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**HUMAN RIGHTS CONCERNS
RELEVANT TO THE MINISTRY OF FOREIGN
AFFAIRS AND TRADE FOR A
NEW ZEALAND – REPUBLIC OF KOREA FREE
TRADE AGREEMENT**

Amnesty International is an independent movement of over 2.2 million people in more than 150 countries who contribute their time, money and expertise to the promotion human rights and international campaigning to prevent some of the most serious violations.

Amnesty International, recognising that human rights are indivisible and interdependent, also works to promote all the human rights enshrined in the Universal Declaration of Human Rights and other international standards, through human rights education programs and campaigning for ratification of human rights treaties.

Amnesty International's Aotearoa New Zealand section has approximately 8,100 members and regular donors, and active members in some 30 local community groups, specialist groups and various action networks. At any one time its members are working on cases and issues in approximately 90 countries. The work of Amnesty International's New Zealand members is supported by paid staff and volunteers based in Auckland, and the movement's International Secretariat based in London.

Amnesty International is impartial. It is independent of any government, political persuasion or religious creed. It does not support or oppose any government or political system, nor does it support or oppose the views of the victims whose rights it seeks to protect

Amnesty International's policies and plans are discussed and decided at general meetings of the membership and meetings of their elected representatives held every two years (International Councils). In New Zealand their implementation is managed by the Chief Executive Officer overseen by an elected Governance Team. Between International Councils the international affairs of Amnesty International are managed by the Secretary General, who reports to an elected International Executive Committee of members from at least seven different countries.

Amnesty International is financed by its worldwide membership and the public. Strict guidelines exist to safeguard its independence of the organisation; AI does not accept government funds for its campaigning work or organisation.

Amnesty International has formal relations with the United Nations Economic and Social Council (ECOSOC), UNESCO, the Council of Europe, the Organization of American States, the Organisation of African Unity, and the Inter-Parliamentary Union.

Amnesty International was awarded the United Nations Human Rights Prize for "outstanding achievements in the field of human rights" on the 30th anniversary of the Universal Declaration of Human Rights. The movement received the Nobel Peace Prize in 1977 for its contribution to "securing the ground for freedom, for justice, and thereby also for peace in the world".

Introduction

1. Amnesty International welcomed the opportunity to raise our human rights concerns about a Free Trade Agreement (FTA) with the Republic of Korea (Korea) with the Ministry of Foreign Affairs and Trade (MFAT) at our meeting in Wellington on the 28th of July. As requested, this is a more detailed analysis of Amnesty International's concerns and outlines how Amnesty believes the New Zealand government can address these concerns.
2. Amnesty is not opposed to this proposed FTA with Korea, nor any other preferential trade agreement that New Zealand signs. Rather, we seek to ensure that such agreements adequately incorporate and endorse human rights and, in particular, international labour rights obligations.

Labour Rights

Fundamental labour principles

3. Amnesty International welcomes the government's commitment to addressing human rights concerns and, in particular, labour commitments within its Framework for Integrating Labour Issues into Free Trade Agreements.¹
4. The 2001 Framework acknowledges the connection between the International Labour Organization's (ILO) fundamental labour principles and free trade agreements. It includes the four core principles that are binding on ILO member states.² These are:
 - Freedom of association and the effective recognition of the right to collective bargaining;
 - The elimination of all forms of forced or compulsory labour;

¹ 2001 Framework for Integrating Labour Issues into Free Trade Agreements

² Adopted in 1998, clause 2 of the ILO Declaration on Fundamental Principles and Rights at Work "[d]eclares that all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely: (a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour; and (d) the elimination of discrimination in respect of employment and occupation."

- The effective abolition of child labour; and
 - The elimination of discrimination in respect of employment and occupation.
5. The Framework comments that "...as a minimum, the outcomes of all trade agreements to which New Zealand is a party must be generally consistent with and not undermine these core principles, the promotion of decent work, and the promotion and protection of universal human rights standards."³ Thus the Framework recognises New Zealand's obligation to uphold the ILO's core principles, irrespective of whether they have signed or ratified the relevant Conventions.⁴ As such, any New Zealand-Korea FTA *must* incorporate and uphold the ILO's core principles. In order to do so, any FTA should expressly commit both countries to uphold the ILO's fundamental Conventions and to incorporate them into domestic law and practice. For that commitment to be a meaningful protection for labour rights, binding compliance mechanisms should be included within the FTA. A failure to do so would leave both Korea and New Zealand in breach of their ILO obligations.

Migrant Workers

6. Amnesty International is concerned about the discrimination of migrant workers in Korea. There are over 500,000 migrant workers in Korea, of which an estimated 210,000 are in an irregular situation, lacking legal permission to remain in the country. Since November 2003, the government has implemented a series of crack-downs leading to the arrest, detention and deportation of irregular migrant workers. Migrant workers face discrimination in the workplace and abuse by employers and state officials. Women migrant workers are particularly vulnerable to exploitation, such as sexual harassment and violence.
7. This is especially concerning, given that Korea has not ratified the fundamental Conventions on freedom of association and collective

³ 2001 Framework for Integrating Labour Issues into Free Trade Agreements

⁴ Refer to footnote 2.

bargaining.⁵ Amnesty does acknowledge that Korea has signed the elimination of discrimination in respect of employment and occupation Conventions.⁶ However, in August 2007, the UN Committee on the Elimination of Racial Discrimination expressed concern that migrant workers can only be granted non-renewable, three-year contracts, face severe restrictions on job mobility, and obstacles in obtaining legal protection and redress against discriminatory treatment and other abuses in the workplace.⁷

8. Thousands of irregular migrant workers have been arrested, detained and immediately deported. Amnesty International is concerned with reports that the Ministry of Justice is proposing revisions to the Immigration Law, dispensing with the need for officials conducting checks on migrant workers to present identification documents or obtain warrants or detention orders prior to arrests.⁸
9. Additionally, Amnesty International is seriously concerned about the recent crackdowns against the Migrant Workers' Trade Union (MTU). In December 2007, three senior officials of the Migrant Workers' Trade Union, President Kajiman Khapung, Vice President Raju Kumar Gurung and General Secretary Abul Basher M Moniruzzaman were forcibly returned to their countries of origin without due process. Similarly, on 2 May 2008 two senior officials of the Seoul-Gyeonggi-Incheon MTU, President Torna Limbu and Vice President Abdus Sabur, were also arrested.
10. As freedom of association and the effective recognition of the right to collective bargaining are recognised by the New Zealand government as core ILO principles⁹ and are binding on both Korea and New Zealand,¹⁰ the government must ensure that an FTA with Korea effectively protects and

⁵ See: <http://www.ilo.org/ilolex/english/docs/declworld.htm>

⁶ The Equal Remuneration Convention (No 100) and the Discrimination (Employment and Occupation) Convention (No 111).

⁷ The Committee on the Elimination of Racial Discrimination's Consideration Of Reports Submitted By State Parties Under Article 9 Of The Convention, Seventy-First Session, July-August 2007. See: <http://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.KOR.CO.1.pdf>

⁸ Amnesty International Report 2008: The State Of The World's Human Rights, p 182. Available at: <http://thereport.amnesty.org/eng/Homepage>

⁹ 2001 Framework for Integrating Labour Issues into Free Trade Agreements

¹⁰ Refer to footnote 2.

promotes the independence of trade unions for *all* workers. Through this FTA process, New Zealand should encourage Korea to expressly commit to the fundamental Conventions on freedom of association and collective bargaining,¹¹ and amend the 2003 Act Concerning the Employment Permit for Migrant Workers to provide adequate protection for migrant workers.

11. Amnesty International also notes that neither New Zealand nor Korea has committed to the Migrant Workers Convention¹² and encourages them to do so. While noting that the Convention may be difficult to incorporate into New Zealand's domestic legislation, Amnesty International strongly encourages the government and MFAT to work towards signing this important Convention. New Zealand's commitment to this Convention is particularly important when, through the preferential trade agreements it is currently negotiating, there is likely to be an increase of migrant workers into New Zealand and an increasing need for legally binding commitments to protect their rights.

People Trafficking

12. Korea is a source, transit and destination country for people trafficking. While prostitution is illegal in Korea, numerous brothels operate in major cities and around US military bases. While all sex workers are prone to mistreatment, migrant sex workers are particularly vulnerable due to language and cultural barriers and, in many cases, due to their immigration status. These issues are of particular concern in relation to this FTA process given that the United States Department of State has reported that "[t]he Republic of Korea is primarily a source country for the trafficking of women and girls internally and to the United States... Japan, Hong Kong, Guam, Australia, *New Zealand*, Canada, and Western Europe for the purpose of commercial sexual exploitation."¹³ Whether or not New Zealand is already a destination country for people trafficking, increasing migration necessitates a proactive approach to eradicate people trafficking.

¹¹ See: <http://www.ilo.org/ilolex/english/docs/declworld.htm>

¹² International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990

¹³ 2008 US Department of State Trafficking in Persons Report, p 156 (emphasis added)

13. Amnesty International notes with concern that, while both New Zealand and Korea have signed the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol) and the Protocol against the Smuggling of Migrants by Land, Sea and Air, Korea has yet to ratify either of these Protocols supplementing the United Nations Convention against Transnational Organized Crime.¹⁴
14. Amnesty International acknowledges New Zealand and Korea's considerable involvement in the Bali Process to combat people trafficking.¹⁵ Amnesty also welcomes Korea's concerted effort to eradicate people trafficking and protect victims of trafficking.¹⁶ Similarly, Amnesty International notes that the New Zealand Interagency Working Group on People Trafficking is currently consulting on the development of a Plan of Action to Prevent People Trafficking. A copy of Amnesty International's submission to the Interagency Working Group on People Trafficking is attached.
15. Despite these efforts, any FTA that will result in an increase in migration between Korea and New Zealand will have to develop safeguards to prevent the future trafficking of people from or through Korea to New Zealand. Whether through targeted increases in visas and permits (as occurred in the New Zealand-China FTA), or simply as a result of the consequential increase in trade between the two countries, Amnesty International believes that migration between Korea and New Zealand will increase under an FTA. Amnesty International encourages the New Zealand and Korean governments to share their knowledge, resources and expertise on people trafficking. In the context of negotiating an FTA with Korea, it is essential that the New Zealand government future-proof any resulting trade agreement and this country's immigration system in order to prevent people trafficking into New Zealand. Please see our submission to the Interagency Working Group for more

¹⁴ See: <http://www.unodc.org/unodc/en/treaties/CTOC/signatures.html>

¹⁵ See: <http://www.baliprocess.net>

¹⁶ In 2004 Korea enacted a law that included a provision which provided for a prison term of up to 10 years for people who force employees to sell sex, and nullifying all debts the employees incurred in the course of such employment. The law also allows for trafficking victims to pursue cases against brothel owners.

detailed suggestions on how New Zealand can prevent the trafficking of people to this country. Additionally, the New Zealand government should utilise the FTA process to encourage Korea to ratify both Protocols on people trafficking.¹⁷ Amnesty International believes that the immigration implications of an FTA necessitate consideration of the issue of people trafficking within the FTA process.

Non-ratification

16. Via their ILO membership, New Zealand and Korea are committed to respect, promote and realise in good faith the ILO's Declaration on Fundamental Principles and Rights at Work (1998), irrespective of whether or not they have ratified the relevant Conventions.¹⁸

17. Amnesty notes with concern that Korea has not ratified the following four core ILO conventions:

- Freedom of association and collective bargaining:
 1. the Freedom of Association and Protection of the Right to Organise Convention (No 87);
 2. the Right to Organise and Collective Bargaining Convention (No 98);
- Elimination of forced and compulsory labour:
 3. the Forced Labour Convention (No 29); and
 4. the Abolition of Forced Labour Convention (No 105).

18. We encourage the New Zealand government to call on the Korean government to follow through on its election pledge to ratify these four fundamental ILO Conventions.¹⁹

¹⁷ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the Protocol against the Smuggling of Migrants by Land, Sea and Air.

¹⁸ Refer to footnote 2.

¹⁹ Amnesty International, Oral statement on the outcome on the Republic of Korea under the Universal Periodic Review, 12 June 2008. Available at: <http://www.amnesty.org/en/library/asset/IOR41/027/2008/en/47cd7453-483b-11dd-a377-f5461cc8d4de/ior410272008eng.html>

19. Although New Zealand has not ratified the Freedom of Association and Protection of the Right to Organise Convention (No 87),²⁰ it has at least committed to protect freedom of association and collective bargaining and the elimination of forced and compulsory labour. New Zealand has signed, and is bound by: the Right to Organise and Collective Bargaining Convention (No 98); the Convention concerning Forced or Compulsory Labour (No 29); and the Convention concerning the Abolition of Forced Labour (No 105). It is of concern in this regard that Korea has signed *neither* of the Conventions relating to freedom of association and collective bargaining nor has it signed either of the Conventions relating to Elimination of forced and compulsory labour. As New Zealand has signed conventions on both freedom of association and collective bargaining and the elimination of forced and compulsory labour, it may justifiably call on Korea to do the same.

20. Furthermore, irrespective of whether New Zealand or Korea has ratified ILO Conventions, both countries are bound to uphold the International Labour Organisation's core principles of: freedom of association and collective bargaining; elimination of forced and compulsory labour; elimination of discrimination in respect of employment and occupation; and abolition of child labour.²¹ Amnesty International therefore encourages the New Zealand government to raise Korea's non-ratification of these four core ILO conventions with the Korean government. Given that both countries are bound by all core ILO principles, New Zealand can legitimately encourage Korea to ratify Conventions they are both *already* bound to uphold.

General Human Rights Concerns

21. Amnesty International believes that the FTA process is a unique opportunity for New Zealand to raise human rights issues generally with the Korean government. The 2001 Framework acknowledges this opportunity, declaring "...the outcomes of all trade agreements to which New Zealand is a party must

²⁰ Nor has New Zealand signed the Convention concerning Minimum Age for Admission to Employment (No 138).

²¹ See footnote 2.

be generally consistent with ... the promotion and protection of universal human rights standards."²² In order to fulfil its commitments under the Framework, the New Zealand government has an obligation to raise human rights concerns with potential trade partners within every FTA process. Whether or not a party to the negotiations believes that human rights concerns are relevant to trade negotiators, New Zealand negotiators must raise New Zealand's concerns to comply with the government's Framework.

Abolition Of The Death Penalty

22. Amnesty International welcomes Korea's move, in December 2007, to abolish the use of the death penalty in practice. However, 64 prisoners still remained on death row at the end of 2007.²³ Amnesty International therefore remains concerned that Korea has not yet formally prohibited the use of the death penalty. Noting the global trend to end the use of the death penalty, New Zealand's strong support for a global moratorium and the Korean National Human Rights Commission's recommendation that the death penalty be abolished, Amnesty International encourages New Zealand to use opportunities within the FTA process to urge Korea to formally abolish the death penalty.

Abolition Of National Security Law

23. Amnesty International is also concerned that the 1948 National Security Law (NSL) has not been amended or repealed. Amnesty International acknowledges that every country has a right to take measures to ensure the security of its citizens. We also appreciate that the Republic of Korea has special security concerns with regard to the Democratic People's Republic of Korea. However, this does not justify the denial of the right to peacefully express different political views, in accordance with international human rights law and standards. The NSL criminalises speech in support of communism

²² 2001 Framework for Integrating Labour Issues into Free Trade Agreements

²³ Amnesty International Report 2008: The State Of The World's Human Rights. Available at: <http://thereport.amnesty.org/eng/Homepage>

and the Democratic People's Republic of Korea. As of December 2007, there were at least eight detainees charged under vague NSL charges.²⁴ Amnesty International is calling for this legislation to be abolished and welcomes the same recommendation from Korea's own National Human Rights Commission. While this is a sensitive issue for Korea, given that its own Commission has called for its abolition, Amnesty International believes it is appropriate for the New Zealand government to support the Commission's recommendation.

Treatment Of Conscientious Objectors

24. Amnesty International is also concerned at the treatment of conscientious objectors in Korea. In December 2007, at least 733 conscientious objectors, mostly Jehovah's Witnesses, were in prison following convictions for refusing compulsory military service. It is promising, however, that it appears that the Korean government is intending to reform military conscription by 2009, offering more, but potentially longer, alternatives to military service. Korea requires that all healthy adult males must serve 26 months military service. Those who refuse to do so currently face imprisonment for up to three years. Amnesty International believes it is unacceptable for people to be punished for their religious or moral convictions. We encourage the New Zealand government to support the reform of military conscription and to recommend that conscientious objectors be exempt from any form of military conscription. Amnesty is concerned that the proposals include longer service than the military conscription period and excludes conscientious objectors from taking positions in public office in the future. We encourage the New Zealand government to call on the Korean government to release all conscientious objectors and amend the current proposal so that alternative civilian service

²⁴ A freelance journalist, Lee Si-woo, was charged with violating NSL Articles 4, 7 and 8, bailed, but kept under strict surveillance. He was accused of disclosing military secrets after he published information on the US military presence in South Korea. His reportage was based on information obtained legally from the government and military under freedom of information laws and data he collected in 2002 as a leading member of the Korean Campaign to Ban Landmines (KCBL). No legal concerns were raised at the time, and many of the sources used were freely available on the internet. Amnesty International Report 2008: The State Of The World's Human Rights. Available at: <http://thereport.amnesty.org/eng/Homepage>

would be no longer than the military conscription period and would not exclude them from taking positions in public office in the future.

Cluster Munitions

25. Amnesty International notes that Korea has not signed the Convention on Cluster Munitions.²⁵ Furthermore, Amnesty International is deeply concerned that Korea produces, stockpiles, and exports cluster munitions.²⁶ Given that New Zealand is “[d]etermined to put an end for all time to the suffering and casualties caused by cluster munitions”²⁷ and that New Zealand has taken a strong lead on this Convention, Amnesty International believes opportunities exist within these negotiations to encourage Korea to sign the Convention and end the production, stockpiling and exportation of cluster munitions.

Freedom Of Expression

26. Amnesty International is also concerned about restrictions on freedom of expression in Korea. During 2007 there were widespread strikes protesting irregular employment and the Korea-US Free Trade Agreement.²⁸ Since early May 2008, tens of thousands of protesters have demonstrated against the renewal of US beef imports over fears of BSE. The protests, often involving crowds as large as 10,000, were largely peaceful, but there were incidents of violence as riot police sought to control surging crowds and some protesters attacked and vandalised police vehicles.

27. In response, during candlelight vigils held on 31 May and 1 June, police used fire extinguishers and water cannons fired at close range against largely peaceful demonstrators, causing serious injuries such as blindness, broken

²⁵ Korea has not yet signed the Convention on Cluster Munitions. See: <http://www.clusterconvention.org/convention/participants/states>

²⁶ Cluster Munitions in the Asia-Pacific Region, Human Rights Watch, April 2008. Available at: http://www.hrw.org/doc/?t=arms_clusterbombs

²⁷ Preamble of the Convention on Cluster Munitions. Available at: <http://www.clusterconvention.org/convention/text/>

²⁸ See: http://www.amnesty.org.nz/archived_news/South_Korea_Stop_excessive_force_against_protestors

bones and concussions.²⁹ Additionally, in July Oh Jung-ryul and Jung Gwang-hoon the Co-Chairs of the Korean Alliance against the Korea-US FTA were arrested on charges of carrying out “illegal” and “non/un-permitted” protests despite having reportedly served the requisite notice about holding the protest, and that the constitution does not require a permit for rallies. Furthermore, on 24 July the South Korean government issued arrest warrants for top leaders of the Korean Confederation of Trade Unions (KCTU) including Lee Suk-haeng (President) and Lee Yong-shik (General Secretary). Ms. Jin Young-ok, the first Vice-President of the KCTU has also been arrested and detained.

28. While noting the inherent difficulty in controlling such large protests, Amnesty International seeks to ensure that all police, especially riot police, receive adequate training and support so as to minimise the number of injuries and deaths sustained.

Additional Comments

29. For further information please don't hesitate to contact us. We are more than willing to discuss the content of this report or any other issues or questions you may have. Amnesty International's next report on Korea is due to be released on the 17th of September. When it is released, I will forward you a copy. Please also see our website for human rights issues specific to Korea: <http://www.amnesty.org/en/region/asia-and-pacific/east-asia/south-korea>

²⁹ See: <http://www.amnesty.org/en/for-media/press-releases/south-korea-use-force-against-beef-protestors-should-be-investigated-tho>