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Upholding Labour Rights in Korea in an OECD context

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Trade union repression in 2015

1. On 11 December 2015, Han Sang-gyun, President of the Korean Confederation of Trade Unions (KCTU), one of the Trade Union Advisory Committee to the OECD's (TUAC) Korean affiliates alongside the Federation of Korean Trade Unions (FKTU), was arrested by police forces after a month stay in the sanctuary of a Buddhist temple. Han Sang-gyun is accused of “obstruction of traffic” during demonstrations held in April & May 2015 to commemorate the tragedy of the 2014 sinking of the Sewol Ferry. Han Sang-gyun could face up to 10 years in prison. His trial is expected to begin on 18 April 2016ⁱ.

2. The arrest of the president of the KCTU was part of coordinated measures taken by the Korean government authorities to crackdown on trade unions, following demonstrations on 14 November 2015 held in protest of a new labour law reform. On 21 November, the police raided multiple offices of the KCTU and its affiliates, seizing documents, equipment and computers. Several trade unionists have been arrested. As of 1 March 2016, 74 trade unionists are imprisoned. 15 KCTU members are detainedⁱⁱ and 504 other KCTU members have been summoned in relation to the November 14 demonstrationⁱⁱⁱ.

3. Furthermore, on 18 February 2016, the police carried out a raid of the Korean Teachers' and Education Workers' Union (KTEU)^{iv}, following an appeal court ruling that confirmed the government decision in 2013 to strip the union of its legal status on the ground that the union accepts dismissed workers among its membership. The case is now in the hands of the Supreme Court. The KGEU representing public sector workers was also decertified by the government in 2014. In Korea, the arrests and imprisonments of trade union

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representatives are often compounded by strike compensation lawsuits against unions and individuals with no purpose other than to bankrupt them.

4. Meanwhile, the relations between the FKTU and the government have recently broken down. *“There’s no point in sitting down to talk with a government that makes a practice of breaking its promises and violating its agreements”* said FKTU President Kim Dong-man on 20 January 2016^v.

5. According to government estimates, a total of 1.47 million workers are members of the two confederations: 630,000 members with the KCTU and 840,000 with the FKTU. The total number accounts for 77% of unionised workers in Korea.

6. Upholding labour rights and civil liberties for trade union members and labour activists has been an issue in the Republic of Korea ever since its democratic transition in 1980s. Korea joined the International Labour Organisation (ILO) in 1992 but has not ratified ILO conventions n°87^{vi} and n°98^{vii} which, as a result, have not been translated into domestic law. The evolution of labour rights in Korea has failed to meet expectations in the past 20 years, and this despite repeated calls from the ILO to bring Korean law, particularly the “obstruction of business clause” of the Penal Code, in line with principles of freedom of association, and despite the commitments made by Korea at the time of its accession to the OECD in 1996.

7. The “special monitoring process” that was set up by the OECD as part of the accession process initially proved to be an effective mechanism to hold Korean public authorities to account. Regrettably, the situation changed dramatically after the monitoring process was abandoned in 2007. In the past three years, repression against unions and the criminalisation of their activities have made a comeback as a government practice as part of the anti-union policy agenda.

The accession in 1996

8. Korea joined the OECD in 1996 upon the commitment to reform its labour law. On the 9 October 1996, prior to joining the OECD, the Korean Government wrote a letter to the OECD stating that: *“The Korean Government confirms its commitment to the basic values shared by the OECD Member Countries, particularly the ideals of pluralistic democracy, open market economy and respect for human rights. [...] The Korean Government confirms its commitment to reform existing laws and regulations on industrial relations in line with internationally accepted standards, including those concerning basic rights such as freedom of association and collective bargaining.”*

9. On the 12 December 1996, the Republic of Korea joined the OECD. However, shortly after on the 26 December, the Korean Government introduced a law that weakened labour rights. During a parliamentary session held at 6 am in the morning, attended by the ruling New Korea Party only, the Trade Union and Labor Relations Adjustment Act (TULRAA) was enacted. TULRAA among others puts a ban on wage payment to trade union officials and imposes penalties on employers that unilaterally engage in negotiations for trade union recognition – standing in stark contradiction with the Korean government’s commitment to respect freedom of association and collective bargaining.

10. In response, the OECD Council established a Special Monitoring Process for Korea. The Employment Labour and Social Affairs Committee (ELSAC) and the Council, meeting respectively on 22 and 23 January 1997, called upon Korea to bring its labour law in line with international standards. According to press reports, the Korean representative of the Business

and Industry Advisory Committee to the OECD (BIAC) to the ELSAC meeting claimed that “*with a trade deficit of USD30bn, Korea cannot afford trade union pluralism*”. Sustaining Korea’s trade competitiveness has been used as a recurrent argument by some business groups and politicians to oppose any improvement to labour rights.

11. Some noticeable progress was achieved under the Special Monitoring Process. The KCTU was legalised in 1999 and the legislation on “third party intervention” (in labour disputes) was repealed. In 2005, however, the process was far from being complete. That year, the OECD listed the following items as being in conflict with internationally recognised labour standards:

- The denial of civil servants’ right to organise;
- The prohibition in principle of employers’ payment for full-time trade union officials;
- The broad definition of “essential public services”, where strike action is prohibited or severely restricted;
- The prohibition for unemployed or dismissed workers to become or remain trade union members;
- The requirement for notification of third parties to industrial disputes;
- The high numbers of arrested and imprisoned workers and union leaders;
- The outstanding alignment of the legislation on obstruction of business (art 314) with freedom of association principles and right to strike.

12. Despite the lack of improvement on these issues in Korea, the Special monitoring process ended in 2007. Twenty years after its accession, and ten years after the conclusion of the Monitoring process, Korea is still far from having fulfilled its commitment to the OECD to bring its labour law in line with international standards. An overview table in annex shows that Korea has not met the expectations set out by the OECD.

Labour rights

13. As of today, basic labour rights, including the right to organise and to bargain collectively as defined by the ILO, are not observed in Korea. State interference in trade union activities remains the norm. Standard conditions for collective bargaining and dispute resolution, including the right to strike, are not met.

14. Freedom of Association implies the right to join a trade union of one’s own choosing and that is independent from management, thereby allowing the possibility of trade union pluralism. In Korea, trade union pluralism is impeded by a “unitary bargain channel” system, which excludes minority trade unions from the bargaining process. Pluralism is further weakened by so-called “bogus unions” – company-level organisations that are supported and financed by the employer for the sole purpose of impeding the presence –of trade unions under the “unitary bargain channel” system – This concerns those unions that are affiliated to industry-wide organisations (FKTU and KCTU affiliates). That is why the Korean labour law is setting rules on changes to the status from a company-level to an industry-level union. These rules aim to protect individual workers against local management influence and to promote the consolidation of trade unions into industry-wide organisations. A core principle of the law is that any decision to shift status rests with the trade union. A recent ruling of the Supreme Court regarding the case of the Korean subsidiary of Valeo is, however, threatening this principle^{viii}.

15. State interference in trade union activities is another major concern. Authorities can arbitrarily dissolve or suspend trade unions and interfere in their by-laws and internal

organisation. Another main legal device for state interference is the prohibition of dismissed or unemployed workers from union membership (Art 2.4 of TULRAA). The law was passed by the ruling Grand National Party at 1 am on 1 January 2010, while security guards were blocking access to the parliament for members of the parliament of the opposition. Based on this article, several unions have been decertified in recent years. In the education sector, the teachers' independent trade union (KTU), which currently has 60.000 members, was first legalised in 1999, then decertified in 2014. In the public service sector, the Korean Government Employees Union (KGEU), currently 140.000 members, was legalised in 2003, then decertified in 2014, as well. The prohibition by law of payment of wages to full-time trade union officials at company level is another serious impediment to normal trade union activity and to collective bargaining. Employers who voluntarily negotiate on this issue face criminal charges.

16. Dispute resolution and the right to strike are impeded by Criminal Act Art.314 on "obstruction of business"^{ix} which can be used to oppose and sue trade union officers that engage in a strike. Under a Supreme Court decision in 2011, a strike constitutes a crime (of obstruction of business) if (i) it is carried out at a time that is "unforeseeable" by the management and (ii) it causes "serious or disastrous damage" to the management's business operations to the point whether it threatens the management's "free will"^x. The use of Art.314 comes into full effect when employers recruit private military companies to attack strikes and, as a result, cause damages to the company's assets. In a statement following a visit to Korea on 29 January 2016, Maina Kiai, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, said: *"The right to strike is [...] constrained. Trade unions cannot strike over issues beyond immediate disputes emerging from the terms and conditions of employment. Workers cannot engage in solidarity strikes, and those engaged in what are regarded as "illegal strikes" by the government may be subject to criminal charges of obstruction of business or civil suits for damages"*^{xi}.

17. In the public sector, collective bargaining and the right to strike are in effect not observed as a result of the provision of "compulsory arbitration". In addition, essential public services are regulated by strong minimum service requirements which allow employers to use replacement workers during a strike. The scope of essential public services is excessively broad, covering the aviation, railroad and subway sectors and waste water, sewage, steam and hot water, petroleum and blood supply.

Civil liberties

18. The repression against Korean trade unionists is not only confined to labour rights. It is also extended to their civil liberties. The most recent crackdown on Korean trade unions in 2015 was essentially a matter of freedom of assembly. The arrest of the KCTU President and the wave of arrests and warrants against KCTU officers that followed the November demonstrations were justified on grounds of the violation of the Assembly and Demonstration Act article 6^{xii} and the Criminal Act article 185 on "General Obstruction of Traffic"^{xiii}.

19. According to the statement, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association issued on 29 January 2016: *"space for exercising the right to peaceful assembly has been shrinking over the past few years [in Korea] [...] Undue restrictions are seeping into every stage of the assembly process [ranging] from formal legal constraints to more practical obstacles. [...] a fundamental problem is the fact that assemblies are deemed to be "unlawful" unless organizers notify the authorities in advance [...] However [international standards and the Constitution of Korea] make clear that organizers' failure to notify does not make an assembly illegal. Nor should the notification process be used to pre-emptively ban assemblies. [...] in many cases, notifications result in*

authorities banning assemblies to prevent disruption to traffic or to enforce blanket bans at certain locations or times; these justifications are not appropriate under international human rights law”. [...] Organizers of peaceful assemblies should not be held liable, under any circumstances, for the criminal actions of others, as it appears to have happened in the cases of Messrs. Han Sang-gyun and Park Lae-goon^{xv}.

20. According to a submission on Freedom of Assembly to the UN Special Rapporteur prepared by a coalition of lawyers’ associations, NGOs and the KCTU^{xv}:

- The Assembly and Demonstration Act is a law intended “not to protect, but to restrict” the freedom of assembly. In particular, the prior reporting system, or notification of assemblies, to police authorities (art. 6) and current police practices, including the abusive use of dispersal orders is “in effect a system of authorization” – despite the fact that the Constitution (Article 21(2)), which prohibits the system of authorization, and despite the rulings by the Supreme Court that explicitly restrict dispersal of assemblies only in very limited circumstances;
- Article 185 (General Obstruction of Traffic) of the Criminal Act is drafted in such general and abstract terms that “there is much room for interpreting all acts taking place [in an assembly] to be included in the definition, which violates the principle of legal certainty”. Furthermore, the article and its interpretation does not discriminate between minor and major violations, which “goes against the principle of proportionality”;
- Since 2008, Art. 185 on General Obstruction of Traffic has been the main legal instrument used by authorities to deter and ban freedom of assembly. This is due to the fact that the Criminal Procedure Act imposes higher fines, and hence facilitates holding protesters into custody, compared to the Assembly and Demonstration Act.

21. The Observatory for the Protection of Human Rights Defenders, a joint initiative by the International Federation for Human Rights (FIDH) and the World Organisation Against Torture (OMCT), recently condemned: “*the ongoing repression, intimidation, and judicial harassment of labour leaders in South Korea, and in particular the arrest and arbitrary detention of Mr. Sang-gyun Han, which seem merely aimed at sanctioning the peaceful human rights activities of labour unions and workers’ rights organisations*”^{xvi}. The ILO Committee on Freedom of Association (CFA) has in the past stated that: “*With regard to searches of trade union premises [...] the right to adequate protection of trade union property is one of those civil liberties which are essential for the normal exercise of trade union rights.*”

22. Upholding labour rights takes place in an adverse, judicial environment. According to labour law experts, the rulings and the overall judicial doctrine of appeal courts and the Supreme Court since 2008 have been systematically regressive on labour issues. More broadly, the fairness and efficiency of the judiciary system seem to be of concern in Korea, or at least it is perceived as such by the Korean citizens. According to a Gallup World Poll used as a benchmark by the OECD for measuring “trust in government”, only 3 Koreans out of 10 reported confidence in the judicial system in 2014, compared to 5 out of 10 across the OECD on average. It is the second lowest level of confidence among OECD countries^{xvii}.

Labour reforms

23. The demonstrations in November were held in protest of a new labour law reform. The reform reduces employment protection legislation in Korea which – as far as collective dismissals are concerned – is already among the lowest within the OECD. At face value, the Korean labour market appears to be performing well in the context of the post-2008 global crisis. The employment rate returned to its pre-crisis level of 64.0% in 2011, and has since risen further to 66.1% in May 2015, the highest level since 1982. The official unemployment

rate is now close to pre-crisis levels at 3.7% in May 2015. The reality of the labour market, however, is that of disproportionately high levels of job insecurity and precarity. Korea's labour market has one of the highest rates of job turnover in the OECD: over one quarter of workers have been in their jobs for less than six months, almost twice the rate of the OECD average. In 2015, according to FKTU estimates, non-regular workers reached the record-high number of 8.68m, equivalent to 45% of the total working population^{xviii}. According to government and OECD figures, non-regular workers account for 6 million people, or one-third of the total workforce. Non-regular workers are low-paid and have limited or no access to social protection or pension schemes. According to the FKTU, the average wage of non-regular workers (KWR 1.48m) constitutes half of the average wage level of regular workers. The basic social security coverage rate of non-regular workers is estimated at 32-38%, despite being mandatory; nor do they have access to unemployment insurance. The incidence of non-regular employment is particularly high among youth and older workers^{xix}.

24. The labour reform was initially developed out of a tripartite agreement signed by the FKTU in September 2015 to tackle the problem of non-regular workers by increasing their access to employment security and to create over 1 million jobs for youth. The bill presented to the Parliament, however, departed from the tripartite agreement and its principles. The proposal aimed at:

- Further flexibility on the use of fixed term contracts, including the doubling of the period from 2 to 4 years for non-regular workers aged over 35 before being able to claim a stable employment contract while, at the same time, offering no new measure to increase pension coverage and to facilitate the right to legal recourse in the case of discrimination and unfair dismissal;
- Greater employer access to temporary agencies and to the hiring of dispatched workers aged 50 years or more (3.28m, 17.4% of workforce). Under the proposal, temporary workers could be employed in occupations and functions, in which currently non-standard work is prohibited, including “normal production processes” in the manufacturing sector

25. At the same time, the government introduced new administrative guidelines – which do not require parliamentary approval - . Under the new guidelines, companies can dismiss “underperforming workers” and arbitrarily change employment conditions without the consent of employees in contradiction with existing Korean labour law^{xx}.

26. The government's labour reform proposal and the new administrative guidelines were met by an immediate and blunt reaction from both FKTU and KCTU leaders. On 30 Nov FKTU President Kim Dong-man standing in front of the Korean parliament said: *“The government and the ruling party are crushing down the spirit of the tripartite agreement pursuing regressive labor reforms such as extending the term of use of fixed-term workers from two to four years instead of reduction and expanding the scope of occupation permitted for dispatch work [...]. The government tries to enforce the guidelines on general layoff and disadvantageous change in employment regulations without sufficient consultation between the labor and management”*. In his statement before his arrest on 10 December, KCTU President Han Sang-gyun said: *“the legislation on precarious workers proposed by the administration and New Frontier Party will wipe out the change precarious workers now have to become permanently employed after two years and with it the only simple dream these workers have. The administration and ruling party are also seeking to wipe out good jobs through unregulated expansion of temporary agency employment, the legalisation of a trade in people. They are also proposing legislation that would make it a fact of life that one has to work through a temp agency after reaching the age of 50.”*

27. The FKTU left the tripartite framework as a result of the unilateral move by the government to change the premise of the reform proposal in its entirety. “*There is no point in sitting down to talk with a government that makes a practice of breaking its promises and violating its agreements,*” said FKTU President Kim Dong-man on 20 January 2016, adding that “*the FKTU will be switching from a framework of negotiations into full conflict mode to combat the government and the ruling party’s policies of so-called labor reform, which will only hurt the labor market*”^{xxi}. The KCTU and the FKTU filed a joint petition with the National Human Rights Commission asking to review whether the proposal of administrative guidelines is in violation of the Labor Standards Act and the Constitution.

28. In response to the withdrawal of the FKTU from the tripartite negotiations and the prospect of a joint FKTU-KCTU mobilisation, President Park Geun-hye vowed not to tolerate “*illegal protests*” and “*illegal demonstrations*”, which would lead to “*social chaos*”. For President Park, it was also a matter of financial stability: “*to avoid a possible financial crisis*”, she argued “*it is critical to stay away from such collectivism*”^{xxii}.

The Chaebols

29. In their respective statements, both KCTU and FKTU leaders point to the role and responsibilities of the Chaebols, the Korean global conglomerates that dominate the economy. In his statement of December 10, KCTU President Han, Sang-gyun said: “*At the formal request of the chaebols, the administration and New Frontier Party are seeking the expansion of low-wage and precarious work, removal of restrictions on firing and the weakening of trade unions. [...] Even if this gift given to the chaebols is wrapped in the wrapping paper of ‘reform’, the government’s policies will never be real reform in the positive sense of the word.*” In a press conference on 20 November to denounce the labour law reform, the FKTU points to the responsibility of “*large enterprises*” in delivering quality jobs following the tripartite agreement of September 2015: “*We will carefully check upon and demand responsibility for the government’s argument that large enterprises will create 300 thousand jobs as a result of the tripartite agreement and 180 thousand youth jobs will be created in the wake of introduction of a wage peak system.*”

30. According to both the FKTU and the KCTU, the political economy of reform in Korea to a large extent has turned into an exclusive dialogue between the ruling party and the interests of the Chaebols. The on-going agenda on “*regulatory reform*” is a manifestation of that. Regulatory reform – the process under which regulations are designed to be fit for purpose while minimising the burden on businesses – is overseen by the Prime Minister Office. It consists of:

- an advisory body, the Regulatory Reform Committee^{xxiii}, co-chaired by a representative of the largest corporate law firm in Korea and sponsored by employer groups and a number of OECD-based chambers of commerce; and
- an executive body located within the Prime minister’s office, the Office of Government Policy Coordination (OPC)^{xxiv}.

31. In December 2014, a year before the above-mentioned tripartite agreement and the labour reform proposals that followed, the Prime Minister’s OPC held a meeting with business organisations with the objective of “*getting rid of inconvenient and inefficient regulations that are not compatible with market principles and hold back economic innovation, and to do so within a short period of time*”^{xxv}. At the meeting, business groups submitted 153 proposals to reduce regulatory burden. On labour issues specifically, and as reported by the FKTU, the proposals for “*regulatory guillotine*” aimed at facilitating business

access to fixed-term workers, to dispatched worker and at eliminating regulatory barriers to layoff of low-performing workers, as well as changes to employment conditions, etc. This more or less mirrors the reform proposals presented by the government at the parliament less than twelve months later. In essence, the tripartite agreement was by-passed by this parallel “regulatory reform”. According to the FKTU, this is a clear manifestation of “*a new alliance between business and politics*” and between “*the government, the ruling party and conglomerates*”, which is “*forcing pain on workers and the general public and giving conglomerates privileges*”^{xxvi}.

32. These conglomerates, the Chaebols, have household names known across the globe. The largest include Samsung, Hyundai Motors, LG, and SK. Overall 38 company groups with family ownership are considered to be Chaebols. Together they control 1,364 companies, of which 213 are listed. Their influence and power over the Korean economy is not fading. In fact, it has increased post-crisis. According to the OECD, the top 10 Chaebols have seen the market capitalization of their 90 listed entities grow from 47.2% of the total Korean market (the KOSPI) in 2008 to 52.3% in 2012. The conglomerates’ role in the economy extends well beyond listed affiliates to a much larger number of non-listed companies^{xxvii}.

33. Chaebols are distinct from the typical OECD model of one single company listed on the stock market with a dispersed ownership structure. Chaebols are almost at the opposite end of the spectrum in terms of governance. They are characterized by family-based controlling owners (by opposition to dispersed ownership) who make use of pyramid structures (cascade of holding companies with, say, 51% control at every level) and circular and/or interlocking ownership structures within affiliated companies to maintain control despite relatively low direct cash flow rights.

34. The governance and opacity of the Chaebols are a recurrent concern. Many of the conglomerates played a considerable role in Korea’s economic collapse during the Asian financial crisis (due to over-leveraging and weak accountability and reporting mechanisms). At the time, the IMF imposed a number of conditions towards reforming the Chaebols in exchange for emergency assistance to the Korean government: improved board practices, disclosure, creditor rights, and strengthened minority shareholder rights.

35. Twenty years later, the situation has not improved substantially. According to the OECD, the transparency of “related party transactions” remains of concern (i.e. transactions that may serve the interest of controlling shareholders, but not necessary the company’s own interest). Furthermore, for the OECD “*it appears clear that minority shareholders continue to face barriers that constrain their ability to influence board nominations and elections. [...] Minority shareholder participation serves as monitors against controlling shareholder abuse, one of the main corporate governance concerns considering the Korean market structure*”^{xxviii}.

36. The concentration of corporate power in Korea is also manifested by the size of state-owned enterprises (SOEs), companies, in which the state is a minority or a controlling shareholder. Compared to other OECD countries, the Korean State has one of the largest and most concentrated SOEs portfolios. OECD data shows that there are 57 Korean SOEs employing 129,235 workers with a total market capitalisation estimated at USD201bn (twice the market cap of French SOEs). Korean SOEs are to be found in the energy sector (incl. Korea Electric Power Corporation and Korea Gas Corporation), and in construction (KEPCO Engineering & Construction), finance (Industrial Bank of Korea), utilities (Korea District Heating Corporation), leisure and aerospace (Korea Aerospace Industries)^{xxix}.

Worker participation and responsible business conduct

37. Regarding the social responsibility of Chaebols and of the Korean private sector at large, two aspects are worth highlighting: (i) the prospect of reduced Korean workers' rights to information, consultation and negotiation and (ii) the Responsible Business Conduct of the Chaebols in the supply chain.

38. In Korea, regular workers benefit from certain rights to information, consultation and representation within the company and in the management of the company – akin to “worker participation” rights in Europe. The Labor Standards Act stipulates that there should be “deliberations” with trade unions in case of downsizing. It is, however, in the terms of collective bargaining agreements that information and consultation rights are set most of the time, including *inter alia*: formal consent by trade unions for corporate decisions on collective restructuring and consultation on outsourcing policy. Nearly half of all workplaces include such terms in their collective agreements. These rights are now under threat. According to press reports, the Korean Government plans to introduce new administrative guidelines in the first half of 2016 to ban these “*illegal and irrational collective bargaining practices*”, as well as to ban trade union representatives from company-level worker committees^{xxx}.

39. Regarding the supply chain, Chaebols' exposure to social and human rights risks is substantial. If any, Korea is a case in point of a high level of integration into “Global Value Chains” (GVCs). According to the OECD, “*Korea has the highest share of foreign content of exports in 2011 in all G20 countries (41.6%). This share has nearly doubled over the last two decades, and the integration of Korea into ‘Factory Asia’ is particularly strong in the ICT & electronics and Motor Vehicle sectors*”^{xxxix}. The central question is whether Chaebols have the appropriate governance and management systems to identify and mitigate these supply chain related risks. A recent report by the International Trade Union Confederation (ITUC) exposes the Korean group Samsung for its lack of human rights due diligence in the supply chain^{xxxii}.

40. Importantly, in an OECD context, the implementation of the Guidelines for Multinational Enterprises is far from being a reality in the case of Korea. The Korean authorities have a responsibility for this. The Korean National Contact Point (NCP) is poorly performing, which TUAC has criticised in the past for its high level of partiality in dealing with trade union and NGO cases. According to the TUAC database, of 15 closed trade union cases handled by the Korean NCP since 2000, only 3 cases are considered to have led to a successful outcome^{xxxiii}. TUAC recognises that the Korean NCP has recently relocated and restructured and is currently awaiting the outcome of 2 trade union cases submitted to this new Korean NCP.

The OECD responsibility

41. The OECD mission and hence responsibility is to promote good governance and inclusive growth principles. After the fall of the Berlin Wall in 1990, the OECD Ministerial Council defined “*the basic values which are common to the OECD countries: pluralistic democracy, respect for human rights, and a competitive market economy*”. These basic principles characterise the fundamental values of OECD membership. They have been restated at several Council meetings. Civil liberties such as freedom of assembly and freedom of expression, fundamental workers' rights and more broadly the effective observance of the Rule of Law are essential elements of a pluralistic democracy and of respect for human rights. All member countries should adhere to and observe the fundamental values of the Organisation, Korea included.

42. Since the end of the Special monitoring process in 2007, however, the OECD has been silent on the violation of labour rights in Korea. Korea made a firm commitment to respect labour rights before the ELSAC and before the Council when it joined the OECD in 1996. As shown in annex, and according to assessment by the TUAC, 20 years after its accession, Korea has failed to meet these commitments by and large.

43. Regarding economic policy recommendations, which at the OECD are being handled by the Economic Development and Review Committee (EDRC), the past three OECD Economic Surveys of Korea (respectively in 2010, 2012 & 2014^{xxxiv}) show that the central concern has been to reduce labour market dualism between regular and non-regular workers. The preferred route to achieve labour market convergence has been by weakening employment protection of regular workers. As for non-regular workers, at best the OECD has recommended better access to “training opportunities” and to social protection:.

- In the 2010 edition, the OECD argues that “*addressing the problem of labour market dualism requires a comprehensive approach that includes lowering employment protection for regular workers, expanding the coverage of non-regular workers by the social insurance system and improving training, including lifelong learning opportunities, to enhance their employment prospects*”;
- In the 2012 edition, the OECD recommends “*relaxing employment protection for regular workers, expanding the coverage of non-regular workers by the social safety net and increasing training opportunities for non-regular workers*”.
- In the 2014 edition, the OECD reiterates that “*reducing employment protection for regular workers to reduce labour market duality*”. Regarding non-regular workers, the OECD recommends to “*reinforce labour inspection capacities and better enforcement of the social security system*”.

44. With the reference to labour inspection in the latest edition, the OECD acknowledges that the enforcement of the basic rights of non-regular workers requires more fundamental revision, beyond training and social protection. However, this recognition comes late and appears inadequate considering the prevalence of job precarity and labour right violations in Korea.

45. Other OECD bodies also impact on the relationship of the OECD with Korea and should also be taken into consideration. This is the case for the Regulatory Policy Committee – previously known as the Working Party on Regulatory Management and Reform. In a report by the Korean Ministry of Strategy and Finance we are told that Korea has been “*closely working with the OECD on regulatory reform by undertaking a country review of regulatory reforms*” and has “*faithfully followed the process and benchmarked the best practices of OECD member countries, in terms of regulatory reform*”^{xxxv}. The OECD has conducted two in-depth peer review of the Korean regulatory reform system, respectively in 2000 and in 2006^{xxxvi}. Each report outlined a number of specific recommendations which have been taken seriously by the Korean authorities. As outlined above, there is a legitimate concern that the Korean regulatory reform system – led by the Prime Minister’s Office and the Regulatory Reform Committee – overshadows the traditional tripartite social dialogue mechanism in Korea.

46. Other relevant OECD bodies include the Public Governance Committee (rule of law, lobbying) and the Education Committee (freedom of association in the education sector). With regard to the specific role of the Chaebols, relevant OECD bodies that would merit further attention include the WP on Responsible Business Conduct regarding the functioning of the Korean NCP and the observance of the MNE Guidelines, and the WP on State-Owned

Assets and Privatisation Practices and the Corporate Governance Committee on governance and transparency issues.

Achieving Progress on Labour Rights – next steps

47. The situation of labour rights and civil liberties of trade union representatives in Korea clearly calls for a concerted campaign by the global labour movement and civil society organisations. The most immediate step that the Korean authorities should take is to release and drop all charges against Han Sang-guyen and of other KCTU officers. Korea should ratify ILO conventions 87 and 98 and drop its reservation to art. 22 of the International Covenant on Civil and Political Rights and, from there, re-engage dialogue with the Korean labour movement and initiate a reform process to effectively align its labour law with international standards.

48. Among intergovernmental forums other than the OECD, the Korean case might be raised by the ILO Committee on Freedom of Association (CFA). Korea has in fact been subject to the longest running case at the CFA: n°1865 submitted on 14 December 1995^{xxxvii}. At European level, the ETUC is pressing for the EU to engage in consultations with the Korean authorities over the observance and implementation of the Trade and Sustainable Development chapter (n°13) of the EU-Korea Free Trade Agreement (FTA)^{xxxviii}, whereby Korea has committed to “*respect, promote and realise*” the ILO core labour standards. The issues have been raised with the EU Domestic Advisory Group – including trade union, business and civil society representatives – whose mandate is to advise on the implementation of the chapter^{xxxix}.

49. The TUAC has supported the Korean labour movement in the run up of and ever since the accession to the OECD in 1996 to both ensure the respect for labour rights and to support the development of an industrial relations system that is both socially just and can handle disputes in an effective way. It will continue to assist its Korean affiliates, the FKTU and the KCTU, and work toward building a sustainable solution for upholding basic labour rights in Korea. In a letter sent to the Korean Ambassador to the OECD on 17 December 2015, the General Secretary of the TUAC expressed his deep concern “*that the progress Korea towards respect of fundamental rights at work has halted and now appears to be moving backwards. Korea can no longer be said to be fulfilling its original commitment to the OECD in 1996. [...] We urge your government to respect international standards and begin process to ratify ILO conventions on fundamental rights at work and to withdraw the charges against President Han and other KCTU activists and return to a process of social dialogue.*”

50. As Korea is about to celebrate the 20th anniversary of its membership to the OECD, the TUAC will in the near future make concrete proposals on how the OECD could help Korea make decisive and long lasting progress in effectively observing international labour standards, which are essential components of any “inclusive growth” framework. The TUAC will work to that end in close consultation with its Korean affiliates and in partnership with the ITUC and the Global Union Federations.

51. Among OECD bodies, the TUAC will primarily raise the issue with ELSAC. The most recent OECD Ministerial on Employment explicitly mandates the ELSAC to look into industrial relation matters “*to help us modernise [...] systems of labour relations*”^{xl}. Other OECD bodies that might be solicited, and as suggested above, would include the Education Policy Committee (teachers’ right to organise), the Regulatory Policy Committee (regulatory reform), the Public Governance Committee (judiciary and rule of law), the Working Party on Responsible Business Conduct (performance of the Korean NCP), the WP on SOEs and

privatisation practices, and the Corporate Governance Committee (accountability of the Chaebols).

Annex: Tracking of Korea's commitments to the OECD

Items considered in conflict with internationally recognised labour standards and outstanding labour law reform issues

2002 OECD monitoring round	2005 OECD follow-up report	2007 report by the Korean Authorities	TUAC preliminary assessment 2016
Continuing prohibition of trade union pluralism at enterprise level	Continuing prohibition of trade union pluralism at enterprise level (change was scheduled for January 2007)	Continuing prohibition of trade union pluralism at enterprise level (ban has been extended; change scheduled for January 2010)	No improvement since 2007
Prohibition of employers payment for full-time trade union officials	Prohibition of employers payment for full-time trade union officials (implementation was scheduled for January 2007)	Prohibition of employers payment for full-time trade union officials (implementation rescheduled for January 2010)	No improvement since 2007
Denial of civil servants' rights to organise	Act on Establishment, Operation, etc. of Public Officials' Trade Unions entered in to force in January 2006; However not fully in line with ILO standards	Restrictions on the right to organise, to negotiate and to strike maintained; transition problems regarding the KGEU are continuing (forceful closure of KGEU offices)	Regression to the situation in 2002 (Denial of civil servants' rights to organize)
Broad definition of "essential public services", where strike action is prohibited or severely restricted	No major developments since 2002 review	The scope of "essential public services" has been extended; abolition of compulsory arbitration, however introduction of minimum service requirements and permission of replacement of workers during strikes	No improvement since 2007
Prohibition for dismissed or unemployed workers to become or remain trade union members	Little public debate, no action taken	No major reforms taken; however, due to court ruling unemployed workers can engage in non-enterprise level union	No improvement since 2007
Requirement for notification by third parties to industrial disputes	Little public debate, no action taken	Abolition of notification requirement, beginning on July 1st 2007	n.a
High numbers of arrests and imprisonment of Korean trade unionists	Continuing arrests and imprisonments of trade union members and leaders	High numbers of arrests and imprisonments of trade union members and leaders reported [Comment: Criminal code continues to limit trade union action by "obstruction of business" clause]	No improvement since 2007

ⁱ Han Sang-gyun is accused of violating the Assembly and Demonstration Act and the General Obstruction of Traffic (Article 185 of the Criminal Code) in relation to his participation in protests that took place in April and May 2015 to commemorate the first anniversary of the sinking of the Sewol Ferry. The arrest warrant issued in June 2015. A court then issued a detention warrant against him on 11 November, three days before the 14 November demonstrations. President Han took refuge in a Buddhist temple. He left the sanctuary on December 11 and was immediately arrested. President Han is currently detained in the Seoul detention centre. The first session of the trial is scheduled on 18 April 2016, the second on 9 May.

ⁱⁱ According to KCTU information, as of March 1st: 20 KCTU officials are currently detained or have been released on bail: Mr. Han, Sang-gyun KCTU/President (Second preparatory hearing : March 8); Mr. Park, Jun-seon KCTU/Director Organisation Department (on trial, 1st hearing: March 31); Mr. Nam, Jeong-soo, KCTU/ Executive Director Education & Publication Dept. (on trial); Ms. Bae, Tae-sun KCTU/Executive Director Organization Department (on trial); Mr. Jang, Hyung-chang KFCITU/Executive Director Organization Department (Released/suspended sentence - sentenced 1 year and 6 months with 3 years' probation); Mr. Kim, Ki-hong KFCITU/ former secretary of KPCWU Ulsan Branch (on trial); Mr. Jeong, Young-hyun KFCITU/general secretary of KPCWU Ulsan Branch (on trial); Mr. Choi, Young-chul KFCITU/ Member of KPCWU Ulsan Branch (on trial); Mr. Park, Myung-hun KFCITU/ Member of KPCWU Jeondonggyeongseo Branch (on trial); Mr. Kang, Beom-jin KFCITU/ Member of KPCWU Chungnam Branch (on trial); Mr. Cho, Sung-deok KPTU/ Vice President (on trial): Mr. Lee, Jae-shik KPTU/ TruckSol, Chair or Gumi Local (on trial); Mr. Byeon, Jae-seung KPTU/ Taxi Branch (Released on bail); Mr. Yang, Jeong-uk KGEU/ Chair or emergency committee of Ulsan Nam-ku Branch (released on bail); Mr. Lee, Geum-ju KMWU Ssangyong Motor Branch (on trial); Mr. Lee, Nam-guk KMWU Ssangyong Motor Branch (released/suspended sentence); Mr. Kim, Kyung-do KMWU GM Korea Branch (on trial); Mr. Choi, Jae-geun KMWU GM Korea Branch (on trial); Mr. Yang, Ji-ho KCTU Jeju Regional Branch (released on bail); Mr. Lee, Hyun-dae KCTU Director/Organisation Department (on trial).

ⁱⁱⁱ According to KCTU information, as of 29 Feb. 2016: a total of 504 KCTU members have been summoned with regard to the Nov 14 demonstration, of which: 453 were investigated as suspects and booked on charge without detention for violation of criminal act (obstruction of general traffic) and Act on Assembly and Demonstration; 12 were investigated as testifiers; 12 were investigated but the police failed to find any concrete allegation; 15 are still on trial under detention; 3 has been released on bail; 2 has been released after the trial of the first instance with suspended sentence; 6 had detention warrant requested against themselves but the court dismissed; 1 (Ms. Lee Young-joo, General Secretary of the KCTU) has arrest warrant issued against her.

^{iv} "The Korean Education Ministry has also requested the city and provincial offices of education to evict the union chapters from their offices, to appropriate their subsidies, to suspend collective bargaining, to abolish collective agreements and to dismiss KTU board members from various committees". Source: Feb.19,2016 "Teachers' union facing more mass layoffs as Ministry orders its staff to return to schools" hani.co.kr & "Appeals court upholds the outlawing of KTU" Korea Joongang Daily 22 Jan 2016

^v "Major trade union announces turn to "full conflict mode" against government" 20 Jan 2016 & "Labor group withdraws from tripartite talks" Korea Times 19 Jan 2016

^{vi} C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C087

^{vii} C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98) http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C098

^{viii} In 2001, the Valeo company-level trade union joined the Korean Metal Workers' Union, itself affiliated to the KCTU. In 2010, a majority of individual members voted to withdraw from the KMWU and to re-establish as a company-level trade union. Despite legal recourse by the KCTU-affiliated members and despite the clear rules set by labour law, the Supreme Court confirmed the legality of the shift in status. Source: interview of Kim Sun-Su, Lawyer, Shimin Law Firm, Seoul, 9 March 2016. Media coverage: "Industrial unions likely to lose members", 2016-02-22 & "Industrial unionism KCTU needs to recalibrate strategy", 2016-02-23, Korea Times

^{ix} Criminal Act Article 314(Obstruction of Business) "(1) A person who obstructs the business of another by the method of Article 313 or by the threat of force, shall be punished by imprisonment for not more than five years or by a fine not exceeding fifteen million won."

^x Situation of Freedom of Peaceful Assembly and Association in the Republic of Korea, 20 January 2016 (page 35). http://www.peoplepower21.org/index.php?mid=English&document_srl=1388277&listStyle=list

^{xi} <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16998&LangID=E>

^{xii} Assembly and Demonstration Act Article 6 (Report, etc. on Outdoor Assembly or Demonstration): "(1) Any person who desires to hold an outdoor assembly or to stage a demonstration shall, from 720 to 48 hours before such assembly or demonstration is held, submit a report on the details in all the following subparagraphs to the chief of the competent police station: Provided, That if two or more police stations have jurisdiction over such assembly or demonstration, such report shall be submitted to the commissioner of the competent regional police agency, and if two or more regional police agencies have jurisdiction over it, such report shall be submitted to the commissioner of the competent regional police agency exercising jurisdiction over the place where it takes place: 1. Objective; 2. Date and time (including hours involved); 3. Place; 4. The following matters concerning

the organizer (in the case of an organization, including its representative), the person in charge of liaison, and moderators: (a) Address; (b) Name; (c) Occupation; and (d) Contact information; 5. Organizations expected to participate and the estimated number of participants; and 6. Methods of demonstration (including a route map). (2) Upon receipt of the report referred to in paragraph (1), the chief of the competent police station or the commissioner of the competent regional police agency (hereinafter referred to as the "head of the competent police authority") shall forthwith issue a certificate of receipt specifying the date and time of receipt to the person submitting the report”.

^{xiii} “A person who damages, destroys or blocks a road, water-way, or bridge, or obstructs traffic by other means, shall be punished by imprisonment for not more than ten years or by a fine not exceeding fifteen million won.”

^{xiv} The UN Rapporteur also expresses concern about the use of water canons and bus barricades in the management of protests (“*aggression only begets aggression*”), and recalls the basics of the right to peaceful assembly and the responsibility of the police where violence occurs: “*because the right to peaceful assembly is an individual right, the fact that a few people are violent in an assembly does not make the assembly violent under international law. Where a few people are violent, the police have the responsibility to find ways to apprehend and hold them accountable, using the least disruptive means possible. Moreover, while violent protesters lose their protection under the right to peaceful assembly, they retain all other rights, including the right to bodily integrity and not to be tortured or subjected to excessive force.*”

^{xv} Situation of Freedom of Peaceful Assembly and Association in the Republic of Korea, 20 January 2016. Submitted by: Catholic Human Rights Committee / Korea Center for United Nations Human Rights Policy / Korean Confederation of Trade Unions / Korean Lawyers for Public Interest and Human Rights / Korean Public Interest Lawyers` Group GONG-GAM / MINBYUN-Lawyers for a Democratic Society / People's Solidarity for Participatory Democracy / Rainbow Action against Sexual-Minority Discrimination / SARANGBANG group for human rights / South Korean NGOs Coalition for Law Enforcement Watch.

http://www.peoplepower21.org/index.php?mid=English&document_srl=1388277&listStyle=list

^{xvi} <https://www.fidh.org/en/issues/human-rights-defenders/south-korea-arbitrary-detention-of-mr-sang-gyun-han-president-of-the>

^{xvii} OECD Government at a Glance 2015 www.oecd.org/gov/govata glance.htm,

<http://www.oecd.org/gov/Korea.pdf> & http://www.oecd-ilibrary.org/governance/government-at-a-glance-2015_gov_glance-2015-en

^{xviii} “Korea, Labour Issues and Roles of International Society” by Chung Moon-ju, Executive Director, Policy Bureau, FKTU - International Symposium on Current Labour Issues in Korea and Role of the International Community, FKTU & Friedrich-Ebert-Stiftung Korea Office, Seoul 9 March 2016

^{xix} OECD Employment Outlook 2015 <http://www.oecd.org/els/oecd-employment-outlook-19991266.htm> , <http://www.oecd.org/korea/Employment-Outlook-Korea-EN.pdf> & <http://www.oecd.org/fr/coree/Employment-Outlook-Korea-KO.pdf>

^{xx} Under Article 94 of the Labor Standards Act, employers are required to seek approval from workers when changing employment rules are unfavourable to workers. “Conflict escalates over guidelines on easy layoffs” Korea Times 25 Jan 2016 & “Unions say labor guidelines violate law and constitution”, Korea Times, 2 Feb 2016

^{xxi} “Major trade union announces turn to “full conflict mode” against government” 20 Jan 2016 & “Labor group withdraws from tripartite talks” Korea Times 19 Jan 2016

^{xxii} “Park issues warning against illegal protests” Korea Times 25 Jan 2016

^{xxiii} <http://e.better.go.kr/fzeng2/page/rrc/rrc04.jsp>

^{xxiv} <http://eng.pmo.go.kr/en/office/office04.jsp>

^{xxv} “Gov’t says ‘guillotine’ will cut lots of red tape”, Dec 29, 2014

<http://koreajoongangdaily.joins.com/news/article/article.aspx?aid=2999002>

^{xxvi} “Korea, Labour Issues and Roles of International Society” by Chung Moon-ju, Executive Director, Policy Bureau, FKTU - International Symposium on Current Labour Issues in Korea and Role of the International Community, FKTU & Friedrich-Ebert-Stiftung Korea Office, Seoul 9 March 2016

^{xxvii} OECD (2012), Related Party Transactions and Minority Shareholder Rights,

<http://dx.doi.org/10.1787/9789264168008-en>

^{xxviii} OECD (2012), Related Party Transactions and Minority Shareholder Rights

<http://dx.doi.org/10.1787/9789264168008-en>

^{xxix} Energy : Korea Electric Power Corporation (where state-ownership is at 54.69%), Korea Gas Corporation (60.79%) & KEPCO Plant Service and Engineering Company (77.68%); construction sector: KEPCO Engineering & Construction Company Ltd. (76.92%); finance: Industrial Bank of Korea (68.6%); utilities: Korea District Heating Corporation (75%); leisure: Grand Korea Leisure Company, Ltd. (51%) & Lotte Tour Development Co. Ltd. (16.86%); and aerospace: Korea Aerospace Industries, Ltd. (26.41%) , Undetermined: Kangwon Land, Inc. (51.01%). Source: OECD (2014), The Size and Sectoral Distribution of SOEs in OECD and Partner Countries, <http://dx.doi.org/10.1787/9789264215610-en>

^{xxx} “New government guidelines would stifle unions’ voices in corporate decisions” hani.co.kr 28 Jan 2016

^{xxxi} OECD-WTO Trade in Value Added (TiVA) database (2015) & “KOREA – Policy priorities for a dynamic, inclusive and creative economy”, OECD, October 2015

^{xxxii} Extract from ITUC Frontlines Report 2016 Scandal – Inside the global supply chains of 50 top companies: “Samsung Electronics is the world’s second largest tech company by revenue and the world’s largest smartphone maker. The corporation employs more than 285,000 in making smartphones, home appliances and electronic components. Operations are spread across 220 global sites with almost two thirds of its labour in Asia. More than 90 per cent of its production is made in-house, unlike most competitors that outsource manufacturing; however, it’s estimated Samsung’s annual supplier spend of \$135 billion impacts at least 1.5 million workers through subcontractors. Samsung has attracted criticism for opposing the unionisation of its workers, and has an explicit no-union policy. In 2011, two Samsung Electronics workers committed suicide by jumping off company dormitories. In 2014, the company agreed to compensate former semiconductor workers who suffered cancers linked to chemical exposure, but appears not to have followed through on compensation in all cases. Samsung also relies on suppliers in Asian countries like China, South Korea and Indonesia. In South Korea, it was estimated to employ 8,000 workers through in-house sub-contractors to lower costs. That practice was found to be illegal at another Korean manufacturer, Hyundai. At Samsung’s Indonesian sites, there have been cases of worker deaths and allegations of union busting. At its suppliers’ sites in Indonesia, there has been union busting and cases of wages paid below the mandated minimum.” <http://www.ituc-csi.org/frontlines-report-2016-scandal>

^{xxxiii} Trade unions have submitted 18 cases to the Korean NCP, of which 2 are ongoing and 1 was withdrawn. <http://www.tuacoecdmneregulations.org/Cases.asp?organisationid=22739&NCP=Y>
^{xxxiv} <http://www.oecd.org/korea/economic-survey-korea.htm>

^{xxxv} The Regulatory Reform System and Policy Coordination in Korea: A Guillotine Rule of Regulatory Clearance for Economic Crisis Management”, report prepared by KDI School of Public Policy and Management, Ministry of Strategy and Finance (MOSF), Republic of Korea December 2014
<http://ksp.kdi.re.kr/publication/modul.jsp?idx=182>

^{xxxvi} OECD Reviews of Regulatory Reform KOREA PROGRESS IN IMPLEMENTING REGULATORY REFORM, 2007

^{xxxvii}

http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:50001:0::NO::P50001_COMPLAINT_FILE_ID:2896898

^{xxxviii} http://trade.ec.europa.eu/doclib/docs/2009/october/tradoc_145203.pdf &

http://www.fta.go.kr/webmodule/_PSD_FTA/eu/doc/eng/k_eu_13.pdf

^{xxxix} <http://www.eesc.europa.eu/?i=portal.en.external-relations-international-trade-monitoring-korea-dag>

^{xl} Ministerial Statement - Building More Resilient and Inclusive Labour Markets - OECD Labour and Employment Ministerial Meeting - Paris, 15 January 2016 [...] ANNEX 3: Further OECD Work on Employment and Labour Market Policies [...] “23. *We invite the OECD Employment, Labour and Social Affairs Committee, in collaboration with other relevant OECD Committees, to carry out further work in the following areas, subject to sufficient resources being available: [...] Analyse the changing landscape of labour relations and its impact on wage growth, working conditions and working-time arrangements, and the impact of and implications for employment and social policies. The system of industrial relations should evolve to be able to respond effectively to changing circumstances, resilience to shocks, and preparedness for a future in which the skills and flexibility of the workforce will be of even greater importance for our labour markets and economies. We look to the OECD to help us modernise our systems of labour relations.*”

<http://www.oecd.org/employment/ministerial/labour-ministerial-statement-2016.pdf>