

KTNC Watch
PUSAKA
SKP-KAME
WALHI Papua

UNHEALED SCARS IN PAPUA

POSCO International and Korean public financial providers' violation of OECD Guidelines for Multinational Enterprises in operation of oil palm plantation in Papua, Indonesia



Unhealed Scars In Papua

POSCO International and Korean public financial providers' violation of OECD Guidelines for Multinational Enterprises in operation of oil palm plantation in Papua, Indonesia



I. OECD Guidelines for Multinational Enterprises

The OECD Guidelines for Multinational Enterprises (hereinafter “the Guidelines”) are recommendations addressed by governments to multinational enterprises requiring them to respect internationally recognized human rights in their operations. The Guidelines oblige corporations to respect human rights by avoiding causing or contributing to adverse impacts. If the corporations identify that they have caused or contributed to actual adverse impacts, they should address such adverse impacts by providing or cooperating in their remediation. The Guidelines also require corporations to carry out human rights due diligence when the adverse impacts are neither caused nor contributed to by their own activities but are directly linked to their operations, products or services by a business relationship.

This report is to demonstrate the violation of the Guidelines by POSCO International as well as two public financial institutions of Korea by KTNC Watch, PUSAKA, SKP-KAME and WALHI Papua. POSCO International by the activities of its subsidiary, PT. Bio Inti Agrindo (PT. BIA) in Papua, Indonesia, has been producing palm oil and selling it in the global market. Through the operation of oil palm plantation, it caused the adverse impacts such as deforestation and infringing the rights of indigenous people, but failed to take remediation or preventive measures to address the adverse impacts. Meanwhile, public institutions are also directly linked to PT. BIA's palm oil business through their financial services. The Export-Import Bank of Korea (KEXIM) has provided loans for PT. BIA's operations and the National Pension Service (NPS) holds more than five percent share in POSCO International. KEXIM and NPS are directly linked to the adverse impacts by financial services provided to POSCO International, but did not carry out human rights due diligence.



II. Adverse impacts caused by POSCO International's operation of the palm oil plantation through PT. BIA

POSCO International acquired the palm oil plantation company, PT. BIA in 2011 and became the controlling owner of PT. BIA. With 34,195 hectares of concession area and a CPO mill, in addition to another CPO mill in construction, PT. BIA's operations have caused adverse impacts on forest, river and the indigenous people for whom the forest and river are a part of their livelihood.

1 Deforestation and loss of biodiversity

According to maps from the Indonesian Ministry of Forestry, before PT. BIA developed the palm oil planation, 19,800 hectares of the land were primary forest and 15,900 hectares were secondary forest.¹ From 2011 to 2017, PT. BIA deforested 27,000 hectares in developing the palm oil plantation.² Furthermore, there have been strong indicators that fire was used to clear the concession area, which is against the law in Indonesia.³ The concession area lies in a particularly important ecological region with an exceptionally rich and unique biodiversity.⁴ Deforestation destroyed the habitat of the flora and fauna - including many endangered and threatened species - in the concession area, and has resulted in the loss of biodiversity.

2 Lack of Free, Prior and Informed Consent (FPIC)

The indigenous people in Papua rely heavily on the forest for their livelihood. The forest is also a place for social, cultural and spiritual activities.⁵ The indigenous people are therefore entitled to give or withhold consent to a project that may affect them or their territories by FPIC. Throughout PT. BIA's development of the plantation, FPIC was not implemented. For example, for the acquisition of right to use in district A, PT. BIA failed to identify the concerned people. It has been alleged that the compensation was paid to the wrong party who did not have customary ownership of the land in question.⁶ Consent was neither given collectively by the communities in accordance with their customs and traditions, which is against the FPIC. It was also reported that the indigenous people did not fully understand the implication of the transfer of the land use rights for the concession area, which shows that it was not "informed" consent.⁷ It is thus clear that PT. BIA did not implement FPIC for the land acquisition during the development of the plantation.

3 Infringement of the right to water

The quality of the Bian River water is closely linked to the right to water, a fundamental human right. The right to water should be ensured by availability, quality and accessibility including information accessibility. Before the development of the plantation, the Bian River provided a reliable source of drinking water and water for daily use for the local communities. Following the development of the PT BIA plantations, local residents can no longer drink the water or use it for daily use. It has also been reported that the river has become murky, and deformed and dead fish have been found.⁸ It is likely that the activities of the plantation, such as the use of extensive chemicals to maintain the palm trees and the waste from the CPO mill, have contributed to the deterioration of the water quality of the Bian River. In addition, local residents have not been provided any information regarding water issues from the company. In this sense, the degradation of the Bian River water quality and the failure to communicate information to the affected people about the water impacts amount to a violation of the right to water.



III. POSCO International's failure to provide the remedies as well as to implement human rights due diligence

Under the OECD Guidelines POSCO International has the obligation to carry out human rights due diligence to identify, prevent, and mitigate the adverse impacts of the activities of PT. BIA. Human rights due diligence is a dynamic process with multiple stages: (1) embed Responsible Business Conduct (RBC) into the enterprise's policies and management systems; (2) identify

Dead fish found in Bian River after PT. BIA's operation had started. © Pastor Anselmus Amo





actual or potential adverse impacts on RBC issues, (3) cease, prevent or mitigate them, (4) track implementation and results, and (5) communicate how impacts are addressed; and (6) to enable remediation when appropriate.⁹

PT. BIA has provided the information on its policy on the environmental and social issues as well as measures they have taken in order to address the potential risks that they had identified. However, the policies and the measures were not enough to remedy the actual harms to the forest and the indigenous people who already suffer from severe damages. It also fails to establish due diligence measures to prevent further adverse impacts.

PT. BIA emphasizes that their measures for environmental and social policies are focused on receiving certificates from ISPO and RSPO. However, their effectiveness is limited since they are voluntary mechanisms with weak enforcement of the standards and they do not remedy the significant clearance that has already taken place. In addition, PT. BIA's claim to manage High Conservation Value (HCV) areas is baseless given that it has already destroyed tens of thousands of hectares of HCV land. Neither measure provides remedy the significant clearance that has already taken place. Therefore, the measures taken by PT. BIA cannot be the remedies for the deforestation and the loss of diversity or be the due diligence procedures to prevent the potential adverse impacts according to the standards in the Guidelines.

Contrary to the reports from the local residents, PT. BIA failed to identify lack of FPIC as the adverse impacts they have caused. Instead PT. BIA alleges that they have concluded FPIC to protect the rights of indigenous residents prior to farm developments. However, it was reported that the stakeholders were not properly identified and the indigenous people failed to understand the implication of the consent they had been asked to give. The public hearings held by PT. BIA are also insufficient for 'informed consent' as they are not held in a manner that the stakeholders actively engage in the procedure. Thus, PT. BIA has neither provided the remedies nor implemented the due diligence procedure under the Guidelines.

Though PT. BIA identified the protection of the right to water in the Code of Conduct, it failed to implement any measures to address the infringement of the right to water; instead, all the measures related to the water quality focused on the waste water management. PT. BIA disclosed the result of the water quality test conducted in the rivers in its operation site with BOD and COD levels.¹⁰ However, these are insufficient to ensure the quality of water to be safe for daily use as well as drinking. Despite the concerns raised, the local residents have not been able to access to such information regarding the water from PT. BIA. Therefore, the right to water of the local residents living near the Bian River has been severely violated without remediation or due diligence measure.

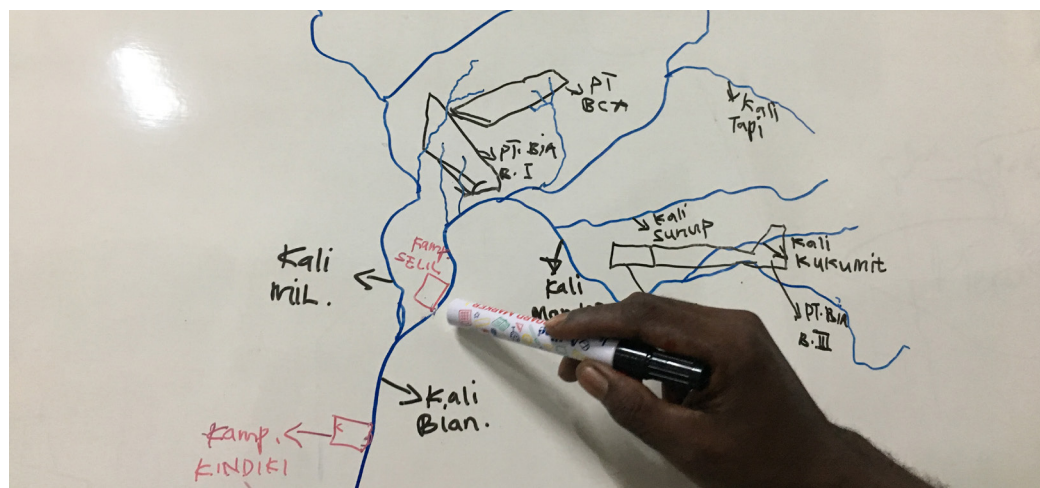


IV. NPS' failure to implement human rights due diligence

The Guidelines require institutional investors to implement human rights due diligence in relation to adverse impacts directly linked to their investments.¹¹ The NPS has been the largest institutional investor in POSCO International since 2010. NPS is directly linked to the adverse impacts caused by POSCO International as a result of its ownership in POSCO International.¹²

NPS may perform shareholder engagement when investee companies damage shareholder value. NPS has clarified that it is aware of the environmental destruction issue in POSCO International's Indonesian operation and stated that it is monitoring the issue in a letter to KTNC Watch in 2017. In POSCO International's 2019 Investment Prospectus, "environmental issues" was listed as one of the risks. Despite its awareness of the deforestation, social conflicts over land, and degradation of water quality, NPS has not used its leverage to influence POSCO International to cease the impact any measures. NPS has thus failed to implement human rights due diligence in relation to the adverse impacts directly linked to its investment in POSCO International and has thus violated the Guidelines.

2019. 6. 11. A villager from Selil village is explaining the villages affected by the operation of PT. BIA © KFEM





V. KEXIM's failure to implement human rights due diligence

Under the Guidelines, any financial services including lending services can be directly linked to adverse impacts.¹³ The UN Guiding Principles on Business and Human Rights also require that export agencies, as public agencies, as well as corporations receiving support from export credit agencies to adopt human rights due diligence. KEXIM provided a loan to PT. BIA under the overseas business loan scheme from 2012 to 2018. By lending 115,125,000 USD,¹⁴ KEXIM is directly linked to the adverse impacts caused by PT. BIA.

Environmental and social conflicts such as deforestation, social conflicts due to lack of FPIC, and the infringement of the right to water are typical issues in the palm oil industry, and POSCO International's business is no exception. The Government Pension Fund of Norway raised the issue of deforestation and loss of biodiversity and divested from POSCO International in 2015, and ABP, a Dutch pension fund also divested from POSCO International for deforestation in 2018. In 2017 and 2018, Korean media covered the relevant issues including land conflicts and allegations regarding degradation of water quality in PT. BIA's operation. Investment in the palm oil sector thus poses a reasonably foreseeable risk of environmental and social damage. KEXIM lacked policies or management to identify adverse impacts when providing loans to overseas businesses and failed to identify reasonably foreseeable risks. This resulted in non-implementation of the due diligence required by the Guidelines, thus violating the Guidelines.

Tree Kangaroos, an threatened species, found in Merauke, Papua ©Mighty Earth



VI. Requests to the Korean NCP, POSCO International, NPS, and KEXIM

The complainants request that the Korean NCP offer its good offices and facilitate dialogue with the respondents to discuss these specific impacts. We seek through mediated conversation to encourage POSCO International to acknowledge the deforestation they have caused and provide the remediation. We also urge POSCO International to adopt and publish a comprehensive group-wide cross-commodity No Deforestation, No Peat, and No Exploitation (NDPE) policy. As a part of NDPE policy, POSCO International should publicly declare a group-wide moratorium on land clearing and peatland development. We request POSCO International to duly implement FPIC in their operations and ensure the right to water of the local communities relying on the Bian River in line with the due diligence required by the Guidelines.

NPS is requested to exercise their leverage to engage with POSCO International in regard to the adverse impacts directly linked to them. NPS should also duly consider deforestation and infringement of the rights of indigenous in developing its socially responsible investment policies. It is suggested that KEXIM refrain from providing further loans to support PT. BIA's operations that are causing adverse impacts. KEXIM should also adopt policies for reviewing environmental and social risks in financing development of natural resources overseas. It is also suggested that Korean government to adopt the policies to review the actual and potential harms to the environmental and human rights when the financial services are provided to the corporations considering the importance of public financial sector.

2017. 7. 31. KFEM activists urging POSCO International to cease deforestation © KFEM





Endnotes

1. Aidenvironment, "Burning Paradise" (2016.8), p.36
2. Mighty Earth, "New satellite mapping reveals POSCO Daewoo continues to clear Indonesian rainforest at rapid pace in second half of 2017" (2017. 9. 27), <http://www.mightyearth.org/new-satellite-mapping-reveals-posco-daewoo-continues-clear-indonesian-rainforest-rapid-pace-second-half-2017/>
3. The Council on Ethics for the Government Pension Fund Global, "Recommendation to exclude Daewoo International Corporation and POSCO from the Government Pension Fund Global" (2015), p.5; Aidenvironment, *supra* note1, p.35
4. The Council on Ethics for the Government Pension Fund Global, *supra* note 3, p.5
5. See the explanation on Marind people, one of the tribes affected by PT. BIA's operation, in general at https://awasmifee.potager.org/?page_id=43; impacts on deforestation on Papuan culture https://www.papuaerfgoed.org/en/Deforestation_threatens_Papua_Culture; Sophie Chao, an anthropologist who has spent a year, living with and studying the Marind-Anim people of Merauke, well documented the impacts of agribusiness on the Marind peoples and environments in several articles. See http://anthronow.com/feature-preview/there-are-no-straight-lines-in-nature?source=post_page-----; <https://thegeckoproject.org/how-land-grabbers-weaponise-indigenous-ritual-against-papuans-an-interview-with-anthropologist-7ebf8ee34385>
6. Hankyoreh21, "Korean Palm Farm in the Stolen Land" (2018. 12. 28), http://h21.hani.co.kr/arti/world/world_general/46390.html [In Korean]
7. INDIGENOUS PEOPLES ORGANIZATION OF BIAN ENIM, "The Impact of MIFEE presence at Bian River and Maro River, West Papua" (2012. 12. 21), <https://rightsandresources.org/en/blog/press-release-from-indigenous-peoples-organization-of-bian-enim-the-impact-of-mifee-presence-at-bian-river-and-maro-river-west-papua/#.XeC5QpMzboA>
8. Hankyoreh21, *Supra* note 6 (2018. 12. 28), http://h21.hani.co.kr/arti/world/world_general/46390.html
9. OECD, OECD Due Diligence Guidance for Responsible Business Conduct (2018), p.21
10. PT. BIA, Environmental and Social Report (2017), p.25; POSCO International, Corporation Sustainability Report 2018 (2019), p.104
11. OECD, "Responsible Business Conduct for Institutional Investors," p. 13, available at <https://mneguidelines.oecd.org/RBC-for-Institutional-Investors.pdf>
12. POSCO INTERNATIONAL, 2018 Shareholders <http://www.poscointl.com/kor/shareholder.do>
13. Netherlands National Contact Point, Final Statement in Friends of the Earth Europe and Friends of the Earth Netherlands/ Milieudefensie v. Rabobank, 15 January 2016, p. 2.
14. POSCO INTERNATIONAL, Investment Prospectus (2019. 7), pp.98-99

About complainants:

KTNC Watch (Korean Transnational Corporations WATCH) is a coalition of Korean NGOs that advocate for human rights and the protection of the environment and local communities against corporate malfeasance. KTNC Watch works on cases of extraterritorial corporate malfeasance to ensure the human rights to be respected everywhere Korean companies have operations. KTNC Watch actively investigates, reports, seeks remedies for individual cases, and researches and advocates for the systematic reforms. Furthermore, KTNC Watch stands with the affected people by Korean corporations in solidarity.

PUSAKA is a non-profit organization that focus on doing advocacy research, documenting and promoting the rights of indigenous peoples, capacity development, education and empowerment related to the themes of indigenous peoples' rights, land rights, economic, social and cultural rights, and strengthening community organizations.

SKP-KAMe is an internal institution of the Catholic Church established in 2001. SKP-KAME established as cooperation between the Archdiocese of Merauke and MSC congregation in Papua Region. It works on contextual situations of local/regional, national and international. The core issues and scope of works are human rights, natural harmony, freedom, gender equality, justice and peace.

WALHI Papua is the Indonesian Forum of Environment in Papua, a non-governmental organization. WALHI works to defend Indonesia's natural world and local communities from injustice carried out in the name of economic development.