

Is it construction of better laws for a real donor? - The laws on Korean ODA system

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Abstract: Korea has development experience of transforming from one of the poorest countries to a donor country within 60 years. Many countries now expect that Korea will play a role of leading donor in international society in the future. The governmental efforts are being made to promote the Korean style projects reflecting the experiences with the economic development in the modern history. Based on the Framework Act, several major Korean ODA laws such as the KOICA Act and the EDCF Act provide different types ODA works and roles of the agencies. However, this legal framework of the Korean ODA is complicated and fragmented. The legislation concerning the purpose of ODA performances, the selection criteria of the partner countries and the ODA evaluation system should be amended in order to consistent maintenance and efficient enforcement of the Korean ODA policies with more effective legal system. Regarding the issue, Korea can consider several points of the Japanese ODA laws. Recently, the New JICA system with the amendment of the related laws combined the roles of former agencies. This reform of law produced more simplified ODA systems and procedures. The Japanese legal changes also clarified the purpose the works following the global standard. By this comparison and considerations of the points from the Japanese law, Korea can establish the one agency system or more practical control power to the CIDC with the legal reform. Certain provisions in the ODA laws for the independence from government influences are also needed. More functional or detailed provisions for more various types of Korean ODA works with NGOs or PPP projects should be established in the ODA laws.

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1. Introduction

Korea became the first nation to change its status from an aid recipient to a donor by joining the Organization for Economic Cooperation and Development (OECD) Development Assistance Committee (DAC) as a result of an unprecedented growth process over the world after overcoming the ruin of the Korean War (KOICA, 2008). International society now expects for this small country to help their developing members. Korea, which grew from the poorest country to an economic power in half a century is a prime example of the critical role of aid by international society for developing countries and is steadily striving to fulfill the responsibility of being a donor.

Official Development Assistance (ODA) is the official assistance that advanced countries provide through loans, technical aid, etc. to developing countries or international organisations. The world expects that Korea will play a role of leading donor in international society in the future, focused on the ODA field. Korea, as a DAC member, is also striving to respond to the expectations and requirements of international society, keeping with many types of efforts in the field.

Korea still has a short history of donor and many shortcomings in quantity and quality compared

to major donors. To promote their systematic and efficient ODA, 'Framework Act on International Development Cooperation', a comprehensive law on ODA was established and Committee for International Development Cooperation (CIDC) established the 'Advancement Plan on International Development Cooperation' under the act. Other laws also provide various legal functions on Korean ODA works.

Although the laws and policies may provide better and firmer direction for the Korean ODA, there are still several points for improvement. Regarding the issue, new Japanese policies and laws are considerable. This paper examines the Korean ODA system and the policy considering the international expectations and the norms. Then, it suggests some legal points to be improved for better Korean ODA works after the comparisons with the Japanese 'New JICA' Act and the system.

2. The ODA system in Korea

Korea promised to promote development cooperation corresponding to the international standards to perform the proper roles as an OECD DAC member by observing the rules decided by international society such as UN's Millennium Development Goals (MDGs). It is also participating actively in the process of establishing new norms. The

country needs intensive strategies and plans, which meet the global principles and agendas for the goal.

In this regard, the government established Strategic Plans for International Development Cooperation (Strategic Plan) which consists of three core bases: 1) developing ODA contents taking advantage of Korea's development experiences, 2) enhancing Korea's ODA system, and 3) strengthening inclusive partnership for development. With the Strategic Plan, Korea tries to give recipients hope, set a good example for international society, and give its citizens a sense of pride.

The scale of Korean ODA has increased dramatically since the 1990s. However, the volume still remains low in comparison to the DAC average ODA/GNI ratio of 0.32% (with the lowest ODA/GNI ratio for a DAC member of 0.12% as of 2010). The government is determined to increase the development assistance, and outlines this objective as one of 50 core tasks in its long-term planning manifesto, Vision 2030. Regarding the volume and ratio as well, in consideration of the international standards, they planned to expand the ODA scale to 0.25% compared with GNI by the year of 2015.

The implementation system of the country includes bilateral and multilateral assistance. The bilateral assistance is again divided into grants and loans. Korean aid architecture is based on two main pillars, but includes a number of other much smaller actors. The Ministry of Foreign Affairs (MOFA) is responsible for roughly half of all bilateral ODA through grants implemented by its executing agency, KOICA. Ministry of Strategy and Finance (MOSF) is responsible for roughly the other half, overseeing the loans implemented through the EDCF from the Korea Export-Import Bank (Eximbank). Multilateral aid is also split, with MOFA responsible for the UN agencies and MOSF responsible for the international development banks. Furthermore, as many as 30 other ministries, agencies and municipalities execute some small development assistance projects and programs using their own budget lines and that are generally detached from MOFA and MOSF.

Although Korea has tried to do many things in the international society, its experience as a donor is relatively short and the awareness on ODA still needs to be improved. As far as the Korean government is concerned, ODA serves as a soft-power instrument in acquiring the status of an advanced country. The policy is linked with national interests and its objectives to obtain more influence in diplomacy, security and commerce and to secure natural resources. Approaches to and distributions of ODA are still highly donor and government-driven. It is not friendly with the concept of the partnership or ownership of recipients (Lee Tae Joo, 2010).

It is possible to criticise that the government lacks a coherent and consolidated system. The administration is characterised by competition between ministries and agencies, dominated by MOSF. The ministry is responsible for loans and contributions to the multilateral development banks as well as for scaling-up ODA volume and aid budget allocations. It stresses national interests, economic cooperation and aid-for-oil in executing ODA. Therefore, the criteria to select partner countries are based on bilateral economic relations and co-operation on investment, trade and natural resources.

As much as 75% of Korean ODA is tied, compared to an average of only 15% in the DAC in 2007. Despite there being a DAC recommendation on untying ODA to the least developed countries (LDCs) from 2001, the untied ratio of Korean ODA to the LDCs is only 20% compared to 98% for the other DAC countries, excluding Korea. Nevertheless, the Korean government has recognised its obligation as a DAC member to untie aid and has therefore adopted a long-term roadmap of untying ODA to the level of 75% of total aid and 90% of aid to LDCs and heavily indebted poor countries by 2015.

The networks with non-governmental participants are still weak points to the Korean ODA system. Furthermore, the ODA work lacks attention to ideas of local ownership, participation, empowerment, capacity building or sustainability. To improve the problems, the government must provide many stages and opportunities to discuss the issue with the non-governmental players in the fields. The concept of Public-Private Partnership (PPP) is available in this work.

3. The laws for Korean ODA

The Korean ODA works are basically operated under several relating acts based on the Framework Act on International Development Cooperation. The rules of the act provide fundamental and integral structures concerning the international development cooperation field including the ODA activities. The articles of the law are also related to the basic system for enhancing appropriateness of international development cooperation policy and efficiency of execution and achieving objective of international development cooperation effectively. They provide the authorities, the powers, the roles and even evaluation methods.

The Korea International Cooperation Agency (KOICA) was founded as a government agency in 1991 under the KOICA Act. The purpose of the act is to contribute to the promotion of international cooperation by establishing the KOICA and by having it perform various cooperative projects to promote the friendly and cooperative relationship and mutual

exchange between Korea and developing countries and assist the economic and social development of the countries. The act consists of many articles for several legal points such as the fundamental purposes, legal status, organisations and functions of the agency.

Korea established the Economic Development Cooperation Fund (EDCF) in 1987 with the purpose of promoting economic cooperation between Korea and developing countries. Drawing on Korea's own development experience over the years, the EDCF assists partner countries by providing funding for their industrial development and economic stability. The EDCF Act is the special law for the establishment and the management of the funds. The provisions are mainly related to the fund such as Establishment and Financial Sources; Use, Operation and Management; Requirement for Assistance and Accounting Agency. Furthermore, the law has other provisions on other matters regarding the fund such as Long-term and temporary borrowings; Disposition of profit and loss and Supervision and order by the authority.

The legal system on the Korean ODA works is harmonised with the global standards in this field, the fundamental concepts of international laws and the principles of international development law. For example, 'Mutuality', 'Cooperation' and 'Equitable Participation' are major principles of the international development law (Rumu Sakar, 2009). The Framework Act has some provisions on the principles such as Article 1, 3 and 4.

According to the OECD, the main challenges to the Korean development work are as follows: (1) How to integrate all grants (from all agencies) and loans into a unified strategy; and (2) How to coordinate the aid effectively (OECD, 2012). By joining into the OECD DAC membership, Korea has tried to improve the legal tools for its aid works. The new Korean legislation with the Framework Act provided clarity for developing and managing both the grant and loan budget.

Although the grant aids and loans are still separately used, they are controlled by the CIDC under the Framework Act. The act provides legal foundation for the Korea's development cooperation including ODA works. It provides the various roles and responsibilities of the different actors involved. Since the enactment of the act in 2010, the CIDC has been playing a control tower in upgrading Korea's ODA system under the legal basis.

However, this system still has challenges in several aspects. Although the CIDC can control the works of the ministries and agencies based on the coordination mechanism under the act, MOFA serves as the Executive Secretary to the grant aid with the KOICA and MOSF plays the same role regarding the

EDCF loan aid with the Korea Eximbank. The funds are still managed by different ministries and agencies under the KOICA Act and the EDCF Act. Furthermore, many other ministries, agencies and municipalities also provide grant aids under the Framework Act. Therefore, it is clear that the legal framework of the Korean ODA is still complicated and fragmented.

This framework is also not yet supported by sufficient decision-making criteria or by thematic and country strategies. Although the Framework Act is structured to cover many parts on the international development cooperation, these basic provisions of the act cannot regulate whole structures related to the ODA system. To achieve greater synergies between loans and grants and make central control or a more effective system considering the issues, there are many parts to be improved in the framework act with the totally unified legal system.

4. Better legal system for the Korean ODA- Consideration of the Japanese Model

Japanese ODA activities have a long history since 1950s and some similarities to the Korean works. Although Japan has changed the ODA system for more effective works, they recently launched a totally new system for its ODA model combining their major agencies. These changes and the launch of a new Japanese model are mainly based on the criticisms on the effectiveness of the system and the independence from the government.

The Japan International Cooperation Agency (JICA) was established in 1974 as a governmental branch but it changed its legal character by the Act on the Independent Administrative Institution Japan International Cooperation Agency (JICA Act) enacted in 2002. The JICA became a semi-governmental organisation under the jurisdiction of the Japanese MOFA. The Japan Bank for International Cooperation (JBIC) was the main agency of the Japanese ODA loan. The Japanese Overseas Economic Cooperation Fund (OECF) was the original funding organisation to take over management of the Southeast Asia Development Cooperation Fund from the Export-Import Bank of Japan (JEXIM) in 1961. In 1999, the JBIC was established by merging the JEXIM and the OECF based on the Japan Bank for International Cooperation Act. The law provided the fundamental system of the ODA loan by the bank, capital and budget, etc.

There was one more major organisational change at the core of Japan's ODA system. With an amendment of the JICA Act in 2007, the "new JICA" - the extension of former JICA - was established in 2008, incorporating parts of the former JBIC (for the ODA loans) and taking on responsibilities for some grants previously managed by the Japanese MOFA.

By this fundamental change, the JICA was transformed from an agency focused on implementing technical cooperation to one which has to deal with all three of Japan's ODA schemes: loans, grants and technical cooperation. Finally, the "new JICA" became the main organisation of Japanese ODA and it runs administratively independent.

Through this fundamental change, the JICA was transformed from an agency focusing on implementation of technical cooperation towards one which manages all three of Japan's ODA schemes: loans, grants and technical cooperation. Finally, the "new JICA" became the core organisation of Japanese ODA and its administrative operation is independent. It is important to shed lights on the fact that JICA has realised the unification of aid agencies. However, this structural unification of aid works does not always signify integrated operation of aid works. To what extent New JICA can have impacts on the aid system and results should critically be taken into consideration (ODA Watch, 2013).

Regarding the ODA issues, the global trends have gradually required better quality of ODA works through the emerging new donor countries such as Korea. However, Japan has decreased its ODA budget due to its financial situations. To adjust with the international trend and the domestic circumstances, Japan had to undertake the new ODA reform policy and system for more effective works (JICA, 2012). Furthermore, JICA had to take into account criticisms on the purposes of the Japanese ODA works.

In 2002, the Japanese government established the fifteen specific measures for their ODA reform in five areas such as (1) auditing, (2) evaluation, (3) partnership with NGOs, (4) exploring, fostering and utilising human resources and (5) information disclosure and public relations. They consist of three pillars: 'public participation', 'transparency' and 'efficiency' (MOFA, 2002). Furthermore, the Japanese government drafted the 'Japan's Official Development Assistance Charter' in 2003. It provided the main objectives, principles and methods for the ODA implementation.

The Charter used as the fundamental rules for the reform of the policies and domestic laws on the issue. Based on the new JICA Act, the New JICA was officially inaugurated on October 2008 as a merger between the existing JICA and the overseas economic cooperation section of the JBIC. The operation of the ODA loans which was previously managed by the former JBIC and a portion of the grant aid which was provided by the Japanese MOFA are replaced with the New JICA as a combined agency.

Although the Korean situation is different from the Japanese one, the needs for the improvement of the effectiveness in their ODA works are the same.

The issue of fragmentation in Korean ODA especially requires new legal system for the effective regulation of the works. To integrate grants and loans into a unified strategy and to coordinate the aid effectively, the establishment of one controlling or agency system should be central. The Korean government has tried to realise this goal by strengthening of the legal status and functions of the CIDC with the Framework Act. However, these changes are not enough for the Korean ODA to be operated in a more effective way.

Before the launching of the New JICA system, the Korean and Japanese ODA works were based on the similar systems. The two MOFAs in each government had initiatives in this field and the KOICA and the JICA provided the grand aid to partner countries. The works on the ODA loans were provided by the specialised banks such as the Korea Eximbank and the JIBC (JEXIM before 1999). Then, Japan integrated the ODA implementation system for the effectiveness and other reasons with the amendment of the JICA Act.

Regarding the laws on the systems, Korea has the Fundamental Act to provide legal bases for the ODA works and the CIDC. Then, the KOICA Act and the EDCF Act clearly distinguishes the grand aid and the loan aid. The technical cooperation is implemented based on the KOICA Act and the Korean Eximbank, as the manager of the EDCF based on the EDCF Act. However, the provisions are sometimes not clear to cover and harmonise whole ODA works. Although aid policies from the Japanese New JICA may still have controversial issues, the legislation is simpler and clearer than Korea's one in terms of its legal foundation. It results from the Japanese reform policy in the pursuit of aid effectiveness and the consideration of criticisms from the international society.

Therefore, it is significant to take into account the Japanese Model for the future of the Korean legislation in some ways. Firstly, Korea can establish the one agency for more effective ODA works such as New JICA with legal reforms. If this idea is too radical in Korea, it is also possible to make practical provisions for the CIDC to have practical power in the control of the governmental branches or agencies in the Framework Act. Secondly, some provisions in the laws are required for the agency or agencies to hold independence from government like the IAI concept in Japan. From more neutral perspective, the laws can be amended. Thirdly, more functional or practical provisions for the practical Korean ODA works with NGOs or PPP projects should be established in the ODA laws.

5. Concluding Remarks

The scale of Korean ODA has recently increased dramatically, especially after joining into the OECD DAC. With the recommendations from the international society, Korea has tried to level up the quantity as well as quality of its ODA works. However, this country is still encountering some problems because of its short history of international development cooperation. Although there have been many improvements, the legal framework of the Korean ODA is also complicated and fragmented. The Korean legal system on the ODA works has to be improved in several ways.

Specific provisions for foreign aid are needed in terms of legislation. The Framework Act enforced in Korea has a lot of room for interpretation due to the abstract provisions. Of course, the necessities of these detailed provisions are related to the issue of the social situation and the legislative policies. Nevertheless, the specific legislation concerning the purpose of ODA performance, the selection criteria of the partner countries and the ODA evaluation system should be reflected in order to establish consistent maintenance and efficient enforcement of ODA policies through cooperation, checks, and mediation between Congress and the administration.

The policy coherence of performing agencies and the promotion of strategy reflecting the aid effectiveness are needed to be considered in the long term. Based on the long term policy, the supporting system for participation of the private sector is also necessary. The legal and institutional strategies regarding the private sector such as NGOs are needed at the national level. Although the Framework Act and the KOICA Act are mentioned in regards to the partnership with NGOs, there are no specific laws for the support of NGO activities in the international development cooperation in Korea. Several provisions in EDCF Act are not enough for the PPP works.

Japan has a long history in the ODA field but it has changed the system in order to achieve the goal of aid effectiveness. They recently started the New JICA system combining the roles of former agencies. Although there are still competing opinions on this transformation in Japan, this new model is mainly based on the criticisms to the effectiveness of the Japanese system and the main purpose of the ODA

works. They simplified the ODA systems and procedures. The legal changes also clarified the purpose the works following the global standard.

Although there are different backgrounds and reasons between the Japanese ODA laws and Korea, it is meaningful for Korea to take into account several points for their new laws on the field as listed below:

- *Establishment of the one agency law such as New JICA or making practical and powerful rules for the CIDC to take control of agencies*
- *Establishment of the rules for the agency or agencies to have more independence from government influences*
- *Establishment of more functional or detailed rules for the practical Korean ODA works with NGOs or PPP projects*

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