South Korea’s Special Development Laws on Saemangeum and The Coastal Zone

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Introduction

In late 2007, shortly before South Korea’s recent presidential election, the National Assembly passed two special bills on coastal development – the Coastal Zone Development Special Act and the Special Act to Promote the Saemangeum Project. These bills were put forward by two development-minded executive branches of the government, the Ministry of Construction and Transportation (“MOCT”) and the Ministry of Agriculture and Fisheries (“MAF”), respectively. These special laws should be the focus of great concern for people in Korea and for the global conservation community in general because of their potentially ecologically destructive nature, the impacts of which are spatiotemporally extensive and will transcend Korea’s territorial borders and the present generation.

The Coastal Zone Development Special Act

A special law is legislation that overrides the basic laws already in place to meet a specific set of purposes. Its effects should in theory be restricted to a relatively small spatiotemporal setting. What is therefore perhaps most controversial about the Coastal Zone Development Special Act (“Coastal Special Law”) is its vast geographical reach, which covers somewhere between 30 to 40 per cent of Korea’s total territorial land. This includes 73 (of the 234) local government units in the country’s coastal areas. One of the few Members of the National Assembly who stands in opposition to the Coastal Special Law has indeed stated that it can hardly be called a “special law” and that it is a law which will bring exclusive benefits to corporations. He also warns that it will bring ecological disaster to future generations, disrupt the whole law and governance system, and degenerate the rule of law in South Korea.

What the Coastal Special Law does essentially is to grant upper-level (metropolitan city and provincial level) local governments (“ULG”) and the central government,
particularly the MOCT, arbitrary power to undertake virtually any kind of development projects they want within the geographical area in question. Plus, it enables the central government to financially support developers (as anticipated, at enormous social and ecological costs).

The ULGs and MOCT will draft three Master Development Plans for each of the three coastal zones (East, West, and South) and designate them as Development Zones. Developers will then submit their Development Implementation Plans to the ULGs for approval. Once approved, the developers semi-automatically will obtain permits/consents under 36 different (development-related) statutes. This includes the coastal wetland reclamation permit issued by the Ministry of Maritime Affairs and Fisheries (“MOMAF”) under the Public Waters Reclamation Act (MOMAF is importantly one of two ministries presently charged with national wetland conservation under the Wetlands Conservation Act, 1999 and the Coastal Management Act, 1999). Such a foul (or “special”) shortcut is dependent on consultation with the relevant ministers, but this consultation process will likely be loaded with politics. In addition, the Coastal Special Law enables developers to semi-forcefully purchase and use land needed for development projects in the Development Implementation Plans. Worse yet, the State, which is explicitly classified as a special type of developer, is virtually free from any necessary administrative procedures.

Among the controversies surrounding this highly problematic piece of legislation is that its jurisdiction reaches into national and regional natural parks (29 national and regional natural parks out of the total 76). To what extent these parks can be developed and with what kinds of facilities are to be determined by a presidential decree and it is likely that the construction of hotels and resorts will be allowed. According to Woo Won-Sik, another Member of the National Assembly opposing the Coastal Special Law, a number of local governments are already in the planning process to develop tourist complexes, resorts, and golf courses in their protected parks.

With MOCT emerging as the principal planning authority over the coastal areas under this new “special” legal regime, the Coastal Special Law de facto strips power from MOMAF, which came into existence only a decade ago, and gives it back to MOCT. This in turn leaves an uneasy question about whether there is still any reason for the existence of MOMAF in its present form. Furthermore, the new Special Law stands in direct opposition to the fundamental conservation vision of the other wetland-conservation ministry, the Ministry of Environment (“MOE”), which is to protect the three ecological axes, one being the entire coastline of South Korea. Instead, it turns this “Coastal Ecological Axis” into a “Marine

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4 Developers include the state, local governments, state investment institutions, local public corporations, corporate bodies, and private individuals. Coastal Zones Development Special Bill (No. 7880) Article 11.
5 Coastal Zones Development Special Bill (No. 7880) Article 15.
6 Coastal Zones Development Special Bill (No. 7880) Article 16.
7 Coastal Zones Development Special Bill (No. 7880) Article 14.
8 Woo Won-Sik, Minutes from the 10th Session of the 269th National Assembly, 21.
9 There are now open discussions about merging MOMAF in with MAF.
Economic Axis”. MOE also cannot do much about it. As Woo correctly anticipates, it will become close to impossible for MOE to reject development projects planned by MOCT under the Coastal Special Law. Given the injustice that this legislation creates, a coalition of environmental NGOs in Korea is planning to file a law suit in the Constitutional Court, arguing that it is against constitutional principles. Furthermore, there has been discussion about collectively boycotting the 2008 Ramsar Convention Conference, especially because the person who first proposed this law is the Provincial Governor of the ULG that is hosting the COP10 in South Gyeongsang Province.

The Special Act to Promote the Saemangeum Project

The primary purpose of legislating the Special Act to Promote the Saemangeum Project (“Saemangeum Special Law”) is to override the Supreme Court’s ruling that the Saemangeum Project may only proceed (despite concerns about a resulting environmental catastrophe) if the reclaimed land will be used as initially planned, solely for agricultural purposes. However, it is widely acknowledged that it is neither environmentally nor economically feasible to use the land for agriculture. Indeed, one of the reasons employed by those opposing the reclamation is exactly this: that the water quality of the huge freshwater reservoir, which determines whether the land can be used for agriculture or not, cannot be maintained at a level suitable for agricultural usage. Knowing this, politicians passed this Special Law that conveniently overrules the Supreme Court’s decision and institutes a legal ground for industrial and residential use.

The Special Law de facto delegates planning authority over the use and development of Saemangeum to the North Jeolla Provincial Governor. To that end, the Special Law allows MAF and the Saemangeum Committee to override the pre-existing legal framework where MOMAF and MOCT possess the jurisdictional rights over reclaimed lands under the Coastal Management Act and the Act on Industrial Location and Development respectively. The Minister of Finance and Economy is also authorised to designate a part of Saemangeum as a Free Economic Zone.

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10 Coastal Zones Development Special Bill (No. 7880) Article 7(1)1.
11 Woo, supra n 8, 22.
13 Among 182 Members of the National Assembly present, 157 voted in support of the bill while 14 voted against it (11 absentees).
15 Park, ibid.
16 Special Bill to Promote the Saemangeum Project (No. 7872) Article 27.
What the Saemangeum Special Law does in procedural terms is quite similar to that of the Coastal Special Law. MAF is given the power to draft and approve the Master Plan, while taking into account opinions of the North Jeolla Provincial Governor, relevant government ministries, and the Saemangeum Committee. In accordance with this Master Plan, the Saemangeum Special Law enables developers to plan and implement their own development projects upon approval of a corresponding ministry. The state and local governments are required to financially support those developers in a variety of ways as specifically laid out in the Act.  

Taking a similar approach to the one adopted by the Coastal Special Law, the Saemangeum Special Law also has a provision which frees a developer, for its approved Development Project Implementation, from any consultation procedures under 33 different conservation, planning, and development statutes. This is intended to “speed up” the process of development. What is worse under the Saemangeum Special Law is that, in contrast to the Coastal Special Law, no consultation with any ministry is necessary.

Relevant ministries are vaguely obliged to plan and implement environmental conservation measures. The Provincial Governor of North Jeolla is vaguely obliged as well to designate and manage special management zones in the upstream region of the rivers flowing into Saemangeum in order to control water pollution sources.

**Concluding Remarks**

Coastal wetlands of the Republic of Korea (many of which are recognised as internationally important in accordance with Ramsar Convention Criteria) are legally defined as public waters and common resources of the Korean public. This means that they cannot be used to derive exclusive benefits for a locality or for a specific group of people. Yet the two special laws do exactly this.

Despite their socially and ecologically unjust nature, there has been lack of debate about them. Because these laws stand directly against the spirit of the Ramsar Convention and global sustainability laws in general, Birds Korea believes that they should rightly be considered and discussed in direct relation to and also at the upcoming COP10, which will be held in South Korea in late 2008.

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17 Special Bill to Promote the Saemangeum Project (No. 7872) Articles 25, 26, 28.
18 Special Bill to Promote the Saemangeum Project (No. 7872) Article 13.
19 Special Bill to Promote the Saemangeum Project (No. 7872) Articles 23 and 24.