

INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS (ICFTU)

INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN KOREA

REPORT FOR THE WTO GENERAL COUNCIL REVIEW OF THE TRADE POLICIES OF KOREA

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EXECUTIVE SUMMARY

Korea has ratified four out of the eight core ILO labour Conventions but has ratified neither the ILO core Convention on the Right to Organise and Collective Bargaining nor the Convention on Freedom of Association and Protection of the Right to Organise. Significant parts of Korean labour law continue to breach freedom of association principles, notably with regard to the absence of trade union rights for public servants, the widespread intervention by the state in internal trade union affairs, and the excessive limitation of normal strike activity through both the wide definition of essential public services and the use of Section 314 of the Penal Code on “obstruction of business”. These continued breaches of freedom of association are the main reason for the recurring arrests of trade unionists. Despite some progress, significant reforms in law and practice are needed to comply with the commitments Korea accepted when it joined the ILO and the OECD, in the WTO Ministerial Declarations at Singapore, Geneva and Doha over 1996-2001, and in the ILO Declaration on Fundamental Principles and Rights at Work.

It is also worrying that new legislation to establish Special Economic Zones (SEZs) includes exemptions on many labour standards for foreign companies that will lead to increased violation of basic workers’ rights.

Korea has ratified the core ILO Convention on Equal Remuneration as well as the Convention on Discrimination. Although progress has been made, differences between men and women in the labour market remain significant, and the wage gap is high compared to other OECD countries. There is also discrimination against disabled workers and migrant workers.

Korea has ratified the ILO core Convention on the Worst Forms of Child Labour and the Convention on Minimum Age. Child labour is not common in Korea, and education is free and compulsory until the age of fifteen.

Korea has not ratified the Conventions on Forced Labour. Forced labour is prohibited, but there are serious problems with trafficking of people from, through and into Korea, for the purpose of forced prostitution, domestic servitude, and forced work.

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Introduction

This report on the respect of internationally recognised core labour standards in Korea is one of the series the ICFTU is producing in accordance with the Ministerial Declaration adopted at the first Ministerial Conference of the World Trade Organisation (WTO) (Singapore, 9-13 December 1996) in which Ministers stated: "We renew our commitment to the observance of internationally recognised core labour standards." The fourth Ministerial Conference (Doha, 9-14 November 2001) reaffirmed this commitment. These standards were further upheld in the International Labour Organisation (ILO) Declaration on Fundamental Principles and Rights at Work adopted by the 174 member countries of the ILO at the International Labour Conference in June 1998.

The ICFTU affiliates in Korea are the Federation of Korean Trade Unions (FKTU), and the Korean Confederation of Trade Unions (KCTU). Around 11.6% of workers are unionised.

The Korean economy is a market based economy and has an annual growth rate of about 6%. Since 1996 Korea has been a member of the OECD. Main economic activities are manufacturing and services. Agriculture accounts for 4% of GDP (2002), industry accounts for 40.9% of GDP, of which manufacturing is 29.2%, and services account for 55.1% of GDP. In 2001, 69% of the labour force was employed in services, 21.5% in industry, and 9.5% in agriculture.

Total exports accounted for US\$ 162,471 million in 2002. Main exports are manufactures, electronic products, machinery, motor vehicles, steel, ships, textiles, clothing, footwear, fuels, ores and metals, fish and agricultural raw materials. Total imports accounted for US\$ 152,126 million of which the most important were manufactures, machinery, electronics, electronic equipment, transport equipment, textiles, organic chemicals, food, grains, oil and steel.

Korea's major trading partners are the US, China, Japan, Hong Kong and Saudi Arabia. Exports to China are currently rising at a 50% annual rate. The agricultural sector is highly protected. In 2003 farmers received support amounting to 3.5% of GDP.

Korea has signed a bilateral trade agreement with Chile, which was ratified in February, and is currently negotiating a free trade agreement with Japan, and another with Singapore. The negotiations with Japan are expected to be finalised in 2005. Korea is a member of APEC (Asia-Pacific Economic Cooperation). Korea is also a member of the Bangkok Agreement, which is a preferential tariff arrangement with India, Bangladesh, Laos and Sri Lanka. China is in the process of becoming a member.

I. Freedom of Association and the Right to Collective Bargaining

Korea has ratified neither Convention No. 87 on Freedom of Association and Protection of the Right to Organise, nor Convention No. 98 on the Right to Organise and Collective Bargaining.

The Constitution allows workers to form and join unions, except for broad categories of civil servants, which do not have the right to organise and collective bargaining. However, a new Bill on the recognition of civil servants' unions was submitted to the National Assembly in 2003, but has not been passed yet. This Bill will allow civil servants the right to organise as well as a limited right to collective bargaining. However, they will not have the right to take collective action, but will be able to form alliances with other labour groups.

The ban on union pluralism at the company level has been extended until the end of 2006. In some cases this has led in practice to the creation of management controlled unions at the plant level, the so-called "paper" unions preventing the organisation of genuine trade unions.

Both the Constitution and the Trade Union Law provide for the right to collective bargaining. The Trade Union Law also provides for reinstatement in the case of unfair dismissal. Third parties involved in collective bargaining must be registered at the Ministry of Labour, which is complicated under current requirements.

In practice the right to strike is severely restricted. Over recent years striking workers and union leaders have often been prosecuted and sentenced under Article 314 of the Penal Code, which prohibits "obstruction to business". This article constitutes a far-reaching and extremely repressive violation of basic workers' rights.

Retribution against workers who have conducted a legal strike is prohibited, and workers have the right to file complaints about unfair labor practices against employers. People working for the central and local government do not have the right to strike, nor have workers involved in the production of military goods.

In addition, there is a long list of restrictions on the right to strike in essential services. The TULRAA (Trade Union and Labour Relations Adjustment Act) provides for mandatory arbitration for disputes in "essential public services" if the parties cannot come to an agreement on their own. The Labour Relations Commission (LRC) conducts mandatory mediation or "adjustment," lasting 15 days for public service enterprises. Recommendations arising from mediation, however, are not binding on any party. In industrial disputes in "non-essential" public services, the conclusion of mediation opens up the possibility of taking industrial action, including a strike or lockout. For "essential public services," however, the mediation committee can recommend that the Chairperson of the LRC refer the dispute to arbitration. Once a dispute is referred to arbitration, industrial action is prohibited. The arbitration award produced by an arbitration committee ends the dispute, and the award has the same effect as a collective agreement. If then industrial action is taken, it is by definition illegal.

Strikes are also frequently illegal if they are not specifically about labour conditions, such as wages, welfare and working hours. And teachers, for example, do not have the right to strike under the pretext of protecting students' right to learn. In practice, while not mandatory,

most disputes in essential public services are referred to mediation, in order to delay or stall negotiations.

The complicated procedures for organising strikes make many of them illegal, even outside essential services. In 2002 for example, 21% of the labour disputes were illegal, particularly the larger strikes. This percentage rose to 28% in 2003. Over 1998-2003 some 800 unionists have been imprisoned, often with the principal charge of “obstruction of business” or when trying to organise trade unions for public servants, which are illegal for most categories of workers, as noted above.

As the authorities and employers try to avoid the mounting international pressure against arrests of trade unionists, trade unions and individual members are increasingly being sued for “damages” incurred during disputes, including the provisional seizure of assets and the suspension of wages. In 2003 some 50 companies were suing for a total of 22 billion won for losses supposedly incurred as a result of trade union action. This has become the latest form of pressure on trade unions in Korea, and the lawsuits brought by employers have led to a spate of suicides.

In 2003 many strikes were suppressed, either by seizing wages, replacement of striking workers, which was the case at the Busan port in May, or by the intervention of police arresting striking workers (some 1,500 striking railway workers were arrested in June). A National Workers Rally, which took place in November 2003 was violently repressed by police, resulting in the arresting of 111 protesters. More than 100 protesters were injured.

A Tripartite Commission was established in 1998, composed of workers, employers and the government, and dealing with several issues such as unemployment policy, corporate restructuring, working conditions, labour market flexibility, and the promotion of core labour standards. In September 2003, the government announced a “Roadmap for Industrial Relations’ Reform”, a framework for the revision of labour laws prepared in response to pressure from foreign companies. New legislation limiting the rights of trade unions and facilitating dismissal is to be presented to parliament this year.

Korea has two export processing zones. The government has designated the enterprises in the zones as public interest enterprises. Although workers have the theoretical right to form and join unions, their rights have been restricted, but they have been gradually increased to the level of those of workers in the rest of the economy.

A new law on Special Economic Zones (SEZs) came into force in July 2003, despite strong opposition from trade unions. The law contains preferential provisions in relation to foreign companies investing in the SEZs by exempting them from many national regulations on the protection of the environment and labour standards, and it is feared that this will result in further violations of workers' rights. The trade unions have objected particularly to the fact that the new law makes it easy to hire "irregular" workers, who will have little or no protection. It will be essential to survey carefully the situation in the SEZs in order to assess fully the impact of the legislation.

Both the ILO and the OECD closely monitor. The Freedom of Association complaint brought against the government of Korea at the ILO is now the longest running FoA complaint. The OECD also monitors Korea's commitments regarding labour legislation reform. When joining the OECD in 1996, Korea promised to bring legislation and practice into conformity with international labour standards including Freedom of Association and Collective bargaining. Some progress has taken place since 1996 with the legalisation of teachers' unions and a second national trade union confederation – the KCTU - but on many fronts progress remains blocked.

Numerous complaints have been voiced with regard to South Korean companies investing abroad, due to the serious violations of labour standards of the workers they employ abroad, particularly in the garment industry. According to the ITGLWF working hours are long, including forced overtime work, wages low, and conditions are appalling. Organising is difficult and workers who want to form a union are harassed and intimidated. They may face violence, death threats, and threats of plant closures and blacklisting. A number of cases concerning these rights violations have been raised under the OECD Guidelines on Multinational Enterprises, but the Korean Government's National Contact Point responsible for overseeing the implementation of the Guidelines is doing little to resolve the situation.

Conclusions

Workers have the right to form and join unions, the right to collective bargaining and the right to strike. However government officials are excluded from these provisions, and the right to strike for workers in essential services is subject to restrictions by the imposition of mediation and arbitration procedures. Various legal provisions are used to undermine the right to strike, such as the "obstruction to business" provision. The new Special Economic Zones create a discriminatory situation in favour of foreign companies that will enable them to engage in increased violations of basic workers' rights in the SEZs.

II Discrimination and Equal Remuneration

Korea ratified Convention No. 100 on Equal Remuneration in 1997 and ratified Convention No. 111 on Discrimination (Employment and Occupation) in 1998.

Article 11 of the Constitution states that: "All citizens are equal before the law. No person shall be subjected to political, economic, social or cultural discrimination based on one's sex, religious affiliations or social status." Basic freedoms, such as freedom of association and choice of occupation are mentioned in articles 15 and 21. Article 32 provides that "Women's labour shall be protected through special measures and they shall not be subjected to unjust discrimination in terms of employment, wage and working condition", which supports the principle of equal pay and a right to equal opportunities in the terms and conditions of their work.

The Equal Employment Act of 1987 aims to eliminate gender discrimination of women in the workplace and promotes equality between women and men. It aims to improve the socio-economic status of working women as well as promote their welfare by protecting maternity and vocational status. It prohibits gender discrimination in recruitment, hiring, wages, vocational education and training, deployment, promotion, retirement and dismissal. Equal pay for work of equal value is provided for by article 6(2) of the Act. The Equal Employment Act of 1987 was amended in 2001. Recruitment advertisements need to be screened in order to prevent gender discriminatory recruitment. If the advertisement betrays any gender discriminatory practices, the Ministry of Labour must order the company concerned to rectify the situation.

The wage gap between male and female regular workers in Korea remains very high (36.5 per cent in 2002, as compared to 37.5 per cent in 2000). It continues to be higher in particular sectors, such as health and social welfare, finance and insurance and within some occupational groups. There is a tendency towards decreasing wage disparities with increasing levels of education. The smallest wage gap occurs at the top and bottom occupational categories, i.e., administrative and managerial workers (17 per cent) and manual workers (24.2 per cent). The largest gap exists for production and related workers (39.8 per cent).

A considerable wage gap exists between men and women of the same educational level and within the same occupational group. Wages in certain occupations predominantly carried out by women are set at a lower level without reasonable justification (2003 Report of the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR)). Wage differentials between men and women in selected occupations show that women are paid 81% of men's wages in the case of accountants, 84% for computer programmers, 66% for first level education teachers, 76% for labourers, 44% for professional nurses, and 74% for welders (ILO, Key Indicators of the Labour Market (KILM), 2001).

In its 2001 CEACR report, the Committee notes that the relevant laws do not prohibit discrimination on the basis of race, colour, national extraction or political opinion and that no provision prohibits indirect discrimination on the grounds listed in the Convention.

Women's likelihood of being employed is lower than that of men, and the labour force participation rate in 2002 was 53.4% for women and 77.7% for men.

Wage discrepancies may well be due to discrimination in education, shown by the fact that the adult illiteracy rate for women was 3% in 2003, compared to 0.7% for men.

In 1999 the Sexual Equality Employment Act went into effect to combat sexual harassment in the workplace. Under the Gender Discrimination Prevention and Relief Act some 48.7% of the cases dealt with in 2002 also concerned sexual harassment. 36.9 percent dealt with employment discrimination (pregnancy, promotion, or salary).

An equality case study booklet notes the increase of pressures for dismissal due to childbirth and points out other obstacles to stable maternity protection, showing that 70.8% of irregular women workers are in some form of unstable employment.

The law prohibits discrimination on grounds of disability in all areas of political, economic, social and cultural life. In companies with more than 300 employees a 2% job quota

for persons with disabilities is required, however, this percentage is only met in 10% of the cases.

Some 200,000 undocumented migrants are employed in Korea, mainly from China, the Philippines, Bangladesh, Nepal, Vietnam, Indonesia, Sri Lanka, and Pakistan, whereas some 100,000 others have a legal contract, most of them industrial trainees. Abuses and poor working conditions are frequent among these undocumented migrants.

Conclusions

Although legislation prohibits discrimination in employment and provides for equal remuneration, in practice differences between men and women remain significant, including a huge wage gap. Job quota targets for disabled workers for companies with more than 300 employees are generally not met, and there are numerous violations and discrimination of migrant workers.

III. Child Labour

Korea ratified Convention No. 138, the Minimum Age Convention, in 1999. It ratified Convention No. 182, the Worst Forms of Child Labour Convention in 2001.

Education is compulsory and free of charge until the age of fifteen, and both quality and enrolment are high. Employment under the age of 15 requires a special employment certificate from the Ministry of Labour. Employment under the age of 18 requires written approval of the parents. Overtime work is restricted to a certain number of hours, and night work requires a special permission from the Ministry of Labour. Child labour laws and regulations are clear and usually enforced when violations are found. However, it is reported that the Government employs too few inspectors to carry out regular inspections.

Conclusions

Child labour is not common in Korea. Education is free and compulsory until the age of fifteen and employment of children under the age of fifteen is subject to a special employment certificate.

IV. Forced Labour

Korea has ratified neither Convention No. 29, the Forced Labour Convention, nor Convention No. 105, the Abolition of Forced Labour.

Forced labour is prohibited by law, including forced labour by children. However, trafficking of people, mainly women and girls, is a serious problem. Korea is both a destination country, country of origin and transit country for trafficked people. Women from the Philippines and Russia are trafficked into Korea and forced to work as prostitutes or in domestic servitude. Many Chinese and other Asian women and girls are trafficked via Korea to third countries. The government has taken several measures, from protection of victims to enforcement of legislation, and has set up several investigation centers to reduce the number of trafficked people.

In addition, some undocumented foreign workers are forced to work, while wages being withheld and passports seized by their employers.

Conclusions

Forced labour is prohibited by law. Trafficking of people is a serious problem in Korea, which is source, transit and destination country for the purpose of prostitution and domestic servitude. Undocumented migrants are also forced to work.

Final Conclusions and Recommendations

1. Further significant reforms are needed to Korea's laws and practice in order to achieve respect for freedom of association. Korea must ratify ILO Conventions 87 and 98 and bring its law and practice into line with the recommendations of the ILO Committee on Freedom of Association concerning these internationally recognised standards on freedom of association and collective bargaining, thereby also fulfilling the commitment it made on joining the OECD in 1996.
2. The right to strike must be strengthened to bring it into line with international standards. In particular, section 314 of the Penal Code (the "obstruction to business" provision) needs to be redefined to allow normal industrial action. The government must bring to a permanent end its practice of the arrest of trade unionists for normal trade union activities. Trade unionists presently imprisoned should be released and outstanding charges dropped. The government has to take urgent measures to prevent employers from abusing their right to file compensation suits for strike action, and seize assets. It must reconsider and redraft new legislation that would limit trade union rights.
3. The government must bring its definition of "essential services", where the right to strike is denied, into line with the internationally recognised definition used by the ILO. The Bill on the recognition of the civil servants' unions, which was submitted to the National Assembly, should be passed in full conformity with freedom of association and the right to bargain collectively, including the right to strike, as soon as possible.
4. The ban on union pluralism at the company level must be ended immediately, rather than at the end of 2006 as presently envisaged.
5. Legislation concerning the Special Economic Zones must be revised to require all SEZ companies, both foreign and domestic, to comply fully with the labour law prevailing in the rest of the country.
6. In the area of discrimination against women, more active measures are needed to address the wage gaps and occupational constraints on employment for women, including increased adult education to enable women to increase their skills, positive action programmes including the screening of recruitment advertisements, and stable maternity protection, with stronger measures to prevent dismissal due to childbirth.
7. The Labour Ministry must continue actions to ensure positive results from its legislative measures aimed at increasing hiring of disabled workers, with enforcement of the requirement that a minimum of 2% of jobs be reserved for people with disabilities.

8. Special measures should be taken to protect migrant workers. The Constitution and Trade Union Law should be applied to all workers, so that migrant workers are able to seek legal redress in case of violations.
9. The Government should ratify ILO Convention No. 29 and No. 105 on Forced Labour.
10. The government should continue and reinforce its efforts to eliminate the trafficking of women for the purpose of forced prostitution.
11. In line with the commitments accepted by Korea at the Singapore, Geneva, and Doha WTO Ministerial Conference and its obligations as a member of the ILO, the Government of Korea should therefore provide regular reports to the WTO and the ILO on its legislative changes and implementation of all the core labour standards.
12. The WTO should draw to the attention of the authorities of Korea the commitments they undertook to observe core labour standards at the Singapore and Doha Ministerial Conferences. The WTO should request the ILO to intensify its work with the Government of Korea in these areas and provide a report to the WTO General Council on the occasion of the next trade policy review.

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