), at 3.

32) Jan Wouters & Leen Chanet, *Corporate Human Rights Responsibility: A European Perspective*, 6 NW. U. J. INT'L HUM. RTS. 262, ¶¶ 12-20 (2008).

33) Faith Stevelman, *Globalization and Corporate Social Responsibility: Challenges for the Academy, Future Lawyers, and Corporate Law*, 53 N.Y.L. SCH. L. REV. 817, 828 (2008/2009).

34) *Id.* at 828-29.

following through on its public commitments, or if it is instead benefitting from the positive publicity that accompanies a CSR code while engaging in business-as-usual practices. This is sometimes called ‘greenwashing’ where a company falsely portrays itself as sustainable or ‘bluewashing’ where a company associates itself with the United Nations by, for example, joining the U.N. Global Compact, without actually integrating the norms contained in the Global Compact into the company’s business practices.³⁵⁾ Nevertheless, there is considerable evidence that once a company adopts a corporate code—even if it only does so for public relations purposes—the progressive norms contained in the code are likely to be integrated into the company’s corporate culture, and the company would risk public censure if it is exposed as being hypocritical or backpedaling on its social commitments.³⁶⁾

While the three aforementioned mechanisms of labor regulation are often placed in separate categories, scholars are increasingly realizing that these three general categories of extraterritorial regulation, regulation by international law, and voluntary self-regulation are in fact somewhat artificial distinctions, and in the real world mechanisms of addressing overseas labor abuses often involve hybrid techniques that may involve elements of governmental regulation and voluntary business actions, often with the involvement of international law (or at least ‘soft law’) from bodies such as the United Nations, World Bank or International Standards Organization.³⁷⁾ The following section will discuss the role of the Korean government in promoting labor standards abroad, through a mix of legislative and voluntary methods, at times employing domestic machinery to implement international initiatives.

35) See, e.g., David Bigge, *Bring on the Bluewash: A Social Constructivist Argument Against Using Nike v. Kasky to Attack the UN Global Compact*, 14 INT’L LEGAL PERSP. 6 (2004).

36) Stevelman, *supra* note 33, at 830.

37) See Jan Wouters & Leen Chanet, *supra* note 32, at ¶ 10; Sorcha MacLeod, *Reconciling Regulatory Approaches to Corporate Social Responsibility: The European Union, OECD and United Nations Compared*, in 13 EUROPEAN PUBLIC LAW 671 (2007); Doreen McBarnet, *Corporate Social Responsibility Beyond Law, Through Law, for Law: The New Corporate Accountability*, in THE NEW CORPORATE ACCOUNTABILITY: CORPORATE SOCIAL RESPONSIBILITY AND THE LAW 9 (Doreen McBarnet, Aurora Voiculescu & Tom Campbell eds., 2007).

III. The Role of the Korean State

Some people would argue that the Korean State should not be involved in securing the labor rights of non-Koreans in foreign countries, and that it should instead concentrate on improving the bottom line of Korean companies.³⁸⁾ This would be a misguided perspective. Human rights are rights applicable to all humans, regardless of their nationality. While the host state clearly has the primary responsibility for enforcing its labor laws, this does not mean that the Korean government has no responsibilities for the actions of its nationals. In fact, the Korean state does have a moral obligation to ensure that its subjects refrain from human rights abuses, and some analysts go a step further, arguing that under the doctrine of effective control, states are obliged to “seek to influence extraterritorial situations to the extent that they may exercise influence in fact.”³⁹⁾

Even in the Korean State was comfortable denying the legitimate human rights concerns of foreign workers, it would still have a clear interest in ensuring that Korea and Korean companies maintain a favorable ‘brand’ instead of developing a reputation for abusing labor rights.⁴⁰⁾ This issue was brought to the forefront in October, 2001, when the Executive Committee of the International Textile, Garment and Leather Workers’ Foundation (ITGLWF) passed a resolution deploring “the exploitation of workers employed in Korean owned textile, garment and footwear companies” and noting “that such unacceptable corporate behaviour is also doing grave damage to the image of Korea and Korean companies internationally.”⁴¹⁾

38) See Broecker, *supra* note 12, at 190 (“most powerful interest groups in home state constituencies (and even the general public) place a higher priority on the creation of an investment-friendly global environment and the generation of wealth than on the protection of the human rights of non-citizens”).

39) *Id.* at 180 (quoting M. SORNARAJAH, *THE INTERNATIONAL LAW ON FOREIGN INVESTMENT* 169-203 (2d ed. 2004)).

40) See, e.g., *Oppression of Overseas Workers by Overseas Korean corporations*, *supra* note 11.

41) Executive Committee of the International Textile, Garment and Leather Workers’ Federation, Resolution on Korean Companies operating overseas (2001), available at [http://www.itglwf.org/pdf/Reportof%20Activities\(EN\).pdf](http://www.itglwf.org/pdf/Reportof%20Activities(EN).pdf). The Korean government itself recognizes the reputational dangers of “exaggerated and distorted” labor disputes occurring at overseas

Despite the presence of ethical and reputational considerations, it is indisputably a challenge to motivate any home-state government, including Korea, to truly care about the overseas labor practices of its corporate nationals.⁴²⁾ This is no doubt due to the influence of powerful interest groups that are more concerned with maximizing the profits stemming from unregulated global investments than protecting the human rights of non-citizens.⁴³⁾ The challenge is particularly acute where the government is explicitly pro-business in outlook and has a largely antagonistic relationship with human rights groups, as is the case in Korea today. However, to the extent that the Korean government is concerned with the rights of non-nationals, it is able to use a number of mechanisms to improve overseas labor practices. This section will analyze the use of five of these 1) passing extraterritorial laws; 2) encouraging firms to follow CSR codes; 3) implementing the OECD Multinational Guidelines; 4) promoting good labor practices for Korean companies overseas through the use of education; and 5) assisting in the resolution of overseas labor disputes. As will be noted, while each of these methods are promising, none have been effectively used by the Korean government to date and in each area more can be done to promote good overseas labor practices.

1. Extraterritorial Laws

As is the case in most countries, Korean labor laws sometimes apply extraterritorially, but usually only when the complainant is a Korean national working at a Korean company overseas.⁴⁴⁾ For example, courts have ruled that when the Korean head office dispatches employees to foreign subsidiary corporations but maintains primary decision making control over the labor

Korean companies, which can “[harm] Korea’s status in the world and [undermine its national interests.” Korea Ministry of Labor, 2009 Employment and Labor Policy in Korea 168 (2009).

42) Broecker, *supra* note 12, at 189.

43) *Id.*

44) The greater protection awarded Korean complainants is consistent with article 2 of the Korean Constitution, which states that it “shall be the duty of the State to protect citizens residing abroad as prescribed by Act” (DAEHANMINGUK HEONBEOP [CONSTITUTION OF THE REPUBLIC OF KOREA], ch. I, art. 2).

conditions of the employees, then the employees in the corporation will be subject to Korean Labor Standard Act.⁴⁵⁾ In addition, where overseas branches and overseas factories of Korean companies are subordinate to the head office, not only dispatched workers but also Korean worker employed from the branch/factory will be subject to Korean Labor Standards Act.⁴⁶⁾ Where the dispute is between a Korean employer and a non-Korean employee, on the other hand, Korean legal protections will generally not apply.⁴⁷⁾

In some circumstances, this lack of attention to foreign nationals can have unfortunate results. For example, the National Human Rights Commission Act gives the Korean National Human Rights Commission (“NHRC”) the authority to investigate extraterritorial anti-discrimination cases against Koreans, which it did in a 2007 case of sexual harassment (which is classified as a form of discrimination) by a Korean national against a Korean citizen while working for a Korean-registered non-profit corporation in Cambodia.⁴⁸⁾ However, while the Commission investigated the allegations of harassment against the Korean citizen, it declined to even look into the alleged harassment of two Cambodian employees by the same individual at the same company.⁴⁹⁾ In the end, the NHRC’s investigation found credible evidence of harassment, and the Commission issued a recommendation that the complainant receive 30 million won in damages and that the Korean NGO develop sexual harassment guidelines for employees and institute educational initiatives to prevent the recurrence of similar cases.⁵⁰⁾ While this verdict may be encouraging

45) Judgment of Jun. 29, 1973, 71Na2458 (Seoul High Court) (relying on analysis pursuant to art. 9 of PRIVATE INTERNATIONAL LAW).

46) GAB RAE HA, LABOR STANDARD LAW 89 (2008). See also Phill-kyu Hwang, *Legal Response to Human Rights Abuses Committed by Multinational Enterprises* 11 (2006), available at http://www.khis.or.kr/bbs/board.php?bo_table=pds_multicorp&wr_id=68 (quoting Judgment of Nov. 15, 1972, 71Na2207 (Seoul High Court) (“the Labor Standard Act is proposed to be applicable regardless of the fact that the place of the employment was within the state or outside the state, as long as the labor has been offered through a labor contract between the citizens of the Republic of Korea. Seeing that the parties to this contract are evidently the citizens of the Republic of Korea, the Labor Standard Act of the state should deservedly be applicable, even though the employment took place within the Republic of Vietnam.”)).

47) PRIVATE INTERNATIONAL LAW (Korea), art. 28(2).

48) Press release, National Human Rights Commission of Korea, Highest Amount of Damages Awarded in Cambodian Sexual Harassment Case (Oct. 15, 2007) (on file with author).

49) *Id.*

50) *Id.*

from a human rights perspective, it nevertheless highlights the irony of the NHRC appearing to ‘discriminate’ by responding to Korean but not Cambodian victims in its investigation of a discrimination case.

According to one analysis, however, there can be an exception to the inapplicability of Korean protections to non-Koreans working for Korean companies abroad, however, if a case is concerned with “the peremptory norms of the Republic of Korea” or “the good public order and customs of the Republic of Korea.”⁵¹⁾ Therefore, if one made the case that labor abuses violate peremptory norms of the Republic of Korea, then the presumption that domestic law cannot be used extraterritorially would break down (assuming that foreign law insufficiently regulated the particular act alleged). Courts have not taken this step so far, however. In addition, while there may be practical difficulties in doing so, it would also be possible for the State to prosecute corporations or individual employers for labor rights violations that violate the Criminal Code or the Special Act on Criminal Affairs.⁵²⁾ Extraterritorial jurisdiction in criminal matters is provided by Article 3 of the Criminal Code, which states that “[t]his law shall apply to the citizens of the state who commit crimes outside the state’s territory.”⁵³⁾

There are a number of ways in which the government could promote legislation to increase the extraterritorial scope of Korean human rights law. For example, it could explicitly extend at least some of the labor rights protections in the Labor Standards Act or other labor laws to apply to workers beyond Korea’s borders. It could also statutorily clarify that egregious labor rights abuses violate the peremptory norms of the Republic of Korea, thus permitting the use of domestic law extraterritorially. In fact, some commentators have been pressing for such actions,⁵⁴⁾ and such laws would not be out of line with the general trends of Korean jurisprudence, which has

51) Hwang, *supra* note 46, at 18.

52) *Id.* at 5.

53) *Id.* at 1 (citing CODE OF CRIMINAL LAW, art. 3).

54) See, e.g., Lavanga V. Wijekoon Litigating Labor Rights Across a Demilitarized Zone: *The South Korean Constitutional Court as a Forum to Address Labor Violations in North Korea’s Kaesong Special Economic Zone*, 17 PAC. RIM L. & POLY J. 265, 284 (2008) (“the South Korean Constitutional Court and the South Korean legislature should adopt a new set of domestic procedural rules to facilitate actions that hold South Korean corporations accountable for unjust labor practices at Kaesong and other extra-territorial economic operations.”).

allowed for increasing extraterritoriality in other areas of the law.⁵⁵⁾

Special attention should be given to expanding the jurisdictional scope for the Korean National Human Rights Commission in addressing extraterritorial labor rights abuses. The NHRC, which was established in 2001 as a national advocacy institution for human rights protection and acts independently from the rest of the government, could have its mandate expanded to allow it to hear complaints regarding human rights abuses committed by Korean companies overseas. While the expansion of jurisdiction would be significant and controversial (because currently, the NHRC does not have jurisdiction to investigate human rights abuses committed by corporations inside or outside of Korea), it would not be unprecedented by international standards, as many other national human rights institutions around the world have the authority to investigate human rights complaints against corporations, including complaints alleging labor abuses.⁵⁶⁾

2. Promotion of Effective Corporate Social Responsibility Policies

CSR policies have come to Korea relatively recently, but they are becoming increasingly widespread.⁵⁷⁾ Recently, a study by the Federation of Korean Industry found that “75% of the biggest Korean corporations were engaged in CSR-Projects of which 87% claim that CSR is a necessary part in corporations” actions, while almost half of large companies have their own CSR departments.⁵⁸⁾ CSR policies are much less common among small and medium sized

55) See generally, Joseph Seon Hur, *Extraterritorial Application of Korean Competition Law*, 6 REGENT J. INT'L L. J. 171 (2008); Jong Bum Kim, *Korean Implementation of the OECD Anti-Bribery Convention: Implications for Global Efforts to Fight Corruption*, 17 U.C.L.A. PAC. BASIN L. J. 245 (Fall 1999/Spring 2000).

56) See United Nations Office for the High Commissioner of Human Rights, *Business and Human Rights: A Survey of NHRI Practices* 5 (Apr. 2008), available at <http://www.reports-and-materials.org/OHCHR-National-Human-Rights-Institutions-practices-Apr-2008.doc> (Paraguay, Egypt, Jordan, the Philippines, Mongolia, Niger, Nigeria, Rwanda, and Uzbekistan have national human rights institutions that are authorized to handle complaints against any kind of company involving any kind of right).

57) Joe W. (Chip) Pitts III, *Corporate Social Responsibility: Current Status and Future Evolution*, 6 RUTGERS J. L. & PUB. POL'Y 334, 394 (2009).

58) CSR Weltweit, Republic of Korea (2009), at <http://www.csr-weltweit.de/en/laenderprofile/profil/republik-korea/index.html>.

enterprises.⁵⁹⁾

Many Korean multi-national corporations have adopted voluntary codes of conduct that regulate labor practices outside of the home country.⁶⁰⁾ For example, between 2005 and 2009, 118 Korean companies became members of the United Nations Global Compact.⁶¹⁾ The Global Compact, which is a multi-stakeholder public-private initiative promoting ten principles in the fields of human rights, labor standards, the environment, and anti-corruption, is considered to be “the world’s largest and most widely embraced corporate citizenship initiative,”⁶²⁾ The Global Compact’s four labor clauses mirror the ILO fundamental principles, namely freedom of association and right to collectively bargain; elimination of all forms of forced and compulsory labor; elimination of the use of child labor, and elimination of discrimination.⁶³⁾ In 2007, a coalition of supporters opened up a U.N. Global Compact office in Seoul, which has since worked to encourage and spread CSR in Korea and the region.⁶⁴⁾ Other private sector groups have begun to promote CSR as well in recent years, including the Korea Chamber of Commerce & Industry, and the Europe-Korea Foundation.

Nevertheless, some analysts have criticized Korean companies’ CSR policies for focusing excessively on donations and philanthropy, rather than imbuing ethical values into core business practices. According to one

59) Seungho Choi & Ruth V. Aguilera, *Corporate Social Responsibility Dynamics in South Korea and Japan: A Comparative Analysis* 10 (2008), available at http://www.business.illinois.edu/aguilera/pdf/Choi_Aguilera_2008_final.doc; Interview with Hyun-pil Na, Coordinator, Korea House for International Solidarity (Jan. 26, 2010).

60) See generally, Angela Joo-Hyun Kang & Joo-Sueb Lee, *Corporate Responsibility in Northeast Asia – South Korea* (2009), EEWG Paper Series, available at http://www.corporation2020.org/new_documents/Corporation2020_EEWG_Paper1_South%20Korea_031409.pdf.

61) United Nations Global Compact Korea Network, *Annual Report* (2007), available at http://www.unglobalcompact.org/docs/networks_around_world_doc/Annual_Reports_2007/Korea_Annual_Activity_Report_2007.pdf.

62) United Nations Global Compact Office, *The United Nations Global Compact: Advancing Corporate Citizenship* 1 (2005), available at http://www.unglobalcompact.org/docs/about_the_gc/2.0.2.pdf.

63) See U.N. Global Compact, Principles 3-6, available at <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html>.

64) U.N. Global Compact Network Korea, *Timeline*, at <http://www.unglobalcompact.kr/eng/13.php>.

commentary, “the convenience of donations prevents the development of more sustainable CSR activities in Korea.”⁶⁵⁾ Also, even among those Korean companies that have drafted CSR policies, oftentimes the policies are only implemented within Korea, and not applied to the overseas operations.⁶⁶⁾ Korean companies have not yet embraced ‘international framework agreements,’ which are often seen as a more legitimate and effective way of protecting the labor rights of individuals working for multinational corporations than traditional codes of conduct.⁶⁷⁾

While CSR policies are by their nature generally centered in the private sector, that does not mean that there is nothing the Korean government can do in order to facilitate the spread of CSR and ensure that companies take CSR policies seriously. In fact, there are a number of different ways in which the Korean government can help. For one thing, the Korean government can assist in educating Korean companies on CSR principles and how they might be beneficial. To some extent, it has already done some work along these lines. Both the Korean National Human Rights Commission and the Ministry of Foreign Affairs and Trade (“MOFAT”) have engaged in CSR-promotion through sponsoring public events on the subject. In 2008, the NHRC co-hosted a seminar on socially responsible investing, and in 2009, it co-hosted a business roundtable on the Human Rights Principles of UN Global Compact and Business Management Integrated with Human Rights.”⁶⁸⁾ In 2008,

65) Seung-ho Choi & Ruth V. Aguilera, *supra* note 59, at 10.

66) Interview with Hyun-pil Na, *supra* note 59.

67) International framework agreements (“IFAs”) are agreements between multinational companies and international trade unions whereby companies commit to observing “certain minimum standards and joint principles of industrial relations which normally are based on fundamental social rights as defined by the ILO principles” (European Foundation for the Improvement of Living and Working Conditions, *Codes of Conduct and International Framework Agreements, New Forms of Governance at Company Level*, 7-8 (2007), available at <http://www.eurofound.europa.eu/pubdocs/2007/92/en/1/ef0792en.pdf>). Currently there are 70 completed IFAs, of which 58 are with European companies. The twelve IFAs involving non-European companies include agreements with Japanese, Brazilian, Canadian, Russian, and South African companies. Dmitris Stevis, *International Framework Agreements and Global Social Dialogue: Parameters and Prospects*, ILO EMPLOYMENT WORKING PAPER NO. 47, 4 (2010), available at http://www.ilo.org/wcmsp5/groups/public/---ed_emp/documents/publication/wcms_122176.pdf.

68) Angela Joo-Hyun Kang & Joo-Sueb Lee, *supra* note 60, at 12; U.N. Global Compact Network Korea, *Empowering the Global Compact Network* (Nov. 13, 2009), available at

MOFAT sponsored a symposium on the U.N. Global Compact and the Millennium Development Goals.⁶⁹⁾ However, it is clear that there is room for the government to do more on this front. For example, a recent survey of large Korean businesses showed very little knowledge about the ISO 26000 CSR guidelines that are going to be implemented in 2010.⁷⁰⁾ The government could hold classes specifically tailored to these rules.

More importantly, the government could work with civil society, union and management groups to create an appropriate template for social reporting by Korean companies active overseas, and could ensure that such reports are widely available to the public. The government could even go a step farther by working with legislators to pass a law mandating that all Korean companies above a certain size publish a social responsibility report. In 2008, 53 Korean companies published sustainability of corporate social responsibility reports with the Global Reporting Initiative, which represents a large increase over previous years, but still only a small fraction of Korean businesses.⁷¹⁾ Even among those Korean companies that do issue reports, there is far less transparency on labor rights issues than there is on environmental matters.⁷²⁾ Labor rights advocates have proposed a law to require adequate reports, but it has not yet been accepted by the administration.⁷³⁾

In order to improve the government's policies of promoting CSR, it is increasingly apparent that CSR responsibilities should be consolidated in one agency, which would make it easier for businesses to access consistent information, and ensure that proponents of CSR initiatives within the government have a stronger bureaucratic voice. Currently, CSR responsibilities

http://www.unglobalcompact.org/docs/news_events/9.1_news_archives/2009_11_13/GC_Korea_Presentation.pdf.

69) U.N. Global Compact Network Korea, Symposium on the Global Compact and the MDGs (Sep. 23, 2008), available at <http://www.unglobalcompact.kr/eng/51.php?ptype=view&idx=518&page=1&code=b51>.

70) Gwang-lip Moon, *Many Firms not Preparing for ISO 26000*, JOONGANG DAILY, Jan. 27, 2010, available at <http://joongangdaily.joins.com/article/view.asp?aid=2915823>.

71) See GRI Reports List, at <http://www.globalreporting.org/GRIReports/GRIReportsList/>.

72) See East Asia's Response: Comparative Analysis of CSR Performance among Chinese, Japanese and Korean Companies Listed in Fortune Global 500, HERI Sustainability Management Research 2008-1, at 5 (2008).

73) Interview with Hyun-pil Na, *supra* note 59.

are spread out diffusely to many different administrative offices. The Ministry of Knowledge Economy hosts the OECD Guidelines National Contact Point (see *infra*). The Ministry of Foreign Affairs and Trade and the National Human Rights Commission host conferences on CSR. The Ministry of Labor publishes an ethics manual entitled Social Responsibility of Multinational Enterprises.⁷⁴⁾ Perhaps the most high-profile body addressing CSR issues is the Korean National Commission on Sustainable Development (formerly the Presidential Commission on Sustainable Development), but that body is in practice more concerned with environmental than labor issues.⁷⁵⁾

The Korean government can also lead by example, through the practices of various state-owned companies. This has not happened as of yet. In fact, over the past few years the State-owned Korea Gas Corporation has come under particularly virulent criticism for partnering with the Burmese junta in a pipeline project that is widely seen as violating many human rights norms. Another company which has not adopted progressive CSR policies is the State-owned Korea Development Bank (KDB). KDB, which should be the flagship for the investment banking industry, has not adopted the Equator Principles or joined the United Nations Environmental Programme's Finance Initiative, which are the most important CSR codes for investment banks. In fact, in a 2006 study, KDB tied for last among 39 major project finance banks around the world for its complete lack of social and environmental policies.⁷⁶⁾ Instead, KDB's CSR policy exemplifies the view of CSR as philanthropy.⁷⁷⁾ The Export-Import Bank of Korea likewise has refrained from adopting the Equator Principles.⁷⁸⁾ Improving the social performances of these public

74) 2009 Employment and Labor Policy in Korea, *supra* note 41, at 168.

75) See generally, Young-Keun Chung & Kumju Hwang, *The Korean National Strategy for Sustainable Development. A Background Report* (2006), available at http://www.pcsd.go.kr/sd/nssd/backgroundReport_Dec2006.pdf.

76) World Wildlife Fund, *Shaping the Future of Sustainable Finance*, at 5, available at <http://www.wwf.org.uk/filelibrary/pdf/sustainablefinancereport.pdf>.

77) Korea Development Bank, *Social Responsibility*, available at <http://www.kdb.co.kr/screen/jsp/IHEng/IHEngUKdb01090001E.jsp>

78) For more detail on the Equator Principles, see generally <http://www.equator-principles.com/>. Export Development Canada, the Australian Export Finance and Insurance Corporation, and Eksport Kredit Fonden (Denmark) are other Export Credit Agencies that have signed on to the Equator Principles. *Id.*

companies should be a first priority for the Korean government.

Finally, the Korean government can use its power to effectively manage the National Contact Point for the OECD Multinational Guidelines, which is the sole CSR mechanism whose enforcement is centered in the public sector. The following section will analyze this option in greater depth.

3. *OECD Multinational Guidelines*

The OECD Guidelines for Multinational Enterprises was one of the first international codes aimed at ensuring the responsible behavior of multinational corporations.⁷⁹⁾ The OECD Guidelines address labor standards along with a number of other issues, including sustainability, corruption and whistleblower protection. The labor rights section of the Guidelines (Part IV) protects the four fundamental principles of the ILO Declaration, but the OECD Guidelines go a step further by requiring that companies actually “contribute” to the abolition of child labor and elimination of forced and compulsory labor, rather than just “uphold” the abolition of child labor and elimination of forced and compulsory labor, as is mandated by the UN Global Compact. In addition, the OECD Guidelines state, among other labor provisions, that companies should provide facilities and information to employees as needed to assist in the development of collective bargaining agreements, should observe standards of employment and industrial relations not less favorable than those observed by comparable employers in the host country, and should take adequate steps to ensure occupational health and safety.

Like other codes of conduct, the OECD Guidelines are voluntary, however they are unique in that unlike other CSR codes, the OECD Guidelines are not adopted by companies themselves; rather, they comprise State-level commitments to improve the conduct of that State’s corporate nationals.⁸⁰⁾ Adhering governments agree to endorse and promote them among multinational corporations operating in or from their territories. The Guidelines

79) The Guidelines were first adopted by the OECD in 1976 and have been revised several times since then. Jernej Cernic, *Corporate Responsibility for Human Rights: A Critical Analysis of the OECD Guidelines for Multinational Enterprises*, 3 HANSE L. REV. 71, 78 (2008).

80) *Id.* at 71.

have been adopted by all OECD members (including Korea, since 1996) along with twelve non-OECD member states.⁸¹⁾

As of 2002, all OECD Member States have been required to implement the Guidelines by establishing National Contact Points (NCPs) to provide a forum for discussion and contribute to resolving issues and disputes that arise concerning implementation of the OECD Guidelines.⁸²⁾ NCPs are government offices charged with promoting the Guidelines and handling inquiries in each specific national context. The Guidelines allow individuals and organizations to bring “specific instances,” or allegations of corporate violations of the Guidelines, to the NCPs for assessment and mediation, and in some cases, to determine whether or not the Guidelines have been breached.⁸³⁾ Korea has set up a National Contact Point in the Foreign Investment Policy Division of the Ministry of Knowledge Economy.⁸⁴⁾

Since its establishment, the Korean National Contact Point has received several complaints alleging extraterritorial violations of labor rights. Petitions have been filed against Daewoo (2008); Fine Corporation (2008); Il Kyung (2007); Chongwon Trading (2007); Korean EPZ Corporation (2004); Kiswire Sdn Bhd (2003); ChoiShin/Cimatextiles (2002); Cosmos Mack Industries (2001). With the partial exception of the Choishin/Cimatextiles case,⁸⁵⁾ the

81) As of November, 2009, Argentina, Brazil, Chile, Egypt, Estonia, Israel, Latvia, Lithuania, Peru, Morocco, Romania and Slovenia are the non-OECD States that have adopted the Guidelines. See Organisation for Economic Co-operation and Development, *Morocco Joins the OECD Declaration on International Investment*, available at http://www.oecd.org/document/50/0,3343,en_2649_34487_44139250_1_1_1_1,00.html.

82) Decision of OECD Council, Jun. 27, 2000, C(2000)96/FINAL, at 2, available at http://actrav.itcilo.org/english/calendar/2002/A3-5560/technical_files/09_OECD/MNE%20Guidelines/Decisions_on_New_Guidelines_2000.pdf.

83) Sarah Altschuller & Amy Lehr, *Corporate Social Responsibility*, 43 INT'L L. 577, 586 (2009).

84) OECD, *Guidelines for Multinational Enterprises, List of National Contact Points* (Oct. 2009), available at <http://www.oecd.org/dataoecd/17/44/1900962.pdf>.

85) In this case, the National Contact Point assisted in the mediation of a labor dispute between Guatemalan workers and their Korean employer (Choishin/Cimatextiles). The mediation was seen by some as successful, as it led to agreement on certain issues that could be improved and actions that should be punished; others faulted the Korean National Contact Point for not inviting the union to the mediation and credited the Guatemalan government for resolving the situation. OECD, *OECD Guidelines for Multinational Enterprises, Annual Report* (2002), at 20 & 28, available at <http://www.jussemp.org/Resources/Corporate%20Activity/Resources/2002%20guide2002011e.pdf>.

Korean government has been non-responsive to these petitions, which has led to criticism of the NCP as ineffective.⁸⁶⁾ The National Contact Point received particular criticism for its decision not to investigate claims of environmental shortcomings and human rights abuses taking place in the Shwe Gas project, a joint venture involving Daewoo and the Korea Gas Corporation, along with the Burmese military and other parties.⁸⁷⁾ According to one recent critique, the Korean National Contact Point can be faulted for instinctively siding with Korean businesses in disputes involving foreign workers without actually bothering to ascertain whether the facts of the dispute are consistent with the claims submitted by Korean companies.⁸⁸⁾

Fundamental reasons for the ineffectiveness of the OECD Guidelines in Korea include their voluntary nature (which is a problem in all countries), poor communication between the Korean NCP and the petitioners, and an institutional conflict of interest in expecting the NCP to vigorously investigate Korean companies when it is housed in the Ministry of Knowledge Economy, which is in charge of promoting overseas energy development.⁸⁹⁾ In addition,

86) Myung-hae Park, *The Investigative Report of Unjust Labor Practices by Korean Companies in South-East Asia* (Oct. 12, 2005) (Korean National Contact Point has been inactive at collecting complaints about labor disputes and is concerned mostly with big issue cases that could negatively affect the national reputation of Korea); OECD Watch, *The OECD Guidelines for MNEs: Are they Fit for the/Job?* (Jun., 2009), available at http://www.transparency.de/fileadmin/pdfs/Themen/Internationales/OW_Review_of_NCPs_2009.pdf (Korea is one of three countries “whose NCP is notorious for its lack of willingness to effectively promote the Guidelines and engage in the specific instance process”).

87) EarthRights International and the Shwe Gas Movement, *A Governance Gap: The Failure of the Korean Government to hold Korean Corporations Accountable to the OECD Guidelines for Multinational Enterprises Regarding Violations in Burma* (Jun. 15, 2009), available at <http://www.earthrights.org/publication/governance-gap-failure-korean-government-hold-korean-corporations-accountable-oecd-guide>.

88) See Trade Union Advisory Council, *TUAC Submission to the OECD Annual Meeting of National Contact Points* (2009), at 2 (“trade unions and NGOs raising cases with the Korean NCP, report that the Korean NCP appears to take at face value statements made by the company to refute claims made by the complainants. The NCP then seems to summarily dismiss the claims on this basis”).

89) Trade Union Advisory Council, *TUAC Submission to the Annual Meeting of National Contact Points, Analyses of NCPs* (2007), at 4. The institutional setting for the Korean NCP can be unfavorably compared to those in many other countries. For example, the UK NCP includes representatives of the Department of Trade and Industry, the Department for International Development, and the Foreign and Commonwealth Office, and the Swedish National Contact

some have pointed out that the time and resources devoted to managing the Korean National Contact Point by the Ministry of Knowledge Economy are minimal. There is only one junior agency staffer who works part-time on OECD Multinational Guideline issues and petitions, and since 2001 there has only been one Committee meeting on Guideline issues within the Agency, which took place at the time of the implementation of the NCP.⁹⁰⁾ The poor performance of the Korean NCP is in part a result of the lack of any oversight mechanism.⁹¹⁾

Assuming that the Korean government indeed cares about the OECD Guidelines, then there is a pressing need for serious reforms to ensure that the NCP has the institutional will and capacity to fulfill its duties, and the authority to effectively challenge the practices of sometimes huge corporations. Clearly a good starting point for reform would be to put the NCP in a different Agency (the Ministry of Labor would be one logical choice, as was done in Denmark and Finland) or in a multi-Agency Committee that contains members more receptive to labor rights concerns, such as NHRC representatives.⁹²⁾ While there are inherent weaknesses in the voluntary nature of the OECD Guidelines, it is also true that many other countries have established NCPs that have been able to work independently and effectively to protect labor rights, and the Korean government can look to these examples in its reform process.

Point includes representatives from Swedish government, business and labor. Cernic, *supra* note 79, at 84. John Ruggie, the U.N. Secretary General's Special Representative on issues of business and human rights, has warned that locating the NCP in a Department that is in charge of investment-promotion could result in conflicts of interest. *Protect, Respect and Remedy: a Framework for Business and Human Rights*, Report of the Special Representative to the United Nations Secretary General on the issue of Human Rights and transnational corporations and other business enterprises (Apr. 7, 2008).

90) Interview with Hyun-pil Na, *supra* note 59.

91) *A Governance Gap*, *supra* note 87, at 11.

92) Many civil society organizations are currently pressing for the Korean government to establish a new mechanism outside of the MKE to deal with violations of the OECD Guidelines. Korea House for International Solidarity, et al., *The Joint Statement of Korea for the Third International Action Day Against Korea's Involvement with the Shwe Gas Development Project in Burma* (Nov. 20, 2006), available at http://www.khis.or.kr/bbs/board.php?bo_table=burmagas&wr_id=63&page=&page= ("government should establish some institutional mechanism to monitor illegal actions and human rights violations Korean corporations commit overseas.").

4. Educational Efforts

Outside of the realm of corporate social responsibility, extraterritorial laws and the OECD Guidelines, there are other ways in which the Korean government can work to improve overseas labor practices on a less formal basis. These can loosely be categorized into educational efforts, and efforts to mediate disputes involving companies that engage in labor abuse violations to follow good labor practices.

Efforts to proactively educate companies about overseas labor practices are more widespread than efforts to remediate. The Korean government instructs the heads of overseas missions to meet with Korean companies operating in those countries as needed to educate them on local labor laws and practices and labor management techniques.⁹³⁾ In certain countries with many Korean overseas companies, such as China and Vietnam, there are labor attachés posted to work towards preventing the occurrence of labor disputes.⁹⁴⁾

In addition, the Ministry of Labor and the Korea International Labor Foundation⁹⁵⁾ have for many years been involved in educating Korean overseas entrepreneurs in good labor practices. The Ministry of Labor regularly sends labor management consulting teams to Southeast Asian and Latin America countries to provide consulting services to Korean companies, visit government agencies, and hold information sessions, meetings and tripartite seminars.⁹⁶⁾ KOILAF engages in similar activities; most recently it sent a labor consulting team in 2009 to Uzbekistan to provide Korean employers with consulting services on labor affairs and held a seminar on labor relations in Uzbekistan.⁹⁷⁾ The consulting team also visited the Ministry

93) 2009 Employment and Labor Policy in Korea, *supra* note 41, at 168.

94) *Id.*

95) The Korea International Labor Foundation (“KOILAF”) is a “non-profit organization established by the labor, management and government of Korea with the purpose of promoting understanding of Korea’s labor-management relations to international society and contributing to international cooperation and sustainable development.” Korea International Labor Foundation, Chairman’s Message, *available at* <http://www.koilaf.org/KFeng/engAbout/message.php>.

96) 2009 Employment and Labor Policy in Korea, *supra* note 41, at 168.

97) Korea International Labor Foundation, *KOILAF Dispatched a Labor and HR Consulting*

of Labor and Federation of Trade Union of Uzbekistan to discuss labor relations in Korean companies. The Ministry of Labor also publishes labor management manuals tailored for countries where there is significant Korean investment; so far, manuals have been published for twenty countries.⁹⁸⁾

These types of programs do not necessarily promote CSR; but they rather provide the tools for companies to obey foreign laws and adjust to foreign cultural expectations. While it is difficult to gauge the impact of this type of activity, clearly it is important to provide Korean employers with the tools to engage in good overseas labor practices, even if these programs do not ensure that the employers actually use them. Thus, these programs should be encouraged and expanded to include instructions for Korean companies operating in new and different cultural climates such as Africa and the Arab world.

5. *Alternative Dispute Resolution*

The second way that the Korean government can directly intervene, is by helping to resolve specific labor disputes, usually through the work of the local Korean ambassador or consular officials. In fact, Korean embassies have a long history of working with overseas Korean companies on labor issues, although not always with the best of intentions. According to one article on Korean corporations in Guatemala, “[t]he Korean Embassy staff act as advocates, spokespersons, mediators and consultants for individual Korean factories, which are all connected in a grand scheme to establish a Korean production structure in Guatemala.”⁹⁹⁾ This comment was made in 1992, during an age when the Korean government was seen as facilitating rather than restraining companies in their labor abuses.¹⁰⁰⁾

Team to Uzbekistan (Feb. 24, 2009), available at http://www.koilaf.org/KFeng/engWhatnew/bbs_read_dis.php?board_no=219.

98) 2009 Employment and Labor Policy in Korea, *supra* note 41, at 168.

99) Kurt Peterson, *supra* note 4.

100) Park, *supra* note 86 (until the 90s, the Korean government’s primary objective was to facilitate foreign investments and to expand exports by Korean companies rather than to encourage corporate social responsibility or to promote labor law observance abroad); Cha, *supra* note 9, at 148 (Before it became a member of the OECD, Korean government put little importance on problems caused by Korean companies abroad even when it received criticism

More recently, Korean embassies have occasionally played a more helpful role as mediators or worked to avoid conflict. For example, in 1994, the Korean ambassador to the United States was seen as playing a beneficial role in assisting a transnational coalition in pressuring the Korean-owned Bilbong factory in the Dominican Republic to cease anti-union activities.¹⁰¹⁾ Korean embassy officials also worked with the Ho Chi Minh City municipal trade union in 2001-02 to address labor abuses in Korean-owned factories,¹⁰²⁾ and in 2008 the Korean Consulate General in Ho Chi Minh City worked with the South Korean Business Association and the Vietnamese Department of Labor, Invalid and Social Affairs to try to resolve salary and social insurance issues that had been contributing to labor disputes.¹⁰³⁾ These are very much the exceptions to the rule, however; in many other instances the Korean embassy or consulate refused to get involved in a dispute despite intervention being urged by workers at a Korean company abroad.¹⁰⁴⁾

Some commentators have urged the Korean government to get more involved in pressuring Korean overseas companies to respect labor rights.¹⁰⁵⁾ Unfortunately, the overseas officials generally see their duty as promoting Korean businesses abroad, and not restraining them.¹⁰⁶⁾ In some instances, there may be legitimate diplomatic concerns as well about interfering with

from human right organizations and international journals).

101) Cesar Rodriguez-Garavito, *Sewing Resistance: Transnational Organizing, Anti-Sweatshop Activism, and Labor Rights in the US-Caribbean Basin Apparel Industry (1990-2005)*, CMD Working Paper #08-03c (2008), available at <http://cmd.princeton.edu/papers/wp0803c.pdf> at 25.

102) Anita Chan & Wang Hongzen, *Raising Labor Standards, Corporate Social Responsibility and Missing Links – Vietnam and China Compared*, presented at the conference “The Labor of Reform: Employment, Workers’ Rights, and Labor Law in China”, University of Michigan, 21-22 March 2003 (union officials contrasted the successful working relationship with the Korean embassy to the lack of contact with Taiwanese diplomats).

103) *Labour Group Spotlights Rights for Workers at South Korean Firms*, VIETNAM NEWS SERVICE (Nov. 11, 2008), available at <http://vietnamnews.vnagency.com.vn/showarticle.php?num=01LAB111108>.

104) See, e.g., Cha, *supra* note 9, at 140 & 147 (relating unwillingness of Korean embassy officials to get involved with a labor dispute in Indonesia).

105) *Oppression of Overseas Workers by Overseas Korean Corporations*, *supra* note 11 (“Problem of overseas human rights abuses would not be completely irresolvable if the government made itself aware of the problem and ordered Korean diplomatic missions to do something about it.”).

106) Interview with Hyun-pil Na, *supra* note 59; Cha, *supra* note 9, at 140 & 147.

host-country legal mechanisms. Nevertheless, Korean consulates and embassies can make it much clearer that they will not support or stand behind Korean-owned companies that abuse human rights, and when both sides agree to their intervention, diplomatic personnel should be willing to intervene in order to ensure that overseas labor disputes are resolved in a way that is fair to both employer and employees.

IV. Conclusion

In conclusion, it is worth stressing once again that the problem of how best to reduce labor rights abuses by overseas Korean companies is a difficult one, without a single completely satisfactory or practical solution. Part of the response must be to improve the legal systems of the host countries, so that they are able and willing to effectively regulate multinational companies. Part of the responsibility must also lie in civil society—through the adoption of private sector CSR codes and the willingness of consumers to punish human rights abusers by refusing to purchase their products (which in turn depends on the ability of human rights groups and the media to effectively publicize overseas labor rights violations).

However, part of the response should also come from the Korean government, both for ethical reasons and in order to preserve the reputation of Korean employers. To a quite limited extent, the Korean government has embraced that role, by promoting CSR, educating overseas employers on local labor laws and practices, and occasionally intervening informally in overseas labor issues. Yet much more can be done. As noted in this article, there are many ways that the government can address overseas labor rights violations through the passage of laws with an extraterritorial scope; the promotion of corporate social responsibility and CSR reporting, the reform of the Korean National Contact Point, and increased government involvement in education and (when necessary) mediation efforts for companies operating overseas. Of course, the greater challenge is to convince the government—and its supporters in the business community—that these measures would be beneficial, and that companies should always respect the rights of their workers wherever their factories may be located.

KEY WORDS: Labor Rights, Extraterritoriality, Corporate Social Responsibility, OECD Guidelines for Multinational Enterprises

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