

**NATIONS UNIES**  
**HAUT COMMISSARIAT DES NATIONS UNIES**  
**AUX DROITS DE L'HOMME**

**PROCEDURES SPECIALES DU**  
**CONSEIL DES DROITS DE L'HOMME**

**UNITED NATIONS**  
**OFFICE OF THE UNITED NATIONS**  
**HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE**  
**HUMAN RIGHTS COUNCIL**

**Mandates of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on extreme poverty and human rights; the Special Rapporteur on the right to food; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and the Special Rapporteur on the human right to safe drinking water and sanitation**

REFERENCE: OL Housing (2000-9) Poverty (1998-11) Food (2000-9) Health (2002-7) Water (2008-1)  
KOR 2/2014

27 May 2014

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; Special Rapporteur on extreme poverty and human rights; Special Rapporteur on the right to food; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and Special Rapporteur on the human right to safe drinking water and sanitation pursuant to Human Rights Council resolutions 25/17, 17/13, 22/9, 24/6, and 24/18.

We are grateful for your detailed response, dated 14 August 2013, to the letter concerning POSCO that we sent to you in June 2013. We would like to take this opportunity to seek further information on some of the points you made in your letter, with a view to continuing our constructive dialogue on the issues raised in our original correspondence.

We wish to request clarification based on your initial responses, particularly with regard to access to the judicial system in the Republic of Korea for persons who seek judicial review of actions committed by Korean corporations acting outside of the Republic of Korea. Similarly, we would welcome information on any measures being taken by the Republic of Korea to implement the UN Guiding Principles on Business and Human Rights and the recommendations of UN treaty bodies on these matters.

We were grateful for the details you provided in your response about the existence and operation of the National Contact Point (NCP) within the Government of the Republic of Korea. We recognize the important role that the NCP system can play as a non-judicial remedy mechanism that can advance processes aimed at conflict resolution and mediation.

In your response, you provided helpful insights into the Republic of Korea's jurisdiction over cases taking place outside of Korean territory, involving a Korean national or legal person. In particular, in your letter you stated that “[b]y law, the jurisdiction of the Republic of Korea is exercised in cases of ... [inter alia] crimes committed abroad by Korean nationals...”.

Considering civil claims, you note that “in case there arises an unlawful act which imposes the responsibility of compensation for damage according to the Civil Act as regards the business activities of a corporation, the corporation shall assume the responsibility of compensation for damage”, and the “Private International Act stipulates that a domestic court shall have the international jurisdiction when a party or a case in dispute is substantially related to the Republic of Korea (Art 2)”.

In determining the ability to establish legal jurisdiction in Korea for these types of cases, the Supreme Court of the Republic of Korea has ruled that “it is required for the parent company to exercise complete domination over the subsidiary to the extent that the subsidiary loses separate will or existence and the parent company manages the subsidiary as part of its own business. To be more specific, there should be an objective sign that the assets, operations, external business transactions, and so on of the mother company and the subsidiary are not clearly distinguishable, overlap with each other, and so on. In addition, there is need for the recognition of subjective intention or purpose to use the legal personhood of the subsidiary as the means to evade the application of law to the mother company or to abuse the corporate institution to realize illicit purposes of getting away with debts and so on” (Supreme Court Decision, 2004Da26119, delivered August 8, 2006).

We note that the current formulation of the legal test outlined above by the Supreme Court may inhibit access to justice in the Republic Korea for some foreigners who allege that their human rights have been violated by Korean-based corporations abroad. We wish to remind the Republic of Korea, as a Party to the International Covenant on Civil and Political Rights (ICCPR) since 10 July 1990, that States Parties are required to “take appropriate measures to strengthen the remedies provided to protect people who have been victims of activities of such business enterprises operating abroad,” as underlined by the UN Human Rights Committee. The Committee on Economic, Social and Cultural Rights affirms that States parties should “prevent third parties from violating the rights [protected under the International Covenant on Economic, Social and Cultural Rights] in other countries, if they are able to influence these third parties by way of legal or political means, in accordance with the Charter of the United Nations and applicable international law.”

Specifically in regard to corporations, the Committee on Economic, Social and Cultural Rights has further stated that: “States Parties should also take steps to prevent human rights contraventions abroad by corporations that have their main seat under their jurisdiction, without infringing the sovereignty or diminishing the obligations of host states under the Covenant.” Similarly, the Committee on the Elimination of Racial Discrimination has called upon States to regulate the extraterritorial actions of third parties registered in their territory. For example, in 2007, it called upon Canada to “...take appropriate legislative or administrative measures to prevent acts of transnational

corporations registered in Canada which negatively impact on the enjoyment of rights of indigenous peoples in territories outside Canada,” recommending in particular that the State party “explore ways to hold transnational corporations registered in Canada accountable.”

Similarly, the United Nations Guiding Principles on Business and Human Rights require that all States take “appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that ... those affected have access to effective remedy” (Principle 25).

We would like to draw the attention of your Excellency’s Government to the 2011 recommendation of the United Nations Committee on the Rights of the Child that States parties “promote the adoption of effective corporate responsibility models by providing a legislative framework that require companies domiciled in Korea to adopt measures to prevent and mitigate adverse human rights impacts in their operations in the country and abroad, whether by its supply chain or associates”. The Republic of Korea has been a Party to the Convention on the Right of the Child since 20 November 1990.

Considering these international obligations as well as the decision of the Supreme Court of the Republic of Korea, we would welcome any further information your Excellency’s Government may be able to provide as to how the Republic of Korea is able to ensure access to remedy for anyone affected by the actions of Korean corporations abroad.

Finally, we would welcome information on how the Government of the Republic of Korea plans to require POSCO to live up to its responsibility to respect human rights throughout its operations. Specifically, we would be most grateful to receive information on existing or proposed mechanisms to ensure that POSCO and its subsidiaries (as well as other transnational corporations domiciled in the Republic of Korea) provide meaningful opportunities for local communities to be involved in effective consultation processes, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.

We would be most grateful to receive an answer in order to continue this constructive dialogue, which we highly value. We undertake to ensure that the response of your Excellency’s Government will be taken into account in our assessment of the situation and in developing any recommendations that we may make for your Excellency’s Government’s consideration pursuant to the terms of our respective mandates. Additionally, we undertake to ensure that the response of your Excellency’s Government is accurately reflected in the reports we will submit to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of my highest consideration.

Raquel Rolnik

Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

Maria Magdalena Sepúlveda Carmona  
Special Rapporteur on extreme poverty and human rights

Olivier De Schutter  
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Anand Grover  
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Catarina de Albuquerque  
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