ITUC CSI IGB

ITUC International Trade Union Confederation
CSI Confédération syndicale internationale
CSI Confederación Sindical Internacional
IGB Internationaler Gewerkschaftsbund

KCTU Korean Confederation of Trade Unions

FKTU Federation of Korean Trade Unions

Ayuba Wabba
President
Président
Präsident
Presidente

Sharan Burrow
General Secretary
Secrétaire générale
Generalsekretärin
Secretaria General

Office of the High Commissioner for Human Rights
UPR Secretariat
Palais des Nations
CH-1211 Geneva 10, Switzerland

HTUR/LEX/MW/ZMG

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UPR Submission Republic of Korea

To the UPR Secretariat,

The International Trade Union Confederation (ITUC), representing 200 million workers in 163 countries, the Korean Confederation of Trade Unions (KCTU), representing 1.2 million workers and Federation of Korean Trade Unions (FKTU) representing 1.4 million workers in the Republic of Korea, would like to make a written contribution to the Universal Periodic Review of the Republic of Korea (4th cycle) during the 42nd session.

Yours sincerely,

Sharan Burrow
General Secretary
International Trade Union Confederation (ITUC)

Contact: Bd du Roi Albert II, 5, Bte 1
B-1210 Bruxelles, Belgique
Tel : +32 (0)2 224 02 11
Fax : +32 (0) 2 201 58 15
e-mail : info@ituc-csi.org
www.ituc-csi.org

Yang, Keyung-soo
President
Korean Confederation of Trade Unions (KCTU)

Kim, Dongmyeong
President
Federation of Korean Trade Unions (FKTU)

Submitting organizations

The International Trade Union Confederation (ITUC) represents 200 million workers in 163 countries and territories and has 332 national affiliates. The ITUC's primary mission is the promotion and defense of workers' rights and interests through international cooperation between trade unions, global campaigning and advocacy within the major global institutions. The ITUC is governed by four-yearly world congresses, General Council, and Executive Bureau. The ITUC has close relations with the Global Union Federations and the Trade Union Advisory Committee to the OECD (TUAC). It works closely with the International Labour Organization and other UN Specialized Agencies.

International Trade Union Confederation (ITUC)
Blvd du Roi Albert II, 5
1210 Brussels
Belgium
Tel: +32 (0)2 224 0211
Fax: +32 (0)2 201 5815
Email : legal@ituc-csi.org

The Korean Confederation of Trade Unions (KCTU, Minju Nochong) is a national trade union organization founded in 1995, representing 1.2 million members in all sectors including metal, public service, transport, construction, retails, etc, as of today. The KCTU is the representative organisation of workers and the trade union movement in Korea and a leading force for democratisation. The KCTU joined the International Trade Union Confederation (ITUC) in 1996 and its affiliated unions are active members of various Global Union Federations.

Korean Confederation of Trade Unions (KCTU)
14nd Fl. Kyunghyang-Shinmunsa Bldg. 22
Jeong-dong, Jung-gu,
Seoul 100-702
South Korea
Tel: +82-226709118
Fax: +82-226351134
Email: inter@kctu.org

The Federation of Korean Trade Unions (FKTU) is a national trade union organization established in 1946. The FKTU promotes workers' rights and interests through organising, campaigns, advocacies and international cooperation and campaigning. The union represents 1.4 million members as of December 2021. The FKTU joined as a founding member of the ICFTU in 1949 and has stayed as a member of the International Trade Union Confederation (ITUC) since 2006, after the ICFTU's merger. FKTU's affiliated unions are active members of various Global Union Federations

Federation of Korean Trade Unions (FKTU)
26, Gukjegeumyung-ro 6-gil,
Yeongdeungpo-gu, Seoul, Korea
Tel : 82-2-6277-0084
Fax : 82-2-6277-0068
E-mail fktu@fktu.or.kr

Summary

Since the 28th session of the third cycle of UPR on the Republic of Korea (ROK) in 2017, the government has ratified ILO Conventions No.87 and No.98 on freedom of association and collective bargaining. Yet, major recommendations in relation to the right to freedom of peaceful assembly and freedom of association resulting from the previous cycle and examinations under other UN supervisory mechanisms are yet to be implemented. The government's reluctance to bring the legal framework governing industrial relations into conformity with the international standards is keeping a growing number of non-regular workers outside the scope of legal protection and is expanding the gaps in protection between regular and non-regular workers, as well as national and migrant workers. Trade unions and labour activists remain subject to criminalisation and excessive sanctions for exercising the legitimate right to freedom of peaceful assembly and expression of political opinions.

Ratification of international human rights treaties related to labour rights

On 20 April 2021, the government has ratified ILO Convention No.87 on freedom of association and Convention No.98 on collective bargaining. By now, the government has ratified all the fundamental conventions of the ILO except Convention No.105 on Elimination of Forced Labour. Whereas, Korea's reservation on article 22 on the right to freedom of association of the ICCPR is still maintained to restrict free exercise of such right.

Given the fundamental character of the ILO Abolition of Forced Labour Convention No. 105 (1998 ILO Declaration on Fundamental Principles and Rights at Work, as amended in 2022), it remains the obligation of the Korean government to respect, promote and realize the principles contained in this Convention. The Government should also ratify ILO Convention No.105 to ensure that trade unions and civil society organisations holding and expressing different political opinions or exercising the right to freedom of peaceful assembly, labour strikes and legitimate trade union activities, are not punished with sanctions of forced and compulsory labour. In the light of fulfilling the commitment of the Korean government in the previous UPR to ratifying the fundamental labour conventions of the ILO, the government should engage trade unions and stakeholders in comprehensive and meaningful consultations on the timetable of ratification of ILO Convention No.105. Simultaneously, a wholistic review of the relevant domestic laws should commence with the involvement of trade unions and stakeholders to remove punitive sanctions with labour for purposes prohibited under article 1 of the Convention.[1]

The ITUC notes that a number of provisions in the domestic laws clearly provide for imprisonment with forced and compulsory labour for a wide variety of acts that could be undertaken in relation to pursuit of legitimate trade union activities, industrial actions and

[1] Article 1 of ILO Convention No.105 prohibits the use forced and compulsory labour as a means of (a) political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system; (b) as a method of mobilising and using labour for purposes of economic development; (c) as a means of labour discipline; (d) as a punishment for having participated in strikes; and (e) as a means of racial, social, national or religious discrimination.

exercise of civil liberties permissible in other domestic laws and the ICCPR. The Assembly and Demonstration Act (article 16(4)), State Public Officials Act (article 84(2)), Local Public Officials Act (article 83), Trade Union and Labour Relations Adjustment Act (article 88 and 89), Labour Union Act (article 89) and Criminal Act (Interference with Business, article 314) penalizes specific acts in relation to industrial actions staged by trade unions or by civil servants and employees in the state and public institutions with compulsory labour.

Recommendations : Provisions in the domestic laws that imposes imprisonment with labour in Annex One and any others should be reviewed and amended in conformity with Convention No.105 in consultation with trade unions. The Government should ratify fundamental ILO Convention No. 105 and withdraw reservations on the Article 22 ICCPR.

Freedom of peaceful assembly (Article 21 of ICCPR, ILO Convention No.87)

The ROK government has fallen short of its commitment in the last UPR to bring the Assembly and Demonstration Act and Criminal Code in compliance with article 21 of the ICCPR. The government is yet to implement the recommendations in the 2016 country visit report of the UN Special Rapporteur on the Right to Freedom of Peaceful Assembly and of Association to improve the domestic legal framework for the exercise of these rights. The Committee of Freedom of Association of the International Labour Organisation (ILO CFA) has made numerous recommendations calling on the government of Korea to repeal article 16 of the Assembly and Demonstration Act, article 185 on obstruction of traffic and article 314 on obstruction of business under the Criminal Act which are not in conformity with ILO Convention No.87 and Convention No.98 (ILO CFA Case 2829, November 2012; ILO CFA Case No. 1865, December 1995).

During the Covid-19 pandemic, trade unions in Korea were never consulted in the adoption of the Infectious Disease Control and Prevention Act which confers powers to the administrative authorities to put a broad ban on public assemblies and impose disproportionate criminal sanctions for violations without a check-and-balance mechanism.

The Act has been actively pursued by the Korean police and the prosecution authorities to lay criminal charges and disproportionate penalties against trade unionists and labour activists in a bid to obstruct large scale trade union mobilisations and intimidate public participation in contrary to the state obligations to observe the principles of legality, necessity and proportionality, as well as public consultation (CEACR report on Application of International Standards in times of crisis, Nov 2020).

Illustrative cases:
On 21st June 2019, **Kim Myung-hwan**, president of **KCTU** and **3 staff members** were arrested and held in pre-trial detention with multiple criminal charges of obstruction of public duties, public traffic, trespassing, and destruction of public goods, following the union mobilisations on 27 March and 2 April to oppose the amendments on the Labour Standards Act and Minimum Wage Act that would further flexibilise working hours and undermine trade union positions on time sovereignty. The arrests seemed to aim at intimidating and obstructing KCTU's national demonstration against precarious work in the public sector which was planned on 3 July. Kim was sentenced to 2 years' jail term with 4 years' suspension by the Seoul Southern District Court on 23rd January 2020. The Supreme

Court finally upheld the conviction and sentence on August 12, 2021.

In September 2019, police forces were called in by the management of the state-owned **Korea Expressway Corporation (KEC)** to threaten 500 protesting toll collectors with criminal charges of obstruction of business if they continued the protest. The illegally dispatched workers had been peacefully staging sit-in protests at the lobby of the company and at the canopy of a toll gate for weeks to demand enforcement of the Supreme Court's regularization order.

The same pattern of criminalization and intimidation against trade unions was observed during the Covid-19 pandemic. On 2nd September 2021, **KCTU**'s president, **Yang Kyeung-soo** was arrested during the police raid on the KCTU office in Seoul for alleged violations of the Infectious Disease Control and Prevention Act, the Assembly and Demonstration Act, and the Criminal Code in trade union rallies in June and on the 3rd of July. Despite concerns raised about contravention of Yang's arrest with the UN Declaration on Human Rights Defenders were raised by the OHCHR[2], Yang was later proceeded to trial and received a suspended sentence of one year-imprisonment and a fine of 3 million KRW. Following Yang's arrest, the Korean police continued to summon 21 KCTU trade unionists who took part in KCTU's labour rally on 3rd July, 15 trade union activists who had joined the rally on 30 September, 79 others associated with the general strike on 20th October and 48 participants in the rally of 13th November. As of 12th July 2022, 19 of the summoned unionists were indicted and brought to criminal trial whereas another 21 unionists are under summary order. Amongst the summoned unionists, the vice president of the KCTU, Youn Taeg-gun was incarcerated at Seoul Detention Center when he reported to the police on 4th May 2022 in association with his role as the acting president of KCTU in 4 public rallies and in the general strike called by the union on 20 October 2021 which was joined by 72,000 trade unionists, activists and young people peacefully to demand jobs and better working conditions adversely impacted by the Covid-19 pandemic. Youn was charged of breaching article 49 of the Infectious Disease Control and Prevention Act, article 16 of the Assembly and Demonstration Act, and article 185 (General Obstruction of Traffic) of the Criminal Code, and a bail was denied to him.

Recommendations: The government must repeal article 16 of Assembly and Demonstration Act, article 185 and 314 of the Criminal Code; consult with trade unions and social partners to review the application of the Infectious Disease Control and Prevention Act; and stop judicial harassments against trade unionists for legitimately exercising their right to peaceful assembly and labour strike to articulate the demands of the union members.

Freedom of association (Article 22, ICCPR; ILO Conventions Nos.87 and 98)

The government of Korea has not withdrawn reservation to Article 22 on freedom of association of the ICCPR. A number of domestic laws that are clearly not in line with the ICCPR and ILO Convention No.87 by excluding large segments of the working population from the right to freedom of association. These restrictions inhibit, obstruct and penalize workers for exercising these rights.

[2] AL/KOR 6/2021:
https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=26739

V.1 Exclusion of public officials and teachers from the right to form and join trade unions (Political Parties Act, Public Official Election Act, State Public Official Act and Local Public Official Act)

Public officials, teachers in elementary and secondary schools and employees in public institutions and cooperatives are obliged to observe political neutrality. They are specifically banned from freely joining a political party or political organization, and to freely expressing political opinions with punitive sanctions under the Political Parties Act, Public Official Election Act, State Public Officials Act and Local Public Official Act. Furthermore, article 15(1) of the Teachers' Act, article 84(1) of the State Public Officials Act, and article 82(1) of the Local Public Officials Act) imposes imprisonment with labour for violations (ILO CFA Case 2707, November 2012). Legislative reform proposals of these laws introduced in 2017 are still pending despite recommendations of the National Human Rights Commission of Korea that these laws be amended[3].

Recommendations: The right to freely associate and freely expressing political opinions of public officials not in state administration, as well as teachers, employees in public institutes and cooperatives must be respected. Domestic laws that prohibit such rights under the Political Parties Act, Public Official Election Act, State Public Officials Act and Local Public Official Act, as well as provisions imposing imprisonment with labour in contravention with ILO Convention No.105 must be repealed.

V.2 Exclusion of workers in non-standard forms of employment, dismissed workers and unemployed workers from the right to form and join trade unions (TULRAA, Article 2(1))

The government has failed to adhere to the long-standing requests of the ILO CFA to amend and bring the Trade Union and Labor Relations Adjustment Act (TULRAA) in conformity with article 2 of the ILO Convention No.87.[4]

Article 2(1) of the TULRAA narrowly defines 'worker' to *'a person who lives on wages, salary or equivalent form of income earned in pursuit of any type of job'.* Such narrow definition excludes the growing number of non-regular workers such as platform workers, freelancers, long-term temporary workers, and workers in many other forms of disguised employment such as dependent contractors misclassified as independent business owners and in-house subcontracting workers as regular workers. The size of non-standard forms of employment has amounted to 61.65 percent of the total workforce by August 2021, outgrowing that of the regular workers of 38.4 percent[5]. An approximate 1.7 percent of the working population amounting to 469,000 workers employed in the platform economy and 2.2 million freelancers as of 2019, have not been able to enjoy the same labour protection provided under the Labour Standards Act or the same right to freedom of association under the TULRAA.

[3] ILO CEACR observations on Convention No.111 on Discrimination (Employment and Occupation), 2020, https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4042077,103123

[4] Convention No.87, article 2 protects 'the freedom of association of workers implies, first and foremost, the right of workers, without distinction, to establish and join trade unions.

[5] Of total 20,992,000 working population in Korea, 12,927,000(38.4%) were regular workers and 8,066,000 (61.65%) non-regular workers by August 2021. Source: Supplementary Result of Economically Active Population Survey by Employment Type of 2021, National Statistics Office, October 2021.

The definition of worker under the TULRAA is premised upon binary relation between a worker and an employer which does not exist in self-employment or in many forms of disguised employment. The ILO CFA has established that the right to establish or join a trade union is not limited to the existence of an employment relationship or an employment contract, and self-employed workers who wish to join or form organisaitons of their own choosing are protected under Convention No.87. The government has ignored the recommendation to repeal article 2(1), leaving these workers with no means to ascertain their rights other than resorting to litigation and judicial interpretation which is time consuming and subject to a case by case adjudication.[6] In practice, self-employed workers and workers under disguised employment are faced with enormous difficulties of recognition and achieving collective bargaining rights with the real employers or the user company, and litigation is time and resources consuming.

Despite the government's commitment made in the last UPR to regularize non-regular employment in the public sector, employers remain reluctant and illegally dispatched employees in the public sector are still reliant on litigation to ascertain their status. At the state-owned Korea Expressway Corporation (KEC), 500 illegally dispatched toll collectors had no resort but to stage sit-in protests at the lobby of KEC and at the canopy of a toll gate on 31st August 2019 to demand enforcement of the Supreme Court's regularization order.

The KEC refused to follow the Supreme Court's regularization order of 5,000 illegally dispatched workers which was handed down on 28th August 2019 and refused to dialogue with the worker representatives. Instead, KEC only agreed to directly hire the worker plaintiffs in the lawsuit if they accepted job transfer arrangements decided by the company, and further threatened to sack 1,500 toll collectors who objected to the transfer.

Article 2(1) of the TULRAA also categorically excludes unemployed workers and by the same token, dismissed workers who have been victimized of anti-union discriminations and unfair dismissals by their employers, as well as those pending legal remedies of reinstatement who fall under the scope of protection of article 2 of Convention No.87 (ILO CFA Case 3371, October 2019). The Labour Law Revision Proposal initiated by the government on 18th November 2020 proposed that the unemployed and the dismissed may join only a multi-union by industry, region or occupation based on the union by-laws. The proposal has not proceeded further to lead to legislative amendment of article 2(1) of the TULRAA.

In the lead-up to the ratification of ILO Convention No.87 and No.98 in 2020, article 2(4)(d) of the TULRAA which rules out registration and maintenance of the registration of trade unions whose members include persons who do not fall under the definition of 'worker'. Yet, unemployed and dismissed workers are still excluded from holding union office under article 23(1). restricts the electoral eligibility of non-employees from holding office in enterprise unions, and the term of the union officers to not more than three years[7] as recommended by the CFA (ILO Case No. 1865, December 1995). The right of trade union members to decide the eligibility of union membership or union officers, elect their representatives in order to be able to act in full freedom and to promote effectively the

[6] The government certified the National Delivery Workers Union (in 2017) formed by the delivery workers who personally own heavy cargo trucks and have signed transportation contracts with delivery companies and that of COWAY CS Workers' Union (in 2019) after they have won the lawsuit against the employers at the Seoul Administrative Court of Korea.

[7] Article 23 of TULRAA : (1) Union officials shall be elected from the union members. (2) The tenure of union officials shall be determined by the union by-laws, and shall not exceed three years.

interests of their members is still inhibited.

Whereas TULRAA articles 12(1)-(3) remain to provide for several broad grounds and conditions under which the public authorities may exercise discretionary powers to obstruct the certification of trade unions under article 10(1) including, apart from procedural non-conformity with the legal requirements, where workers that do not fall under the definition of workers under article 2(1) of the law, 'where the aims of the organisation are mainly directed at political movements'. The CFA has ruled that the registration procedural requirements under article 12(1)-(3) are not mere formality but constitutes a substantive review into the operation, by-laws, and ideologies of trade unions equivalent in practice to require priori authorization to obstruct and prohibit the formation of a trade union.

The impact of the government's failure to bring the necessary legislative reforms to the TULRAA is reflected in the sustenance of unequal pay and treatment under the government-led regularization campaign in the public sector. While 48 percent of the 415,000 non-regular workers in the public sector has been converted to permanent contract under the previous administration, these workers are classified as a different category than 'fully regular' workers and they remain 'regular workers in name only'[8]. The converted workers are hired by the newly established subsidiaries of the public institutions or municipal institutions which function as mere employment agents rather than directly hired by the government institutions. The arrangement has hardly entitled them to equal employment status with the pubic sector employees, nor do they receive equal remunerations, benefits and promotion opportunities.

Recommendations: Repeal Article 2(1), Article 23(1), Articles 12(1)-(3) of the TULRAA, and amend the TULRAA in conformity with the recommendations of the CFA of the ILO The government should consult trade unions on regularization policies to close the gaps in the employment conditions and right to collective bargaining between non-regular and regular workers.

V.3 Exclusion of workers in workplace with 5 or less employees from labour protection under the Labour Standards Act

Article 11 of the Labour Standards Act limits the scope of application to "all business or workplace in which not less than 5 employees are regularly employed" which by estimation, has excluded 17.8 percent of the working population and 61.86 percent of the workplaces in Korea from its coverage in 2022. These workers are excluded from some important provisions such as the restriction of dismissals, wages, working hours and protections from workplace harassments, etc. According to the FKTU[9], workers employed in workplaces with less than 5 employees are excluded from the legal cap on maximum 52 working hours per week adopted in July 2018, as well as the minimal wage protection of at least 50 percent of the ordinary wages for extended work, night or holiday work. Furthermore, they are not entitled to annual paid leaves which are granted to employees who have worked not less than 80 percent of one year. The restrictions on night work from 10.00 pm till 6.00 am and holiday work for pregnant workers do not apply to female employees in these businesses or workplaces. They are not entitled to claim monthly menstrual leave or fetal examination leave, or shutdown allowances which amount to 70 percent of their average wages in business closures attributable to the employer. They are unable to request a remedy from

[8] Direct Request of the CEACR of the ILO on Convention 111 on Discrimination (Employment and Occupation) in Korea, 2020, https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:4042081

[9] "5.1. Plan – New Initiative of FKTU", FKTU, 2022.

labor relations commissions, and employers in workplaces with less than 5 employees are exempted from informing the employees of the ground and schedule of dismissals in written notifications.
Furthermore, workers whose length of service is less than 1 year are not entitled to retirement benefits under the Labour Standards Act. Article 18(3) further stipulates that workers with mini-jobs who work shorter than 15 hours per week are not eligible for retirement benefits, weekly holiday allowances or paid annual leaves.

Recommendations: Repeal article 11 and article 18(3) of the Labour Standards Act to ensure all workers are entitled to the same labour protection.

Restrictions on migrant workers' rights

Migrant workers are not, in practice entitled to the right to free choice of employment. Although the general working conditions provided under the labour laws apply to migrant workers, the KCTU has reported that violations are commonplace, rectifications of labour abuses through labour inspection remain weak and uneven, and most important of all, migrant workers are vulnerable and forced to accept sub-standard working and accommodation conditions due to difficulties to access legal remedies and change the workplace[10].
The United Nations Committee on the Elimination of Racial Discrimination (CERD) has urged the government to revise the Employment Permit System (EPS) under the Act on Foreign Worker Employment, etc (Foreign Workers Act) including the removal of restrictions for migrant workers to change workplace and change to different type of visa under the EPS, as well as to allow extension of the maximum period of stay for migrant workers[11]. The February 2019 revision of article 25 of the Foreign Workers Act still fails to align with the recommendations. The revision introduces grounds for workplace changes not attributable to the worker which covers sexual violence and unfair treatment[12]. It has not removed the limit to the number of workplace change allowable to migrant workers. Change of workplace for non-professional migrant workers remains limited up to 3 times during the 3-year period through the job centre. In practice it remains extremely difficult for non-professional migrant workers to provide evidences of proof or to ensure non-reprisals from the employer or the perpetrator in order to exercise the limited right to change job.

Recommendation: Amend the Act on Employment of Foreign Workers, etc. in line with ILO Convention No.100 and No.87, ensure migrant workers are able to exercise the right to free choice of employment by law and practice.

[10] ILO CEACR observations on Convention No.111 on Discrimination (Employment and Occupation), 2020, https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4042077,103123:NO
[11] The CERD recommends the government to amend the EPS and other legislation applicable to migrant workers to: (1) facilitate family reunification; (2) remove restrictions that prevent migrant workers from changing their workplace; (3) extend the maximum period of stay; and (4) enable migrant workers to change to a different type of visa more easily with a view to facilitate migrant workers' access to long-term or permanent residence permits and reduce the risk of irregular stays (CERD/C/KOR/CO/17-19, 10 January 2019, paragraphs 9 and 10).
[12] The February 2019 revision includes notifications on grounds of workplace changes not attributable to the migrant worker that covers cases of sexual violence and unfair treatment by the employer, colleagues as well as lineal ascendants and descendants of the employer.

Conclusions

The Government of Korea has failed to take the necessary steps in order to bring its laws and practices into compliance with international human rights norms. Therefore, we request that during the UPR in 2023 the Government of Korea is called upon to take the following actions:

- Repeal Article 16 of Assembly and Demonstration Act, as well as Articles 185 and 314 of the Criminal Code, to ensure workers' right to freedom of assembly; consult with trade unions and social partners to review the application of the Infectious Disease Control and Prevention Act; and stop judicial harassments against trade unionists for legitimately exercising their right to peaceful assembly and labour strike to articulate the demands of the union members;

- Review provisions in the domestic laws that impose imprisonment with labour in Annex One and amend the law in conformity with ILO Convention No.105, in consultation with trade unions;

- Ratify ILO Convention No. 105;

- Withdraw reservations on the Article 22 ICCPR;

- Ensure the right to freely associate and freely express political opinions of public officials who are not employed in state administration, as well as teachers, employees in public institutes and cooperatives by repealing domestic laws that restrict access to these rights, that is, the Political Parties Act, Public Official Election Act, State Public Officials Act and Local Public Official Act;

- Repeal Article 2(1), Article 23(1), Articles 12(1)-(3) of the TULRAA, and amend the TULRAA in conformity with the recommendations of the ILO CFA. The government should consult trade unions on regularization policies to close the gaps in access to the right to collective bargaining between non-regular and regular workers;

- Repeal Articles 11 and 18(3) of the Labour Standards Act to ensure all workers, regardless of form of employment, are entitled to the same labour protection;

- Amend the Act on Employment of Foreign Workers, etc. in line with the relevant ILO standards, to ensure that migrant workers are able to exercise the right to free choice of employment by law and practice.