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30 March 2017

Joint Stakeholder UPR Submission concerning the Republic of Korea (Korea)

To whom it may concern,

Please find below the joint submission of the International Trade Union Confederation (ITUC) and the International Centre for Trade Union Rights (ICTUR) concerning Korea's Universal Periodic Review during the 28th session of the UPR Working Group.

Yours sincerely,

General Secretary

John Hendy, QC, ICTUR President

(1) Submitting organisations

ICTUR was founded in 1987 in order to defend, extend, and raise awareness of trade union rights and their violations worldwide. The organization comprises a membership of trade unions, lawyers and human rights organisations. ICTUR undertakes legal, advocacy, research and publishing activities. Among its publications are: International Union Rights journal (since 1993); the World Map of Freedom of Association (5th edition, 2017); and the reference book Trade Unions of the World (7th edition, 2016).

The ITUC was formed on 1 November 2006 as the result of the merger of the International Confederation of Free Trade Unions (ICFTU) and the World Confederation of Labour. The organisation represents 181 million workers in 163 countries and territories and has 340 national affiliates. The ITUC's primary mission is the promotion and defence of workers' rights and interests, through international cooperation between trade unions, global campaigning and advocacy within the major global institutions. Its main areas of activity include the following: trade union and human rights; economy, society and the workplace; equality and non-discrimination; and international solidarity. The ITUC adheres to the principles of democracy and independence. It is governed by four-yearly world congresses, a General Council and an Executive Bureau.

The submission below was prepared in consultation with trade unions in Korea, the Federation of Korean Trade Unions (FKTU) and the Korean Confederation of Trade Unions (KCTU).

(2) Summary

Korea is not respecting its human rights obligations in relation to the right to freedom of association and specifically the right to join and establish trade unions without interference and the right to carry out trade union activities and in particular public protests and strikes. In the past few years, Korea has acted repeatedly to close down the activities of certain unions, to repress rallies, ban strikes, and to arrest and prosecute key trade union organisers and activists. International trade union organisations view the current state of trade union rights in the Republic of Korea as highly repressive and at a critical level, requiring urgent review by international supervisory mechanisms. The recent arrest, sentencing and imprisonment of the leader of a national trade union centre demonstrates the extent to which this situation has escalated.

Our primary concerns with respect to trade union rights in the Republic of Korea are:

- the arrest and prosecution of many trade unionists – including the imprisonment of Korean Confederation of Trade Unions (KCTU) President Han Sang-Gyun
- the refusal to register and attempts to de-register unions – notably the Korean Teachers and Education Workers Union (KTU), and the Korean Government Employees' Union (KGEU).
- a series of raids of trade union premises – affecting the KGEU, the Korean Railway Workers Union (KRWU), the KTU, the KCTU, and the Korean Public Service and Transport Workers Union (KPTU)
- the criminalization of strikes and other trade union activities and excessive damages claims against workers – including against the KRWU and the Korean Metal Workers Union) KMWU

(3) International Human Rights Obligations

The Universal Declaration of Human Rights makes it clear that “everyone has the right to form and to join trade unions for the protection of his interests”. In 1990 the Republic of Korea ratified the International Covenant on Economic, Social and Cultural Rights obliging State parties to ensure the right to form and join trade unions of their own choice, including at national and international level. The Covenant further states that trade unions have the right to function freely and to take strike action. The International Covenant on Civil and Political Rights was also ratified by The Republic of Korea in 1990 and stipulates that, “everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests”. The Republic of Korea has not ratified ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise (1948), nor ILO Convention No. 98 on the Right to Organise and Collective Bargaining (1949), despite the recommendations of its UPR Review of 2012 where the government was called to “continue to exert its utmost efforts to ratify ILO core conventions. However, further obligations to uphold the principles of freedom of association also stem directly from the Republic of Korea's membership of the ILO.

(4) Arrests

The two top-level leaders and two senior staff members of the KCTU are among those the State has sought to prosecute following mass demonstrations in late 2015 against the government's labour policies. Han Sang-Gyun, the President of the KCTU was sentenced to five years imprisonment (reduced to three years on appeal) following his involvement in union rallies and protest actions. Charges originally raised against him reportedly included organizing ‘illegal’ demonstrations and ‘sedition’. Since 2015 a warrant has been out for the arrest of Lee Young-joon, Secretary General of the KCTU. Two members of KCTU's Organisation Department Tae-sun

Bae and Hyun-dae Lee were arrested in Jan. 2016. At trial on 19 July 2016 both were sentenced to prison terms: three years (subsequently suspended by the High Court) in the case of Tae-sun Bae and one and a half years in the case of Hyun-dae Lee. The offences for which the KCTU leaders and staff were ultimately convicted included: ‘Special Obstruction of Public Duty Injuring Public Officials’, ‘Special Destruction of Public Goods’, ‘Special Obstruction of Public Duty’, and ‘Obstruction of General Traffic’. Prosecutors in all cases reportedly sought heavier sentences.

Leaders of the KPTU have similarly received prison terms for their involvement in the same series of public demonstrations, including in November 2015. On 12 May 2016 Jae-shik Lee, Chair of the KPTU Truck Sol Division Gumi Local, was sentenced to 10 months in prison. On 26 July 2016 Cho Sung-deok, Vice President of the KPTU was sentenced to two years’ imprisonment by the Seoul Central District Court (this sentence was later suspended by the High Court). Also further to the public demonstrations centred around November 2015, three other members of the KCTU and its affiliated unions: Jae-seung Byeon, member of KPTU; Jeong-uk Yang, Chair of the Emergency Committee of the Ulsan Nam-ku Branch of the Korean Government Employees’ Union (KGEU); and Ji-ho Yang, Chair of KCTU Jeju Regional Branch) are reportedly currently on bail awaiting trial for offences ‘Obstruction of Traffic’, ‘Special Obstruction of Public Duty’, and violations of the Assemblies and Demonstrations Act.

We are aware of a further 11 trade unionists – all associated with the KCTU and its member unions - who have all been convicted on charges related to ‘Special Obstruction of Public Duty’, and who were sentenced to prison terms of up to one and a half years imprisonment, again following their participation in the public protests centred around November 2015, in each case these sentences being suspended, for periods of up to two years. They are: Jae-geun Choi, member of the Korean Metal Workers’ Union (KMWU); Young-chul Choi, member of the Korean Federation of Construction Industry Trade Unions (KFCITU); Hyung-chang Jang, Department Executive Director of KFCITU; Young-hyun Jeong, General Secretary of the Korean Plant Construction Workers Union (KPCWU) Ulsan Branch; Beom-jin Kang, member of KFCITU; Ki-hong Kim, member of KFCITU and former Secretary of KPCWU Ulsan Branch; Kyung-do Kim, member of KMWU; Geum-ju Lee, member of KMWU; Nam-guk Lee, member of KMWU; Jeong-soo Nam, Executive Director of KCTU’s Education & Publications Department; Myung-hun Park, member of KFCITU.

But many union leaders and members have also been arrested in purely industrial cases: on 10 October 2016, 7000 members of the KPTU ‘TruckSol’ Division took part in a strike in protest at the government’s plan for the deregulation of the trucking transport market. 4000 police were deployed, 50 TruckSol members were arrested, and injuries were reported. On the ninth day of the strike, police arrested TruckSol President Won-ho Park in Busan for “blocking traffic”. And on 2 June 2016 a Korean court found 15 tower crane operators, all members of the Korean Construction Workers’ Union (KCWU), guilty of ‘blackmail’ and ‘obstruction of business’, simply for trying to engage in collective bargaining negotiations with a company that refused to hire union members. They were particularly concerned about safety conditions on Korea’s accident-prone building sites. KCWU Vice President Jeong Min-ho and Seoul-Gyeonggi Tower Crane Branch President Kim Myeong-uk were sentenced to two to three years’ incarceration respectively, while the other 13 were given suspended prison sentences ranging from 8 to 18 months for the same charges.

KPCWU President Lee Jong-hwa, branch chair Jwa Choel-seok and 23 additional union officials are currently facing criminal charges for allegedly “obstructing traffic” and “joint coercion and extortion”. Police ransacked the union office, seized, and searched vehicles belonging to union officials. The trade unionists had engaged workers in order to unionise and to enter into the collective bargaining rounds held between July and August 2016 and held a rally between 9-10 August.

(5) Bans and de-registration

The KCTU-affiliated KTU was permitted to register as a union only in 2000. In Oct. 2013, after more than 21 thousand members of the union participated in a protest against the imposition of a single state-issued Korean history textbook, the Labour Ministry revoked the KTU’s registration, supposedly on technical grounds, citing the participation in the union of nine dismissed teachers, contrary to Article 2 of the Act on the Establishment, Operation, Etc. of Trade Unions for Teachers (‘AEOTUT’). A number of court rulings and cross appeals have followed, most recently confirming that the union’s registration must be revoked.

The KCTU-affiliated Korean Government Employees Union (‘KGEU’) has been attempting to register as a trade union for more than a decade, but has been repeatedly denied, including most recently on 2 Aug 2013. The authorities claim that the union has violated Korean law requiring civil servants to remain politically neutral (Article 3 of the AEOTUT and Article 4 of the AEOPOTU bar teachers’ and public officials’ unions from ‘political activities’). Further, Articles 2 and 6 of the Act on the Establishment, Operation, Etc. for Public Officials’ Trade Unions (‘AEOPOTU’), serve as a barrier blocking dismissed and former officials from membership. These provisions have been criticised by the ILO supervisory bodies.

The Migrants Trade Union first applied for legal recognition in 2005, and won a High Court ruling two years later. However, the Ministry of Labour refused to register the MTU, and subsequently harassed, arrested and deported a number of MTU leaders (this case was raised in the submission by Amnesty International to the 2nd cycle of the Universal Periodic Review). In 2015, following a ten-year legal struggle, the Supreme Court ultimately did rule in favour of the MTU. which development we welcome.

(6) Raids

On 1 Dec. 2009, police raided the offices of the KGEU and the KWRU: computers, printed documents and other materials were seized from the premises of both unions. On Nov. 2013, the government raided the KGEU headquarters and searched the union's computer servers. On 22 Dec. 2013, hundreds of riot police raided the KCTU's headquarters in Seoul. Six senior KCTU leaders were arrested for supporting a national anti-privatisation railway strike. In total 130 trade unionists were arrested and several workers were injured when police used pepper spray. Among those arrested was Yoo Ki-soo, Secretary General of the KCTU. The KCTU's offices were raided on 27 June 2014 after a number of members left work early as part of a protest. On 15 July 2014, police seized KCTU's website servers as part of an investigation into alleged 'illegal' political activity by its members. On the morning of 6 Nov. 2015, some 200 police officers raided the headquarters of the Korean Public Service and Transport Workers' Union (KPTU). And on 21 Nov. 2015 police raided the offices of eight unions, including the KCTU.

(7) Strike bans and fines

While the Constitution establishes the right to strike, Article 314 of the Criminal Code (which proscribes 'interference with business' by 'force') has been used repeatedly in response to trade union actions, particularly strikes. This use of the criminal law by the State then also facilitates the use of the civil law by corporations as a dual mechanism for repressing the right to strike: once a court has determined that a strike is criminal it is a simple matter for the company to establish a civil claim for damages, which in recent years have become very large sums indeed, such as to threaten the financial security and integrity of the unions.

According to a 2014 survey by the Korean Confederation of Trade Unions ('KCTU'), the total amount of damages claimed on grounds related to trade union activities, was, at that time more than KRW 100 billion (approx. US \$90m.) in 17 workplaces. Recent examples include:

- When members of the KCTU-affiliated Korean Workers Railway Union (KWRU) took strike action KORAIL filed a lawsuit reportedly worth KRW 31.3 billion (about US \$27m.).
- A group of workers dismissed by the SSangyong Motor company and their union ('KMWU') took strike action and were sued for KRW 30.2 billion (about US \$27m.).
- Union members in MBC, one of the major broadcasting companies, went on a strike over the question of fairness in broadcasting, and the employer brought a lawsuit claiming KRW 19.5 billion (about US \$27m.).
- During a pilots strike against Korean Air Lines in February 2016 the company sought a court injunction against the union vote for a strike, claiming that the vote was 'invalid' due to procedural issues (that request was turned down by the Seoul Southern District Court on 15 April) and filed a defamation suit against 20 of the pilots involved, seeking damages, which it finally dropped at the end of April.

Article 3 of the Trade Union and Labour Relations Adjustment Act (TULRAA) purportedly protects trade unionists from civil damages claims, but the protection is too narrow a protection and is currently failing to protect trade unionists from damages claims arising from disputes that are clearly within international concepts of freedom of association.

The right to strike is entirely negated for teachers and public officials by Article 8 of the AEOTUT and Article 11 of the AEOPOTU, which criminalise industrial action by teachers and public officials and their unions. The related Article 15 of the AEOTUT and Article 19 of the AEOPOTU provide for heavy criminal punishments for breaches of the industrial action bans, including prison terms of up to five years. The criminalisation of strikes by teachers and public officials is clearly contrary to international standards on freedom of association, and has been criticised by the ILO supervisory bodies and by the UN Special Rapporteur on Freedom of Assembly and Association.

(8) Recommendations

We therefore call on Korea to:

Civil liberties of trade unionists

- release all trade unionists detained on grounds relating to their participation in trade union activities
- cease pending prosecutions against trade unionists that are based on their participation in trade union activities
- ensure that all State agencies including the police and Ministries cease harassing, raiding and obstructing trade unionists

Registration and legal status of trade unions

- make appropriate revisions to Article 2 of AEOTUT and Articles 2 and 6 of AEOPOTU
- make appropriate revisions to Article 2 of AEOTUT and Article 4 of the AEOPOTU

- make appropriate revisions to Article 3 AEOTUT and Article 4 of the AEOPOTU.

Law on industrial action and strikes

- make appropriate revisions to the Criminal Code, including Article 314, and associated legislation, to ensure that core trade union activities such as strike action cease to be regarded as criminal
- introduce effective legislation (including Article 3 of the TULRAA) to ensure that trade unions (and their members, staff and officials) are appropriately protected from damages claims in all situations where the action complained of stems entirely or substantially from trade union activities, including strike action.
- make appropriate revisions to Articles 8 and 15 of the AEOTUT and Articles 11 and 19 of the AEOPOTU.

International treaties and agencies

- withdraw the Reservation in respect of Article 22 of the ICCPR
- ratify, as a matter of urgency, ILO Conventions No.98 (Right to Organise and Collective Bargaining, 1949) and No.87 (Freedom of Association and Protection of the Right to Organise, 1948).
- seek the assistance of the International Labour Organisation in making amendments to domestic law and practice

Consultation

- to plan and implement the above reforms in full consultation with the national trade union centres KCTU and the Federation of Korean Trade Unions (FKTU) and their affiliated unions, particularly KTU and KGEU.

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