2. Gather relevant information and data on migration in IFBWW sectors and exchange information between sending and receiving countries.
3. Policy and advocacy at national and global level for appropriate legislation and protection.
4. Trade union approaches and agreement on migrant workers
5. Organize migrant and cross border workers and ensure equal pay of equal work for employees regardless of their origin and nationality.

IFBWW Migration Project in the Asia-Pacific Region

These strategies served as guidelines for a project the IFBWW Asia-Pacific regional office started in 2003 on migration. Fourteen representatives from unions affiliated with the IFBWW in both sending and receiving countries participated in a meeting in September 2003 to discuss the implementation of this project. Unions that are involved are: Construction Site Workers General Union (CSWGU) of Hong Kong, Building and Public Works Workers Union (BPWWU) of Indonesia, Timber Employees Union and Union of Employees in Construction Industry (TEUPM) of Malaysia, National Union of Building and Construction Workers (NUBCW) of the Philippines, Korean Federation of Construction Industry Trade Unions (KFCITU) of South Korea, and the National Federation of Chinese Construction Workers Union (NFCCWU) of Taiwan.

The objectives of the project are:

1. Increase awareness in trade unions of the issues, threats and organizing possibilities of migrant workers and cross border workers.
2. Work against racism and xenophobia, which fuels barriers to information gathering and solidarity amongst construction workers.
3. Work for the incorporation of migrant policies in global instruments with MNCs
4. Establish a network and a working relationship with international and national agencies working to combat the exploitation and abuse of migrant workers.
5. Provide the migrant workers' access to information and understanding about their rights and situation in the host countries; and
6. Development of a membership mechanism and networking among IFBWW affiliates in both the sending and receiving countries.

As part of the project, we have been working with receiving countries to coordinate a series of local, regional, and national meetings to increase awareness about migrant workers, develop a national union policy on migrant workers, strategize ways to organize migrant workers and incorporate them into the union.

Development of Bilateral Relationship: NFCCWU (Taiwan) and NUBCW (Philippines) Case Study

As a result of the project, the NFCCWU has developed a national policy on migrant workers. More importantly, in an historic move, on May 2, 2004, the NFCCWU signed a framework agreement with two main employer organizations in the construction industry in Taiwan---Chinese National Association of General Contractors (CNAGC) and the Taiwan Regional Engineering Contractors (TREC). This is a first step for the Taiwanese trade union movement.

For the past two years, the NFCCWU began outreaching to employer organizations to begin a dialogue on union recognition and worker rights; however, CNAGC expressed very little interest. The CNAGC only agreed to meet the union when the Bureau of Employment and Vocation Training Administration (EVTA) stated that the CNAGC had to get the approval of the union in order to recruit migrant workers. In May 2000, the NFCCWU had lobbied the government to pass a resolution that required union approval for any recruitment of migrant workers in the construction industry. Currently there is a shortage of workers in the construction industry due to the housing boom.

In the beginning of 2005, the CNAGC contacted the union to discuss the recruitment of migrant workers. After several meetings with parties that included the NFCCWU, the CNAGC, EVTA, and the TREC, an agreement was finally reached on April 1. Within a month, the agreement was approved by the membership of both employers' associations and the union. A key feature of the agreement states that the CNAGC agree to employ on local workers. In the case that the NFCCWWU is unable to provide sufficient manpower, then they will use foreign workers. However the GNAGC agree that all foreign workers working in companies associated with the GNAGC will be allowed to join the NFCCWU. Finally, the CNAGC agreed to organize a joint committee on the recruitment of foreign workers under the regulation set by government.

What began as a discussion on the recruitment of migrant workers developed into the signing of this agreement, undoubtedly a significant event in the Taiwanese labor movement.

The NFCCWU currently conducted a national seminar on migration to educate its key national and local leadership to educate them about migrant workers, discuss the impact of the agreement on the union, and examine and develop a structure to incorporate migrant workers who join the union. At the same time, the NFCCWU national leadership met with leadership from the National Union of Building and Wood Workers (NUBCW) of the Philippines to discuss and further develop a strategy framework on direct trade union to trade union development overseas contract workers.

Currently, the NUBCW is working with FES of the Philippines in drafting a strategy paper that will look at feasibility of this relationship incorporating the potential responsibilities and roles of unions, employers, recruiting agencies, and governments in both receiving and sending countries. Specifically the areas the paper addresses are the documentation of potential migrant workers, skills training, job placement, representation of the workers' rights, repatriation and re-integration of the workers once they return home. The paper also outlines the potential role the Asia-Pacific regional office of IFBWW can play in fostering this relationship.

Clearly this pilot project is controversial and challenging because it changes the historical role of unions. However, during a time crisis, particularly for the Philippines, where three million Filipinos are officially known as Overseas Contract Workers (OFWs), the reality is that all ideas need to be seriously considered and addressed.

Development of a Memorandum of Understanding: UECI Case Study

In Malaysia over 50% of the workers in construction industry are migrant workers, mostly from Indonesia, Bangladesh, Nepal, and Thailand. Because of this, it is essential for UECI to not only formulate a national policy on migrant workers but more importantly develop a national program organizing migrant workers. Although UECI has initiated some activities to this effort, they unfortunately have not been able to establish a national policy. However, since UECI's national center, the Malaysian Trade Union Center (MTUC) has finally developed a national policy supporting the rights and organizing of migrant workers in Malaysia, we believe this will make it much easier for UECI to follow suite.
Since it is currently difficult for the UECI to develop a clear policy and program regarding migrant workers, we hope to work with the UECI as well as TEUPM, our other affiliate organizing workers in forestry and wood working industry in developing a Memorandum of Understanding (MOU) with their national center, MTUC and national centers and our affiliates in sending countries such as Indonesia and Nepal. Through the MOU we hope that our IFBWW affiliates and the national center can develop a work plan that will include adoption of a clear national union policy on migrant workers, commitment to organizing migrant workers, exchange programs for migrant workers, and actively lobby their government for pro-migrant workers' rights policy and punish unscrupulous recruiting agencies and employers that exploit migrant workers, particularly those who are irregular.

Conclusion

I would like to conclude by stating that the most important and fundamental thing that IFBWW recognizes as to be the core and center of our migration policy is organizing migrant workers and educating native workers. In Malaysia, the majority of the work force within the construction industry is migrant workers. In the Philippines the number of construction workers working abroad is greater than the number of construction workers working in the Philippines. In both South Korea and Japan, the aging native construction work force is being gradually replaced more and more by migrant workers.

Unless we as trade unionists make a commitment to organize migrant workers and more importantly; incorporate them into our union structure where they can play an active and leading role, the standards within the construction industry will dramatically deteriorate because it is the employer's intention to replace native workers with migrant workers in order to keep wages and working conditions low. IFBWW also recognizes the importance of educating native workers to see migrant workers as their allies rather than as their enemies

Increasingly, workers are also moving from one country to another following the job market. Within this context, the reality is that migrant and cross border work will continue. The challenge for the trade union movement is what they are going to do in addressing this issue. In some ways, many of the unions have begun to address this issue late, as many NGOs, interfaith groups and other worker rights groups have been

working on the issue around migrant workers much longer than the trade union movement. However, we must all recognize that the issue of migrant workers is too big and complex for no one entity to resolve it alone.

IFBWW believes that governments, companies, employer associations, trade unions, development agencies, and NGOs should all work together with the purpose of better assisting migrant and cross border workers and preventing an undermining of nationally achieved standards.

Appendix 1:
Source: IFBWW Migration Project Draft Document---Trade Union Workers and Migration

Formation of the European Migrant Workers Union (EMWU): IG BAU Case Study

September 4, 2004, Germany's Trade Union for Building, Forestry, Agriculture and the Environment (IG BAU) announced the foundation of a European Migrant Workers Union. The new union addresses posted workers and seasonal workers in all industries, but in the initial phase will concentrate on migrant workers in construction and agriculture who work for a limited period of time in one or several EU Member States. The aim is to provide those workers with legal assistance and advice, support them in the event of sickness accident, help them to receive correct payment for work done and promote the provision of better accommodation. The European Migrant Workers Union is though to be the first such organization to be formed within the European trade union movement."[25]

The effort of the IG BAU is a culmination of intensive preparation in forming the European Migrant Workers' Union (EMWU). The conception flowed from IG BAU"s campaign, called "There must be rules" (Ohne Regein geht es nicht), was followed by a research survey on the needs and aspirations of migrant workers in Germany's construction industry, which led to a union design on the nature, character, scope, aims and structure of the migrant workers' union.

Services offered by the European Migrant Workers Union

- Legal help and advice in various languages;
- Support in the event of sickness and accident;
- Support to ensure correct levels of pay – ie for workers to receive at least the German collectively agreed minimum wages, as required under the Posted Workers Act and to be paid for all hours worked;
- Collective bargaining in order to improve pay and conditions for migrant workers;
- Help to get in contact with German colleagues (language courses);
- Help in finding better accommodation;
- Lobbying in favour of migrant workers; and
- Support for undocumented workers (it workers without an official work permit and residence status) so that they are able to organized themselves in the trade union structure.
  Source: EIR Online, op. cit.

The EMWU starts with migrant workers from Poland, who forms the largest group of migrant workers in Germany; eventually it is expected to include migrant workers of all nationality in all field of activity, not only in Germany but in all Europe, including providing union protection for irregular migrant workers. The union aims to set up

[25] EIROnline

offices in the countries of origin of the migrant workers, starting with Poland, and to address the migrant workers in their own language. The union is thought to be "under construction", until the time that it can go on its own.

Funding of the organization initially comes from a loan provided by the IG BAU, which the migrant workers' union will pay in the process of expanding its membership and its financial capacity.

Its membership is of three types: full membership (with entitlement to vote); associated organizations; and non-voting members.

At the moment, full membership is limited to founding members, all of whom are leading officials of IG BAU. The full members will decide on the acceptance of other full members and other types of membership.

Associated members include trade unions and other organizations supporting migrant workers in Germany or elsewhere, who are to pay dues according to their size of membership and are entitled to certain number of votes.

The non-voting members are individuals who subscribe to the aims and purposes of the new union. While non-voting, they have the right to be informed about the union's activities and expenditures as other members and to present proposals. Non-voting members who are migrant workers are entitled to receive services of the union after payment of a nominal entry fee of EUR 15 and a regular monthly contribution of EUR 12.

Current officers are initially made up of IG BAU officials, while the union is in transition. There are currently also two full time officials who are assisted by IG BAU area organizers.

The separate structure of the migrant workers union from the IG BAU was decided upon in order to set up a platform from which the "competition" between German workers and the posted foreign workers will be addressed, particularly experienced in the construction industry. This competition refers to the thinking of the local workers that foreign workers undercut existing rates of pay and may be threatening their jobs too. While a separate union will not erase the tension anytime soon, it is thought that the new union will become the platform from which to address this issue, among others.[26]

[26] This subsection was summarized from the article written by Heiner Dribbusch, Institute for Economic and Social Research, WSI, publish in EIROnline.

Nepalese Migrant Workers

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Introduction

Nepal, clearly situated between two giant nations- China and India, is a small land-locked country. It falls under the group of least developed twenty-nine countries. As it is underdeveloped and still in a semi-feudal conditions, nearly 7.5% of the total population is employed in industrial and service sector. The per-capita income in Nepal is equivalent to US $200. In Nepal, the 60 % of the people are still illiterate. 82% of the total population is dependent on agriculture and more than 51 % of the population falls below the poverty line.

Nepal: Migration and Migrant Workers

A quite considerable number of Nepali workers go abroad in the absence of fruitful employment within the national boundary. After Nepal-British/ India war of 1814-15 AD, formal entrance of Nepali citizens in foreign employment started when 4650 Nepalese were appointed in British -Gurkha regiment. And then, a large number of Nepali workers had migrated to India for the employment in the tea-estates of Darjeeling and wood-works of Asam during the second-half of 19th century.

In those early days, Nepalese were forcibly used in arm force by the colonial rulers in negotiations with the feudal rulers of Nepal. Later on, the persons going abroad for employment used to work not only as porters and gateman but also as the sex-workers. Nowadays the areas of foreign-employment have been widened much more covering even the professional and skilled manpower. It is described clearly in a booklet published for the information of foreign employers by His Majesty's Government of Nepal, Ministry of labour (MOL/HMG).

Although Nepal is one of the least developed countries, the pressure of the migrant workers from abroad is considerable. In addition to the large number of Indian migrants coming without intervention through the open Nepal-India boarder, migrant workers from Germany, Japan, China, Pakistan, Philippines, Norway, Armenia, England, Denmark, USA, Bangladesh, Thailand, Russia, Holland, Australia, Switzerland, Malaysia, Italy, Kajakisthan, France, Ukraine etc. are also working in Nepal.

Nepali Migrant Workers Abroad

While trying to estimate the number of foreign migrant workers in Nepal and Nepalese migrant workers abroad, complications can be observed because of the open Nepal-India boarder. The statistical information published by Department of Labour on the number of Nepalese migrant workers excluding India is not reliable & realistic.

Rough estimation in India indicates a number of 7 million people of Nepali origin living

therein. This estimate looks close to reality in view of the large number of Nepali language speakers in Darjeeling (west Bengal), Asam, Sikkim and other states. The trend to work as agri-labourers in different states of India especially in Punjab and Hariyana is increasing among Nepalese workers. In totality, the number in different sectors from agri-labourers to hotel boys and army-men working all over the India, taking into consideration, can be claimed to be more than two and a half millions in India. Unfortunately, mentionable is the number of more than 150,000 Nepalese women forcibly or willingly engaged in sex-trade in different Indian cities as presented in " Sex-Trade in Nepal : Realities and challenges" written by Gauri Pradhan.

The Conditions of Migrant Workers in abroad:

Numerous cases of intolerable sufferings of the Nepalese migrant workers have been found abroad. It is a bitter reality that Nepalese workers are accepted in East and South East Asia as well as Gulf-countries only because they are cheap and they do whatever job they get. Most of them are the educated male and female from middle and lower middle class families who goes abroad with a hope to earn much within a short period. The large number among them works illegally. Nepalese, whether by training visa, work permit or by illegal measures, used to reach their destination countries after paying considerably huge amount to the middle man or the so called employment agencies. They have been generally forced to work under '3-D' (Dangerous, Difficult and Dirty) conditions.

Women workers are the major sufferers among the Nepalese migrant workers. Thousands and thousands of Nepali women in India have been smuggled and sold for prostitution or forcibly used in sex trade by criminal groups that the government and the social movement could not eliminate in spite of constant efforts.

On the other hand, the pains and sufferings of those who entered Singapore, Malaysia South East Asia and some of Gulf countries without work-permit are also horrifying. They have been put into jail and tortured in an inhumane manner. The so-called foreign employment agencies are fully responsible. In 1997, the Ministry of Labour/ HMG had constituted a commission-"Commission for the Investigation of Irregularity in Foreign Employment" to unmask those agencies. Some of the exploitative agencies, leaving the Nepalese workers helpless in foreign territories after sucking the maximum amount, have also been tapped under government action, but still it is insufficient. Although government had made the Foreign Employment Act to protect the Nepalese People from cheating of Middle Man and Manpower Agencies but still there is the weakness of Monitoring and Fair Action of the related department.

Manpower Agencies and Middle Brokers

Since last year government had opened more 83 countries and made total 108 countries for the Foreign Employment permission. But still there are some of countries where government had not permitted for employment because of natural disaster, civil war and terrorist activities. Such as Iraq, Afghanistan and others, but Manpower Agencies are continuously sending Nepalese people there.

Nepal government had banned people to move abroad job without labour permission, but agencies are sending the people through New Delhi, India and even third countries

to Iraq and Afghanistan and other countries. Some of them are success to reach the destination country but most of are victimized by brokers. In such a way Nepalese women workers are also sent to the Gulf countries illegally..

We can remember the case of Industrial Trainee System of Korea for Nepal. Which is presently stopped by the KFSB(Korean Federation of Small and Medium Business). The national TV broadcast of Korea, MBC (Munha Broadcasting Center) had showed the real cheat of Manpower agencies. Also the incident of 12 Nepali hostage killed by the Iraqi Militant on August 31st, 2004.

Because of Broker's selfish business and improper action of government Nepali citizens are facing different troubles and unknowingly dieing in the different parts of the world

So, the core of all the cases is the weakness of Government. Perhaps, people oneself also do not have the awareness on it.

GEFONT and the Migrant Workers

GEFONT has convened its second National Congress at March 1996. An important document covering the outlook, concept and position of GEFONT on National Labour Policy has been adopted by this congress. In this document, foreign employment, and migrant workers issues are also analyzed.

GEFONT is of view that uninterrupted flow of capital from the developed countries can be balanced through the labour-export of the developing ones. The scope of traditional foreign employment in military service is, now, very little and declining, but the attraction towards foreign employment is increasing day by day due to lack of gainful employment within the country. However, as mentioned above, there is neither diplomatic protection for them, nor easy and secured remittance of their earnings to Nepal. Thus, for their protection and rights, GEFONT has made Migrant committee in its foreign Department and started to organize them through GEFONT support groups. Such groups are established in HK, South Korea, Japan, India and some of the Gulf countries. GEFONT has also made a provision that representatives from the support group of each country can participate in its National congress.

Although we are active for the protection of their interests, we feel that they have to be trained and be given orientation in some issues and that the government should be warned in some policy issues.

We have mentioned in our policy that labour export from the third world should be made easy and without complicated barriers. Our logic is that these issues should not be looked at with a blind-nationality point of view. Of course, in this context, we are alert because of the open border between Nepal and India, size of Nepal and India and the population and unemployment rate of Nepal and India. We are quite clear that even the excellent policies may become harmful with nationalist point of view if native workers in our motherland are displaced by millions of Indian migrant workers.

Therefore, in view of special conditions in Indo-Nepal relation, we have given due

emphasis to 'work permit system' to all the migrant workers including the Indians which is clearly analyzed and presented in our 'Labour Policy ' document.

Nepalese Migrant Workers in abroad

Nepal government had permitted 108 countries for the foreign job but the huge number of Nepalese migrant workers are in Middle East, Malaysia, South East Asia and in some of Europe countries.

S.No.	Country	Number of Workers
1	Malaysia	154,215
2	Saudi Arabia	118,314
3	Qatar	106,200
4	U.A.E.	51,082
5	Kuwait	7,074
6	S. Korea	5155
7	Bahrain	4,595
8	Hong Kong	2989
9	Macau	462
10	Oman	453
11	Brunei	555
12	Israel	514
13	Japan	183
14	U.S.A.	144
15	Jordan	196
16	England	161

- Data collected by MOL since 1994 to the June 2004
- People moved in 57 countries in the number of 347,060

The record of MOL shows only in the last year (July, 2003-June, 2005) 106,660 men and 892 women had moved in 73 countries for abroad job. So we can imagine the ratio of foreign employment of Nepalese people.

Organizing Women Domestic Workers in Hong Kong IMWU – HKCTU Experience

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The Ministry of Indonesia Transmigration and Manpower (Depnakertrans) data shows that since 1999 about 400,000 Indonesian workers have migrated abroad each year. Today the total number has reached four million workers, most of whom (68% to 72%) are women working in the domestic and manufacturing sectors. Most of these women are in their most productive years, between eighteen and thirty-five years old, though a small percentage are younger than eighteen. About 30% of migrants are men working in the farming, construction, transportation, and service sectors. Some of the most common destination countries for migrant workers from Indonesia are Malaysia, Hong Kong, Taiwan, Korea, Singapore, Japan, and the Middle East, including Saudi Arabia.

Working abroad holds the promise of a much higher salary than workers could get at h ome; however, the risk is equally great. Migrant workers are exploited from the time th ey apply to work overseas, through the application and selection process, by employm ent agents and employers in their destination countries, and finally, upon their return to their home countries, especially as they pass through Terminal III. Although the Indon esian government condemns brokers as the origin of the problem, the fact is that the go vernment itself does nothing to stop illegal recruiting, deception, and even trafficking.

Violence against Indonesian migrant workers remains a serious problem. The Consortiu m for Indonesian Migrant Worker Advocacy (KOPBUMI), in their 1999-2003 study, fou nd that there was substantial violence directed against Indonesian migrants working in Asia, the Pacific, and the Middle East. Most of this violence was directed against female migrants. In 2002, there were 1,308,765 cases of death, rape, physical violence, decepti on, or deportation. Only a few of these cases have been satisfactorily settled through pro per legal channels.

Not all Indonesian migrant workers' deaths are due to intentional violence. In 2003, KO PBUMI noted that in less than two years, there were 90 Indonesian deaths recorded in S ingapore, many of which were the result of falling from high construction sites. In 2005, one NGO based in Jakarta known as ECOSOC reported that at least 114 Indonesians di ed in Singapore in 2004. Between January and September, the Federation of Indonesian Migrant Workers' Organizations (FOBMI) observed that there were seventy-four cases of Indonesian migrant worker deaths from a variety of causes in a number of countries. However, since employees at Sukarno Hatta airport and Juanda airport have stated that a lmost every week corpses arrived, it is likely the actual number is higher. Apart from thi s, the NGO Yayasan Panca Karsa Mataram in the province of West Nusa Tenggara also r eported that many dead bodies were delivered to the aforementioned province.

Illness has also plagued Indonesians who work abroad. Data from Depnakertrans shows that of 350,000 migrant workers who returned through Terminal III, Sukarno Hatta airp

ort, 37,000 (12%) were sick. Press reports revealed that some of them were forced to wo rk as prostitutes.

Feminization of Migration

The majority of Indonesian migrant workers are women. Over the past five years, wome n working overseas increased between 68% and 76%. Of this increase, 71% was in the i nformal sector, primarily in domestic work. The seven destinations absorbing the largest number of Indonesians have been Malaysia, Taiwan, Hong Kong, Kuwait, Singapore, t he UAE and Brunei Darussalam. Saudi Arabia in particular has been the largest recipien t of Indonesian informal labor.

The feminization of migration has been largely due to women holding less land and thei r inability to secure long-term employment in the agricultural sector. The resulting escal ation in poverty has necessitated overseas employment. Table 1.1 indicates the rise in fe male migrant laborers from 1969 to 2003.

Table 1.1: Number of Indonesian migrant workers traveling abroad from 1969 to 2 003, by gender.

Term	Women	Men	Quantity
Pelita I (1969-1974)			5,624
Pelita II (1974-1979)	3,817	12,235	16,052
Pelita III (1979-1984)	55,000	41,410	96,410
Pelita IV (1984-1989)	198,735	93,527	922,262
Pelita V (1989-1994)	442,310	209,962	652,272
Pelita VI (1994-1998)	1,203,936	660,043	1,856,967
Pelita VII (1999-2003)	1,018,458	516,103	1,534,516

Source: Analyzed from the data of the Indonesia Department of Manpower and Transmi gration (Depnakertrans)

Migration feminization has resulted in the polarization of labor, with men primarily taki ng part in formal work sectors and women participating more actively in informal doma ins.

This polarization has resulted in women's weaker societal and employment situation, a fact all too evident in their exploitation by the private sectors. Indeed, employment agencies promote Indonesian women workers as being obedient, docile and willing to undergo even the most degrading tasks. Unfortunately, the government of Indonesia does not take this fact into consideration in its labor policies.

Domestic Workers

Domestic work has shown the strongest presence in the legal history of Indonesian migr ant workers. Domestic work, primarily in the Middle East, has often been the only choic e for female migrant workers from Indonesia.

According to Depnakertrans, in 2002, 76% of 480,393 Indonesian migrant workers wer e women. Of these, 94% were domestic workers in the Middle East, Asia and the Pacifi c. In particular, in Asia and the Pacific, the growth in numbers of female migrant worker s was a consequence of increasing growth and employment in the public sector.

Domestic work does not require higher education and skill levels. The primary tasks inv olve housekeeping and caring for young children and the elderly. Because domestic wor k is largely done in private homes, environments hidden from public scrutiny, violence a nd abuse are rampant. Regulations regarding work time allocation, task type, holidays, a nd worker's compensation, where they exist, are easily ignored by employers.

Overview of Indonesian Migrant Workers in Hong Kong

In the 1990s, the government of Indonesia began cooperating with the government of H ong Kong in migrant placements. This resulted in a significant increase in migration to Hong Kong. While Indonesian domestic workers in Hong Kong numbered 10,000 in 19 90, that number had swelled to 80,000 by 2004. The increase currently averages betwee n 10,000 and 15,000 per year.
However, comparing data on migrant worker populations in Hong Kong from both the I ndonesian and Hong Kong governments highlights a great discrepancy. The Hong Kong government data is based on the number of employment contracts registered with the I mmigration Department and is therefore more likely to be accurate. The large inconsiste ncy in numbers between the two governments' data shows that the Indonesian governme nt may not be effectively monitoring the labor migration process to Hong Kong, and mo st likely to other countries as well.

According to the data from Hong Kong Immigration Department, during the ten-year pe riod from 1992 to 2002, Indonesian migrant workers to Hong Kong increased on averag e 37.9% per year. On the other hand, during the same time period, Filipino migrant wor kers, though their total number was greater, decreased as much as 14.8% per year.

According to the government of Indonesia, migrant workers from that country in Hong Kong represent only 4.3% of the total number of Indonesian migrant workers abroad an d contribute, on average, proportionately to the Indonesian economy through remittance s. The information below reflects Indonesian government statistics on the annual remitta nces from countries with large populations of Indonesian migrant workers for the years 1999-2002:

Table : Indonesian Migrant Worker's Remittances (US$)

Country	1999	2000	2001	2002
Saudi Arabia	492,368,517	356,754,738	1,555,378,775	140,840,872
Malaysia	298,719,836	325,162,878	61,348,362	57,491,288
Singapore	133,346,335	85,695,193	48,577,819	11,755,440
Taiwan	97,073,777	208,175,101	144,568,795	761,861,048
Hong Kong	94,525,859	157,413,506	77,702,806	25,761,936
Brunei	31,934,993	17,740,807	10,602,291	7,587,144
UAE	22,406,557	18,230,578	14,446,757	4,484,264

Kuwait	3,737,743	12,610,545	4,358,093	10,791,680
Qatar	1,645,328	2,974,121	1,614,801	669,456
Oman	1,982,541	2,152,974	869,493	855,472
Other	117,704,571	126,754,022	4,521,373	6,784,284
Total	**1,295,446,057**	**1,313,664,463**	**1,923,989,365**	**1,028,882,224**

Source: Analyzed from Depnakertrans RI

The table below shows the percentage of total remittances that may be attributed to thos e remittances sent from Hong Kong during the same period of time:

Table : Indonesian Migrant Workers' Remittance from Hong Kong (US $)

Year	Number	Total Remittance	Percentage
1999	94.525.859	1,295.446.057	7.3
2000	157.413.506	1,313.664.463	12
2001	77.702.806	1,923.989.365	4
2002	25.761.936	1,028.882.224	2.5
Through Sept 2003	7.234.984	245.035.447	3

Source: Analyzed from data of Depnakertrans RI

From a regulatory point of view, Hong Kong is the only destination country that recogni zes domestic work as work, and has established thorough regulations aimed at protectin g migrant domestic workers and establishing equity in the workplace. Furthermore, unli ke many other destination countries, the Hong Kong government tolerates migrant work er trade unions, and thus there is a degree of autonomy in collective organizations with bargaining power.

Unfortunately, however, regulations protecting Indonesian migrants' welfare often are n ot followed in practice. A prior baseline research conducted by Asian Migrant Centre (A MC) in 2001 found that in Hong Kong, 48% of Indonesian migrant workers were under paid. Most of the salary that they do receive is paid directly to the employment agency f or the first seven months, thereby leaving very little spending money for the migrant wo rker. Filipino migrants are relatively better off, with fewer subject to underpayment. In a ddition to underpayment, 47% worked for more than eight hours per day, while 25% per formed duties not outlined in their employment contract and 16% did not get proper hou sing or accommodation. Another survey found that sixty-seven Indonesian migrant wor kers who worked as housekeepers (6% of total respondents) experienced physical attack s, while thirty-two Indonesian workers (3% of total respondents) were victims of sexual abuse.

Hong Kong Migration Regulations

Hong Kong is a party to various core human rights conventions of the United Nations, i ncluding the International Covenant for Civil and Political Rights (ICCPR), the Internati onal Covenant for the Elimination of All Forms of Racial Discrimination (CERD), and t he International Convention for Economic, Social and Cultural Rights (CESR). In additi on, key ILO conventions on migrant labor, namely ILO Conventions Nos. 97 and 98, ha ve been applicable to Hong Kong since 1990 and 1975 respectively.

According to Hong Kong law, foreign domestic workers (FDWs) receive the same prote ctions under Hong Kong's Labour Ordinance as local workers. As such, they are suppos ed to enjoy the same rights and freedoms as local workers. In addition, the conditions of work of FDWs are regulated through a standard employment contract. This contract sti pulates employers must provide their workers benefits such as paid holidays and rest da ys, adequate food, home leave and return airfare.

The standard employment contract also includes the Minimum Allowable Wage, or MA W, as mentioned above. The MAW was first implemented in 1987, set at HKD 2,900 pe r month. Between 1987 and 1998, the MAW consistently rose due as Hong Kong's econ omy prospered, and the voices of migrant and local workers' advocacy groups grew lou der. Unfortunately, the MAW is often the first to be targeted by the government during p eriods of economic slump. The government first attempted to cut the MAW in 1998, foll owing the 1997 financial crisis that plunged Hong Kong and several Asian countries int o economic recession. In 1999, the government succeeded in imposing the first-ever cut (5%) on the MAW, bringing it down to HKD 3,670 per month. In February 2003, the go vernment succeeded in imposing a second wage cut, bringing wages down by 11% (HK D 400) to the current HKD 3,270.

In addition to attacking the MAW, the Hong Kong government has imposed a HKD 9,60 0 levy on the employers of FDWs for each two-year contract. This was implemented co ncomitant with the 2003 wage cut as a round-about way to pass on the burden of the lev y to FDWs, as the HKD 9,600 levy breaks down to HKD 400 per month – the same am ount as the HKD 400 wage cut on FDWs' wages. The move violates the Hong Kong go vernment's obligations as a signatory of the ILO Convention No. 97 on Migration for E mployment, which prohibits the discriminatory imposition of levies or taxes on migrant workers.

The Indonesian Migrant Workers Union, as well as trade unions in Hong Kong, HKCT U, filed a complaint to the ILO in April 2002. In June 2004, the ILO Committee of Expe rts on the Application of Conventions and Recommendations noted that the Governing Body "believe that the imposition of the same levy . . . would not be equitable," and req uested the Hong Kong government to provide information on the issue. In a separate mo ve, a group of migrants and advocates filed a case in Hong Kong in mid-2003 against th e levy and wage cut. Despite the ILO's comment, the High Court decided in December 2004 that the wage cut and the levy were legal and were two separate policies.

Further, Hong Kong's New Conditions of Stay (NCS), enacted in 1987, imposes a host of discriminatory policies on FDWs in Hong Kong. The NCS denies FDWs the right to change to other (non-FDW) job categories, to right to obtain residency after seven years, the right to be joined by their families, and also severely restricts the conditions upon w hich they can change employers. The "Two-Week Rule", a specific provision within the NCS, requires FDWs to leave Hong Kong within two weeks of the termination date of t heir contract. Although the UN CERD Committee and the UN Committee on the Conve ntion for Economic and Social Rigths have issued repeated reports calling on the Hong Kong government to modify or repeal the Two-Week Rule, this policy remains in place.

Another discriminatory policy is the live-in requirement, which forces FDWs to live in t heir employers' homes.

Indonesian Migrant Workers Union and Their Strategic Intervention

The Indonesian Migrant Workers Union was transformed from the Indonesia Group Ho ng Kong (IGHK), which formed in 1993 and registered in 1996. It had transformed fro m a self-help group to a union with a more political agenda of promoting labour rights. IMWU is a founding member of CMR and KOTKIHO, an affiliate of the Hong Kong C onfederation of Trade Unions – HKCTU (since 2003), and it continues to build stronger links with NGOs in Hong Kong with other Indonesian and migrants' organisations. IM WU has been developing common positions and networking relationships with the ICF TU since April 2003, and it was affiliated as ICFTU to attend the International Labour C onference (ILC) 2004.

IMWU's membership is presently over 2000. In the past three years, IMWU has organi sed more than 40 trainings on different topics, such as organizational management, boo k-keeping, leadership and teambuilding, English, Cantonese, computer usage, traditiona l dance and introduction to the internet. There were also special trainings on gender, par alegal information, trade unionism and reintegration. A total of 500 members benefited from the training. Through these trainings, many participants have been enabled to expr ess their problems through filing complaints, and/or participating in campaigns or protes ts.

IMWU has been involved in several successful and ongoing advocacies. In 2003, the U nion successfully advocated against the Indonesian government policy that sought to ma ke it compulsory for the migrants to return home to renew their contract and re-pay agen cy fees. The government eventually succumbed to the pressure and reversed the policy. In the same year, IMWU conducted mass education campaign work to pressurise the In donesian government to reduce the exorbitant agency fees being charged to the migrants coming to Hong Kong. They were able to secure a meeting with the Indonesian labour ministry and sign a three-way MOU between the government, the Union, and the largest employment agency (PJTKI) to secure the lower fee. While implementation has been d ifficult, this process has forced the government and agencies to recognise the role of the Union.

The Union has also documented the situation of Indonesian migrants through baseline r esearch (ongoing) and the production of a documentary film, *2.5 billion dollars for the S tate,* on the Indonesian labour export process. The film has been shown to migrants, mi grant support groups, and to both the Indonesian and Hong Kong governments.

In 2003, IMWU worked with HKCTU to advocate at the national and international level against the wage cut and levy policy against FDWs. In February 2003, IMWU and CM R submitted a letter to the ILO on the discriminatory policies, and later held meetings w ith the ILO and the UN Special Rapporteur on the Human Rights of Migrant Workers. I n August 2003, IMWU also submitted information through HKCTU to the ICFTU to th e ILO Committee of Experts, detailing the links between forced labour situation of Indo nesian migrants and the Indonesian government's flawed migration policy regime.

IMWU has been a member of the MFA, coordinating with the various migrant organisat ions in Asia to strengthen the campaign for migrants human rights at the regional and int ernational level. They also work directly with migrant workers' organisations in Korea, Taiwan and Indonesia to strengthen their regional ties and build a regional and internati onal movement of Indonesian migrant workers.

Migrant Workers: We work Together
Our Approach to an Equal Society for All People

Torii Ippei
/ JTUC, Japan

□Introduction

→Migrant workers in Japan
"Old Comers" / "New Comers"

◆Migrants with Residential Status
- Latin Americans of Japanese ethnic origin
- Specialist and Skilled workers; Language Teachers, Engineers, Cooks, and etc…
- Technical Interns

◆Unqualified Migrant Workers

◆Trainees, Entertainers, and Domestic Workers who are not "workers" on the Labor Standards Law

→The number of migrant workers
-A change of the number of registered foreign nationals in Japan
-The number of migrant workers
-The types of migrant workers distinguished with their residential status
-A change of the number of unqualified migrants

□The Beginning of "The day for Migrant Worker's Right"

→Migrant workers gathered on 8tn March in 1993.
"The day for Migrant Worker's Right"
A lot of migrant workers visit Kanagawa City Union and FWBZ every day.

→The beginning of Foreign Workers Brunch
At first, there were 20 members →now 2000 members.

→The role of Union
-Application of the overall Labor Standards Law: not only Article.3 (Equal Treatment);
When foreign workers under the deportation procedure should be relieved from their worker's rights violation; e.g. unpaid wage and industrial accidents, the deportation should be pended as necessary.
-Statement at the Diet & Notice 6.by the Bureau of Labor Standards (in1994);
In the event a labor standard office handles a labor case from an overstayed foreign worker, the labor standard office should inform an immigration bureau that the foreign workers' case is ongoing, and the labor standard office should try to relieve foreign worker's rights violation before deportation.

□There are 100 Stories in 100 Cases.

→Migrant Workers who support Japanese Industries

→Labor problems: industrial accidents, unpaid wages, dismissals, bankruptcies, taxies, and etc…

-The Day For Migrant Worker's Rights,
-Counsel about various problems
-Medical Examination
-Cooperation with NGOs and NPOs (about medicine, women, and education, etc.)

→Is an "illegal working" a crime?

Influence of migrant workers to Japanese Labor Union

→They revealed the situation of working condition and realities of unions.

→They changed the usual activity of unions.
e.g. FWBZ, Kanagawa City Union

→Issues and Conditions as a labor union
① individual enrolment system ②activity in the medium and small companies
③ approach from the point of health & safety

Importance to have a network with NGOs/NPOs and cooperation with governmental bodies

The policy of Japanese Government-Capitalism

→Four reports & proposals
-07/06/2001 Ministry of Economy, Trade and Industry
"Survey Research about introduce human resources from abroad in an aging society with fewer children."

-07/2002 Ministry of Health, Labor and Welfare
"Report of study group about the foreign worker's affairs"

-14/04/2004 Nippon Keidanren
"Proposal for the issue of accepting foreign workers"

-10/2004 Ministry if Foreign Affairs
"The new policy for the consular reform and the problem of foreigner in the changing world."

→Use of Foreign trainees & Technical trainees
Trainees = workers who are not "workers" on the Labor Standards Law.
Expectation as a labor force & basic rule of Immigration law system
The response to foreign workers after the collapse of the speculation……Now?
Displacement to unqualified migrant workers

→Threat for Dynamism and Control-----Xenophobia

Campaign against Foreigner's crime
Immigration Bureau under the Ministry of Justice "mail report system"
Falsification of the facts
Strengthen of administrative control as a policy of "immigrants control"

□Migrant Workers: We Work Together
… Our Approach to an Equal Society for All People.

→Work policy premising on linguistic, religious, and cultural differences
-Safety and health,
-Establishment of rights as workers
-Rights of workers, Rights of citizens
→Life as a member of a community as well as at a workplace
-Lives and Rights of Migrant workers and their families

Importance of collaboration
→Follow-up after going back to their home countries
Sideration of Pneumoconiosis by asbestos and organic solvent poisoning, aftereffects, or recurrence
→struggle with international broker
Migrant workers fear that their rights violation.
e.g. intimidation to their family and crack down after going back to home
The problem of "breach of contract."
→Dynamism in migration & Changing Standards-----global issue-
-12/1990 UN
"International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families"

-06/2004 ILO
International Labor Conference 92nd Session
"Discussion of the Global report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work"
Policy of ILO
Proposal by Solidarity network with Migrants Japan

Plan to Achieve the Labor Rights of Migrant Workers in Korea

Kajiman Khapung
/ MTU, Korea

1. The shifts of the government's policy, their effects on migrant workers and the beginning of their struggles

1-1. Before 1991 : The first migrant workers coming to Korea

The first migrant workers began to flow into Korea as the demand for manpower increased and Korea's economy grew. The promotion of trade with China and the Olympic Games in 1988 were another cause of their inflow. Most migrant workers came to Korea in the hope of getting good jobs with a tourist's visa. A Filipino housemaid was the first migrant worker that appeared in the newspaper in 1987. Although most of migrant workers were undocumented during that period, they were considered to be workers according to the Labor Standard Act and could be compensated for industrial disasters. The National Labor Relations Act could also be applied to them.

1-2. 1991 : The introduction of the Trainee System and Exclusion of undocumented migrant workers' labor rights

In 1991, the Korean government officially began to bring in migrant workers to provide manpower for 3D industries by introducing the Trainee System. Labor unions opposed it with the argument that migrant workers would dominate the domestic labor market, thereby lowering wages for all workers. Under pressure, the Ministry of Labor abolished this system in April of 1993. However, the Korean Federation of Small and Medium Business(KFSMB) independently supported the system.

Starting in August of 1992, the National Labor Relations Act could no longer be applied to undocumented migrant workers. More and more migrant workers had to pay penalties for staying illegally in Korea. Also, a migrant workers injured in an industrial accident could no longer get proper treatment and compensation.

Because of this horrible situation, local shelters and support groups for migrant workers began to form. During this time, the first official migrant workers' rally was held in front of Seoul Immigration Office. The first protest was brought about by a worker named Im-ho, aKorean Chinese worker who was living in Korea illegally. Im-ho committed suicide because of the stress caused by the penalties for his illegal stay in Korea.

1-3. Industrial Trainee System as the completion of the modern slavery

The capitalists and the government began to use the Industrial Trainee System more actively to get cheap manpower. Through this system, 20,000 trainees were recruited in May of 1994. Under the name of "trainee", no legal protection was available to them. Their wage was only about 400,000-450,000 won ($350-400) a month. What is worse,

the actual payment to the migrant worker was actually only one third of that wage; the rest was forcibly deposited. Under this system, many migrant workers could not help but leave their work places, resulting in a dramatic rise in undocumented workers, where 70 percent of the migrant workforce in Korea was undocumented.

Under the Trainee System, not only could migrant workers not send money to their families, but they weren't even making enough money to live in Korea. They had to pay an average of 2 million Won to legal andillegal brokers. They also had to deposit one hundred dollars a month. In addition, the compensation insurance for industrial accidents was not available to them. Injured migrant workers were not able to get any proper treatment and compensation. In their work places, they suffered from different types of violence and harassment such as abusive language and swearing, beating, and detention. They were almost in the condition of slavery.

1-4. 1994 - 1995 : A Sit-in Struggle targeting the compensation for industrial accidents and the application of labor law

As the situation became worse, migrant workers started to fight against the government. Kyeong-sil-lyun Hall Sit-in Struggle and Myeongdong Church Chain Sit-in Struggle were organized by Bangladeshi and Nepalese migrant workers in 1994. As a result of their struggle, the Korean government accepted the demand for the application of industrial accident compensation law and the minimum wage law. The migrant workers who joined the struggles were the first generation of the migrant workers' movement in Korea. However, they scattered afterwards and the movement lost its continuity. In the meantime, the Joint Committee for Migrant Workers in Korea (JCMK) was established based on the association of about 10 social groups which had been involved in the sit-in struggles. After that, the JCMK led the migrant workers' movement in Korea for a while.

As more and more migrant workers came into Korea, migrant workers' struggles in the work place also increased. For example, Vietnamese trainees' struggle occurred in Tae-Kwang Corporation. The workers in Ewha Textile Company in Gu-mi led a strong strike for higher wages and better working conditions. However, no effective solidarity between migrant workers and domestic workers could not be found. Meanwhile, the government was cracking down on migrant workers for 2-3 months of every year.

1-5. The effort to legalize migrant workers' right vs. the capitalists and government's attack

Migrant workers' groups began to make efforts to legalize migrant workers' rights. In 1996, 1997 and 2000, they submitted a petition for legalization of migrant workers' rights after the model of Work Permit System from Germany. They also led sit-in struggle for 39 days. However, the members of KFSMB and government oppressed the struggle. Meanwhile, migrant workers from Bangladesh, Nepal and Pakistan began to make their local communities.

1-6. The application of the Labor Standard Act to undocumented migrant workers

As undocumented migrant workers were increasing and their struggles were getting serious, the government could not ignore their voice any longer. In 1998, the Labor Standards Act started to be applied to undocumented migrant workers. In 1999, the Minimum Wage Law and Industrial Disaster Insurance Law also began to be applied to the trainees. In addition, in 1998 the Trainee System also had a little change from a 3 year-training term to a 2-year training and 1-year working term.

1-7. The Establishment of Equality Trade Union Migrants Branch and their struggle

Several migrant workers from JCMK and other local communities joined the Equality Trade Union to make their migrants' branch (ETU-MB). In the winter of 2002, ETU-MB organized sit-in struggles and rallies to demand the abolition of the Trainee System and the introduction of Work Permit System. This was the first time that migrant workers formed their own organization with their own voice, and no longer solely depended on other groups where Koreans made all of the decisions. Two Bangladeshi members who had been arrested went on a hunger strike with two more migrant workers in the detention center. As a result of their struggle, the four migrant workers were released.

In 2003, the Sungsu chapter organized a struggle to get their delayed retirement pay. Also in Maseok, a strike was organized to get an apology from the owner for the violence he perpetrated on a migrant worker. Migrant workers gained self-confidence and began to struggle for their labor rights by themselves.

1-8. One year sit-in struggle against Employment Permit System (EPS)

Under the criticism for violating the human rights of migrant workers, and increased cost due to the instability of manpower supply, the government pushed the legalization of Employment Permit System (EPS). Along with it, severe crackdown and deportation started. The government prolonged the stay of about 80,000 migrantworkers to 5 years. But only the migrant workers who had stayed for less than 4 years could get the benefit of it. 190,000 migrant workers were also legalized for a short time. However, the government decided to crackdown on 120,000 undocumented migrant workers. During the early period of crackdown, 9 migrant workers committed suicide in despair.

To resist this horrible government policy, ETU-MB began to organize public rallies and struggles. They encouraged migrant workers in Seoul and the Gyeonggi Province to join the rallies by visiting their apartments and work places. Small local rallies were also organized. Beginning with less than 10 workers in the first rallies, they grew into public rallies of large scale. At the end of 2003, over one thousand people gathered to rallies. On November 14th, 2003, over 80 migrant workers began a sit-in struggle at the entrance of Myeongdong Church. Other big and small sit-in struggles were also locally organized and networked with each other. The Myeongdong team led their sit-in struggle for over 1 year, until the end of 2004. Despite the hard time , such as the president of the team being arrested by immigration, and having all other struggle teams break up, the Myeongdong team did not stop their struggle. Their struggle was a great achievement in the migrant workers' movement in Korea. Through the struggle, migrant

workers could strengthen the base of their movement and gained great confidence about themselves.

1-9. The break-up of the sit-in struggle and the establishment of Migrant workers Trade Union (MTU)

Despite of the longterm sit-in struggle, the team realized that their power was not strong enough to change the policy of the government. They decided to break up to make a stronger independent migrant workers' labor union: the Migrants' TradeUnion (MTU). MTU began with 91 member in April of 2005 and now has more than 250 members. However, the government has refused to register MTU as a legal labor union. They argued that "illegal" migrant workers are involved, and the union was formed for political purposes. In May of 2005, immigration officers targeted and arrested the chairman of MTU . He has been in the detention center for 6 months. However, MTU is trying its best to strengthen and broaden their organization by holding public rallies and by networking with other solidarity groups. Recently, MTU has been preparing to struggle for the legalization of the Work Permit System (WPS), a bill that is being introduced into the national assembly by the Korean Democratic Labor Party (KDLP) on behalf of MTU.

2. Implementation of Employment Permit System(EPS), its effects on migrant workers, and the need for policy geared toward guaranteeing workers' basic rights.

2-1. EPS's effects on migrant workers

- Ruthless manhunt continues.

Deprived of even minimal human rights, migrant workers have been violently hunted down in the government crackdown. Stun guns, electric shockers or rubber bullets have often injured them so seriously as to require hospitalization or surgery; to avoid arrest, others have ended up breaking their own backbones and legs by jumping off buildings. In short, migrant workers are being driven off with no regard for their basic human rights, much less labor rights.

- EPS fails to deliver its promises on ameliorating abuse.

From the year 2003 onward, the crackdown on illegal residents has deported about 60,000 workers. Despite this, over the half of the entire migrant workforce of 400,000 are still working unregistered. the capital and the state had touted that EPS, with its inclusion of four major insurance policies, would significantly reduce the number of illegal residents by resolving the inhumane defects of the industrial trainee system. But those now entering Korea through EPS are yet again being forced to leave their workplace and thus become illegal, because they have no freedom to choose their workplace and therefore are mistreated by their employers who take advantage of their workers' plight with unduly low wages and harsh labor conditions. The fact that over the half of those under EPS have gone illegal makes it evident that the policy failed.

- Cases of stagnant wages, overdue wages, and job insecurity increase.

The average hourly wage for migrant workers has stagnated at 3,575 won in 2005, compared with 3,565 won in 2002. Although the rule of 'the same wage for the same work' should apply, the wage gap between domestic and migrant workers has not been reduced. Given the inflation, real wages have fallen. Furthermore, taking advantage of migrant workers' helplessness under the ruthless crackdown, employers have intentionally delayed payment more often. In addition, unregistered migrant workers enjoy even less employment security as indirect hiring on a daily basis through temp agencies replaces direct hiring. All these changes go far beyond the stated purpose of the current government crackdown, which allegedly is to reduce the number of illegal residents, and this points to another hidden objective, which seems to conveniently provide employers with means to limit the choices of migrant workers, thereby aiming to lower labor standards. An overall decline in the labor standards was also shown in the recent survey done by the Korean Democratic Labor Party.

- Unregistered migrant workers exempted from labor laws

Facing workplace abuses such as violence, wages long overdue, and the denial of the presence of workplace-related injuries and the refusal to pay for their losses, unregistered migrant workers turn to the labor ministry or to the court. But when they do so, they are now simply deported, without being able to resort to the labor-related rules and regulations. Prior to the implementation of EPS, when facing similar situations, unregistered migrant workers had some, albeit limited, recourse to legal procedures at the ministry of labor. But now they are regarded as mere criminals. Extortion cases began to occur where unregistered workers were victimized by Koreans disguising as immigration officer. Koreans' overall attitudes toward migrant workers have also deteriorated. The government even dared to oppress migrant workers' religious activities, citing recent geopolitical events and branding Islamic religious communities as terrorists.

- Contracting workplace struggles and basic labor rights moving farther away

With the implementation of the new policy, the activities by migrant workers to organize themselves to protect their rights have faltered greatly, evidenced by the fact that recent several years have seen no workplace struggles. Other than submitting pleas by Korean representatives, Migrants' Trade Union (MTU) has found few viable ways to resolving the issues like delayed payment. Workplace struggles during the days of Equality Trade Union Migrants' Branch are fading into oblivion.

- Government's oppression of basic labor rights

Though MTU was founded April this year, the government rejected its declaration of establishment papers submitted to the labor ministry, citing the following reasons: that unregistered migrant workers are included as members; that members' workplace is unclear; that it was set up for the purpose of political struggle. To add insult to injury, the government perpetrates routine inspection on labor union activities, singled out, followed and arrested its chairperson, and even arrested Koreans in solidarity. As demonstrated by the government disregard for its own legal procedures during the arrests and deportation, sheer oppression reigns. A guarantee of basic labor rights is a far cry.

2-2. The essence of policy on migrant workers such as EPS

The government has pledged to unify the migrant workers-related regulations into EPS, currently co-existing with the industrial trainee system, by 2007. But EPS does not amount to much, except for the application of the four major insurance policies. Moreover, it patently fails to guarantee the labor rights to migrant workers. It can even be said to be retrogressive, since it is implemented jointly with the brutal crackdown on unregistered migrant workers. The liberty of choosing one's own workplace is a right taken for granted even in a capitalist labor market. But EPS does not allow this. Not only that, the law guarantees the possessory right of the employer over migrant workers during the contract periods. As a result, on Korean soil, the migrant worker now has to choose either to live a serf's life or to live under constant fear of deportation as an illegal. After the contract period expires, the stigma of illegality sticks--no matter how naturally most of employment are further extended or no matter how much hiring needs are there for the migrant worker at different workplace. The migrant workers' stays are being spontaneously extended by the structural needs of the labor market, and the government knows it. That is why they looked the other way when it comes to the employers' use of unregistered migrant workers. Therefore, the government policy cannot be seen as a benevolent effort to rotate migrant workers and guarantee their human rights, but can only be properly understood as an calculated effort to keep the overall working conditions and labor rights of migrant workers to bare minimum and thus to exploit them to the fullest. In other words, EPS, the industrial trainee system and the crackdown constitute the unholy trinity of encircling migrant workers within a more perfect barriers of exploitation.

2-3. Laws truly geared toward guaranteeing the basic labor rights of migrant workers

- Labor permit system with right to choose workplace and to extend stays

In order to guarantee the basic labor rights of migrant workers, they should be allowed into a level labor market. Any shackles against this liberalization must go. When attempting to excercise one's labor rights, one watches this shackle materialize into a threat of instant deportation. Under the current system, it all depends on the employer, who, on a whim, can show the migrant worker the door to deportation. As such, laws should move in the direction of guaranteeing the labor rights to migrant workers, away from the current system of granting unlimited possessory rights of the employer over the worker. The key points are the following: to guarantee unfettered freedom to move across workplaces, and to guarantee extension of residence.

However, it should not stop there. As is shown in Europe, legal protection would not guarantee truly equal rights. Even if the laws were to dictate equal labor rights among workers, cultural, idealogical and institutional barriers would favor domestic over migrant workers. After all, superficial equality of opportunity guaranteed by the laws succeeds neither to eradicate antagonism between the capitalist and the labor nor to wipe out the discrimination between women and men, and between the handicapped and the rest.

Likewise, the capital maintains the status quo by applying the perennial "divide and rule" tactics, namely, driving a wedge between workers by stoking prejudices held by domestic workers against migrant ones and weakening both. Such exploitation racket

could go on as long as the spirit of struggle and solidarity among workers stay weakened. At any rate, legal equality is the minimal device for achieving substantial equality, nothing more, nothing less. To this end, a labor permit system that guarantees equal labor rights must be implemented.

- Moving toward the viewpoint of the worker

What trumps all else when it comes to migrant workers' issues is to start from the vantage point of the worker, whether the issue at hand be struggle or legislation. Abandoning the view points of the capital and the government, whose views can be summarized as domestic worker first and migrant worker later, we must support the free migration of world labor and view migrant workers as equal partners in our collective struggle against oppression and exploitation.

If restrained by the perspectives of the capital and the government, migrant workers never cease to be those that need to be protected only 'when necessary.' Along these lines, migrant workers could easily fall victim to a nationwide clamour for any solution to soaring unemployment caused by a crisis of capitalism. It happened in Europe, and is happening yet again. In the late sixties, even though the leftist factions of the democratic labor parties came to power in Britain and France, they sacrificed migrant workers by deporting them, in the face of severe economic crises and crippling unemployment. They betrayed international solidarity then, and they are still at it now.

In order to avoid this from happening in Korea, a bedrock principle must be held firm: that migrant workers are indeed equal and that international solidarity is the unshakable foundation for any struggle and legislation in labor movement. To reiterate, the basic labor rights of migrant workers must be approached from the labor perspective, regardless of the market demand of the capital.

3. Organizing Migrant Workers

3-1. The Relationship between migrant workers and the Korean Labor Movement

Migrant workers are still suffering from race, religious, and national divisions. Migrant workers want to be members of Korean trade unions, but they have not been allowed. The Sungseo Industrial Zone Construction Union admitted some migrant workers into the union, but no other industries have allowed migrant workers to join. Because of the restrictions on migrant workers joining Korean trade unions, they have had no choice but to form their own union.

Although Korean workers and migrant workers have different immediate demands, the greater goals are the same. Migrant workers and Korean workers are both simply workers, and they must be united to achieve their goals. SGI MTU has sent representatives to the KCTU Gyeonngi zone and districts for solidarity and organizing non-migrant workers. Since that time, the relationship between migrant workers and KCTU has gradually improved. Not only is the support from KCTU increasing day by day, but many other solidarty groups, social and political organizations, such as the KDLP are also increasing their support.

3-2. Organizing the Equality Trade Union, Migrant's Branch (ETU-MB)

ETU-MB started when some volunteers for the Joint Commission for Migrant workers in Korea (JCMK) started thinking that migrants needed their own voice. The JCMK is a coalition of religious groups and NGOs whose mission is to help migrant workers through providing social services and cultural programs. However, many migrant workers thought that the JCMK treated migrants as helpless people from very poor countries who cannot do anything for themselves. So the migrant workers decided to start their own group called Struggle Network for Migrant workers' Rights and Freedom (SN for MRF).

When the migrant workers formed SN for MRF, it proved that migrant workers can think for themselves and struggle for their own rights. Migrants workers started their struggle not through counseling (as the JCMK had done), but through organizing and direct action. A few migrant workers who work in 3-D factories started to organize their co-workers while sacrificing their free time and holidays. They started to spread the idea that the migrants' situation in Korea would improve through struggle, not through NGOS and counseling. SN for MRF organized rallies in front of immigration offices and in different cities. They also started to act in solidarity with Korean trade unions and support the general cause of labor in Korea. After seeing this struggle, the Equality Trade Union started allowing migrant workers to join and were allowed to form their own branch within ETU.

In the workplace, migrant workers tried to overcome problems like industrial accidents, unpaid wages, violence, and sexual harassment by bargaining with factory authorities. At first, very few migrants would participate for fear of being caught and deported, but soon the movement started to grow. Korean solidarity groups also started to join and helped to make the migrants more confident. The migrant workers started to achieve victories through direct actions, including going on strike. They were able to get owners to pay wages that were owed, or to pay hospital bills in the case of workplace accidents. This struggle gave other migrant workers hope that they could achieve their rights, and the migrants in ETU-MB became more confident and stronger in their fight. This process created many new migrant union activists.

3-3. Organizing MTU

As ETU-MB continued to struggle, some of the migrant workers gave up their paid work to fight full time against the Korean government's immigrations laws, namely EPS and ITS. Through leaflets and meeting with other migrant workers, the ETU-MB leaders were able to gain support in migrant communities. In some areas, up to 1,000 migrant workers were in support of ETU-MB activities. Through these activities, a struggle committee was formed.

When the Korean government started their Crackdown policy in November of 2003, ETU-MB decided to start a sit in struggle in Myeong Dong to protest the crackdown and to repeal EPS. Despite the crackdown, ETU-MB continued to organize through petition campaigns, rallies, fundraising and propaganda. Though they had a strong

foundation, ETU-MB failed to organize the migrant workers who were receiving many services from NGOs and Chinese-Koreans.

3-4. The Sungseo Industrial Zone Labor Union

ETU-MB tried to organize a nation-wide migrants' union, but right now there are two separate unions representing migrant workers: MTU Seoul-Gyeonggi-Incheon and the Sungseo Industrial Zone Labor Union. MTU was formed in April 2005 out of ETU-MB, and in 2003, the Daegu province Sungseo Industrial Zone Labor Union admitted migrant workers as members. Because of the language barrier, migrant workers formed a separate organizing committee. Representatives of migrants from every country meet once a month to discuss and decide on the organizing plan. The Korean secretariat follows all of the decisions that are made by the migrant representatives. In Deagu, the migrants are organizing along industrial lines, as well as by nationality. By the end of 2005, the migrants in SIZLU will form their own union. To date, MTU has 3 branches and 6 chapters throughout Seoul, Gyeonggi and Incheon and are trying to organize more.

One of the difficulties in organizing migrant workers is that there are many barriers created by culture, language and religion. Another difficulty is that MTU is not concentrated in one place. There is an office in Seoul, but workers live and work all over the Gyeonggi province, as well as Korea. There are branch offices and districts, but is still difficult to organize given how widely dispersed the workers are over a relatively big geographic area.

3-5. Construction Unions and Migrant Workers

There are many migrants working in the construction industry. A majority of those workers are Chinese-Korean. Very few of the migrant laborers are members of the construction trade union. Because the migrant workers get paid less, they are more desirable for companies to hire. This creates many divisions between migrant workers and Korean workers in the construction trades. However, there are cases where migrant workers in the construction trade joined with Korean workers in their struggle. For example, in Ulsan, there was a strike at the power plant where one of the migrant workers was forcibly deported while fighting with his Korean comrades; in another case migrant workers participated in the occupation of a construction company building with the Gyeonggi Jungbu Construction Trade Union. This shows that migrant workers will act in solidarity with Korean workers and fight together in the workplace for their rights. If Korean trade unions allowed migrant workers to join their unions, it would make the Korean Trade Union movement stronger.

4. Conclusion (Organizing Direction & International Solidarity)

There are many difficulties in organizing migrant workers. First of all, since many migrant workers live under constant fear of deportation, they are afraid to join the struggle. If migrant workers make a struggle in their workplace, then the owners will call immigration and have them deported. In addition to this, often Korean workers and

migrant workers do not get along well in the workplace to cultural and linguistic differences. Sometimes, when Korean workers go on strike, they fail because they migrant workers do not strike with them. Though the Korean workers walk out, the factories still operate because migrants are not a part of the union. This, too, causes resentment in the workplace.

To avoid this sort of resentment and failure, Korean workers need to take steps to organize migrant workers into their unions so that they can fight together. Korean workers need to help make the workplace safe for migrant workers, and migrant workers need to join with Korean workers in workplace struggle. If migrant workers and Koreans workers join together, it will be the beginning of a new era of the Korean labor movement where migrant workers and Korean workers are united in their fight against unfair government policy and a bad working environment.

Finally, migrant workers in Korea need to join together. Currently, there are many separate migrant communities that are based on nationality. Some of them are struggling against the unfair immigration policies and bad working conditions in Korea, but they are doing it alone. If they join with the rest of the migrant workers in Korea, they will be stronger. In addition to this, they need to build links with organizations in their home countries so they can form a network of people around the world who are struggling for migrants rights in Korea, and other countries as well.

[Workshop 2]

Rights for "Disguised" Self-employed Workers

Rights for "disguised" self-employed workers in Korea

Dr. Ae-Lim Yun
/ Korea Solidarity against Precarious Work

Since the 1990's there have been significant changes in the structure of the labour market and employment relationships in South Korea. The share of irregular work in total employment surpassed 50% in 1999 and in 2004, it amounted to 56.1% (8,404,000) of total employment. Irregular workers refer to those in fixed-term, day labour, triangular, part-time, self-employed and economically-dependent employment relationships among others. These atypical forms of employment have increased across industries and there is an increasing trend in which large enterprises replace regularly-employed workers with irregularly-employed workers. In particular, irregular employment has rapidly increased among women's jobs, amounting to 69.5% of total women's jobs.

Although the working hours of irregular workers are as long as those of regularly-employed workers, the average of wage of precarious workers is less than half of that of regularly-employed workers. Irregular workers are not protected by social security system. The total density of union organization is 11.8%, yet in the case of precarious workers, it represents only 3.2%. Irregular workers are excluded from coverage in collective bargaining agreements.

Despite the fact that irregular workers have become a majority of the workforce, they exist outside of basic labour protection. The legal scope of their employment relationships also do not accord with the realities of their actual working relationships. Some of the contractual arrangements most frequently used to disguise the employment relationship include a wide variety of civil and commercial contracts which give it the semblance of self-employment. One of the most serious problems is a growing trend in which enterprises make use of disguised self-employed workers to evade responsibilities for adhering to labour law standards and to prevent workers from unionizing.

After 1998, the union organizations of the self-employed began increasing in industries such as road transportation, construction, sales, private service, nursing and broadcasting etc. The union density of the self-employed is 7.6%, which is significantly higher than the average union density of total irregular workers. The self-employed have formed independent occupational unions and demanded for legislation that enlarges the scope of their employment relationship.

According to the traditional judicial judgement, the self-employed workers have not been treated as an employee in the labor law. The viewpoint of the judicial judgement mainly focused on the personal dependency, namely whether to be controlled during the performance of the job. But this kind of criteria could be estimated as an outdated and too narrow one.

As an alternative approach, it is proposed that the application of personal dependency should be modified according to the flexibility of work(wage, working hour, office-going time etc.). Recently the increase of flexibility never mean the decrease of dependency. Among the self-employed, we can find a new criteria of dependency that is,

"employers' power" concerning the beginning and the ending of the contract itself and "the economic condition of worker" etc. And another criteria are related to economical and organizational dependency, namely 'combination of business' and 'the nature of service in business' etc.

After 2001, the Korea Tripartite Commission debated legislation concerning precarious employment including the self-employed. In 2004, the Korean government proposed related bills to Parliament, which is sparking a big debate at this moment. Due to stark difference of opinions, it is very difficult for social partners to reach an agreement. The National Human Rights Commission announced the official opinion that the Government bills are insufficient to secure the basic employment rights of precarious workers and the Korea Confederation of Trade Unions (KCTU) waged a general strike to protest the government bills.
The Government and employer representatives firmly maintain the opinion that labour law protection is inappropriate because the self-employed are not under standard employment contracts. Instead, they have considered the schemes of protection by the Fair Trade Act and the organization of self-employed associations so as to complement the weakness of their economic status. Contrarily, KCTU and the self-employed unions have demanded legislation that enlarges the scope of their employment relationships and their collective bargaining rights. Many scholars support the idea that under certain conditions self-employed workers are presumed as employees. It is vital issue to determine how labour legislation can be adapted to complex situations in which it is particularly difficult to determine whether or not an employment relationship exists, especially in a context where there exists a situation of dependency on work.

The profound changes occurring in the world of work have given rise to new forms of relationship which do not always fit within the parameters of the employment relationship. While this has increased flexibility in the labor market, it has also led to a growing number of workers whose employment status is unclear and who are consequently outside the scope of the protection normally associated with an employment relationship.
Over the past decade, the ILO has held discussions on workers in situations needing protection. In 1997 and 1998, the Conference examined an item on "contract labour". The original intention of the Conference discussion on "contract labour" was to protect certain categories of unprotected workers through the adoption of a Convention and a Recommendation, but the proposal to adopt a Convention and Recommendation failed.
At the 91st Session of the Conference in 2003, a general discussion was held on the scope of the employment relationship. There are rights and entitlements which exist under labor laws, regulations and collective agreements and which are specific to or linked to workers who work within the framework of an employment relationship. The Conference noted that the ILO should envisage the adoption of an international response on this topic. A Recommendation was considered as an appropriate response. The Recommendation should focus on disguised employment relationships and on the need for mechanisms to ensure that persons with an employment relationship have access to the protection they are due at the national level. The question of the employment relationship will be examined at the 95th session of the Conference in 2006.
Discussion at ILO concerning the scope of employment relationship provides the

following issues :
First, the determination of the existence of an employment relationship should be guided by the facts, irrespective of the arrangement, contractual or otherwise, agreed between the parties. ILO examined a list of indicators that may assist in establishing the factors, for example, the person who determines the conditions of work; whether remuneration is paid periodically and constitutes a significant proportion of the income of the worker; whether the work is performed solely or mainly for one person; the extent of integration of the worker into the business etc.
Secondly, governments, employers and workers should take active steps to guard against disguised employment. It is acknowledged that a substantial number of innovative measures have been introduced in many countries to address the problems relating to the determination of the employment status of workers. Those measures include the law establishes a legal presumption of employment if work is performed or services are provided in specific circumstances, unless it is shown that the parties had not intended to enter into an employment relationship.
Thirdly, all workers, regardless of employment status, should work in conditions of decency and dignity and enjoy fundamental right at work equally. These rights include the right to organize, the right to bargain collectively, freedom from discrimination in employment and occupation on the basis of race, color, sex, religion, political opinion, national extraction or social origin, minimum wage, working time, maternity protection, occupational safety and health, protection of remuneration and statutory social security etc.
Last, right to organize and right to bargain collectively are effectively encouraged as a means of determining and improving the terms and conditions of work. Any obstacles to the exercise of the right to join organizations of their choice and to participate in the activities of such organizations should be identified and eliminated. Korean legal system does not accord with that international labor standard, because disguised self-employed's unions can't have legal status and contract workers in triangular employment relationships can't enjoy their basic right toward user-companies.

Concludingly the interpretation and the revision concerning dependency of contract labor should confirm that "disguised" self-employed are employees in the labor law. I propose that the concept of 'employee' should be enlarged such as "laborer who provide work for regular business or being jointed into employer's business and who get remuneration as a change of one's service."
And when we apply the labor law to a case of contract labor, we should apply clauses concerning the minimum of labor standard such as working hour, minimum wage and the protection of maternity etc. totally. In addition we should design the higher standard for protection of unstable work.

日本の特殊雇用労働者の現實と労働組合の課題

Koyano Takeshi
/ RENTAI Union, Japan

1．日本の特殊雇用職..者

(1) 日本にも特殊雇用職..者が多.存在する。

特殊雇用職..者が多いのは次の産業.業種である。

1)建設産業
2)ダンプカ.
3)バラトラックによるセメント運送業
4)生コン運送業
5)一般貨物トラック運送業

これら産業.業種の特殊雇用職..者は、「個人事業主」のとして就.先企業と請負契約を結び、自ら調達した材料や自己所有の機械工具、車.等の生産手段を使用して請負った業務完成させる体裁をとっているので、..者ではないとされる場合が多い。

日本では、このほかにも音.家や芸能プロダクションの..者などがある。

(2) 日本の特殊雇用職..者は１９７０年代以降減少し、セメント、生コン、一般貨物トラックの分野ではいったん消滅しかけた。しかし、１９９０年代後半から再び全般的に著しく.加し始めている。

１９７０年代に減少したのは、..組合が特殊雇用職の正社員化運動を.力に取り組んだこと、また、時の日本は高度..成長期にあり、資本も..力不足に..するために特殊雇用職にこだわらず常用雇用化を選んだためである。

ところが、１９９０年代中期以降、日本政府と資本はアメリカ主導ですすむ..のグロ.バル化に..して、新自由主義的な政策思考にもとづく政策を.力にすすめた。

たとえば１９９５年、日本..者連盟（日.連。現在の日本..連。韓の..にあたる）は、「新時代の日本的..」と題する基本政策を.表し、それまで終身雇用を基本としていた日本の雇用政策の.換を提案した。具体的には、..者の雇用形態を、①長期雇用する正規職..者、②有期雇用契約..者、③パ.ト.派遣などの非正規職..者、の３つに分類する方針を提案した。

政府も雇用柔軟化の.点に立って、１９９０年代後半から２１世紀初頭にかけて雇用...法制の全般的自由化をすすめた。

この結果、 大企業は相次いでリストラ政策を.行し正規職を大幅に削減し、代わりにパ.ト、日.雇用、有期雇用契約、派遣など非正規職を大量に採用した。この流れのなかで特殊雇用職..者も再び.加したのである。

(3) 日本では、正規職..者を雇用する使用者は、..者を社...保.（雇用保.、.災保.、政府管掌健康保.、厚生年金保.）に加入させなければならない。同時に、..基準法の規制に.って.業代の支.い、有給休暇の保障などを義務づけられている。

パ.ト.日.雇用.有期雇用.派遣などの非正規職..者を雇用する場合であっても、それが雇用契約である以上、使用者は程度の差はあっても基本的にこの規制を免れることはできない。

しかし、特殊雇用職..者についてはそうではない。「請負契約で就.する個人事業主」を.装させることによって、使用者は..法令上の全ての規制を免れることができる。

１９９０年代後半以降、急速に特殊雇用職..者が.えているのは、..のグロ.バル化に伴う資本の生き.り競.が激しさを.した結果、.人件費を削減し、使用者責任を回避する究極の手段として、建設業、運輸業だけでなく..な産業分野の中小企業が、..者であることを否定した.かせ方を採用しはじめたためである。

(4) 現在の特殊雇用職..者は、１９７０年代以前と比較して次のような特.をもっている。

第１に、正規職と全く同じ形態で就.しているにもかかわらず、形式的に「請負契約の下で就.する個人事業主」として取り扱われているだけで、.体的には事業主の要素を全く持たない特殊雇用職..者が多くなっていることである。

建設業の場合、１９７０年代までは、特殊雇用職..者の大.は工事で使用する建築材料や機械工具類を自ら調達または所有して、事業主性（請負契約の.質である業務遂行の裁量や.業の自由）を一定程度備えていた。しかし、最近は、材料や機械工具類を全く調達.所有せず、事業主性をほとんど持たずに、もっぱら..力のみ提供するケ.スが.えている。

建設業の特殊雇用職..者は.質的には出.高.い賃金で.く非正規職..者にすぎないというべきである。

セメント、生コン、一般貨物トラックの場合も、６０－７０年代は、特殊雇用職..者が名目上は車.を自己所有している体裁をとる事例が多かった。しかし、最近は、車.を全く所有せず、.ら正規職と同一の業務指示に.い、報酬もたんなる出.高.い賃金にすぎない特殊雇用職..者が.加している。

第２に、特殊雇用職..者の...件が全般的に著しく.化し、生存が脅かされる水準にまで低下していることである。

１９７０年代の特殊雇用職..者は、雇用が不安定であることを除けば、年間所得水準は正規職を上回るケ.スが多かった。しかし、現在は逆に大半が下回る傾向にある。..時間も長くなり、運.手の場合、.夜連.運行が常態化するケ.スも.えている。

２００３年９月、あまりの搾取に怒った小型トラックの特殊雇用職..者が、ビルに立てこもり、ガソリンをまいて爆.死する事件もおきた。

第３に、建設業および運輸業以外に、かつては特殊雇用職..者が存在する余地のなかった産業.職種でも特殊雇用職..者が.えていることである。

工場の製造ラインで.く現業..者（外.人..者が多く含まれる）、.業職や事務職などのホワイトカラ...者などの事例が.えている。

(5) しかし、日本の..組合は大企業や公務員の運動が中心で、しかもほとんどが企業別組合なので、特殊雇用職..者の存在や..基本.にはほとんど.心が.われてこなかった。

これを反映して、特殊雇用職..者の現.に.する体系的な分析はもちろん、正確な政府方針も存在していない。したがって、日本の特殊雇用職..者の正確な現.を報告することはできない。

以下は、日本の建設業およびセメント.生コン産業に限定して、特殊雇用職..者のおおよその現.と..運動の課題に.する全日本建設運輸連...組合の.え書きである。

２．日本の建設産業と特殊雇用職..者の現.

(1) 建設産業の.況

○ 日本の建設投資は１９７０－８０年代の２０年間に倍.ゲ.ムで.大した。ピ.クの１９９０年前後の建設投資は約８２兆円にものぼり、これは.時の年間政府予算とほぼ同じ規模、...生産の２割近くを占めた。

しかし、１９９０年代以降は、劇的な縮小過程に入っており、２００５年度は５１兆円（ピ.ク時の約６割）にまで減り、...生産比も１割程度にまで落ちた。（表１）

政府はこの趨勢が今後も.き、２０１０年頃には４０兆円程度になるとみている。

表１　日本の建設投資の推移

（.位：百億円、％）

年度	年間投資額 (A)	...生産 (B)	A／B
1970	1,463	－	－
1975	3,162	－	－
1980	4,948	24,627	20.1
1985	4,996	32,743	15.3
1990	8,144	45,000	18.1
1995	7,902	49,998	15.8
2000	6,619	51,317	12.9
2005	5,133	51,150	10.0

資料）.土交通省

(2) 建設業の産業構造と..者の雇用.態

○ 日本の建設業者の.は５６３，０００社にものぼる。

その企業規模別..は、大企業１．１%、中小企業４０．５%、零細企業３５．０%、個人事業主２３．４%である。

○ 過去３０年間の間に、建設業者全体に占める個人事業主と零細業者の割合は９割から６割弱にまで激減し、代わりに中小企業の.が大幅に.えた（表２）。

これは主に、日本の.統的な１.建木造住宅が減り、中高層マンションの占める割合が大きくなったこと、その結果、生産の主体が大企業や中小企業に移行して、在.工法に依.する「個人事業主」が受注機.を失い、大企業や中小企業の下で.く..者に.わっていったことの反映である。

表２企業規模別建設業.事業者.

（.位：千件、%）

年度	.事業者.	企業規模別..			
		個　人	零細企業 1000万円以下	中小企業 1000万円~１億円未.	大企業 １億円以上
1980	489	264(54.1)	179(36.6)	43(8.6)	3(0.6)
1985	519	252(48.6)	202(39.0)	61(11.8)	4(0.7)
1990	509	206(40.4)	213(41.9)	85(16.8)	4(0.9)
1995	552	166(30.1)	229(41.4)	151(27.4)	6(1.0)
2000	601	158(26.3)	196(32.6)	240(40.0)	6(1.0)
2005	563	132(23.4)	197(35.0)	228(40.5)	6(1.1)

資料）.土交通省

○ 建設産業を支配しているのは「ゼネコン」（General Contracter)と俗.される.合建設業者である。

ゼネコンのうち、「ス.パ.ゼネコン」とよばれる上位５社は、各社とも資本金５００億円超、年間.上高１兆円超、..者.１万人規模の巨大資本であり、その次の大手グル.プ約５０社も資本金１０億円超、年間.上高１０００億円超、..者.２~３０００人規模の大企業である。いずれも株式を公開し全.的規模で.業活動を行っている。

その他に、主として各都道府県を.位として.業活動を行う中堅.中小ゼネコンが約１万社ある。

○ 今日の建設生産は、「重層下請構造」の下で行われている。

ゼネコンは.注者から工事を請負うと、自らは工事全般の施工管理と監理業務だけを行い、.際の建設作業は、とび土工、.骨.筋、大工、左官、電、管工事など各職種別.門工事業者（１次下請業者）に請負わせている。

次に１次下請業者は、もっぱら職人や作業員の.務供給を行う業者（２次下請業者）に作業の全部又は大半を請負わせ、自社の技術者の指揮命令の下で.際の工事作業を行う。

これが重層下請構造であり、３次下請、４次下請に及ぶことが往.にしてある。

○ 建設..者の雇用.態は、この重層下請構造に..して階層分化している。

1) ス.パ.ゼネコンおよび大手ゼネコンの..者は全て正規職で、主として管理.監督業務を担.する技術者と.業.事務職である。日本の公務員..者の年.は６００万円程度だが、ゼネコンの..者の平均年.は８００~１０００万円程度、完全週休２日制など.まれた福利厚生制度の下で.いている。

日建協（日本建設産業職員組合協議.：４万人）は、株式公開している大手ゼネコンの正規職で組織された企業別の..組合である。

2) 中堅.中小ゼネコンの..者もほぼ全て正規職..者であり、公務員と同等またはやや下回る程度の年.....件で.いている。

3) 職種別.門工事業者および.務供給.門業者では正規職は一部にすぎず、大多.が日雇いまたは特殊雇用職..者である。

2)、3) の分野の..者を組織する..組合は、全建.連（７０万人、主に建設職人）、全港.（１万人、日.雇用を組織）、連.組（５千人、中小企業..者と特殊雇用職を組織）である。

○ 建設業における特殊雇用職..者は近代資本主義の時代から存在し、かつては「職人」と呼ばれた。「職人」は１人またはグル.プで、日本の.統的住宅の建築工事を.注者から直接注文を受け、自己所有の機械工具を使い、自己調達した材料を使って、自己裁量の下で工事を仕上げるなど、事業主性が相.程度.かった。

しかし、建設生産の寡占化と重層下請構造化がすすんだ１９８０年代以降、「職人」は１の(4)の第１で見たとおり事業主性を次第に失ってきた。現在では、請負契約の体裁をとっているものの、.態的にはゼネコンや下請.門工事業者の業務指示の下で出.高.い賃金で.くにすぎない..者に.貌しつつある。

○ 建設業における特殊雇用職..者の.態に.する正確な統計資料は存在しない。

.務省の「..力調査」（２００３年度）は、日本の人口１億２０００万人、就.者..６３００万人のうち、建設業は６０４万人を占め、また建設業の就.者のうち常用雇用..者は４４３万人だと.表している（表３.上段）。

表３　建設産業の就業者.と社...保.加入者.（２００３年度）

（.位：千、%）

	事業者.（件）	就業者（人）
. .	563（100.0）	6,040(100.0)
(自.)		870(14.4)
(家族.事者)		230(3.8)
(常用雇用)		4,430(73.2)
(臨時雇用者)		260(4.3)
(日雇い)		260(4.3)
建設雇用者.	−	4,930(100.0)
(雇用保.適用)	320(56.8)	2,351(47.6)
(健康保.適用)	263(46.7)	2,051(41.6)
(年金保.適用)	279(49.6)	2,858(57.9)

資料）.務省、社.保..

この通りだとすると、日本では建設..者の７３．２%が正規職ということになる。

しかし、.務省統計は事業主に.するアンケ.ト調査である。したがって、その..者を.際に正規職の要件を.たす..者として雇用されているか否かに.係なく、事業主が自社で常時..的に使用している（「雇用している」ではない）から「常用雇用」と認識し入れば、その..者は常用雇用として統計上は計上されている。したがって、.務省の統計のいう「常用雇用」の.はそのまま正規職の.とみなすことはできない。

むしろ、正規職..者を雇用すれば法律上義務づけられた社...保.の加入.況（表３下段）を示す社.保..のデ.タの方が.態に近い.字を表している。

この.字をもとに判.すれば、日本の建設..者のおよそ５割前後が日雇い、臨時雇用および特殊雇用職..者からなる非正規職..者だと推定できる。

３．セメント.生コン産業と特殊雇用職..者の現.

(1)　セメント産業および生コン産業の推移も建設業とほぼ同じである。

日本のセメント産業は、三菱、住友、アサノ、小野田といった財閥系大資本が支配している。

１９８０年代初頭の年間生産量は９０００万トンに達し、.時のソ連に次ぐ世界第２位の規模となった。

しかし、１９９０年代後半以降、建設投資の激減に比例して生産量は大幅に減り、現在では６０００万トン程度（ピ.ク時の３分の２）に縮小した。この傾向は今後もつづく。（表４）

セメント産業の子.社産業として生まれた生コン産業も同.である。ピ.ク時の１９９０年

前後の生産量は２億立方米にのぼったが、現在は３分の２の規模に縮小した。（表５）

表４　セメント主要統計

年	.社	工場	生産能力（千ｔ）	生産高（千ｔ）
1970	22	55	83,520	56,543
75	22	53	116,832	65,191
80	24	49	125,503	87,409
85	22	43	103,300	72,562
90	23	41	87,808	84,433
95	20	41	97,574	96,407
2000	18	37	87,223	83,339
2004	18	33	74,247	72,367

資料）セメント年鑑

表５　生コン主要統計

年度	工場	生産能力（千m）	生産量（千m）	１工場.たり生産量（m）	稼.率（%）
1955	12				
60	70				
65	629				
70	2,602				
75	3,849	520,586	137,612	35,752	27.1
80	5,026	736,104	184,633	37,150	24.7
85	5,306	907,411	155,763	29,356	17.2
90	5,394	1,103,999	203,899	37,801	18.5
95	5,021	1,184,110	189,409	37,723	16.0
2000	4,682	1,093,738	165,192	35,282	15.1
03	4,291	1,024,604	137,399	32,020	13.4

資料）セメント年鑑

(2) セメント産業の産業構造と特殊雇用職..者

○　日本のセメントメ.カ.は１８社あり、いずれも大企業である。

太平洋セメント、宇部三菱セメント、住友大阪セメントの主要３社で市場の８０％以上を占めている。

セメントメ.カ.は、自社工場で生産したセメントをいったん全.各地のＳＳ（貯.出荷基地、全.に４６５カ所）までタンカ.または貨車で運搬する。その後、下請の運送.社に委託して、バラ車と呼ばれる大型トラックでＳＳからエンドユ.ザ.である生コン工場または建設現場に搬送する物流方式をとっている。

○　バラセメント運送.社は大多.が中小企業で、現在全.に約４００業者、車.台.は約４８００台である。

２０００年以降、セメント販.高の減少、販..格の大幅な下落（表６）に..して、各メ.カ.は大規模な販.合理化政策を.行した。その一環として、メ.カ.はバラ輸送部門を販.活動の一部として位置付けるのを止め、ＳＳ以降の輸送に責任を持たなくなった。そして、エンドユ.ザ.の生コン.社やゼネコンが、自前で運送.社を調達してＳＳまでセメントを買い取りに.る方式に.えた。

○　その結果、かつてはセメントメ.カ.の子.社または..下請業者として比較的安定した...態にあったバラセメント運送.社は、.しい生き.り競.を.いられるようになった。

２０００年以前のバラセメント..者は大半が正規職..者であり、特殊雇用職..者は例外的だった。しかし、これ以降、各運送.社は、①.運送業務の再下請化、②正規職..者の非正規職化、③正規職の賃金...件切り下げ、などの政策を一.にすすめた。

○　バラセメント運送..者は、一般物流トラック..者と比較して相.的に高い水準の賃金...件を得ていたが、現在では、公務員水準を大幅に下回る年.３００－４００万円台、１カ月の.業時間１００時間以上、土曜休日なし、という..者が大勢を占めつつある。

連.組が２００４年１０月に東京周.の主要ＳＳで.組合に加入していないバラセメント運.手１５３人を.象に面談.アンケ.ト調査を行ったところ次のような結果が出た。

①　「正社員ではない」（「１人車主」、日雇い、有期雇用など）が３６人（２３．５％）

②　「社...保.に加入していない」が３１人（２０．３％）

③　「.業代が支.われていない」が７７人（５０．３％）

４人に１人が非正規職で、２人に１人が.業代を受け取っていないというのが現在の.態である。

なお、日本ではトラック貨物運送事業における「１人車主」制度は道路交通法やトラック貨物運送事業法に違反する行.となる。そこで、最近になって「１人車主」制を採用した運送.社は、自社所有の車.を運.手にリ.ス契約で貸.し、運.手の.上げ報酬から、.社の管理費（ピンハネ）や車..費一式を控除して支.う請負契約を結び、自社の業務指示の下で.かせる方式をとっている。つまり、請負契約を.装しているが、.態は出.高.いの運...者にすぎない。

(3) 生コン産業の産業構造と特殊雇用職..者

○　生コン産業は１９５０年代半ばに誕生した。建設投資の.大に..するために、セメントメ.カ.がゼネコンに.し半製品のコンクリ.トを大量に生産.販.するサ.ビス部門としてつくり、育てた。

.初は全てセメントメ.カ.の子.社だった。しかし、１９６０年代に地域の建設業者や建材業者が次.に.入し、セメントメ.カ.も自社製品の販..張手段として工場新.設を各社が競い合ったので、現在は９５％以上が資本金１億円未.、..者.３０人以下の零細業者となっている。

低成長期に入った現在も４３００工場が.立しているため、生コン.格は原.割れの.態が.いている（表６）。

表６　セメント.生コン販..格

年	セメント（円／ｔ）	生コン（円／m）
1980	14,844	13,099
85	14,511	12,649
90	12,029	11,621
95	9,754	10,458
2000	9,090	10,354
04	8,495	9,582

資料）..産業省

○　生コン産業の雇用.態は過去１０年間に次のとおり.化した。

表７　生コン業者、雇用..者、ミキサ.車の推移

	１９９４年度（A）	２００４年度（B）	B／A（%）
工場.	５，０１９工場	４，３０９工場	８５．９
常用雇用	５３，５３１人	３４，５０６人	６４．５
（運輸部門）	（２５，６４１人）	（１５，０９１人）	５８．９
人型ミキサ.車	６８，１５８台	４７，１４９台	６９．２

（資料）..産業省、自動車.査登.協力

この表を見ると、①生コン業者は１０年間で正規職..者の３５％を削減したこと、②そして運輸部門では４０％.を削減したこと、③その結果、大型ミキサ.運.手全体に占める正規職..者の割合は３人に１人以下に減り、大多.が下請運送.社の..者となっていることが分かる。

さらに、２００５年５月に連..組が東京で..組合未加入の生コン運.手５３人に面談.アンケ.ト調査を行ったところ、次のような結果がでた。

① 「正社員ではない」（「１人車主」「有期雇用契約」「日雇い」など）が３３人（６２％）

② 「社...保.に加入していない」が２３人（４３％）

③ 「.業代が支.われていない」が１３人（２８％）

生コンミキサ.運.手の場合、非正規職の中心は日雇..者と有期雇用契約である。一部に「１人車主」と呼ばれる運.手もいるが、バラセメント輸送同.生コンでも「１人車主」制度は違法なので、.際には車.を所有せず、請負契約を.装して.かされている出.高.いの特殊雇用職..者である。

4．特殊雇用職..者の..と主な成果

(1) 建設職人の社.保障制度の確立

○ 「職人」と呼ばれた.時の建設業の特殊雇用職..者は、雇用主を持たないという理由で正規職に適用される社.保.制度を利用できなかった。「ケガと弁.は手前持ち」と長く言われた。

○ １９５０年代初めにかけて、日本の日雇建設..者と職人は共同..を展開した。激しい大衆..の結果、１９５３年には日雇健康保.制度を確立し、職人も擬制適用することになった。また、.災保.についても職人の「特別加入制度」を認めさせた。

１９７０年に日雇健康保.が改.され、擬制適用制度が.止されると、建設職人を.象とする職域健康保.組合を設立し、これを政府に認知させ、.庫補助を勝ち取った。

これら制度は一部改.されたが、現在も存.している。

(2) 特殊雇用職..者の..基本.確立－－「..者性」の認定に.して

○ 建設職人の大勢が先に見たとおり事業者性を徐.に失い、特殊雇用職..者としての性格を.めだした１９６０年代半ば頃から、賃金不.いや.災の補償をめぐってゼネコンや..基準監督署に.し責任を追及する運動が.多く取り組まれるようになった。この過程で建設職人の..者性に.する.の判.や判例、命令がいくつも出された。

○ 同じ頃、生コン業者や.石、ダンプ業者が次.に「１人車主」制を導入したため、連.組をはじめ各..組合が激しい反...を展開した。

１９７３年４月には、政府が「１人車主」制は基本的には違法な雇用形態であると見解を表明すると同時に、１人車主制で.く個人事業主を..基準法上の..者と解.するにあたっての判.基準を初めて示した。

１９８０年１月には、..組合を結成したダンプカ...者の..者性と.結.をめぐり、これを全面的に認める.期的な..委員.命令（思川砂利事件）が出された。

.組合の多くの.いと..者性を認定する判例.命令がつづいたことに加え、.時の日本の資本は..力の安定的確保を優先する政策をとっていたことから、トラック運.手の「１人車主制」は１９８０年代初頭までにはほぼ消滅、大多.が正社員化された。

ただし、ダンプカ...者の場合、..組合が正社員化の方法をとらず、建設職人の組合がそうしたのと同.、健康保.組合を利用して個人事業主のまま組織化を進める政策をとったことから、ダンプ業界では現在も「１人車主」制が大きな割合を占めている。

○ １９８５年１２月には、..省が..基準.究.報告「..基準法の『..者』の判.基準について」を.表した。（１９９６年３月には補足報告も出されている）

..省の判.基準が明確になったことにより、以後の裁判...委員.はこれをモノサシとして判.をする時期が長くつづいた。

○ ところが、１９９６年１１月、厚.省の判.基準を全面的に覆す最高裁判決が出された。（旭紙業..浜南.基署長事件）

厚.省の判.基準は、業務指示等の使用..性の有無、報酬の.務.償制、..性、機械.器具の負担.係など、特殊雇用職..者の..者性と事業者性に該.する各要素を逐一分析して.合的に判.する手法をとっている。この事件も一審はこの判.基準にもとづき..者性を認めた。

ところが、最高裁は使用..性の要素を二次的判.要素としてしかとらえず、運.手がトラックを自己所有し、諸.費を自己負担をしていた事.を重視して、「自己の危.と計算の下に業務に.事していた」として..者性を否定したのである。

この司法判.は、政府や資本がこの頃から新自由主義的な政策思考で雇用...法制を自由化させたことに.く影響されたものというべきである。

以降、９０年代には、..省の判.基準に依.して..者性を立証しようとしたケ.スでは、..者と組合が相次ぎ敗訴する事態がつづいている。

○ その反面、１９９０年代後半以降、大衆..によって新たな成果も生まれた。

この時期、建設業では人型倒産が相次ぎ、多額の未.い賃金（工事代金）を抱えた特殊雇用職..者が.出した。これを組織した..組合（連..組や全建.連）が、時には倒産企業を占.したり、あるいは.業活動を自主的に再建するなどしながら、破産裁判所や銀行債..との.体交で..者性を認めさせ、特殊雇用職..者の未.い債.を..債.として認めさせることに成功す

る事例が相次いだ。

さらに、それまでは正規職..者しか利用.績のなかった.の立て替え.い制度を特殊雇用職..者が２００人、あるいは３００人といった.位で大がかりに利用する.例をいくつも生み出した。

(3)「使用者.念の.大」

○　特殊雇用職..者の..基本.確立をめざす..には、「使用者.念の.大」をめざす活動が不可欠である。

日本では、１９６０年代後半以降、金.、港、建設などの中小企業の産業別.組合と.時のナショナルセンタ..評が、主に倒産時の..者の.利と雇用確保の手段として、親.社、銀行、商社等の使用者責任追及..に積極的に取り組んだ。

裁判..委命令も多.出されている。なかでも派遣..者に.する派遣先企業の使用者性を認めた最高裁判決（朝日放送事件、１９９５年）は、雇用者が.一ではなく、複.存在する場合があることを認めた.点で.期的であった。

同判決は、派遣、委託、間接雇用、さらには持株.社の使用者.念.大..に重要な足がかりを.えている。

ただし、裁判..委命令では、「使用者.念」を.大する部分の判.基準が必ずしも確定しているわけではない。過去の判例.命令と同.の手法にとらわれて使用者性の立証を試みた事案では敗訴したケ.スも多.ある。具体的事案にもとづく創造的思考や理論構成が必要である。

○　建設業やセメント.生コン..者の場合、その産業構造の特質から、特殊雇用職..者の雇用や...件を左右する.の使用者は、直接の雇用契約.係にはない元請業者（ゼネコン）や親.社であることが多い。

○　建設業では、６０年代後半以降、下請業者が.く日雇..者や特殊雇用職..者の..災害、賃金不.い、..法令違反等に.して、元請業者（ゼネコン）の使用者責任を追及する..が相次いだ。

その.いの成果とそして、建設業法には次の.な.項が盛り.まれた。

「第２４.の６（下請負人に.する特定建設業者の指導等）

特定建設業者は、.該建設工事の下請負人がその下請負に係る建設工事の施　工に.し、建設工事に.事する..者の使用に.する法令に違反しないよう、.該下請負人の指導に努めるものとする。

２　特定建設業者は下請負人が前項に規定する法令に違反していると認めたときは、.該違反.を指摘して、その是正を求めるよう努めるものとする。

３　下請負人が是正しないときは、.または自治体に、その旨を通報しなければならない。」（要旨）

（この.項でいう「特定建設業者」とは元請（ゼネコン）を指し、「..者の使用に.する法令」とは.基法、職業安定法、..安全衛生法、..者派遣法の.連.項を指している。）

また、建設業法には次のような.項も盛り.まれている。

「第４１.（建設業者..体に.する.注者の指導、助言及び.告）

２　下請業者が..者に.する賃金の支.いを.延した場合、必要があると認めたときには、.または自治体が、その下請業者を使用する特定建設業者に.し未.い賃金の立替.いやその他適切な措置を講じることを.告することができる。」

..組合は、この.項を足がかりにして特殊雇用職..者の.利や雇用に.して元請（ゼネコン）に.交を申し入れ、雇用.件の改善や.災、賃金不.い事件の解決をはかってきた。

これら.項は、建設業の重層下請構造に着目して.ら社.政策的.点から制定されたものである。また、建設業法は..法ではないという限界もある。しかし、さまざまなや派遣、間接雇用、持株.社などのケ.スでの使用者.念.大..の手がかりを提供する意義をもっている。

○　セメント.生コン産業は、産業構造の特質から、使用者.念.大..がもっとも活.に取り組まれてきた。

判例.命令も多.存在しているが、なかでも.期的なものは、大阪アサノ事件判決（２００２年）である。

同判決は、太平洋セメントの子.社の生コン.社に就.する生コン運.手が、親.社の太平洋セメントの生産設備.設計.が生コン運.手の雇用に影響を.えるとして行った.交申し入れとストライキの正.性を.った刑事裁判である。判決は「生コン.社と生コン輸送.社は太平洋セメントの一部門」と認定したうえで、「..事項であっても...件に影響を及ぼすとみられる場合、.交申し入れは正.」とする趣旨の判.を示した。

5．非正規職..者の..基本.確立にむけた運動上の課題

(1) 企業別.組合を.皮し、あらゆる雇用形態の..者が.等平等に.結.連.できる産業別.組合づくりが必要である。

日本の..組合は企業別に組織されているうえ、組合員はほぼ全てが正規職..者である。新自由主義的な...産業政策は企業同.士の生き.り競.をめているが、企業別.組合はこの企業間競.に.き.まれやすい体質を.く持っている。そのために各企業レベル、そして産業レベルで急速に進展した正規職の削減、非正規職による代替という.務管理政策に直面すると、正規職の.得.維持という.点から行動するので、非正規職..者の.利確立と...件改善を自らの課題ととらえることができない。

これでは資本による..者の分.支配に..組合自ら手を貸し、結果的に自らの影響力を弱めるばかりか、自らの.利も危機にさらす結果しか招かない。

日本においても非正規職..者は雇用者の４０％を超す趨勢にあることをふまえ、..組合と組合員自身が意識改革と組織改革をすすめ、..者の多.な.き方を前提として、あらゆる雇用形態の..者が.結と連.をはかることのできる、開かれた社.組織としての..組合づくりが必要となっている。

連..組の場合、雇用形態のいかんに.わらず、誰でも１人でも加入できる個人加盟方式を採用し、同時に、.体交、..協約締結、.議行.の３.を中央本部と各地域別.業種別支部に一元化して、企業の.をこえた.的な賃金...件の確立（..協約の締結）をめざしている。

(2) 非正規職の組織化を組織活動の重点とする必要がある。

.まれた正規職..者の立場にあぐらをかいて、非正規職..者を救..象として見下すような.点では非正規職..者の組織化はできないことがはっきりしている。

非正規職が自ら要求を立て、運動の主人公となる方法で、正規職とは別に組織づくりをすることが必要である。

また、非正規職の組合づくりと連動して、産業別.組合が親.社や元請、金融機.や商社等、また.に.し、産業政策要求を提出して.いをすすめることが必要である。

連..組は、２００４年以降、セメント.生コン産業の分野で急.する非正規職..者、とくに特殊雇用職..者の組織化と...件改善を目的として、セメントメ.カ.、生コン業者.体、トラック協.、政府に.し、次のような産業政策要求を提出し、交.を始めている。

１）子.社および下請業者による以下の違法行.をセメントメ.カ.と業者.体の責任で是正すること。

① 社...保.の未加入
② .業代の不.い
③ その他の..法令違反
④ 過積載

２）子.社および下請業者が前項の違法行.を是正するために必要な原資を保障するために、現行の運賃.料金を適正な水準に是正すること。

３）子.社および下請業者に.し完全週休２日制の.施を指導すると同時に、ＳＳ稼.日.時間.を規制すること。

(3) ..組合は大企業の生産活動に.する監視を.め、..な角度から社.的.言を行い、影響力を高めることが必要である。

連..組は、公共工事における品質管理の手.きや欠.工事を日常的に監視.告.を行うと同時に、これを根絶するための政策提言、..自治体に.する要求..を重視している。

また、組合員がセメントメ.カ.等の株主となって、.体交.以外の場面を通じて大企業の..政策の責任追及を行う工夫をしている。

現代の巨大資本は、コンプライアンス（法令遵守）やＣＳＲ（企業の社.的責任）を.際的に誓約するケ.スが多くなっているので、直接の.使.係以外の..な社.的チャンネルを通じて、

..組合の考え方を.信し、影響力を高め、市民社.と結びついて多.派を形成する努力が必要である。

(4) ..の「使用者」「..者」の判.基準をこえた、新たな理論..念形成が必要となっている。

これまでの..者性の認定や使用者.念の.大のために使われた.念の多くは、非正規職..者、とくに特殊雇用職..者が.の上でも運動的にも社.的には例外的存在だった時代のものだという限界をもっている。

したがって、あくまで正規職を想定した..者像を基準にして、いかにこれと同等視できるか、また直接の雇用.係といかに同等視できるかを中心にした分析や理論形成にとどまっているのが弱点となっている。

しかし、正規職とは異なる雇用形態の..者がこれだけ多.となり、しかも資本の...略においてもダイナミックなまでに企業間のM＆Aがすすんで、持ち株.社化がすすんでいる以上、古典的な..者像や雇用契約だけを基準にして、範疇から少しでも外れたものは切り捨てるのは正しくない。

(5) .境をこえた..者の連.活動を.める必要がある。

１９９０年代後半以降、巨大資本は各.で成功した..者支配の方法を直ちに他の.でも.行している。ＦＴＡ（自由貿易協定）がすすめば、さらにその動きは.まるのが確.である。

..組合の活動も日常的に.境をこえて取り組まれる必要がある。

とくに日本と韓.の場合、法律の制定動機や法律体系も酷似しているので、政府の立法動向や財界の政策について、日常不.の情報交換や運動上の..交流がさらに.められる必要がある。

日韓生コン..者の共同..はその試みの一部である。

以　上

Irregular Workers' Past and Future in Italy

Relazione di Salvo Leonardi
/ CGIL's institute of research IRES, CGIL Italy

1.1 La crisi della membership sindacale

Negli ultimi vent'anni il sindacato ha subito in tutto il mondo una diffusa e consistente riduzione della sua rappresentatività sociale. I saldi negativi sui tassi nazionali di sindacalizzazione, rilevati dalle statistiche internazionali e dagli studi comparati, non sembrano risparmiare alcun modello, investendo sindacati molto diversi fra loro per storia, ideologia, organizzazione e contesto istituzionale.

Fra i paesi occidentali, la membership sindacale (*union density*) è oggi caduta al di sotto del 40% in Italia e in Irlanda, sotto il 30% in Germania, Olanda e Gran Bretagna, sotto il 20% in Spagna, intorno al 10-12% negli USA e in Francia.

Nel mondo occidentale la sola significativa eccezione è rappresentata da quei pochi paesi in cui le organizzazioni sindacali dispongono di un controllo – sia pure indiretto – sulla gestione dell'assicurazione contro la disoccupazione (*Metodo Ghent*): Belgio e, soprattutto, paesi scandinavi.

L'Italia si attesta su un tasso relativamente medio-alto (36%). La somma degli iscritti alle tra grandi confederazioni italiane, con quasi 12 milioni di iscritti, pone il mio paese al primo posto in Europa per numero assoluto di iscritti. La Cgil da sola è invece la terza maggiore Confederazione in Europa, dietro alla tedesca DGB e alla britannica TUC. Il dato riportato dalla Cgil nel 2005, pari a 5 milioni e 600 mila di iscritti, corrisponde addirittura al massimo storico per questa confederazione. Detto ciò, va' aggiunto che i sindacati confederali aumentano gli iscritti in cifra assoluta (pensionati inclusi) ma, sul terreno decisivo dei lavoratori attivi, perdono - fra il 1980 e il 1998 - il 28% (34% la Cgil). In leggera, ma incoraggiante controtendenza il dato di Cgil e Uil negli ultimi anni. Tuttavia, la quota di pensionati iscritti alle maggiori organizzazioni sindacali ha da alcuni anni superato la quota del 50%.

Tutte le grandi associazioni delle parti sociali paiono incontrare serie difficoltà ad intercettare le nuove tipologie professionali e a declinare di queste i profili identitari e le aspettative di rappresentanza che salgono a livello sia collettivo che individuale.

1.2 Cause economiche, socio-giuridiche e culturali

Il sindacato è oggi sfidato dalle trasformazioni che negli ultimi decenni hanno investito le basi materiali e culturali di quel mondo del lavoro su cui esso aveva fondato il suo insediamento sociale e la sua forza politica. Almeno tre ordini di fattori incidono oggi sulla tradizionale capacità di rappresentanza delle maggiori organizzazioni sindacali, non soltanto italiane.

a) settoriali/dimensionali;

Il primo dato che rileviamo è la terziarizzazione privata dell'occupazione e il declino dei settori storicamente a maggiore insediamento sindacale (miniere, siderurgia,

cantieristica navale, auto).
Gli addetti alla manifattura industriale, negli USA, rappresentano già poco più del 15% del totale degli occupati e i dipendenti dei McDonalds superano quelli dell'intero settore siderurgico. In Gran Bretagna gli studenti con PHd sono più numerosi di storici settori dell'industria (minatori, siderurgici).

b) giuridico/contrattuali;
Qui rileviamo un netto allentamento dei vincoli istituzionali (legali-contrattuali) che regolano il rapporto di lavoro subordinato standard, ampliando la gamma e la funzionalità di nuove forme contrattuali.

Qui notiamo due ordini di tendenze : a) la diffusione di forme di lavoro autonomo, semi-autonomo o « parasubordinato » che modificano significati e proporzioni fra lavoro autonomo e lavoro subordinato ; b) la diffusione di rapporti di lavoro « atipici » e substandard », caratterizzati da un regime di tutele più debole di quello tradizionale del lavoratore subordinato a tempo pieno e indeterminato (a tempo determinato, interinale, job on call, part time - il meno "atipico" di tutti).

A lavori subordinati con alti indici di autonomia (non più limitati ai tradizionali esempi del lavoro dirigenziale o a domicilio: si pensi al softwarista, ai *knowledge workers,* ai *designers*, ai progettisti, specialisti finanziari, ecc.) si affiancano così lavoratori autonomi con alti indici empirici di subordinazione.
Il concetto, un po' impressionistico di lavoro "atipico" si riferisce a tutto questo articolato universo di rapporti di lavoro diversi da quelli tradizionali:

- subordinati a tempo pieno e indeterminato
- autonomi alla vecchia maniera

a) Nel primo caso il problema cruciale concerne una nuova concettualizzazione del lavoro subordinato.
b) Nel secondo caso si pone il problema di ripensare un nuovo diritto del lavoro, ma anche un nuovo welfare state, capace di allargare e approfondire la tutele per i nuovi lavori, diversi da quelli subordinati e salariati. La tradizionale polarità autonomia/subordinazione, insidiata sul terreno della tipizzazione socio-giuridica, assume esiti dirompenti sull'asse fattispecie-effetti. Essere l'una cosa piuttosto che l'altra può voler dire usufruire o essere interamente esclusi dalla gran parte delle misure lavoristiche e di welfare predisposte in favore del lavoratore subordinato.

La cifra riassuntiva del cambiamento in atto potrebbe essere quella che sposta in direzione dell'individuo il baricentro di rapporti lavorativi e sociali che fino ad oggi si erano intesi in termini quasi esclusivamente collettivi. Donne e giovani scolarizzati sono i maggiori interpreti di bisogni e stili di vita non riconducibili alle vecchie dicotomie fra lavoro e vita, fra autonomia e subordinazione.

I riflessi politico sindacali di queste tendenze sono pesanti. La tesi è semplice: la diffusione di rapporti di lavoro troppo flessibili determina nei lavoratori condizioni generalizzate di instabilità giuridica e di soggezione psicologica, del tutto sfavorevoli alla scelta individuale di affiliarsi sindacalmente.

Senza iscritti non si eleggono rappresentanze nei luoghi di lavoro, non si molta contrattazione collettiva e tutti i diritti dei lavoratori ne vengono penalizzati.

2. I dati dell'occupazione italiana e lo scenario del lavoro "atipico"

2.1 - Il quadro generale del mercato del lavoro italiano

La "dualizzazione" geografica del mercato del lavoro italiano (oltre che dell'economia)

1) Basso tasso di occupazione
2) Alta disoccupazione/inoccupazione giovanile e femminile
3) Storica rilevanza del lavoro autonomo e di quello irregolare e sommerso
4) Boom recente delle assunzioni "atipiche"
5) Il fenomeno italiano del lavoro c.d. "parasubordinato", vera peculiarità.

2.2 Storica rilevanza del lavoro autonomo e di quello sommerso

L'Italia ha da sempre un tasso nettamente più alto della media dei grandi paesi industriali - doppio e anche triplo. Simile ad altri paesi meno industrializzati e ricchi del Mediterraneo.

Il lavoro autonomo rimane stabile in *quantità.* Cambia la *composizione* al suo interno. Ieri il ruolo dei piccoli contadini proprietari, dei commercianti al dettaglio, degli artigiani, ma anche dei liberi professionisti (avvocati, medici, ingegneri);

Oggi i consulenti fiscali, gli esperti di software e di ICT, ma anche gli operatori telefonici dei centri di chiamata (*call centres*)

Lavoratori irregolari:
3.400.000 (17% del GNP) – oltre 5 milioni di posizioni lavorative. 2 milioni solo nei servizi

- persone con doppio lavoro
- irregolari (Sud, tessile, agricoltura, servizi)
- "nero-nero" (immigrati; clandestini)
- minorile (370-400.000; stime Ires-Cgil)

2.3 Il boom del lavoro "atipico" e il fenomeno italiano del lavoro "parasubordinato"

Seppure tutte in crescita, l'Italia vanta rispetto alla media europea, meno lavoro interinale, meno part time, meno tempo determinato. In compenso l'Italia è forse il paese europeo con la più ampia quota di lavoratori autonomi mascherati (*disguised self-employed*).

Infatti, al lavoro autonomo tradizionale, disciplinato dai codice civile, si affianca da alcuni anni quello c.d. "parasubordinato", delle collaborazione coordinate a progetto. Fenomeno tipicamente italiano. Una "zona grigia", a metà strada fra subordinazione ed autonomia, ma – dal punto di vista della qualificazione giuridica e degli effetti di tutela – una sottospecie del lavoro autonomo.

Rappresentano di gran lunga la maggior parte dei posti offerti sul mercato del lavoro.

Si tratta per lo più di giovani tra 31 e 40 anni, o di persone già in pensione, che svolgono autonomamente alcune collaborazioni. Livelli di scolarizzazione sono mediamente più alti che fra i lavoratori dipendenti (il 32,8% ha un diploma di maturità, il 17,3% un titolo universitario)

Il lavoro atipico è fortemente decrescente all'aumentare dell'età. Questo significa che

esso, pur risultando funzionale alle esigenze dei lavoratori più giovani, non è alla lunga compatibile con le esigenze legittime di stabilità e tutela di chi ha una vita di adulto, una famiglia, una dignità professionale e sociale.

Il tipo di mansioni svolte risulta molto polarizzato: o molto qualificate o molto ripetitive

L'83,7% ha un solo committente; un dato che deve far riflettere poiché rivela come – al di là del contratto autonomo stipulato – il rapporto di collaborazione tradisca i caratteri di una subordinazione economica che non può essere ignorata dal legislatore.

In quanto appartenente alla famiglia del lavoro autonomo, esso risulta pressoché del tutto privo di tutele del diritto del lavoro. La riforma del sistema pensionistico del 1995 ha riconosciuto loro un diritto minimo alla pensione, attraverso il versamento obbligatorio di contributi previdenziali che sono oggi inferiori ai 2/3 di quelli previsti per i lavoratori dipendenti. La recente legge di riforma del mercato del lavoro, varata nel 2003 dall'attuale governo di centro-destra, ha affermato e precisato alcuni diritti minimi di ordine formale, tipici del diritto civile dei contratti e ancora molto lontano da quelli assai più intensi previsti dalla legislazione e dalla contrattazione collettiva in favore dei lavoratori dipendenti.

Il fatto che per i lavoratori parasubordinati sia di fatto impraticabile il ricorso al più tradizionale strumento di autotutela collettiva, lo sciopero, inficia pesantemente la stessa possibilità di fare sindacato nell'ambito di questo segmento del mondo del lavoro. Sappiamo infatti che senza conflitto, sia pure come estrema risorsa di potere, non si dà vera contrattazione collettiva, e senza vera contrattazione collettiva non vive alcun vero sindacato.

Un lavoro troppo frammentato e discontinuo produce in ogni caso costi umani e sociali inaccettabili. Impedisce infatti di fare carriera, limita le opportunità di formazione, con ricadute pesanti sul piano professionale, esistenziale e previdenziale. Il destino pensionistico di questi lavoratori appare oggi drammaticamente incerto ed esploderà certamente quando una intera generazione si avvicinerà all'età della pensione e scoprirà di avere davanti a sé un destino di povertà.

3. Le politiche sindacali italiane verso i nuovi lavori atipici

Quella dei nuovi lavori atipici, giuridicamente autonomi ma economicamente dipendenti, costituisce oggi una sfida di primaria importanza per qualunque organizzazione sindacale che ambisca a mantenere e ad ampliare il suo grado di rappresentatività, sia essa sociale, negoziale e politica. Nessuna strategia di reinsediamento sindacale e di effettiva sovranità contrattuale potrà eludere il problema dei bisogni di rappresentanza espressi oggi da una categoria sempre più ampia ed eterogenea di soggetti produttivi, irriducibili – per molti versi – al prototipo socio-giuridico del lavoratore iscritto e militante sindacale: il salariato maschio e adulto, assunto a tempo piano e indeterminato, addetto alla grande manifattura industriale, con livelli medio-bassi di qualifica, deprofessionalizzato da una organizzazione del lavoro fortemente parcellizzata ed alienante.

Sugli indirizzi strategici ed organizzativi che possono oggi arrestare ed invertire la crisi della sindacalizzazione, la Cgil ha da alcuni anni ormai avviato un percorso impegnativo di analisi e di proposta politica.

L'obiettivo politico e organizzativo è di sviluppare progetti di reinsediamento sindacale in contesti critici per l'organizzazione. Le aree individuate sono caratterizzate

per:

1) presenza di lavoro sommerso, nero, giovanile, precario;
2) forte diffusione di lavoro "atipico" (parasubordinato e interinale);
3) scarti elevati fra risultati elettorali aziendali e numero di iscritti al sindacato;

Il Dipartimento organizzazione ha redatto un regolamento istitutivo di un *fondo nazionale per progetti di reinsediamento della Cgil*. I progetti dovranno avere durata annuale e sono predisposti dalle Cgil regionali, di intesa con le categorie territoriali interessate.

Se il lavoro si "de-concentra" e "de-massifica", individualizzandosi e disperdendosi nel territorio, anche il sindacato deve rendersi capace di seguire e raggiungere i lavoratori nella loro nuova dimensione. La risposta del sindacato italiano è andata fin'ora in tre direzioni:

a) il potenziamento dell'offerta dei servizi individuali, a livello territoriale e di confederazione (servizi fiscali, assistenza pensionistica, informazione sulle opportunità di lavoro, formazione professionale);
b) la nascita di una rappresentanza associativa e negoziale specificamente rivolta alla tutela dei lavoratori « atipici »

3.1 Il lavoro atipico e l'esperienza di Nidil

Il maggiore tasso di individualismo che connota oggi condizioni di lavoro e strategie professionali richiede al sindacato il rafforzamento, se non addirittura l'invenzione di nuovi incentivi selettivi. La nascita di un sindacato specificamente rivolto ai lavoratori atipici, alla fine degli anni '90, costituisce una delle novità più interessanti nel panorama sindacale italiano e internazionale. L'organizzazione della Cgil si chiama Nidil, che vuole dire "Nuove Identità di Lavoro", e costituisce una struttura volta alla rappresentanza sindacale e alla tutela dei nuovi lavori: collaborazioni, interinali, partite Iva. Il modello organizzativo innova sul tradizionale impianto organizzativo, del sindacalismo italiano basato sulla categoria industriale e non sul mestiere o sulla singola azienda. Un modello inedito di rappresentanza associativa, che attraversa orizzontalmente tutte le federazioni di categoria, ponendo ora al centro la condizione giuridica di lavoro e la modalità concreta di prestazione ad opera delle persone.

Le iscrizioni si fanno come prima degli anni '70; contatti individuali e pagamenti periodici della tessera attraverso il contatto personale e continuativo coi rappresentanti sindacali territoriali o nei luoghi di lavoro. Una modalità che nei settori tradizionali è stato superato da un sistema automatico di trattenuta sul salario, dopo che la propria iscrizione è stata comunicata al proprio datore di lavoro.

Il trend di crescita degli iscritti a NIdiL – parallelo a quello dell'intera Confederazione - continua infatti da qualche anno. Nel 2004 erano poco meno di 20.000. Una cifra interessante e frutto di enormi sforzi individuali e collettivi, ma ancora lontanissima dalle grandi federazioni della manifattura e del terziario, privato o del pubblico impiego. Il titolo di studio è relativamente alto. Il 45% è infatti in possesso di un diploma di scuola superiore e poco meno del 40% ha la laurea o comunque un diploma universitario. Soltanto il 17% ha la licenza media.

Nidil si offre come punto di incontro e rete di protezione sociale, in grado in intercettare e interrogare i bisogni di rappresentanza e tutela per tramutarli in protagonismo politico e sindacale sul terreno dei servizi individuali e della contrattazione collettiva. Sono almeno di cinque tipi i terreni su cui Nidil intende

posizionare gli assi del suo intervento: 1) la consulenza contrattuale individuale; 2) la consulenza previdenziale e assistenziale; 3) l'assistenza fiscale; 4) l'informazione sulle occasioni di lavoro presenti nei territori; 4) la formazione.

A livello di luogo di lavoro, Nidil dispone di una "co-titolarità" negoziale, a fianco delle tradizionali organizzazioni che rappresentano il lavoro dipendente. Sono oltre 150 i contratti siglati da Nidil negli ultimi anni. Fra i settori più interessati, quello dei call centres, delle cooperative sociali, delle amministrazioni pubbliche locali.

3.3 Un nuovo e più inclusivo sistema di tutele

Posto tutto ciò, occorre comprendere come nessun avanzamento potrà avvenire se non si sarà prima arrestata ed invertita l'irrazionale ed iniqua polverizzazione delle tutele giuridiche generali.

Secondariamente, andrà ripensata la nozione giuridica della subordinazione alla luce dei nuovi paradigmi socio-tecnici del lavoro. Essa deve oggi confrontarsi con le nuove caratteristiche della produzione post-fordista e post-taylorista, con la crescente intellettualizzazione e responsabilizzazione di segmenti significativi di lavoro operaio e impiegatizio, con l'aumento delle quote femminili e autonome del mercato del lavoro.

Se i connotati della subordinazione e dovessero essere ancora ricercati in quella che è stata la modalità tipica dello scorso secolo – unità spazio-temporale della prestazione lavoro sotto un rigido potere direttivo, gerarchico e discplinare del datore di lavoro – non c'è dubbio che la portata interpretativa della subordinazione risulterebbe drasticamente ridimensionata, sia sotto il profilo quantitativo che qualitativo. Superata (o in via di superamento) la centralità del prototipo sociologico della subordinazione - l'operaio industriale - entrerebbe in crisi anche quel modello di diritto del lavoro che su quella figura si basava. Noi pensiamo invece di essere in presenza di processi che non aboliscono la natura sostanzialmente subordinata del lavoro al potere dell'impresa, ma ridefiniscono soltanto il modo concreto con cui esso si può oggi esercitare.

Bisogna ripensare la subordinazione, allargandone i confini in due direzioni : quella socio-economica e quella dell'inserimento tecnico-funzionale nel progetto produttivo di altri (il datore di lavoro). Ci pare infatti condivisibile l'assunto secondo cui: "Alcune tecnologie possono appannare gli aspetti esteriori della subordinazione, ma la sua struttura sociale, economica e giuridica non è modificata" (Gaeta).

Per non sacrificare ad esse la necessaria dose di flessibilità per le imprese, si potrebbe immaginare il modello delle tutele "per cerchi concentrici", suggerito dal giuslavorista francese Supiot e ripreso nella Carta dei diritti redatta dai partiti di centro-sinistra per la prossima legislatura (se vinceranno le elezioni). Più è alto il tasso di etero-determinazione della prestazione di lavoro da parte del management aziendale, più forti e intensi diventano i diritti individuali e sindacali dei lavoratori.

Oppure quello della proposta Cgil, che da un lato recupera l'impianto dualistico del sistema autonomia-subordinazione, dall'altro rifonda la nozione di lavoro subordinato non più dentro il paradigma dominante dell'eterodirezione, bensì sul terreno dell'inserimento funzionale dentro un progetto ed un processo produttivo di impresa predisposto da altri. Un solo tipo negoziale, articolato negli effetti giuridici e contrattuali a seconda delle modalità di esecuzione della prestazione di lavoro.

Consapevole delle specifiche aspettative della alte qualifiche, più interessate a godere margini di autonomia contrattuale rispetto alla disciplina collettiva, la proposta della Cgil ammette che fra le parti con contrattano possa determinarsi un muto interesse

affinché la prestazione subordinata venga eseguita con modalità relativamente meno rigide di organizzazione del lavoro. Tale esigenza può trovare riconoscimento attraverso un patto scritto, in cui le parti derogano parzialmente al regime normale della subordinazione, per lasciare spazio ad un rapporto fiduciario di collaborazione.

4. Conclusioni

Ciò che è cruciale capire è che l'insediamento sindacale presso i quadri e – più inclusivamente – nei riguardi delle alte professionalità, costituisce oggi un ineludibile presidio per poter conoscere e controllare da vicino i cambiamenti socio-tecnici dell'o.d.l., e con essi quelli soggettivi che riguardano i fabbisogni di rappresentanza associativa e negoziale di fasce sempre più ampie di lavoratori.

L'unificazione del mondo del lavoro può essere realizzata solo attraverso il riconoscimento delle articolazioni reali e delle diversità.

Un sindacato moderno deve mostrare l'intelligenza e le risorse per farsi carico di una offerta di servizi collettivi ed individuali – oltre che di risorse identitarie e valoriali – all'altezza delle complessità e delle articolazioni socio-giuridiche prodotte dalla nuova grande trasformazione che stiamo vivendo.

労働者性に關する一事例: A急配事件の紹介

弁護士　平　方　かおる

［事例の紹介］

1　事者

(1)　A急配株式社（以下、「社」という）は、トラック輸送を業とする株式社である。社の業員は約100名であり、トラックドライバとして貨物運送業務に事している。社の取扱業務には、「チャタ」と呼ばれる1便ごとに請け負う貨物運送業務、「」と呼ばれる別の運送社が注文主から請け負った運送業務を一定期間的に社が下請けとして行う業務、「引越」と呼ばれる個人や体の居に伴う荷物の運送や据え付けを行う業務がある。

(2)　ドライバB、C、D、E、F

ドライバB、C、D、E、F（以下、に「B]「C」「D」「E」「F」という）は、上記3つの社取扱業務に事してきた。3つとも.している者もいれば、1つしか.したことのない者もいる。また、それぞれ新聞告や、知人の紹介で社が業員を募集していることを知り、募した。そして、履書を持.して社の担者の面接を受け、採用された。E、Fを除くB、C、Dは、採用後しばらくして「運送業務委託誓約書」と題する社作成文書に署名、捺印させられた。因みにこの書面の題名は「誓約書」となっており、「契約書」とはなっていない。また、同書面の容についてB、C、Dは社から何も明を受けていない。E、Fは、上記「運送業務委託誓約書」に署名捺印させられていない。それは、E、Fの採用時期が他の3名より何年も早く、その時はまだ社ではドライバに.して上記書面に署名させる方法を採用していなかったためである。

なお、Bは２００２年5月１７日に、Cは２０００年8月1日に、Dは２０００年8月１６日にそれぞれ社に採用された。

2　組合の結成と社のB、C、Dに.する解雇通知

(1)　組合の結成

B、C、D、E、Fは、件の改善を目指して組合を結成し、２００３年8月5日、社に.して組合結成通知を行った。同通知の中で、B、C、D、Eが組合の執行委員であることを明らかにした。

(2)　B、C、Dに.する解雇通知及びE、Fに.する嫌がらせ

社は、上記組合結成通知を受領すると、そのわずか9日後である同年同月１４日、B、C、Dに.して「運送委託契約解除の通知書」と題する書面を送付してきた。その容は、Bと社との運送委託契約が２００３年１１月２６日で終了する、Cと社との運送委託契約が２００３年１２月１９日で終了する、Dと社との運送委託契約が２００４年2月１５日で終了するということであった。

また、社は、Eに.しては、上記B、C、Dに.する「運送委託契約解除の通知書」と題する書面と同じ日付で「要請書」と題する書面を送付してきた。その容は、1年以

上前の、しかもEが配置.換される前に担.していた業務に.して報告を求めるものであり、Eを困惑させること、Eがこれに答えなければ懲戒.分にも.げてやろうとの意.が明らかなものであった。

さらに、２００３年9月２２日、..組合はFもまた組合員であることを明らかにしたところ、.社はFに.し、同月２４日から仕事を.えない、賃金を一方的に減額する、.社事務所.での村八分、社宅からの退去命令などの嫌がらせを行った。

3　.業員地位保全等仮.分申立とその決定

(1)　仮.分命令申立

①　Bは、２００３年１２月１６日、大阪地方裁判所堺支部に地位保全等仮.分命令申立を行った。同.に、Cは２００４年2月9日に、Dは２００４年4月２３日に大阪地方裁判所堺支部にそれぞれ地位保全等仮.分命令申立を行った。

②　.社の主張

.社は次のように主張した。すなわち、まず、B、C、Dは.社と運送業務委託契約を締結した「委託契約者」であり、雇用契約（..契約）を締結した..者ではないから、B、C、Dに解雇.濫用法理の適用はない。B、C、Dと.社との間で締結した運送業務委託契約は、期間を6か月とし、.社、委託契約者.方に異論がなければ6か月ごとに更新することになっているが、今回は.社は更新しないことにした。その意思表示が「運送委託契約解除の通知書」である。この更新拒絶は契約どおりであり、運送業務委託契約は契約自由の原則に則り.等な立場にある.社とB、C、Dが自由意思で締結したものであるから有.である。よって、今回のB、C、Dと.社との契約終了は有.である。なお、B、C、Dは不...行.を主張するが、B、C、Dは.社との間で運送業務委託契約を締結したいわば事業者であり、..者ではないから、..組合を結成したり、加入したりすることはできない。

③　B、C、Dの主張

これに.し、B、C、Dは次のとおり主張した。すなわち、.務供給契約が雇用契約（..契約）か業務委託契約かは、契約の形式に拘泥することなく.態を見て判.すべきである。B、C、Dと.社との.係は、.態から見て雇用契約（..契約）である。.って、B、C、Dに.する.社の「運送委託契約解除の通知書」は解雇通知に他ならない。B、C、Dには..基準法が適用され、解雇.濫用法理も適用されることになる。今回の.社のB、C、Dに.する解雇には正.事由がなく、解雇.の濫用であるから無.である。また、.過から明らかなように、今回の.社のB、C、Dに.する解雇は、B、C、Dが..組合に加入したことを理由としており、不...行.であることは明らかであるから、その意味でも違法であり無.である。

(2)　B、C、Dと.社との契約及びB、C、Dの.社における業務遂行の.態

①　契約締結時

B、C、Dは、.社のドライバ.募集.告を見て、あるいは知人の紹介で.募した。募集.告には、「給.」「勤務」「通勤」など、雇用契約に特有の用語が用いられていた。また、B、C、Dは履.書を持.して.社の支店長の面接を受けて採用された。面接の際、.社からは雇用契約ではなく、業務委託契約であるとの.明はなかった。また、.等な

立場の事業主同士が締結する業務委託契約であれば通常行われる契約.件についての交.はなかった。逆に、面接時に雇用契約に特有の「給料の支給日」「休日」についての.明を受けた者もいる。

②　契約締結後の「運送業務委託誓約書」

B、C、Dは、採用、就.開始から.日後（人によっては.か月後）、.社から「運送業務委託誓約書」への署名、捺印を求められ、これに.じた。その際、.社から「運送業務委託誓約書」の.容について.明はなく、.しも交付されていない。「運送業務委託誓約書」には、.社とB、C、Dが運送委託契約を締結すること、契約の期間は6か月とし、.方に異議がない限り.示に更新されること、委託契約者は.社の服務規程に.い、服装、接客用語、接客態度は.社の規定に.うことなどが記載されている。

③　業務に.する指揮命令

B、C、Dは、チャ.タ.の場合は、前日または.日に.社から荷主名、荷物の種類、荷積み場所、荷下ろし場所、目的地への到着指定時間、高速道路使用の可否などを指定され、.該運送業務を行うよう指示を受けた。また、..の場合は、顧客（元請け）名、出勤時刻などを指示され、具体的な業務遂行方法については、..先の指示に.うよう指示を受けた。引越の場合は、集合時間、集合場所、運.を行うのか助手として荷物の積み下ろしだけを行うのかなどを予め指示され、現場ではリ.ダ.の指示に.って作業をするよう指示を受けていた。

そして、B、C、Dの給.は後述するように日給月給または出.高給であったため、指示された業務を.ると次回からは業務を回してもらえなくなることから、B、C、Dは.社から指示された業務を拒否することは、睡眠時間、休憩時間もとれない過密スケジュ.ルでの業務を指示されたときなど物理的に指示どおりの業務遂行が不可能なときを除いてできなかった。

.社が雇用契約であることを認めているE、Fについても全く同.の指揮命令方法であった。

④　報告義務及び勤怠管理

.社では、タイムカ.ドはなかったが、B、C、Dは指示された業務を行うと業務を開始した時刻、走行距離、目的地到着時刻、.社時刻などを業務日報に記入し、.社に提出して報告することになっていた。また、事前にチャ.タ.など運送業務の指示がなかった場合は、.日朝9時には.社に出勤するよう指示されていた。さらに、定休日以外に仕事を休む場合は、予め.社に.け出ることになっていた。

また、B、C、Dは、指示された業務を完了したとき、または完了できなかったときはその理由を添えて.社に報告することになっていたし、運送先で別の業務を依.されたときは、まず.社に報告し、.社の指示を受けてから..することになっていた。

⑤　服務規程の適用

B、C、Dは、業務を行う際、.社の制服を着用することになっていた。また、身だしなみについても、頭、髭などについても.社から規制されていた。

⑥　..性

B、C、Dは、.社の仕事の他に仕事をすることはできなかった。

⑦　代替性

B、C、D は、.社から指示された運送業務の遂行について、自己の判.で第三者に行わせることは許されていなかった。

⑧　報酬（賃金）の支.

.社は、B、C、Dに.月１回特定の日に賃金を支.っていた。賃金は、引越、..の場合は日給の定額制、チャ.タ.の場合は出.高制であった。引越、..の場合は、超過勤務手.がつくこともあった。もっとも定額制、出.高制といっても賃金の額は.社が一方的に決定し、決定方法（基準）すら B、C、D らには知らされておらず、B、C、D らは給.明細を見るまではその月の給.額を正確に知ることはできなかった。

.社は給.支.の際、給.明細を交付しており、そこには「給.明細」「社員コ.ド」などの.業員であることを示す用語が使用されていた。

B、C、Dの平均賃金額は、賃金センサス及び全日本トラック協.の調査による勤務トラック運.手の平均賃金よりも相.低額であった。

⑨　生産手段の所有.係

B、C、Dが使用するトラックは.社の所有であり、B、C、D は業務の都度.社から指示されるトラックに.務して運送業務を行っていた。

また、保.料、燃料費、車.修理代、高速道路を使用した際の高速道路料金は.社の負担であった。

⑩　社.保.、..保.、所得.

.社は、B、C、Dらについて社.保.（健康保.、厚生年金）、..保.（.災保.、失業保.）に加入していなかった。また、所得.について源泉..をしていなかった。

(3)　仮.分決定

大阪地方裁判所堺支部は、Bについて２００４年５月１４日、Cについて同年７月３０日、Dについて同年８月１８日、それぞれ..基準法第９.の..者であることを認め、本裁判の第１審判決が出るまでの間、.社は B、C、D に.し、.前の賃金相.額を仮に支.えとの仮.分命令を出した。

裁判所の判.は以下のとおりである。

B、C、D について、チャ.タ.については運送という業務の性質から.然必要とされる指示以外には.社の指揮監督を認めるに足りるほどの業務遂行に.する具体的指示があったとは認められない。しかし、引越、..については.社や.社の元請である別の.社の指揮監督下における業務の提供ということができる。また、業務を割り振る.限を.社が一方的に有している.態では、B、C、D が希望しない仕事の指示を拒否することは事.上困難であったと考えられる。さらに、B、C、Dは.社に日報を提出したり、運送業務委託誓約書にも.業秘密保持義務、服務規定遵守義務、直接取引の禁止など一般的な雇用契約上の義務と共通する性質の規定がある。さらにまた、生産手段である自動車は.社所有であり、保.料、修理費、燃料代も.社が負担していたことや具体的な報酬額の決定.は.社にあり、B、C、D らには交.のうえこれを上積みする余地はなかったことから、B、C、Dは自己の危.と計算の下に業務に.事する事業者とは言えない。以上から、B、C、D らが提供する.務は、.社の運送事業のための組織的..の一部を構成するものと評.

できるが、そうすると、B、C、D らは、.社の指揮監督の下で.務を提供し、これに.する報酬すなわち賃金の支.いを受けていたものと評.するのが相.である。よって、B、C、Dには..基準法が適用される。

(4)　..基準監督署、公共職業安定所の.分

..基準監督署は、２００４年７月８日、Dが本件解雇前に.社の業務中に負った傷害について、..災害であることを認め、.災保.金を給付することを決定した。また、公共職業安定所は、同年６月、B、C、Dについて雇用保.の被保.者資格を認定した。.の機.である..基準監督署も公共職業安定所もB、C、Dの就.の.態からして、雇用契約であり、B、C、Dが..基準法第９.の..者であることを認めたのである。

4　その後

現在、B、C、Dについて、.業員地位確認請求、賃金請求事件の本裁判を大阪地方裁判所本.、大阪地方裁判所堺支部で係.中である。

これに先だって出された上記仮.分命令は、結論としては.然のものであった。ただ、仮.分命令は、業務指示の.容について、.業員ほどの具体的で.度な業務指示を認めることはできないと述べた。そして、後述する.浜南.基署長－旭紙業事件の高裁、最高裁判決は、業務指示の.容、.度を重視しているように見える。しかしながら、トラック運.手という業務の性質上、.社からの指示は一定程度抽象的にならざるを得ない。現に、本件でも.社が.業員であると認めるE、Fについての業務指示もB、C、Dに.するものと全く同じであった。本件のような事例では、.務提供者の使用者に.する指揮命令をある程度は抽象化し、.合的にみて.務提供者が使用者に..しているか、それとも.立した.等の事業者であるのか判.されるべきである。

［..の紹介］

1　問題の所在

..基準法第９.には「この法律で..者とは、職業の種類を問わず、事業または事業所...に使用される者で、賃金を支.われる者をいう」と規定し、同法の定める保護を受ける者の範.を規定している。同法にいう「..者」は、また、最低賃金法、..安全衛生法、..者災害補償保.法などの..者保護法規の適用.象も規定することになる。

2　..の紹介

ある者が他人のために..して報酬を得る.係（...係）について、民法では、使用者の指揮命令下の.務に服する雇用契約、仕事の完成を一任される請負契約、そして事務の遂行を一任される有償委任契約という３つの契約形態を設けている。

..基準法では、..者を使用者から保護するために多.の契約上の原則.基準を設定し、それらの法規制が及ぶ...係を表現するために「..契約」という契約.念を設定した。

したがって、..契約は..基準法が適用される.務供給契約であり、ある.務供給契約が..契約といえるか否かは、.務を供給している者が..基準法の適用事業に使用され、賃金を支.われる「..者」（.基法９.）といえるかどうかが決め手となる。

契約は申.みと承諾の意思表示の合致によって成立することが原則であり、..契約も契約である以上基本的にはこの原則に.うことになる。しかし、民法の一般原則を修正して

...係を規律するために..契約.念を設定した..基準法の趣旨に鑑み、その契約が..契約に.たるか否かは、.務供給者が..基準法第９.の「..者」に該.する.質を備えているか否かによって決定すべきである。

..基準法９.は「使用される者」で「賃金を支.われる者」を..者とする。「使用され」といえる典型は、仕事依.に.する諾否の自由がなく、業務の.容や遂行の仕方について指揮命令を受け、勤務の場所や時間が規律され、業務遂行を他人に代替させえないといった事情がそろう場合であり、また報酬が賃金といえるか否かは、これらの事情に加えて、額、計算方法、支.形態において.業員の賃金と同質かどうかを考慮して決することになる。

［..基準法.究.報告の紹介］

1　..基準法.究.とは、..大臣の私的諮問機.で、１９６９年に設置された。..分野の諸問題について調査、.究し、報告を行っている。

１９８５年１２月、..基準法.究.が、..基準法の「..者」の判.基準について具体的判.基準を提示した。

2　報告の紹介

..基準法.究.は、.基法の「..者性」の有無は、「『使用される＝指揮監督下の..』という.務提供の形態及び『賃金支.』という報酬の.務に.する.償性によって判.される」とし、しかしながら、現.には指揮監督の程度、態.の多.性、報酬の性格の不明確さから上記の基準で..者性を判.することが困難な場合があり、そのような限界的事例では、指揮監督下の..であるか、報酬が賃金として支.われているかを判.するにあたり「..度」「.入額」等の諸要素も考慮にいれて.合的に判.すべきとする。

そして、..、裁判例の.討の結果として..者性に.する具体的な判.基準として以下の基準をあげている。

.務提供が他人の指揮監督下において行われているかどうかの判.基準として、①仕事の依.、業務.事の指示等に.する諾否の自由の有無、②業務の.容及び遂行方法について使用者の具体的な指揮命令を受けているか否か、③拘束性の有無－勤務場所、勤務時間が指定され、管理されているか、④.務提供の代替性の有無（本人に代わって他の者が.務を提供することが認められているか、本人が自らの判.で補助者を使うことが認められているかなど）。報酬の.務.償性についての判.基準として、⑤報酬の性格が使用者の指揮監督の下に一定時間.務を提供していることに.する..と判.できるか否か（時間給としての計算など..の結果による較差が少ない、欠勤した場合控除される、.業した場合別に手.が支給されるなど）。

また、..者性の判.を補.する要素として、事業者性の有無と..性の程度をあげ、前者の判.基準として、⑥機械.器具の負担.係、⑦報酬の額が自らの計算と危.負担にもとづいて事業..を行う事業者に.する報酬と評.できるか否か、⑧その他事業遂行上の損害に.する責任を負うか、.自の商.使用が認められているかなど、後者の判.基準として、⑨制度上または事.上他社の業務に.事することが困難で..性の程度が高いか否か、⑩報酬に固定給部分があり、その額が生計を維持できる程度のものであるなど、生活保障的な要素が.いこと、をあげている。

その他、具体的事例においては、選考過程が正規.業員と同じであること、.金の源泉..を行っていること、..保.の適用.象となっていること、服務規律を適用していること、退職金制度、福利厚生を適用していることなどは使用者が.務提供者を..者と認識していることを推認させる事情として..者性を肯定する判.の補.事由としているものがあることを指摘している。

［判例の紹介］

..基準法第９.の「..者」該.性についての判例は多いが、ここではトラック運.手に.する..者性が問題とされた事件について紹介する。

1　井谷運輸事件

(1)　事案の.要

本事案は、貨物運送を業とする.社に.初通常の..契約を締結して入社し、「.業員運.者」として.いていた者が一旦退社し、１ヶ月後に改めて「償却」制度に基づく「受け取り」の者として.く趣旨で.社と「運送契約書」と題する書面による契約を締結して.いてきたドライバ.に.して、.社が運送契約の解約告知を行ったことについて、ドライバ.はこれが解雇にほかならないと主張し、その..者性が.われた事案である。

裁判所は、以下の事.を認定し、「『..者性』の判.基準は使用者との.質的使用...係の有無に求められるところ...認定の事.によれば、結局、.社は『受け取り』を..時間中拘束してその指揮監督下においており、.社と『受け取り』との間には.質的な使用...係があったと考えるのが相.であり、『受け取り』の..者性は優に認められる。.者の間には.契約.係が成立していたものというべきであって、本件契約が.社主張のごとき.なる請負契約とはいえない。」と判.した。

(2)　裁判所が認定した具体的事.

①　車.の所有.係と運行.費の負担.係

.社が所有し.業免許の許可を受けた車.を、「受け取り」の者が「購入」したという形式をとり、「受け取り」にその車.を..的に使用させて運送業務にあたらせる。但し、車.の名義は代金完.後も.社のままである。運行.費の負担は、車.の購入代金、自動車.、燃料費、点.修理費用も「受け取り」の負担である。

②　「受け取り」の仕事.容

「受け取り」の仕事.容は、４トンの貨物自動車で.社の指定どおり集配作業を行うこと。朝６時ごろ.社に出社し、宵積みをしておいた.用の車.に.って出.し、担.地域に朝８時頃到着して午前中に配達を完了し、午後に予め.社から指定された集荷先で集荷し、.社に.り荷物をおろし、翌日配達分の荷物の.票を渡されて宵積みをし、午後９時ごろ荷物を積.みおえ、.宅する。「受け取り」以外の「.業員運.者」とほぼ同じ.容。

④　.社からの作業指示の拘束性

作業の段取り自体についての細かい指示はないが、前日の荷物を午前中に配送完了することが求められる仕事の性質上、コ.ス、担.地域によって仕事の手順は必然的に定まり、「受け取り」の裁量の.く余地はほとんどなかった。また、指示された業

務を行うか否かの諾否の自由もなかった。

⑤ .務提供の代替性

「受け取り」が都合で休む場合は前もって.社に連絡することで足り、「受け取り」が.社から代行者の手配を命じられることはなく、逆に「受け取り」は自己以外の者をもって運送にあたらせることは許されなかった。

⑥ ..性

「受け取り」が、他から依.を受けて自己使用車.を運.し運送に.事するなどして.社から支給される金員以外の.入を得る余地は全くなかった。

⑦ ..日、..時間の管理

..時間につき、「.業員運.者」のようなタイムカ.ドによる管理はなされていないが、.日の作業日報、タコグラフを.社に提出することを義務づけられていた。万一事故を起こせば事故報告書の提出義務を課せられていたことは「.業員運.者」と同.である。休業する場合は前もって.社に連絡することを求められていた。

⑧ 制服の着用、車.のカラ.リング

「受け取り」は、作業の際、「.業員運.者」と同じ.社名入りの制服の着用が義務づけられていた。

また、車.は.社名入りのカラ.リングが施されており、「受け取り」が自由なカラ.リングを行うことは許されなかった。

⑨ 「受け取り」の報酬

決定方法は、全額.合制であり、.社が決めた計算基準による。1ヶ月に1回計算され、「受け取り」の口座に振り.まれる。

金額は、名目.支給額は、「.業員運.者」の時代よりかなり.加した。但し、現.に支給される際には、車.購入代金、自動車.、自動車保.料、一般管理費等が控除される。また、上述したとおり、燃料費、修理、車.費、高速代、タイヤ部品代等を自己負担することから、現.の.入は「.業員運.者」の時代とあまり.わりはない。

「受け取り」は、基本給..業手.その他の諸手..賞.等の支給を受けることはなく、退職金の制度もない。

2 .浜南.基署－旭紙業事件（第1審、控訴審、上告審）

(1) 事案の.要

段ボ.ル及び紙器の受注生産方式による販.を業とする.社において個人の車持ち.み運.手として..的に同社の運送業務を行っていた者（以下、「車持ち.み運.手」という）の.災保.法上の..者性が.われた事案。

(2) 第1審判決

裁判所は、「.基法9.は、同法上の『..者』とは、職業の種類を問わず、同法8.所定の『事業又は事務所に使用される者で、賃金を支.われる者』をいうと規定しているが、これは要するに使用者との使用...係の下に.務を提供し、その..として使用者から賃金の支.を受ける者をいうものであり、その使用...係の有無は、雇用、請負といった形式の如何にかかわらず、使用者とされる者と..者とされる者との間における業務遂行上の指揮監督.係の存否..容、時間的及び場所的拘束性の有無.程度、.務提供の代替性の有無、

業務用機材の負担.係、使用者の服務規律の適用の有無、報酬の性格、公租などの公的負担.係、その他諸般の事情を.合的に考慮して、その.態が使用...係の下における.務の提供と評.するにふさわしいものであるか否かによって判.すべきものである。」と..者性の判.基準についての一般論を述べた。

そして、車持ち.み運.手である原告は、.社との契約の形式上は.業員としては扱われず、.社の就業規則や賃金などに.する規定の適用もなく、報酬も出.高に.じた額で支.われるものとされており、自らも.社の.業員ではないと認識していたものと認められるが、原告の業務の.態を子細に.討すると、.社は、車持ち.み運.手を.業組織の中に組み入れ、これにより、事業の遂行上不可欠な運送力を確保しようとしていたこと、時間的な拘束の程度は一般の.業員とそれほど異ならないこと、納品時刻、運送先、運送品の.量、運送距離等の運送業務の.容も、運送係の指示によって一方的に決まり、車持ち.み運.手がこれを選.する余地はなかったこと、.社以外の事業所と運送契約をしたり、第三者に運送業務を代替させることは不可能であったこと、報酬についても.社が一方的に設定した報酬基準である運賃表に拘束され、その運賃表の設定に車持ち.み運.手の意向を反映させることは事.上あり得なかったこと、その運賃表は、多分に運送に要する時間すなわち運.手の..時間の要素を加味したものとみることができること、報酬額はトラック協.の定める運賃表によるよりも1割5分も低く、一般の.業員運.手の賃金と比較して、..者性を否定するほどに特に高額であるともいえないことなどを認定した。

こうした.社と車持ち.み運.手である原告との間における業務遂行上の指揮監督.係、時間的及び場所的拘束性の程度、.務提供の代替性や業務用機材の負担の.情、報酬の性格等を.合的に考慮すると、.社の原告に.する業務遂行に.する指示や時間的場所的拘束は、請負契約に基づく.注者の請負人に.する指.やその契約の性質から生ずる拘束の範疇を超えるものであって、これらの事情の下で行われる原告の業務の.態は、.社の使用...係の下における.務の提供と評.すべきものであり、その報酬は.務の..の要素を多分に含むものであるから、原告を..者と認めるのが相.であると判示した。

(2) 控訴審判決

ところが、高等裁判所は、一.して車持ち.み運.手である原告（被控訴人）と.社との契約を..契約とは認めず、.なる請負契約に過ぎないと判.して、被控訴人を逆.敗訴させた。

その理由とするところは、車持ち.み運.手は、運送の主要機材であるトラックを所有し、運送請負契約のもとに、.態上は..的な下請業者として運送業務を行い、ガソリン代、車.修理代、高速道路料金など運送必要.費及び自己の場合の損害賠償責任を負担し、.社の就業規則の適用はなく、福利厚生の措置も取られず、社.保.、..保.の.象とされず、所得.の源泉..も行われていなかった。報酬は、.業員運.手の給.よりは多額の報酬が支.われていた。この就.形態は、.基法上の..者と見ることは困難である。...車持ち.み運.手に.する.社の指示等は一般の.業員に.する指揮監督に比べて範.は.く、.容的にも弱いものとみられるし、場所的時間的拘束も一般の.業員よりは弱く、また、報酬も出.高.いであって、これに、業務用機材を所有して業務の遂行につき危.を負担し、自らも.業員

でないとの認識をするなど、.基法上の典型的な..者と異なることは明らかである、ということである。

(3) 上告審判決

高裁判決を維持し、.社と上告人（車持ち.み運.手）との契約を..契約とは認めなかった。

すなわち、上告人（車持ち.み運.手）は、業務用機材であるトラックを所有し、自己の危.と計算の下に運送業務に.事していたものである上、.社は運送という業務の性質上.然に必要とされる運送物品、運送先及び納入時刻の指示をしていた以外には、上告人の業務の遂行に.し、特段の指揮監督を行っていたとはいえず（運..路、出.時刻、運.方法についての指示はない）、時間的場所的な拘束の程度も、一般の.業員と比較してはるかに緩やかであり（１回の業務を終えて次の運送業務の指示があるまで運送以外の別の仕事が指示されることはなかったし、勤務時間も始業時刻、終業時刻が決められていなかった）、上告人が.社の指揮監督の下に.務を提供していたと評.するには足りない。そして報酬の支.方法（出.高制）、公租公課の負担等についてみても上告人が.基法上の..者に該.すると解するのを相.とする事情はないと判示した。

[Workshop 3]
Rights for Workers in a "Triangular" Employment Relationship

Measures for the Guarantee of Labor Rights for Indirectly Employed Workers(with a focus on the Korean case)

Jin-Woo Joo
/ KCTU

1. What is Indirectly Employed Labor?

- Indirect employment refers to the separation of employment and the use of labor, as in dispatch labor
- Dispatch workers enter into a contract with dispatch business proprietors, but work under the supervision and orders of the using business proprietor according to the terms of the contract between the dispatch and using business proprietors.

2.Types and Classification of Indirect Employment

[27]1) Contract work and Disguised contract work

- Contract work is an agreement between the labor supplying firm, which guarantees completion of work, and the user firm, which pays according to the results of the labor.

- But in reality, contract work is agreed upon only formally, and in practice most are dispatch or worker supply work.

- The reason the user enters into the practice of disguised contract work is to transfer responsibilities as a user, outlined in the labor law, to the labor supplying firm, in turn restricting labor rights and evading regulations regarding lay-offs.

2) Worker supply and Dispatch

- Supplying of workers is defined as supplying for use to another business enterprise workers employed by one's company according to a supply contract.

- Worker dispatch is a type of worker supply, where a workers employed by a dispatch enterprise are dispatched to different company and are put under the supervision and orders of that company.

※ In the case of Korea, according to the 1998 'Law on the protection of dispatch workers,' dispatch work was legalized in 26 types of work, including secretaries, typists, telemarketers, drivers, bill collectors, office cleaners etc.

3) Introduction of jobs

- Refers to the act of receiving application for a job and then connecting it with a person

[27] Below I cite frequently from the '2002 Fact Finding report on Indirect Employment' by KSPW

seeking workers, thereby concluding an employment contract.

4) In-company sub-contract work

- Refers to a sub contract firm receiving the contract from the parent company for certain production operations within the parent company, and carrying out the work using the facilities of the parent company.

- Most sub contract work is disguised as contract work, but in reality the contract firm becomes dependent on the parent company, and as a result the user firm directly and indirectly supervises and orders the workers, making it a disguised contract work operating in the form of dispatch work.

5) Salesmen Dispatch

- The case where a production company dispatches workers to distributing stores. Dispatched workers receive the orders from the distributing stations regarding work and working hours, even though they belong to the production company. This can be grounds for consideration as illegal dispatch work.

6) Outsourcing/Separation of Company

- Outsourcing: ordering part of company work to an outside firm
- Separation of Company: Diving the firm into several firms and operating them
- In the process, most divided firms become subsidiaries of the mother company: real authority lies with the mother company, while employment at the subsidiaries takes the form of irregular worker(a form of indirect labor)

3. Actual conditions of indirect employment

1) The scope of indirect employment

- According to the National Statistical office's 'Supplementary Study of the Economically Active Population,' the number of dispatch workers is, as of August 2004, 117,000(0.8%), while service labor workers number 413,000(2.8%).

- The Ministry of Labor's 'Current State of Dispatch Labor' states the number of dispatch workers is 55,000(2003), showing a discrepancy with the Supplementary Study of the Economically Active Population, which places the number at 98,000.

- The Ministry of Labor's statistics only tabulates the number of legal dispatch work, which gives it little relevance when considering the fact that illegal dispatch work is the more common form of dispatch work.

- The 2004 government inspection data revealed that in large firms of over 500 employees(construction firms excluded), in-company sub contract workers numbered

close to 150,000(23% of the total).

- In conclusion, it is estimated that the number of indirectly employed workers, including dispatch workers, service contract workers, and contract workers, is over 600,000(including illegal dispatch workers)

- By industry, dispatch labor was found to take up a relatively higher percentage in manufacturing, insurance. Service contract work in manufacturing, service, and restaurant/hotel sectors.

2) Working conditions of Indirectly employed workers

- The average monthly wage of dispatch workers is 1.27 million won(1270$), service contract workers receive an average of 920,000 won(920$). Compared to the average of regular workers dispatch workers received only 60.3%, and service contract workers 43.7%, showing that they suffer from low wages.

4. Problems of Indirectly employment

1) Structuralization of low wages and long work hours.

- In addition to the discrimination that irregular workers are subject to in general, indirectly employed workers receive lower wages compared to regular workers doing similar work because of intermediary exploitation.

- The rate of intermediary exploitation of dispatch and service contract work companies, which do nothing more than recruit and pay wages, varies by company but ranges from 20-30% to as much as 50-60%.

- Furthermore, many dispatch, service contract workers are not able to receive the benefits from the application of weekly working hours or allowances outlined in the labor standards law. Formally, overtime pay and various allowances exist, but in many cases the total wage is set beforehand, and the details of the pay are worked out afterwards.

※ There exists extra expenditure for the maintenance of the dispatch□service contract business, but the user company is able to block the unity of dispatch workers and to maintain low wages through the implementation of dispatch work, thereby enjoying cost reductions.

2) Illegal dispatch

- In the case of Korea, illegal dispatch work(dispatch in types of work other than the 26 allowed, or dispatch by unauthorized businesses)is more commonplace. According to the current law, there is no separate clause, excluding one on criminal punishment, on whether employment relations exist between the dispatched worker and the user firm in

the case of illegal dispatches. Together with government's relaxed supervision, this has led to widespread use of illegal dispatch work.

※ In Germany, in the case of illegal dispatch, the worker's contract and the dispatch contract are considered invalid. A direct employment relation between the dispatch worker and the user firm is considered to be in effect.

- Even when an illegal dispatch is recognized, the Ministry of Labor has adhered to the line of "directly employing the worker or changing to a complete contract worker according to the civil law." This has led to the phenomenon of dispatch worker users terminating the contract of dispatch workers in the name of stopping the illegal dispatch and changing over to legal contract work.

- Therefore the only way to resolve the issue of illegal dispatch work is to consider the user as directly employing the dispatch worker the moment illegal dispatch work is received. .

3) Denial of the 3 basic labor rights

- One of the main reasons users utilize dispatch work is because it can structurally blocks the unity of workers.

① Violation of the right to organize

- In dispatch/service contract work relations, the violation of the 3 basic labor rights usually arises due to directions from the user firm.

- The most extreme case of violating the right to organize by the user firm is terminating the contract with the dispatch/service contract firm when a union is formed. The termination of the dispatch contract equals a lay-off in a situation where there is no constant dispatch work. In such a situation the termination of the contract is very powerful means to violate the right to organize.

- Other forms of basic labor rights violation include demanding that core unionists be changed, or inducing withdrawal from the union through threats.

② Violation of the right to collective bargaining

- Dispatch contract workers provide labor at the user firms workplace. Therefore, it is the user firms management that determines the working conditions of the dispatch/service contract workers. .

- Most dispatch companies are in a weak position in the relationship with user firm. The dispatch companies also do not have any substantial role besides recruiting and supplying the workers according to the needs of the user firm.

- As a result, the wage levels of the dispatch contract workers are set according to the

dispatch contract, and the worker cannot receive any protection from the dispatch firm in the case the user firm demands the termination of the contract or a dismissal.

- Therefore, when dispatch/service contract workers form a union, in most cases they want to collectively bargain with the user firm. However, the user firm refuses to bargain, citing the reason that they are not a party in the employment contract. It then transfers responsibility to the dispatch firm, which has no authority or ability to change the situation.

③ Violation of the right to collective action

- Dispatch, service contract workers have no alternative but collective action, in a situation where the user firm refuses collective bargaining and does not recognize the union. The user firm, evading all responsibility outlined in the labor laws, denies the right to collective action as well..

5. Measures to guarantee labor rights for indirectly employed workers.

A. Government propsal on Dispatch work

Full scale expansion of the fields where dispatch work is allowed, leading to an increase of irregular workers

○ The government proposal seeks to expand full scale the fields in which dispatch is allowed(currently 26), excluding a few areas(the so called 'Negative List' method), thereby increasing the number of dispateched irregular workers by a large margin.

※ Japan, which in 99 abolished the limit on fields which dispatch work was allowed in a similar fashion to the Korean government, has seen an increase in the number of dispatch workers from 470,000 in 1995 to 2.13 million in 2002: (Ministry of Labor, Main contents of the Bill on Irregular Workers, 2004.9)

※ The method of 'maintaining the positive list method and exapnding the fields where dispatch is allowed' examined between the government and the ruling party just before the Feb. Assembly Session, seems less severe than the Negative List method, but in essence is the same as the government proposal in that it results in a drastic increase in the number of fields in which dispatch is allowed.

※ National Human Rights Commission's opinion: "Maintain 'Positive list' method"

○ The number of years spent as a dispatch worker is also extended from 2 to 3 years, increasing the range of dispatch use for employers.

○ In order to stop abuse of the government proposal, the government has presented a 3 month cessation period after 3 years of dispatch work. However, in connection to the

free use of part time work, it will result in a vicious circle of irregular work use: 3 years of dispatch - 3 months part-time work - 3 years of dispatch work.

※ National Human Rights Commission's opinion: "Expand the cessation period by considering the operations of the year"

※ The original government porposal stated□2 year of dispatch work followed by 8 month cessation period□(1/3 of the dispatch period). However, it regressed to 3 years of dispatch work - 3 month cessation period□(1/12), erasing what preventive effects it may have had.

※ Companies can bear the 3 month cessation period, considering the current childbirth vacation is 3 months.

○ Currently, dispatch workers were consdiered directly employed after 2 years of dispatch work, but the current government proposal has relaxed it to a mandatory employment provision. Even if the provision is violated, the user only has to pay a fine and their is no guarantee the dispatch worker will be directly employed.

○ Due to the full scale expansion of dispatch labor, and the legalization of previously illegal dispatch work, measures to limit illegal dispatch work(such as direct employment in the case of illegal dispatch) have been rendered meaningless.

○ The government proposal does not state the responsibility of the user firm(which in reality exerts influence on the working conditions of dispatch workers), regarding the labor law. This excludes the exercise of the workers' basic rights.

B. KCTU's proposed change of the law on dispatch

Abolishment of the Dispatch law and Eradication of illegal dispatches

○ The dispatch law of 1998 legalized intermediary exploitation by dispatch and contract firms, and has produced illegal dispatch labor in the name of service contracts or in-house sub-contracting on a large scale. Dispatch workers have also been denied basic labor rights because users have transferred responsibilities outlined in the labor law to the dispatch firms.

○ Therefore dispatch system must be abolished and illegal dispatches must be eradicated. The labor law must be revised to hold the users accountable to the labor law. To do this ▲abolish the current dispatch law ▲Directly employ workers in the case of illegal dispatch ▲Reinforce divison between dispatch and contract work ▲Clearly state the responsibility, according to the labor law, of the user firm.

※ National Human Rights Commission's opinion:
"It is desirable to consider the user firm as directly employing the dispatched worker as

soon as the illegal use of dispatched labor arises"
"Expand the responsibility of the user firm regarding labor rights so that dispatch workers can exercise the right to organize and to collectively bargain."

※ Is the demand to abolish dispatch labor unrealistic?
Before pointing out that the abolishment of dispatch labor is unrealistic, it needs to be verified that the need for the system exists. On the need to expand dispatch labor, the government and the employers have presented ▲the need for temporary work ▲smooth supply of manpower and etc.

▶ The need for temporary work can be satisfied the use of temporary contract labor.

▶ The issue of providing a fluid supply of manpower needs to be solved through public job connecting agencies and a public job training system, not through the invigorating the private dispatch sector, which leads to problems such as intermediary exploitation and the denial of basic labor rights.

※ In fact, in Germany, where the government claims the dispatch law is being relaxed to cover more fields, there exists a strong public job connecting system. The supply of labor is mostly accomplished through this system, and the usage of dispatch labor through private dispatch firms is a small minority.(0.7% of entire labor force)

The Reality of Construction Daily Workers and Basic Labor Rights

Myoug-Sun Choi
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1. The reality of construction workers (focus on temporary workers)

1) Daily construction workers work under sub-human working condition of no toilet, cafeteria, and rest area.

Picture 1) These workers are eating at lunch at dusty work post because there is no cafeteria for them to sit down and eat.

Picture 2) Workers are changing their clothes because there is no dressing room. They are changing to work clothes by a mini van.

Picture 3) Filthy toilet at the construction site. Toilets are always in short in construction sites.

Without a rest area provided, workers try to rest wherever they can for 10 to 20 minutes after lunch.

2) Construction daily workers receive about 54% of the average wage of regular workers in 2004 (50.7% compared with regular workers in construction industry), and this wage disparity is deepened each year.

(The wage of daily construction workers compared to regular workers is 60.7% in 2002, 55.3% in 2003, and 54% in 2004)

<Average wage of daily construction workers> (Unit: 10,000 won)

Year	regular workers in overall industry	Construction Industry		
		Regular	Irregular	Daily
2002	176.9	194.8	125.5	107.5
2003	195.8	206.8	136.5	108.4
2004	203.6	220.3	146.2	111.8

<Source: The National Statistical Office, Additional research on economically active population>

3> Working long hours of 70 hours a week, 800 workers die in industrial disaster related death a year, have no access to social welfare system

- The legal working hours in Korea is 44 hours a week, and 40 hours a week for the businesses of over 300 employees. But, the working hours of construction daily workers is 70 hours a week. There is no Sundays in construction sites: They are expected to report to work on Sundays. Moreover, construction workers do not receive paid holidays that were stipulated by the law such as weekly, monthly, and annual paid holidays.

- In construction sites in Korea, in the average of 800 workers die and 20,000 workers are injured on the job a year. In the year 2004, 779 construction workers died while working in the construction site. Only 50% of the industrial accidents receive compensation through industrial injuries insurance, and 25% of injured workers do not receive any kind of compensations. Typical diseases of construction daily workers are lung cancer from inhaling asbestos, pneumoconiosis, leukemia by exposing to benzene, respiratory problems from inhaling dust particles, hearing problems with noisy at the construction sites, and muscle and bone related diseases, but they are not entitled to industrial diseases compensation because of short term employment and difficulty in providing employment proof.

- Construction daily workers are either excluded from social welfare systems such as employment insurance, national pension benefit, and health insurance benefit.

2. The Reality and Employment Structure of Construction Workers

- The dramatic working condition of 1.8 million construction workers in Korea is owe to indirect hiring structure and daily employment structure of construction industry. Depending on the employment status, workers face harsh working conditions whether they are employed for the short term or under indirect hiring process. Whereas, the duality in the employment structure of construction workers leave them in the worst working condition in anywhere.

1> Daily Employment

- Due to its special industrial characteristic, short employment is prevalent in the construction industry. It is the same with construction workers in other countries. Usually construction lasts about three months depending on the speed and procedure of construction, hence, the construction workers are usually employed for a short period of time of in the average of three months to eight months at a time.

- However, in the case of Korea, another form of employment exists: That is daily employment. The daily employment is ultra short form of employment. The condition that lies on the workers are such that workers actually work from three to eight months, but their job statue is a daily worker, which means they do not sign labor contract when they start working and they are not protected by their employer at all. Also, the common practice of them not being employed directly by the construction company, but being employed by a foreman (team leaders) or through job market, and employment of unskilled workers into the construction workforce is prevalent in construction industry in Korea.

- This employment condition has direct relations with the overall wage system in Korea. The daily construction workers are often excluded from overtime pays stipulated by the law (graveyard, overtime, working in holidays), and excluded from benefits such as weekly holidays, monthly holidays, and annual holidays.

<Figure> Illegal Multi –Level Subcontracting System in Construction Sites
(omitted)

2> 7 to 8 tiers of Subcontracting System

- In construction industry, there is three tiers of legal subcontracting system of indirect employment through an organization ordering for construction work -- primarily contracting company -- subcontracting company. And then, there is another three to four tiers of illegal indirect employment through foreman and team leaders.

- In other industries, indirect hiring goes as far as two tier of the primary contracting company and a subcontracting company. But, with construction industry, workers have to endure indirect hiring through seven to eight tiers of subcontracting system. Through this indirect employment through subcontracting tier system, construction workers work without being aware of who their primary employer is.

- This is because of multi-level subcontracting system that does not exist in other countries. In other countries, even with construction industry, there is no multi-levels of subcontracting, so workers are hired directly by the primary contracting company or some works can be dispersed to subcontractors according to the progress of the work and the workers are hired by the subcontractors.
-This multi-level of indirect hiring system brings ambiguity in determining who the employer is in every aspect of labor law, and it brings ambiguity in fundamental labor protection system such as benefits, industry safety and health, and employment insurance. Moreover, it impedes in guaranteeing three fundamental labor rights to the workers.

3> A Construction Site of Dispatching of workers and Irregular Workers

- Dispatching of workers is prohibited in construction sites in Korea, but the construction site is filled with various irregular workers including dispatched workers.

- For daily workers, dispatch worker is prevalent through dawn job placement market and service company. Even with tower crane operators face dispatched work through individual or service company.

- For the leasing of machines in the construction sites such as hoist drivers was hired directly by the construction site before, but drivers are dispatched from a dispatch company since four to five years ago.
Special employment of vehicle operators such as dump trucks and cement mixers are in the form of construction machine workers.

3. Indirect Employment and Guaranteeing of Fundamental Labor Rights to Construction Daily Workers

1> Collective bargaining with primary contracting company

- Since 2000, construction daily workers labor union has signed collective bargaining contract with primary construction company and 350 construction sites. The collective bargaining contract mainly deals with industrial safety and health and employment insurance that the primary contractor responsible is by the current labor law and abiding the standing labor laws and guaranteeing the labor union activity.

- However, since 2003, due to strong collective repulsion by the construction companies and oppression by the prosecutors office and the police, labor union officials involved in signing the collective bargaining were arrested and denies collective bargaining right of the labor union. Currently, the case is waiting for a trial. The high court ruled that collective bargaining is possible between a local construction labor union and the primary contractor, but the case is pending in the supreme court.

- Since current labor law has a basis on regular employment in the manufacturing sector, it leaves out fundamental labor rights of workers of indirect employment. Because of its industrial special characteristics of indirect employment structure from primary contractor and subcontractor, and for the primary contractor, the construction site has the continuity and for the subcontractors, the job lasts for two to three months depending on the process.

2> Primary construction capital baldly engaging in illegal labor activities on wage negotiation of subcontractors

- During the general strike of Ulsan Construction Plant In 2005, SK (Inc.) (the organization placed an order for a construction work) discharged union members through subcontractors. SK also threatened construction workers that it would cancel its contract with subcontracts if workers sign wage negotiation with the labor union. It also paralyzed the general strike by extending the work completion date prior to the union's strike. The labor union filed a law suit against SK an unlawful labor practice, but the current labor law doesn't punish these blatant unlawful labor practices by the organization that give an order for a construction work and the primary contractor.

- In the case with the local construction union in Yeosu in 2005, the union signed the collective bargaining agreement with subcontracting company, and was union activity was stipulated in the contract. But, GS Caltex, the organization that gave the order for the contraction work, denied the union access to its facility, paralyzing the collective contract between the union and the subcontractor.

- During collective bargaining and strike in Pohang and eastern S. Cheolla Province in 2004, Posco (the contractor) intervened in the wage negotiation between the union and the subcontracting company, and paralyzed the strike by extending the construction completion date, resulting in prolonging the strike because there was no legal foundation to regulate such activity by the contractor.
- Primary contracting companies such as Posco and GS Construction excludes companies that employs union members of tower crane and cement mixer drivers from the list from the beginning, or make it a company regulation to refuse hiring union members. The contractors are manipulating job placements of desperate irregular

workers to paralyze the labor union.

3> Using foremen and teamleaders as subcontractors

- There are three to four tiers of illegal subcontracting besides primary contracting and subcontracting structure in construction industry in Korea. The people involved in the middle of this illegal subcontracting tier system are foremen and team leaders and they, too, are workers. They become team leaders if they bring subcontracting work with them, if they do not bring any work with them they are just workers. They are commission based workers and play a role as intermittent manager. They have no contraction license.

- Construction companies insist that these foremen and team leaders are the employers of the construction workers and leaves the wage, safety and health, and industrial disaster issue of construction workers in the hands of team leaders. Construction companies use team leaders to reject collective bargaining with the labor union.

- According to the current construction industry standard act, team leaders and foremen are considered illegal entrepreneurs, but in the labor law, they are considered as employers in uncollected wages, and there is no clear interpretation in labor-management negotiation. Hence, in many instances, collective bargaining can last for a extended period of time even with labor union in the case with construction daily workers,

4> Use the short employment to delay the collective bargaining process, and then excluded itself from the collective bargaining

- Short employment is prevalent in construction sites. Companies avoids collective bargaining continuously until the union members have completed the work. Then, the companies use the excuse of no union members present to void the collective bargaining process. The wage negotiation in Ulsal Construction Plant in 2005 is the representative case. Companies the labor committee recognized as the employer were 16 in the beginning, but as collective bargaining dragged on and the constructions were completed, the companies shrunk to 12 at the end.

5> The primary contracting company is engaged in illegal substitution, paralyzing the right to strike

- When the labor union declares a strike, the primary contractor or the contractor blocked the union from entering the site, and by requesting police intervention through requesting for a facility protection, the contractors prohibited the union's action to stop the company from hiring illegal substitutions.

- As with the case in Ulsan in 2005, SK (Inc.), the contractor and the primary contractor, had substitution workers dressed as the contractor work clothes and brought them to the construction site with a bus. SK even built a dormitories for the substitutes at the construction site, prohibiting the substitutes from any contact with the striking workers.

The labor union filed a law suit against this illegal labor practice, but there is no legal binding to regulate such activity.

4. Right to live by the construction daily workers and Schemes to improve law and system in guaranteeing the fundamental labor rights.

A> Put it in a law to recognize the primary contractor as an employee to guarantee the basic labor rights of workers hired indirectly

- The primary contracting company actually directs and supervises in the construction site, and controls working hours in the site and wage through setting price. The primary contracting company is responsible for basic health and welfare facilities such as rest area, cafeteria, and toilets, supplying safety gears, and basic labor protection system such as health examination and employment insurance. In the case with union activity, the construction site that actually provide the labor is under control of the contractor or the primary contractor, and subcontractors do not have their own construction sites. Hence, in order to guarantee basic labor rights of workers, legalization of recognizing the primary contractor as an employer is imminent.

- Multi-level subcontracting is illegal in the construction site, but there is no supervision on the matter and no one is punished for such practice. Abolition of construction bidding system, strengthening punishment on multi-level subcontracting, creating a system to prosecute and punish multi-level subcontracting should be established and practiced.

- Direct construction system of construction industry that is to be administered from 2006 should be fully implemented and law should be amended so that direct construction system can lead to direct employment.

- Currently the Ministry of Labor recognizes subcontractors in subject of illegal subcontracting as employers in the construction related law, and there is discrepancy in applying law between government offices, This discrepancy encourages illegal multi-level subcontracting in the construction sites. As there is a law in requiring workers to be employed directly if workers are illegally dispatched, there should be legalbinding in direct employment of workers by the primary contractors upon found with illegal multi-level subcontracting.

In-company Sub-contract Workers and the Responsibility of Primary Contracting Company

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** Mr. Oh's draft is displaced with the pamphlet, which was distributed at the International Motor Show in Seoul on 29 April 2005 as following*

Behind the rapid growth of Korean automobile industry, Many non-regular workers suffer from sorrow and discrimination

Ladies and Gentlemen! Welcome to the Seoul Motor Show.

We guess you know that Korean automobile makers, including Hyundai-Kia which faces the global top 6, have grown considerably in the world market such as North America, Europe and China. But, do you know the fact that many non-regular workers who are employee of internal subcontract factories are working under all kinds of sorrow and discrimination? And do you know that they are not guaranteed the fundamental rights provided by ILO as well as human rights which is the universal value?

Let me tell you our surprising experience. In 2003, a worker at A-san internal subcontract factory of Hyundai motor applied a monthly leave which is guaranteed by the law. But he was rejected and even taken to hospital because of violence by his manager. That's not all. In the hospital, the company manager attacked him and stabbed violently his Achilles tendon two times with a fruit knife.

To overcome such coares condition, non-regular workers established the trade union. We non-regular workers are struggling here and there. At the Hyundai motors factories placed at Ul-san, Cjeon-ju and A-san, at the Hyundai Heavy Industries, at the Cheong-ju factory of Hynix Semiconductor, at the Chang-won factory of GM-Daewoo, and at the Hwa-seong factory of Kia motors.

But Hyundai Motors, Hyundai Heavy Indutsries, Hynix Semiconductor, GM-Daewoo and Kia Motors which are contractors have oppressed with discharge, complaint and indictment, provisional disposition and attachment, illegal investigation, illegal commitment of substitute workforce and so on. They did it by themselves or made subcontractors do.

Ministry of Labor decided that Hyundai Motors and GM-Daewoo did camouflaged contracts and illegal dispatches of workers. According to the supervision regulation of Ministry of Labor, even if companies do so, "Employment Agenda Clause" which means that the workers dispatched for more than 2 years are regarded as employed directly by the contractor must be applied. The clause is contained in Act Relating to

Protection ect. for Dispatched Workers. Nevertheless Korean Government doesn't leave a negative attitude on solving the problem, but rather protects the violations of employers.

Hyundai Motors and GM-Daewoo abuse these circumstances to try to make all as lawful non-regular workers and sweat with only low wages and fire on their won authrity instead of employing directly or converting into regular workers.

Foreigners visiting Seoul Motor Show!
Wages and working conditions of non-regular workers in Korea are considerably different from those in your countries. Most of new employment are made up by the non-regular, so workers have no choice and sink to the non-regular. Under such conditions, non-regular workers works in the same as regular workers but take at most 50% of wages of regular ones. Every kind of welfare is more poor. And by reason of doing union activities, despite it is lawful, employers fire workers on their own authorities. In Korea, Social security programs are still so poor that the fired worker and his/her family are threatend their living no sooner than fired.

Nevertheless Korean Government try to make laws to spread non-regular workers and remove even poor safeguards. The Government bill denies fundamental rules such as freedom of association, prohibition of discrimination, equal-wage for equal-value-work and so on. So, most workers were in opposition to the bill and declared the struggle against the government.

For example, Korean Confederation of Trade Union (KCTU) sued Korean Government to ILO on the ground that Korean Government was violation against Clause 87, Freedom of Association and Protection of the Right to Organise Convention, and Clause 98, Right to Organise and Collective Bargaining Convention, of ILO Conventions and disturbed rights of workers. "Conclusion of employment relation" adoped at 91th International Labor Conference in 2003 mentioned about "disguised" employment relationships (i.e., workers who are in fact employees but their status is disguised or hidden). This is simillaer to the illegal worker-dispatches spreading in Korea.

We workers at internal subcontractors will keep on struggling against contractors as well as Government in order to remove discriminations and poor conditions. Think about sorrows of and violence to non-workers behind excellence and growth of Korean Automobiles displayed at Seoul Motor Show.

We guess that workers in all around the world as well as in Korea lie under such conditions. We will struggle not to be better only by ourselves but to take right and freedom of all workers in all the world.
For Global Unity of All Workers in the World.

A Short Account in the last session:

The Future Struggle of Irregular Workers and Trade Unions' Response

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There are some 200,000 self-employed and causal workers who are excluded from the labour protection under the Labour Law of Hong Kong.

HKCTU considers the irregular workers are the working people who should be entitled to the worker rights as other permanent workers. To divide workers with different working conditions and entitlement is a spilt and rule strategy for capitalists profit maximization and state control on working people.

In the past, HKCTU has been in struggle with the self-employed, causal and migrant workers in defending the labour rights. Among the 72 affiliates, there are self-employed workers unions such as the Mixer Truck Drivers Association (changed to the Mixer Industry Employees Union), Dumper Truck Drivers Association, causal workers union such as the Hong Kong Domestic Workers General Union (most are part time workers without paid leave and year service compensation upon dismissal), migrant workers such as the Indonesian Migrant workers Union and Filipino Domestic Helpers General Union. HKCTU believes undocumented migrant workers contribute enormously to Hong Kong economy. It is the employers violating the immigration laws for making greater profits. They are deserved to the penalty of laws violation. And Hong Kong society should provide them the undocumented workers basic rights such as wages and occupational health and safety.

Looking ahead, HKCTU will confirm the solidarity with the irregular workers, to assist them in defending their rights in terms of collective action and legal provision, unionizing them to consolidate a stronger force for collective negotiation to reclaim the worker identity and the rights they are deserved. HKCTU will continue to advocate the rights for working people as a whole both among the affiliates and in the civil society by promoting mutual understanding among different worker statuses; legal recognition of their equal rights; and support their struggle of human dignity and decent work.