

Unofficial translation: by Korean House for International Solidarity (KHIS)
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**Reply to the Complaint by
OECD Korea NCP, Ministry of Knowledge Economy of the Republic of Korea**

The Ministry of Knowledge Economy (hereinafter, "MKE") of the Republic of Korea finds it hard to assume that the involved corporations breached the OECD Guidelines for Multinational Enterprises Ch. II, III, IV, and V; thus, the MKE does not see a necessity to initiate an additional investigation or an arbitration.

However, the MKE expects the relevant companies to make a continuous effort to disclose relevant information and consult with the affected communities, regarding the size and socio-economic effects of this gas development.

If you have any more question, please contact NCP Korea(02-2110-5356)

Addressees: KHIS, Daewoo International, KOGAS

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**EXAMINATION OF THE FEASIBILITY OF INVESTIGATION
ON THE ALLEGED BREACHES OF OECD GUIDELINES FOR
MULTINATIONAL ENTERPRISES BY
DAEWOO INTERNATIONAL AND KOREA GAS CORPORATION**

I. COMPLAINT SUMMARY

1. Date of the Complaint: October 29, 2008
2. Corporations involved: Daewoo International, Korea Gas Corporation (KOGAS)
3. Complainants: EarthRights International (ERI), Korean House of International Solidarity (KHIS), and eight other organizations
4. Content of the Complaint – Breaches of the OECD Guidelines for Multinational Enterprises (hereinafter, “Guidelines”)
 - 1) Breaches of Section II. General Policies
 - Failure to disclose vital information and to consult the indigenous communities affected about the Shwe Project (hereinafter, “Project”) (Breaches of Section II.1)
 - Participation in the Project that contributes to human right abuses of people in the project area, including forced relocations (Breaches of Section II.2)
 - 2) Breaches of Section III. Disclosure
 - Failure to disclose to the public about Daewoo’s contract with the Myanmar military regime (Breaches of Section III)
 - 3) Breaches of Section IV. Employment and Industrial Relations
 - High possibility of breaching the Guidelines with the progression of the Project, such as commitment of forced labor (Breaches of Section IV.a(c))
 - 4) Breaches of Section V. Environment
 - Failure to provide the local communities with information on potential risks of the Project and opportunities to express their views about the environment (Breaches of Section V.2)
 - Absence of Environmental Impact Assessment (EIA) of the Project (Breaches of Section V.3)

II. EXAMINATION OF THE COMPLAINT

1. Breaches of Section II.1 of the Guidelines

1) Claims of the complainants

- Daewoo and KOGAS failed to disclose vital information and consult the indigenous communities affected, thus failing to further the goal of achieving sustainable development.

2) Claims of the involved corporations

- They have disclosed relevant information by making a number of public notices, holding direct dialogues with human rights organizations, and participating in other activities concerning the Corporate Social Responsibility.
- In addition, they are making every effort to collect the communities' opinion by making an on-the-spot inspection, for example, through the Socio-economic Coordinator at their Exploration & Production (E&P) office in Myanmar.

3) Opinions of the MKE

- Concerning the complainant' claims, the corporations have made efforts to disclose the relevant information by making several public notices since July 27, 2007 and interviewing the Korean Federation for Environmental Movement (in 2006), KHIS, ERI, and SGM (in 2008).
- Moreover, the MKE recognizes that the corporations are trying to promote the communities' welfare within the project, by establishing and operating the Socio-economic Program¹ as they consult the communities through the E&P office in Myanmar. Such efforts can be deemed as furthering the goal of achieving sustainable development.
- Considering all the factors above, the MKE finds it hard to determine that the relevant corporations are breaching the Guidelines.

2. Breaches of Section II.2 of the Guidelines

1) Claims of the complainants

- By participating in the Project, Daewoo and KOGAS are linked to violations of the fundamental human rights of people in the project area, including forced relocations.

¹ The Socio-Economic Program consists of programs in three areas.

- Education: to improve 22 school buildings
- Healthcare: to build 9 health centers and blood storage facilities, providing HIV medicines and medical devices
- Sanitation: to build and improve potable water storage facilities

2) Claims of the involved corporations

- Only onshore explorations have been completed. Course of offshore pipelines is not yet determined.
- As for construction of the offshore pipelines, it is too early to worry about forced relocations or forced labor by military guards disposed along the pipeline corridor.
- Furthermore, the corporations are trying their best to prevent possible human rights abuses, by analyzing the former case of the Yadana Project, and consulting the indigenous communities affected.

3) Opinions of the MKE

- Up to now, Daewoo and KOGAS are only involved in onshore explorations. Construction of offshore pipelines, which is related to the complainants' claims, is to be undertaken by the Republic of China (while Daewoo considers taking its share). Course of offshore pipelines is still undetermined, and the construction has not begun yet.
- Thus, the MKE has not found any objective evidence that shows these corporations are linked to the Myanmar government's human right abuses. Moreover, the MKE finds it unreasonable to judge Daewoo and KOGAS to be breaching the Guidelines solely with the examples of Total and Unocal in the past Yadana Project.
- Unless there are special circumstances, the MKE will have difficulties in recognizing the mutual causality between the fact that Myanmar government has violated, or is violating human rights, and that the multinational corporations are taking part in a specific project.

3. Breaches of Section III of the Guidelines

1) Claims of the complainants

- As the Myanmar government holds 15% share of the project through its national enterprise (MOGE), Daewoo and KOGAS must publicize their contracts with the Myanmar government, concerning the security of pipelines, responsibility sharing, payments breakdown, etc.

2) Claims of the involved corporations

- Matters involving construction and maintenance of the offshore and onshore pipelines are under consultation between the interested parties. The Project is to be carried on under the permission of the Myanmar government.

- However, on the basis of the confidentiality clause, detailed terms of contract with the Myanmar government cannot be made public.

3) Opinions of the MKE

- Section III and the relevant commentary of the Guidelines speculate that disclosure requirements are not expected to place unreasonable administrative or cost burdens on enterprises and disclose information that may endanger their competitive position.
- Therefore, as it can be assumed that the corporations will be able to refuse disclosing the information which the corporations are bound to keep its confidentiality, the MKE estimates that Daewoo and KOGAS cannot be compelled to disclose information that is object to the confidentiality clause between the contractors.

4. Breaches of Section V.1(c) of the Guidelines

1) Claims of the complainants

- It is highly likely that progression of the Project will lead to breaches of the Guidelines, including the pervasive use of forced labor as in the case of Yadana Project.

2) Claims of the involved corporations

- Daewoo's E&P office in Myanmar established the Code of Conduct² in 2007, and it is still being implemented. Daewoo is also planning to notify the CNPC the relevant factors, and ask it to prevent breaches of the Code.

3) Opinions of the MKE

- In the light of the principle of accountability, forced labor in sense of the Section IV.1 of the Guidelines should be interpreted as something related to the involved multinational corporation and committed under the corporation's management responsibility or in conspiracy with the other person.
- As for the Project, the MKE finds it hard to recognize the existence of forced labor only with the complainants' claims. The involved corporations have already established the Code of Conduct and are

² It refers to Code of Corporate Conduct and Ethics, which sets the activity standard in the stage of development production. It also reflects the UN Global Compact, the Rio Declaration, and Universal Declaration of Human Rights. It is practically in the same level as the Code of Conduct of the world's major oil companies.

encouraging their employees to follow it.

- Further, the MKE finds it even harder to assume that at this stage, the corporations breached the Guidelines and are contributing to forced labor, only on the grounds of the history of forced labor in the similar project of the past.

5. Breaches of Section V.2 of the Guidelines

1) Claims of the complainants

- Although the Project has adverse effects on the natural environment, Daewoo and KOGAS did not provide the local communities with opportunities to express their opinions. They also failed to address the Project's posing risks.

2) Claims of the involved corporations

- They have conducted a comprehensive Environment Impact Assessment (EIA) in order to minimize adverse effects the project may have on the project area's natural environment. Currently, the EIA on Upstream section has been completed, and the EIA on Midstream 1 section (corridor of the onshore pipelines) is nearly done.
- In order to prevent possible environmental disruption and human rights abuses and to seek appropriate countermeasures, the corporations are trying their best to collect the opinions of the local communities through the Socio-economic Coordinator at the E&P office in Myanmar. They are also exchanging opinions with relevant NGOs, both national and international.

3) Opinions of the MKE

- With regard to the Project's posing risks, the involved corporations have been conducting the EIAs since 2006. Presently, they are selecting eligible partners to carry out a Social Impact Assessment (SIA) and will start it soon.
- The involved corporations are not actually carrying out the construction of onshore pipelines, but they are still trying to collect opinions of the local communities through the Socio-economic Coordinator. In light of the foregoing, the MKE finds it hard to assume that the corporations breached the Guidelines.

6. Breaches of Section V.3 of the Guidelines

1) Claims of the complainants

- Daewoo and KOGAS have not conducted an EIA for the Project, despite the

fact the Project may have significant environmental, health, and safety risks.

2) Claims of the involved corporations

- They have conducted the EIAs since early 2006 in order to minimize adverse effects the project may have to the natural environment.
- Currently, the EIA on Upstream section has been completed. The corporations are now in the process of selecting eligible partners that will carry out a SIA.

3) Opinions of the MKE

- The gravity of resource development projects lies on development activities, such as exploitation, freight and sales. If an assessment over the environmental and social impacts has been conducted before the development activities, it should be seen as conforming to the Guidelines.
- Daewoo and KOGAS conducted the EIAs since 2006 before it entered the development stage through the ERM, and have already completed the EIA on Upstream. They are currently selecting eligible partners to conduct a SIA.
- Therefore, the MKE finds it hard to assume that the corporations failed to conduct the EIA and SIA.