

인권 자료실		
등록일	분류기호	자번호
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International Seminar

**아시아-유럽의 외국인노동자 정책과 보호대책**  
**Policies & Protective Measures Concerning**  
**Foreign Workers in Asia & Europe**

일시 : 1995. 5. 30(화)-5.31(수)  
Date : Tuesday, May 30 - Wednesday, May 31

장소 : 타워호텔 몽파르나스실  
Venue : Hotel Tower, Montparnasse Room

**주 최 : 후리드리히 에버트 재단(FES)**  
**노동정책연구소(KRIWHJ)**

**Organizers : Friedrich-Ebert-Stiftung (FES)**  
**Korea Research Institute for Workers'**  
**Human Rights & Justice (KRIWHJ)**

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**목적 :**

- (1) 각국의 외국인노동자 실태를 구체적으로 파악하고 그 문제점을 공유하고자 함
- (2) 각국의 외국인노동자 관련정책 추진과정 및 제반 문제점을 참조함으로써 한국에서의 외국인노동자 정책기준을 제시하고자 함
- (3) 각국 민간단체의 외국인노동자 인권보호 활동에 대한 정보를 공유하고 향후 효과적인 국제협력을 모색하고자 함

**Objectives :**

- (1) To understand the actual conditions and problems facing foreign workers in other nations.
- (2) To present directions for policy concerning foreign workers in Korea, by referring to the process of policy implementation related to foreign workers in other nations and the various resulting problems.
- (3) To share information concerning the activities of other nations' non-governmental organizations which work to protect foreign workers' human rights, and to seek effective international cooperation.

\* 동시통역이 준비되어 있습니다. (한국어/영어)  
Simultaneous interpretation will be provided. (English/Korean)

**프로그램/Program**

**5.30. 화요일/May 30, Tuesday**

09:30-10:00 개회식/Opening ceremony

환영사/Welcoming speeches)

;베른드 레디스(FES 주한협력사무소 대표)

Bernd Reddies (Representative of FES Korea Office)

;박석운(노동정책연구소 소장)

Seok-Woon, Park (Director of KRIWHJ)

10:00-10:30 총괄 기조발표/keynote speech

;이광택(국민대 교수)

Kwang-Taek, Lee (Professor, Kook-Min Univ.)

10:30-10:45 휴 식/Coffee Break

10:45-12:30 연구조사 및 국내 1,2차 세미나 결과보고/Final report on research and 1st & 2nd domestic seminars

;이종구(성공회 대학 교수)

Jong-Ku, Lee (Professor, Sung-Kong-Hoe Univ.)

12:30-14:00 중 식/ Lunch Break

14:00-15:30 제1회의/한국 보고

"한국에서의 외국인노동자 상황과 인권개선 방안"

Session 1/Report from Korea

"Report on Foreign Workers' Conditions & Measures to Improve Human Rights in Korea"

\* 사회 : 신윤환 (서강대 교수)

Chairperson : Yun-Hwan, Shin (Professor, So-Kang Univ.)

\* 발표자 : 박석운(노동정책연구소장)

Speaker : Seok-Woon, Park (Director of KRIWHJ)

\* 토론자 : 김동춘 박사(서울대 지역종합연구소)

김성진(한국노총 국제부장)

Panel : Dr. Dong-Choon, Kim(Center for Area Studies,  
Seoul Nat'l University)

Seong-Jin, Kim (Director, Int'l Dept., FKTU)

15:30-15:45 휴 식/Break

15:45-17:45 제2회의/일본 보고

- (1) 일본에서의 외국인노동자 상황과 민간단체의 활동
- (2) 재해시 외국인 인권-"고베 지진시 나타난 문제점"

Session 2/Report from Japan

- (1) Report on Foreign Workers' Conditions &  
Non-governmental Organizations' Activities in Japan
- (2) Foreigners' Disaster-related Human Rights  
- "problems concerning the Kobe earthquake"

\* 사회 : 이종구(성공회 대학 교수)

Chairperson : Jong-Ku, Lee (Professor, Sung-Kong-Hoe  
Univ.)

\* 발표자 : 야와타 아키히코 (아시아인 외국인노동자 문제 간  
담회)

모리키 가즈미('외국인노동자와 그 가족들의 인권을  
지키는 관서 네트워크; RINK)

Speakers : Yawata Akihiko (AJIKON : Forum on Asian  
Migrant Workers Concern in Japan)

Moriki Gazmi (RINK: Rights of Immigrants  
Network in Kansai)

\* 토론자 : 위르겐 에클 박사(독일노총 국제부)

최상덕(YMCA 전국연맹 간사)

Panel : Dr. Jurgen Eckl (Int'l Dept., DGB-German Trade  
Union Federation)

Sang-Duk, Choi (Secretary, YMCA Nat'l League)

18:00-20:30 교류회/Reception

**5.31, 수요일/May 31, Wednesday**

09:30-11:00 제3회의/필리핀 보고

"외국인노동자-인력송출국의 관점과 경험"

Session 3/Report from the Philippines

"Foreign Labour-The Views & Experiences of a Sending  
Nation"

\* 사회 : 이석태(변호사)

Chairperson : Seok-Tae, Lee (Attorney)

\* 발표자 : 아르넬 드 구즈만 교수 (KAIBIGAN)

Speaker : Arnel de Guzman (Professor, KAIBIGAN)

\* 토론자 : 타네쇼르 반자데(네팔인 노동자)

이금연 (천주교 수원교구 사회사목실 대표)

Panel : Thane Shwor Bhanjade(Nepalese Worker in Korea)  
Keum-Yeon, Lee (Director, Social & Labor  
Apostolate Office, Catholic diocese of  
Su-Won)

11:00-11:15 휴 식/Break

11:15-12:45 제4회의/독일 보고  
"독일과 유럽에서의 외국인 노동자-법적, 사회적, 경제적 지위"

Session 4/Report from Germany  
"Foreign Labour in Germany and Europe-Legal, Social &  
Economic Status"

\* 사회 : 이광택(국민대 교수)

Chairman : Kwang-Taek, Lee (Professor, Kook-Min Univ.)

\* 발표자 : 위르겐 에클 박사(독일노총 국제부)

Speaker : Dr. Jurgen Eckl (Int'l Dept., DGB)

\* 토론자 : 윤우현(민주노총 준비위 집행위원)

야와타 아키히코(AJIKON)

Panel : Woo-Hyeon, Yoon (Executive Committee, KCTU  
-Korean Council of Trade Unions)  
Yawata Akihiko(AJIKON)

12:45-14:15 중 식/Lunch break

14:15-17:15 제5회의/종합 토론  
Session 5/Concluding Discussion

\* 공동 사회 : 베른드 레디스(FES 주한 협력사무소 대표)  
이광택(국민대 교수)

chairpersons : Bernd Reddies (Representative of FES  
Korea Office)  
Kwang-Taek, Lee (Professor, Kook-Min  
Univ.)

\* 폐  
    넬 : 위르겐 에클(독일노총 국제부)  
        야와타 아키히코(아시아인 외국인노동자 문제 간  
        담회)  
        아르넬 드 구즈만 (KAIBIGAN)  
        박석운(노동정책연구소 소장)  
        김해성(성남 외국인노동자의 집)  
        설동훈(서울대 강사)

Panel : Dr. Jurgen Eckl (Int'l Dept., DGB)  
Yawata Akihiko (AJIKON)  
Arnel de Guzman (KAIBIGAN)  
Seok-Woon, Park (KRIWHJ)  
Hae-Seong, Kim (Foreign Workers' House in  
Sung-Nam city)  
Dong-Hun, Seol (Lecturer, Seoul Nat'l Univ.)

17:15-17:45 폐 회/Closing Ceremony

International Seminar  
on  
Policy and Protection for Migrant Workers  
in Asia and Europe

Organized  
by  
Friedrich-Ebert-Stiftung  
Korea Research Institute for Workers' Human Rights & Justice

<Keynote Speech>

Protection of Migrant Workers  
in the Light of Globalization

May 30 - 31, 1995  
Tower Hotel, Seoul, Korea

By

Prof. Dr. Kwang-taek Lee  
(Faculty of Law, Kookmin University, Seoul, Korea)

## I.

Early this year Mrs. Contemplacion, a Philippina house maid and the mother of four children, who had been working in Singapore for many years, was executed in the host country, because she allegedly murdered a four-year-old son of her master and another house maid. This case resulted in not only diplomatic conflict between the Philippines and Singapore, but also raised great concern of the people in whole Asia.

Last week on May 25 Ms. Santos Milaprol, 34, another Philippina who had been working at a restaurant in Hongkong, threw herself to death from 8th storey of a building. She was known in a distressing circumstance as the Hongkong Immigration Office was ready to indict her for illegal employment.

Unfortunately the two tragedies are concerned about the Philippine women, for whom Professor Arnel de Guzman, I believe, is in the right place to give us more details.

The tragedies take place not only in Singapore and Hongkong, but also in Germany, Tokyo, Seoul and any other cities, where migrant workers are admitted legally or illegally. The tragedies are not only for the Philippine wives abroad, but also for Korean girls at Shinjukku quarter in Tokyo, for Nepalese workers at small factories in Seoul, for Turkish guest workers (Gastarbeiter) at coal mines in Recklinghausen, and all the other migrant workers in others countries.

The theme "migrant workers" used to be one of three main topics discussed in the XIV World Congress of Labour Law and Social Security, which was held in Seoul from September 26 through 30, 1994.

## II.

According to the ILO Convention No. 143, the term "migrant workers" means a person who migrates or who has migrated from one country to another with a view to being employed otherwise than on his own account and includes any person regularly admitted as a migrant worker.(Art. 11, Para. 1)

The ILO Convention No. 143 of 1973, which came into force on December 9, 1978 in supplement to the Convention No. 97 of 1949, gives further provisions concerning migrations in abusive conditions and the promotion of equality of opportunity and treatment of migrant workers.

Each member state for which this Convention is in force shall undertake to respect the basic human rights of "all migrant workers"(Art. 1).

In order to prevent and to eliminate migrations in abusive conditions Article 3 of the Convention Nr. 143 stipulates as follows:

Each Member shall adopt all necessary and appropriate measures, both within its jurisdiction and in collaboration with other Members -

- (a) to suppress clandestine movements of migrants for employment and illegal employment of migrants, and
- (b) against the organisers of illicit or clandestine movements of migrants for employment departing from, passing through or arriving in its territory, and against those who employ workers who have immigrated in illegal conditions.

Article 9, Paragraph 1 of the Convention No. 143 reads:

"Without prejudice to measures designed to control movements of migrants for employment by ensuring that migrant workers enter national territory and are admitted to

employment in conformity with the relevant laws and regulations, the migrant worker shall, in cases in which these laws and regulations have not been respected and in which his position cannot be regularised, enjoy equality of treatment for himself and his family in respect of rights arising out of past employment as regards remuneration, social security and other benefits."

According to Article 10 of the Convention, each Member for which the Convention is in force undertakes to declare and pursue a national policy designed to promote and to guarantee, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, of social security, of trade union and cultural rights and of individual and collective freedoms for persons who as migrant workers or as members of their families are lawfully within its territory.

Each Member shall also, by methods appropriate to national conditions and practice, in consultation with representative organisations of employers and workers, formulate and apply a social policy appropriate to national conditions and practice which enables migrant workers and their families to share in advantages enjoyed by its nationals while taking account, without adversely affecting the principle of equality of opportunity and treatment, of such special needs as they may have until they are adapted to the society of the country of employment.(Art. 12 (e))

But the provisions concerning equality of opportunity and treatment do not apply to -

- (a) frontier workers;
- (b) artistes and members of the liberal professions who have entered the country on a short-term basis;
- (c) seamen;
- (d) persons coming specifically for purposes of training or education;
- (e) employees of organisations or undertakings operation within the territory of a country who have been admitted temporarily to that country at the request of their employer to undertake specific duties or assignments, for a limited and defined period of time, and who are required to leave

that country on the completion of their duties or assignments.(Art. 11, Para. 2)

To Korea tens of thousand workers mostly from Asian countries have been admitted as the so-called "vocational trainees."

The question is whether the "vocational trainees" admitted to Korea fall under the category of "the persons coming specially for purposes of traing or education", as defined in Art. 11, Para. 2(d) of the Convention.

Unfortunately, the answer to this question is negative. Most of the "vocational trainees" admitted to Korea are sent directly to undertakings which are not prepared to give ordinary vocational traing.

### III.

At the beginning of this international seminar on the National Policy and Protection for Migrant Workers here in Seoul, I would like to raise some general questions, which I hope are to be answered during the conference.

Those are:

1. Is your country a country of origin (emigration country) or a host country (immigration country) for migrant workers?
  - a) What are the reasons for migration (economic, social or other)?
  - b) What is the extent of the migration movement Quantitatively (number of workers) and qualitatively (simple worker, qualified worker or manager, frontier worker, etc.)?
2. Has your country ratified ILO Conventions Nos. 97 and 143 of concerning this question? If not, can you indicate why?

In case of the legal immigration and employment, I suggest to disuss following issues:



For basic protective measures for migrant workers in the countries of origin (emigration countries) following items should be observed:

1. Free Information service
2. Campaign against false propaganda through preventive or repressive measures
3. Recruitment services (official or private)
4. Control of work contracts
5. Other measures

For the protection of migrant workers in host country (immigration country)

1. Conditions for obtaining a residence permit and a work permit
2. Principle of equal opportunity and equal treatment. Basis at the national level (legislation, custom, jurisprudence) and restrictions
3. Application of the equality principle with reference to employment and occupational status
  - a) Access to employment
  - b) Access to vocational training and career counselling
  - c) Access to placement service
  - d) Terms and conditions of employment
  - e) Recognition of professional qualifications acquired abroad
  - f) Job security
  - g) Geographical mobility
4. Application of the equality principle with reference to trade union rights
  - a) Affiliation to trade union organisations
  - b) Exercise of trade union rights
  - c) Eligibility for trade union office, or to represent workers on other bodies within undertakings
  - d) Entitlement to advantages offered by collective agreements
5. Protection of expatriate workers

In case of clandestine or illegal migration and illegal employment of migrant workers, I'd like to propose to discuss the following matters:

1. Clandestine or illegal migrations

- a) Causes
- b) Ways and means used
- c) Measures taken to detect and eliminate this kind of migration
2. Illegal employment of migrant workers
  - a) Measures taken to detect and suppress illegal employment of clandestine migrant workers and clandestine (irregular) employment of migrant workers
  - b) Migrant workers' rights during their period of work
  - c) Migrant workers' rights at the end of their illegal employment
  - d) Normalization of the situation of migrant workers whose employment is illegal

From the report from unified Germany, a member state of the European Union, we expect Dr. Juergen Eckl especially to give us details of the following items:

1. Geographical mobility of the workers from and to the other part of the old (East/West) Germany
2. Access for citizens of member countries to employment in other countries of the EU
3. Situation of migrant workers from countries outside the EU
4. Immigration and irregular employment

#### IV.

The participants represent four countries. Two of them belong to the host countries, i.e. Japan and Germany. The Philippines are one of the big emigration countries. Korea used to be a emigration country in 1960s and 1970s. Since the end of 1980s, probably after the Seoul Olympic Games 1988, Korea is turning into one of the immigration countries. To the present over ten thousand foreigners are working in this land. More than 60% of them are supposed to reside here illegally. One of the main points specific in Korea is that about 40% of the migrant workers are Chinese of Korean origin.

Nevertheless, Korea can not be definitely categorized into the immigration countries, because not a few Koreans are still seeking jobs in abroad, mostly in Japan. It is therefore to say that Korea is situated in a turning point from emigration to immigration country.

Although Germany and Japan belong to the same category, they represent different policies. Germany has "work permit" model, while Japan has the so-called "traing-and-employment" model. The two models has become subjects of discussions, which are going on up to the level of ministrial conference of the Government of Korea.

The discussion was launched after a group of Nepalese workers staged a sit-in strike at Myongdong Cathedral, in downtown Seoul early this year. The 13 Nepalese demanded minimum wages, industrial accident compensation, eight-hour-day, and other protection under Korean labour law. After days of sit-in, an agreement between the Nepalese trainees and the Korean Federation of Small Business (KFSB), which is responsible for recruitment services of the "vocational trainees", was reached with the support of the labour organizations, religious and human rights groups.

Among the main points of the agreement are following:

- The KFSB immediately pay to the Nepalese trainees the full amount of their allowances which, they claim, have not been paid. However, the Nepalese trainees shall return to the KFSB the portion of the amount, if it is confirmed on checking to have already been paid.

- The Nepalese trainees shall receive their allowances in time directly from their employers.

- The passports which have been kept by the Korean employers shall be immediately returned to the Nepalese trainees, and shall be kept by them. The KFSB shall ask Korean authority to give the Nepalese trainees favourable consideration that they can stay legally in Korea.

- The KFSB shall make sure that the Nepalese trainees shall not be forced to work against their will after regular work under the contract without mutual consent, and that working and living conditions will be free of hostilities and

violences against the Nepalese trainees, and that freedom after work will be ensured.

- In case of sickness and accidents while at work, the Nepalese trainees shall receive the benefit of medical treatment and due compensation in case of dismemberment or death.

The sit-in strike of the Nepalese workers in January 1995 triggered a series of discussions to better the situation of the migrant workers in Korea.

The Philippine tragedies have been shared by many Koreans, who had experienced hard situation for example in Germany in 1960s and 1970s, even if it is not just comparable to that of the Philippines.

Thus, I think it is not only interesting, but it makes sense that the seminar on policy and protection of migrant workers is being held here in Korea.

Furthermore, the Government of Korea has launched a policy of "globalization" from the start of this year.

Without equal treatment of the migrant workers in labour law and social security, the "globalization" would remain mere political propaganda.

In this sense, I hope that this seminar, in which the representatives of extremely different experiences are participating, is able to find right ways to design national and international policy to promote and guarantee equality of opportunity and treatment in respect of employment, and of other rights related thereto and to respect the basic human rights of all migrant workers.

Thank you.

# A Survey of Foreign Workers in Korea 1995

Seok-Woon, Park (Director, Korea Research Institute for  
Workers' Human Rights & Justice)

Chong-Koo, Lee (Professor, Sung-Kong-Hoe University)

Dong-Hoon, Seol (Lecturer, Seoul National University)

## 1. Introduction

From January 9 to 17, 1995, foreign technical trainees from Nepal staged a sit-in at Myongdong Cathedral protesting unjust treatment from their employers and intermediary exploitation at the hands of their "manpower" or brokerage agencies, thereby making theirs as a larger social issue. Before that, starting in January 1994, foreign workers who were illegally overstaying their visas in Korea and had suffered industrial accidents staged a sit-in at the office of the Federation for Economic Justice for a period of one month, demanding medical treatment and compensation, thus capturing society's attention. These events can be deemed as indications that the issues concerning foreign workers are occupying an increasingly important position in our society.

In 1994, a female worker from the Philippines was one of the victims of the Songsu bridge's collapse, and the names of foreign workers are frequently found on the lists of automobile accident victims. In fact, the number of foreign workers residing and working in Korea has increased so greatly that such cases are not unfamiliar, and it is not difficult to find foreign workers from China, Southeast and West Asia, and Africa throughout our country. The lives of foreign workers are closely linked with ours in Korea.

Issues concerning foreign workers are not isolated to Korea, but have been present in Japan, Singapore, Hong Kong, Taiwan, Malaysia, and other countries as well. Thus, the influx and employment of foreign labor is not only occurring in Korea, but in other countries with similar economic dispositions in that they are economically developed to the point that shortages in the industrial labor force are perceived. Also, as a result of the Uruguay Round of GATT negotiations and the institution of the World Trade Organization (WTO), the future outlook indicates the increased possibility of the free movement of labor across international boundaries. Due to such predictions, it is clear that the problems concerning foreign workers are not merely temporary.

Foreign workers are the "hidden laborers" who fill the labor shortages in Korea's industrial sector. Since they are workers, they should be afforded full legal recognition and protection as workers. However, whether they are foreign industrial technical trainees who reside and work in Korea legally (hereinafter referred to as "trainees"), or foreign workers who overstay their visas and work in Korea illegally (hereinafter referred to as "overstaying workers"), these workers are not afforded such treatment by the government. In other words, as these workers are deprived of their various rights, their lifestyles are similar to those of the Korean "drafted laborers" at the time of Japanese imperialism. In order to improve their situations, it is first necessary to gain a fuller understanding of their situations, by understanding the processes in which both trainees and overstaying workers came to Korea, as well as the true conditions of their lives in Korea.

Our purpose has been to research the actual living conditions and the migration processes of trainees and overstaying workers in Korea.

## 2. Method of collecting samples

For this research, the Korea Research Institute for Workers' Human Rights and Justice conducted a survey by collecting samples, with support from the Friedrich Ebert Foundation. Having considered that access to foreign workers as respondents to the survey would be difficult, we utilized several foreign workers as research assistants. After receiving recommendations from various counselling centers for foreign workers, we were able to select foreign workers who had an adequate command of either English or Korean to aid in our research process by helping to collect samples.

Because random sampling based on proportional probability sampling was realistically infeasible, we chose the method of quota sampling by collecting a minimum number of surveys roughly representative of the number workers of a certain country of origin. Designation of the final respondents was also based on the method of "snowball sampling." In snowball sampling, after collecting a sample from one respondent, the researcher is continuously introduced to other respondents by the original respondent. The survey period for our research spanned four months, from November 1994 to February 1995. A total of 393 surveys were used in the final analysis.

### 3. Basic characteristics of the survey respondents

According to the Ministry of Justice's statistics, there are 75,863 foreign workers residing in Korea as of December 13, 1994, of whom foreign technical trainees comprise 28,328 (37.3%), and workers overstaying their visas comprise 47,535 (62.7%). In other words, there are 1.7 times as many overstaying workers as there are trainees. Classified by country of origin, workers from China are the most numerous, followed by those from the Philippines, Bangladesh, Nepal, and Pakistan (Table 1).

In our study, the legal immigration status of respondents was classified into "trainees" and "overstaying workers." By ethnicity, workers were classified into "ethnic Koreans" and "other." Since the ethnic Korean foreign workers are generally from China, the "ethnicity" classifications can be condensed into "ethnic Koreans from China" (hereinafter referred to as "Korean-Chinese") and "other" (hereinafter referred to as "other overstaying workers"). As the nationality of the ethnic Koreans from China is Chinese, they are clearly foreign workers in Korea, and only their ethnicity is Korean.

<1> The Number of Foreign Workers in Korea, 12/31/1994

(unit: 1)

country	China	Phil.	Banglad.	Nepal	Pakistan	Sri Lanka	Indonesia	Thailand	Other	Total
Tech. Train. (94 Tech. Tr.)	12,663 (7,528)	5,050 (2,639)	- (1,521)	- (767)	- (617)	1,310 (935)	1,585 (930)	403 (0)	7,317 (3,560)	28,328 (18,497)
Overstaying	18,676	7,538	5,256	2,087	2,277	-	-	-	11,701	47,535
Total	31,339	12,588	-	-	-	-	-	-	19,018	75,863

Note: the "other" category among the technical trainees include individuals from Vietnam (2523), Myanmar (788), and Iran (249).

- denotes the unavailability of data.

Source: Ministry of Justice, 1995.

<2> Classification of Foreign Workers in Korea

Leg. imm. status	Ethnicity	
	Korean-Chinese	Other Foreigners
overstaying foreign workers	I	II
foreign technical trainees	III	IV

<3> Nationality

Country	#	%
Nepal	112	28.5
Korean-Chinese	105	26.7
Philippines	84	21.4
Bangladesh	40	10.2
Myanmar	18	4.6
Pakistan	11	2.8
Indonesia	5	1.3

Nigeria	4	1.0
Iran	3	0.8
India	3	0.8
Sri Lanka	3	0.8
Other African nations	2	0.5
Vietnam	2	0.5
Other	1	0.3
	393	100.0

Of the total respondents to our survey, those from Nepal were the most numerous (n=112), followed by the Korean-Chinese (n=105), Filipinos (n=84), and those from Bangladesh (n=40) (table 3). Also, overstaying workers (n=325) outnumbered trainees (n=68) (Tables 4,5). The survey results exhibited differences from the actual distribution of foreign workers in terms of country of origin and legal immigration status. As this was not perceived as an obstacle in studying their living conditions in Korea and their process of migration, we continued with our research.

We collected only one sample from a Korean-Chinese technical trainee. Thus, we were forced to combine categories III and IV from Table 2 into one category. The result can be seen in Table 6, which classifies foreign workers as Korean-Chinese overstaying workers (n=104), other overstaying workers (n=221), and technical trainees (n=68).

<4> Status Under Korean Immigration Law

Status Under Korean Immigration Law	#	%
tourist/visitor visa; unexpired	54	13.7
tourist/visitor visa; expired	249	63.4
trainee visa; valid employment	68	17.3
trainee visa; illegal employment	22	5.6
	393	100.0

<5> Legal Immigration Status

Legal Immigration Status	#	%
overstaying/illegal for. work.	325	82.7
foreign technical trainee	68	17.3
	393	100.0

<6> Ethnicity and Legal Immigration Status

Ethnicity & Legal Immig. Status	#	%
Kor.-Chin. overstaying for.	104	26.5
Other overstaying for. work.	221	56.2
Technical Trainee	68	17.3
	393	100.0

Now we will examine some basic characteristics of the foreign workers in Korea (Tables 7,8). In terms of gender, the percentage of female foreign workers among the Korean-Chinese and Filipino workers was relatively high; the percentage of female foreign workers was higher among trainees than among the overstaying foreign workers excluding the Korean-Chinese. The percentage of female workers was the highest among the Korean-Chinese workers. Interestingly, not even one female workers from either Bangladesh or Pakistan was surveyed. This can be attributed to the fact that the economic activity of women is not recognized under Islamic law.

In terms of age, a majority of Korean-Chinese workers were middle-aged, over 40 years of age, while the other foreign workers were significantly younger, in their late 20s. Also, the average age of overstaying workers was higher than that of trainees.

Workers' ages were somewhat related to their marital status. Of Korean-Chinese workers, 81.0% were married, while only 30-40% of other overstaying workers were married. Also, compared to overstaying workers, a much higher percentage of trainees were unmarried.

With approximately ten years of formal education, foreign workers reached a high school level of education on average. The educational level among workers from the Philippines was relatively higher. However, there seemed to be no significant differences in terms of educational level according to ethnicity or legal immigration status. In other words, between Korean-Chinese workers and workers of other ethnicities, and between overstaying workers and trainees, there were no significant differences in terms of educational level.

In terms of family size in workers' countries of origin, workers from Bangladesh and Pakistan had the largest families with an average 8.4 members, while those from China had the smallest families, with an average of 4.5 members. Other overstaying workers had an average family size of 7.2, while trainees' families averaged 6.6 members. The small size of families of workers from China can perhaps be attributed to the strict family-planning policy of the Chinese government.

Examining the type of area in which the workers lived in their countries of origin, the number of Korean-Chinese from urban areas was quite high, while other workers were largely from rural areas. Comparing the workers' places of

birth and places of residence at the time of their departure for Korea, one can see that rural-to-urban migration was quite common. Among Pakistani and Bangladeshi workers, 58.1% answered "yes" to a question asking whether or not they had moved from a rural to urban area in order to gain employment, the highest percentage among all foreign worker groups. On the other hand, only 33.1% of Chinese-Korean workers answered "yes" to this question.

More than 80% of foreign workers replied that they were employed and working when in their countries of origin. Workers from the countries of Bangladesh, Pakistan, Nepal, and the Philippines exhibited higher rates of unemployment among the foreign workers surveyed before their entry into Korea.

Answers to the question of whether or not the workers had passed through a third country on their journey to Korea were two-fold. Of Korean-Chinese and Filipino workers, 90% came straight to Korea, while of the workers from Bangladesh, Pakistan, and Nepal, about 50-70% had passed through other countries on their journey to Korea. This trend is reflected in the percentage of workers who had experiences of travelling to a country other than their country of origin and Korea. Of the Bangladeshi, Pakistani, and Nepalese workers, around 60-70% had already had some experience of travel or work abroad, and many of them had experience of employment in another country other than their country of origin and Korea.

A large number of Filipino workers (60%) wished to leave Korea and gain employment in another country. Also, the percentage of trainees who wished to gain employment in a country other than Korea (53.2%) was much higher than the number of undocumented workers who wished to do so.

While the average required costs for entry into Korea overall was US \$1835, the costs for entry into Korea for Bangladeshi and Pakistani workers were the highest, while those for Korean-Chinese workers were the lowest. The employment costs for other overstaying workers were the highest, followed by trainees. When asked what social class workers belonged to in their countries of origin, 53.6% replied that they were from a middle-class background, 25.9% working class, 12.0% upper middle-class, 5.1% lower class, and 3.5% upper class. When asked to rate the economic status of their families, 60.1% replied "average," while 15.5% replied "higher than average," and 24.5% replied "lower than average."

<7> Basic Features of Foreign Workers, by Country

Country	Korean-Chinese	Philippine	Bangladesh-Pakistan	Nepal	Other	Total
Males***(%)						
Average age***	60.0	57.1	100.0	83.9	91.9	74.6
Marriage rate***(%)	43.4	30.8	29.2	27.8	28.6	32.9
Yrs. of educ.**	81.0	47.5	27.5	39.3	29.7	49.9
# in Family***	10.6	12.1	10.1	9.6	12.2	10.7
*A (see below)***(%)	4.5	6.9	8.4	6.9	6.3	6.4
*B **(%)	75.2	45.5	36.7	45.5	73.5	55.0
*C **(%)	46.4	36.4	34.0	37.8	78.8	42.9
*D ***(%)	17.5	19.2	26.1	23.1	11.4	20.2
*E ***(%)	33.8	51.6	58.1	50.0	25.0	44.6
*F ***(%)	2.9	8.9	72.0	50.0	37.8	30.4
*G ***(%)	11.8	30.3	66.7	59.1	41.9	40.9
*H (%)*	5.6	17.7	12.2	21.5	11.4	14.4
*I ***(US\$)	16.7	60.0	28.0	32.1	30.0	33.7
# of Respondents (N)	1417.4	1807.9	2619.7	1759.7	1790.4	1834.8
# of Respondents (N)	105	84	51	112	37	393

\* p<.05 \*\* p<.01 \*\*\* p<.001

\* A Lived in an urban area in native country

\* B Was born in an urban area in native country

\* C Was unemployed in native country

\* D Migrated from rural to urban area in native country

\* E Travelled to Korea via third country

\* F Travelled to countries other than native country and Korea

\* G Was employed in country other than native country and Korea

\* H Plans to gain employment in country other than native country and Korea

\* I Average amount spent to enter Korea

<8> Basic Features by Ethnicity and Legal Immigration Status

Country	Korean-Chinese	Other Overstay Workers	Technical Trainee	Total
Males***(%)				
Average age***	59.6	86.9	58.8	74.6
Marriage rate***(%)	43.4	29.78	27.0	32.91
Yrs. of educ.**	80.8	41.6	28.8	49.9
# in Family***	10.6	10.58	11.56	10.75
*A (see below)***(%)	4.5	7.21	6.64	6.38
*B **(%)	75.0	43.7	64.5	55.5
*C **(%)	46.9	39.3	50.0	43.0
*D ***(%)	17.7	21.3	18.3	19.9
*E ***(%)	32.9	48.7	49.2	45.0
*F ***(%)	3.0	48.8	12.5	30.6
*G ***(%)	11.9	56.9	25.4	41.0
*H (%)*	5.6	18.5	12.5	14.3
*I ***(US\$)	15.7	36.4	53.2	34.2
# of Respondents (N)	1147.4	2005.52	1591.21	1835.16
# of Respondents (N)	104	221	68	393

\* p<.05 \*\* p<.01 \*\*\* p<.001

\* A Lived in an urban area in native country

\* B Was born in an urban area in native country

\* C Was unemployed in native country

\* D Migrated from rural to urban area in native country

\* E Travelled to Korea via third country

\* F Travelled to countries other than native country and Korea

\* G Was employed in country other than native country and Korea

\* H Plans to gain employment in country other than native country and Korea

\* I Average amount spent to enter Korea

4. The entrance of foreign workers into Korea

Technical trainees and overstaying workers differ greatly in their processes of entering Korea. Trainees enter Korea through "manpower" or brokerage agencies in their countries of origin under contracts with the Korea International Training Cooperation Corps ("KITCO") of the Korea Federation of Small Business ("KFSB") or by introductions from overseas factories of Korean companies. The broker agencies serve to recruit trainees and send them to Korea. Those who wish to work as trainees in Korea through the introduction of these broker agencies must pay commissions or brokerage fees. Such fees are often exorbitant and thus result in the trainees fleeing from their originally contracted workplaces. After entering Korea as a group, trainees undergo an orientation and education program for a few days, after which they are placed at various factories scattered throughout Korea.

Of all so-called "illegal" workers, the majority are overstaying workers who entered Korea on tourist or other short-term visas and stayed past the valid date. There are also a significant number of workers who entered Korea as trainees but fled their original places of employment and sought employment elsewhere. Finally, there are a number of workers who enter Korea on work-related visas and overstay the valid term.

Concerning the process in which a foreign worker enters Korea and gains employment as an overstaying or otherwise illegal worker, various "networks" for employment can be said to be at work. The process beginning with the departure from another country and ending with employment in Korea can largely be divided into two categories. First, as is the case for the Korean-Chinese, workers enter Korea with the assistance of their relatives or friends who are already employed in Korea. Second, as is largely the case for those from Southeast and West Asia, workers enter Korea assisted by brokerage agents or other "employment assistance agents" commonly referred to as "brokers." Table

9 shows the percentages of workers who entered Korea by means of such brokers working overseas, according to their legal immigration status.

**<9> Rate of Entrance into Korea by Means of Brokers**

	Kor-Chin	Other	Trainee	Total
Yes	24.1	27.1	59.7	32.2
No	75.9	72.9	40.3	67.8
Total Incidence	100.0 79	100.0 210	100.0 62	100.0 351
Chi-Square	Value	DF	Significance	
Pearson	26.30757	2	.00000	

Tables 10 and 11 show the reasons for which the workers left their countries and the reasons for which they chose Korea as their destination. Foreign workers decided to go abroad "to make money" (87.3%), "to gain new experiences" (63.9%), and "to acquire new skills" (51.6%). The motive "to make money" was most common among other overstaying workers, while trainees had high expectations of fulfilling their objectives "to acquire new skills" and "to gain new experiences." For the Korean-Chinese, the expectations "to visit relatives" and "to gain new experiences" were relatively high.

To the question of why they chose Korea of all places as their destination, many responded that it was because "it seemed easy to get a job in Korea" (60.8%), "they had a good feeling about Korea" (39.2%), "Korea offers relatively high wages (38.4%), and "it was easy to obtain an entry visa for Korea (31.1%). While trainees and other overstaying workers often stated "the easiness of gaining employment" as their reason for selecting Korea, the Korean-Chinese mentioned that it was because they had relatives and friends in Korea and because they had a good feeling about Korea. Also, while trainees and other overstaying workers emphasized the usefulness of obtaining visas for entry for Korea, Korean-Chinese overstaying workers instead complained of the difficulties involved with obtaining entry visas.

Generally, foreign workers received information pertaining to Korea from "acquaintances who had previously been to Korea" (52.3%), due to "sporting events such as the Olympics or the Asian Games" (50.0%), or by means of "domestic newspapers of other media sources on Korea" (49.4%). However, in contrast to overstaying workers, the percentage of trainees who received information about Korea from "acquaintances who had previously been to Korea" was quite low. Instead, they learned about Korea from "domestic newspaper or

other media sources on Korea," "sporting events such as the Olympics and Asian Games," and "publicity by their own governments." By far, the most common source from which foreign workers received information pertaining to gaining employment in Korea was relatives and friends (70.5%), neighbors (53.3%), factory co-workers (38.9%), and from mass media (35.5%). Such a distribution is similar in the various categories of legal immigration status. For trainees, however, factory co-workers were the single most important source of information.

**<10> Reasons for Leaving Country and Selecting Korea**

	Response	%
Reasons for Leaving Country (N=366)	① To make money	87.3
	② To have a new experience	63.9
	③ To acquire skills and knowledge	51.6
	④ No job at home	22.1
	⑤ For a higher standard of living	21.9
	⑥ To visit my relatives	10.1
	⑦ No specific reasons	6.0
	⑧ Just wanted to leave my country	4.6
Reasons for Selecting Korea (N=357)	① Easy to get a job	60.8
	② Had a good feeling about Korea	39.2
	③ Relatively high wages	38.4
	④ Relatively easy to obtain an entry visa	31.1
	⑤ Introduced by countrymen friends, relatives in Korea,	26.3
	⑥ Invited by Korean relatives and friends	24.6
	⑦ Cheap travel costs	15.7
	⑧ Little possibility of being caught	13.7
	⑨ Provides a good opport. to go to U.S. or Japan	7.0
Sources of information about Korea (N=346)	① Neighbors who have been to Korea	52.3
	② Athletic events, such as the Olympic or Asian Games	50.0
	③ News or reports by mass media	49.4
	④ Employees of Korean companies in my own country	29.2
	⑤ Movies and/or TV entertainment programs	22.5
	⑥ Commercial advertisements	20.5
	⑦ Korean merchandise	14.5
	⑧ Information provided by my own government	10.7
	⑨ Information provided by the Korean government	5.8
Sources of information about job opportunities in Korea (N=332)	① Relatives and friends	70.5
	② Neighbors	53.3
	③ Fellow workers in the company I work for	38.9
	④ Mass media	35.5
	⑤ School friends	16.6
	⑥ Books other than school textbooks	16.6
	⑦ Teachers, professors	12.0
	⑧ School textbooks	4.8

Note: Three responses were chosen for each question.

**<11> Reasons for Leaving Country and Selecting Korea: A  
(A) Most Important Reason for Leaving Country for Employment**

	Kor-Chin	Other	Trainee	Total
Make money	58.9	79.8	60.9	71.3

Have new exper.	10.0	8.2	14.1	9.7
Acq. skills, know.	3.3	6.7	18.8	8.0
Visit relatives	16.7			4.1
No job at home		3.8	6.3	3.3
Higher liv. stand.	6.7			1.7
No specific reasons	3.3	.5		1.1
Just wanted to leave	1.1	1.0		.8
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>
<b>Incidence</b>	<b>90</b>	<b>208</b>	<b>64</b>	<b>362</b>
<b>Chi-Square</b>	<b>Value</b>	<b>DF</b>	<b>Significance</b>	
Pearson	93.32495	14	.00000	

**(B) Most Important Reason for Selecting Korea as Destination**

	Kor-Chin	Other	Trainee	Total
Easy to get job	2.2	28.6	28.3	21.9
Inv. by Kor. relat.	47.2	11.4	17.0	21.3
Good feel. ab. Kor.	21.3	13.8	11.3	15.3
Easy get entry visa	3.4	18.1	11.3	13.4
Int. by rel. in Kor.	11.2	13.8	11.3	12.8
Relat. high wages	9.0	6.7	9.4	7.7
Cheap travel costs	2.2	6.7	5.7	5.4
Go to U.S./Japan	3.4	.5	3.8	1.7
Not be caught		.5	1.9	.6
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>
<b>Incidence</b>	<b>89</b>	<b>210</b>	<b>53</b>	<b>352</b>
<b>Chi-Square</b>	<b>Value</b>	<b>DF</b>	<b>Significance</b>	
Pearson	82.55360	16	.00000	

**(C) Sources of Information About Korea**

	Kor-Chin	Other	Trainee	Total
Mass media news	34.4	33.3	37.7	34.4
Neigh. been to Kor.	31.1	21.4	1.6	20.4
Olympic, Asian Gam.	12.2	23.4	19.7	19.8
Emp. of Kor. comp.	4.4	4.2	18.0	6.7
Commerc. Adverts.	1.1	7.3	8.2	5.8
Movies, TV ent.	5.6	5.7	3.3	5.2
Kor. merchandise	7.8	2.6	1.6	3.8
Govt's information	1.1	.5	9.8	2.3
Kor. govt's info.	2.2	1.6		1.5
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>
<b>Incidence</b>	<b>90</b>	<b>192</b>	<b>61</b>	<b>343</b>
<b>Chi-Square</b>	<b>Value</b>	<b>DF</b>	<b>Significance</b>	
Pearson	63.79372	16	.00000	

**(D) Sources of Job Opportunities in Korea**

	Kor-Chin	Other	Trainee	Total
Relat., friends	45.8	34.7	29.8	36.7
Co-workers	21.7	25.8	45.6	28.2
Neighbors	15.7	14.7	8.8	13.9
Mass media	4.8	7.4	8.8	7.0

School friends	8.4	6.3	3.5	6.4
Teachers, profs.	2.4	6.3		4.2
Books, not texts.	4.2		3.5	3.0
Textbooks	1.2	.5		.6
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>
<b>Incidence</b>	<b>83</b>	<b>190</b>	<b>57</b>	<b>330</b>
<b>Chi-Square</b>	<b>Value</b>	<b>DF</b>	<b>Significance</b>	
Pearson	23.36991	14	.05451	

**5. The present working conditions of foreign workers in Korea**

**Typical Industry:** While the typical company which employs overstaying workers is generally small and hires fewer than 50 workers overall, those which employ trainees are more economically stable small and medium-sized companies hiring an average of 150 workers. Among overstaying workers, companies which employ Korean-Chinese workers are generally much bigger (44 workers total) than those which employ other overstaying workers (28 workers total). Because very small companies are unable to entice Korean workers to work for them due to insufficient levels of wages, job security, working conditions, and welfare benefits, and Korean workers do everything to avoid such employment, the labor shortage in such companies is very severe. To this extent, opportunities for overstaying workers to gain employment in such companies are readily available. As a result, overstaying workers are greatly concentrated in small companies (Table 12).

**<12> Number of Workers in a Typical Company Hiring Foreign Workers**

	Kor-Chin	Other	Trainee	Total	Differential
#, same country	5.19	3.56	15.77	5.99	F=46.8***
#, other country	1.10	2.83	2.11	2.45	F= 1.0
#, Korea	37.75	17.57	125.59	38.27	F=37.5***
Total #	44.33	27.97	141.94	49.39	F=28.1***
<b>Incidence</b>	<b>40</b>	<b>198</b>	<b>48</b>	<b>286</b>	

**<13> Respondents, by Industry**

Value Label	Frequency	Percent
Agriculture and hunting	8	2.5
Forestry and logging	1	0.3
Fishing	1	0.3
Metal ore mining	11	3.4
Other mining	5	1.5
Manufacture of food, tobacco	11	3.4
Textiles, leather	50	15.4



Wood products, incl. furniture	26	8.0
Paper, printing, publishing	13	4.0
Chem., petro., rub., coal, plastic	47	14.5
Non-metallic mineral prod.	2	0.6
Basic metal industries	26	8.0
Fabricated metal prod., mach.	24	7.4
Other manufacturing	30	9.3
Electricity, gas, steam	16	4.9
Construction-general contract.	20	6.2
Construction-special trade cont.	7	2.2
Wholesale trade	2	0.6
Retail trade	3	0.9
Restaurants, hotels	12	3.7
Business services	1	0.3
Social, related community service	2	0.6
Personal, household services	5	1.5
Int'l, other countries services	1	0.3
Missing	69	Missing
	324	100.0

<14> Assignment Plan for Trainees by Industry Type, 1994

Industry Type (21)	Companies		Trainees		Train per Comp.
	N	%	N	%	
Textiles	926	21.9	4,941	24.7	5.34
Clothing, fur	132	3.1	714	3.6	5.41
Leather handbags, shoes	103	2.4	658	3.3	6.39
Wood products (except furniture)	49	1.2	198	1.0	4.04
Paper products	116	2.7	489	2.4	4.22
Printing	42	1.0	169	0.8	4.02
Petroleum, nuclear fuel	2	0.0	8	0.0	4.00
Chemical	165	3.9	680	3.4	4.12
Rubber, plastic	560	13.3	2,185	10.9	3.90
Non-metallic minerals	78	1.8	367	1.8	4.71
Primary metals	184	4.4	840	4.2	4.57
Metal assembly (machinery, equipment)	455	10.8	1,944	9.7	4.27
Other machinery, equipment	336	8.0	1,447	7.2	4.31
Office equipment	12	0.3	57	0.3	4.75
Other electrical products	220	5.2	985	4.9	4.48
Audio, visual, communications products	226	5.4	1,289	6.4	5.70
Medical, precise equipment: watches	78	1.8	333	1.7	4.27
Automobiles, trailers	340	8.1	1,840	9.2	5.41
Other transportation equipment	39	0.9	158	0.8	4.05
Furniture	155	3.7	691	3.5	4.46
Recycling	3	0.1	7	0.0	2.33
Total	4,221	100.0	20,000	100.0	4.74

Note: This table includes 21 manufacturing industry types with labor shortages of 50% or more, excluding foodstuffs, tobacco, publishing, and document reproduction, as of late June, 1993.

Source: Korea Federation of Small Business, "Principles of Operating the Technical

Trainee System," 1994.

**Type of Industry:** There is much difference among the types of industry in which foreign workers are engaged according to their country of origin. In the

case of Korean-Chinese workers, the men are often employed as construction workers, while the women are often employed as restaurant employees. Other overstaying workers are generally employed in the manufacturing sectors, particularly in the textile, needlework, garment, and leather industries. A good number of them are also employed in plastic, furniture/wood, electrical components, chemical, and handbag manufacturing companies. The types of industry in which trainees are engaged are shown in Table 14. These industries are almost identical to the industries faced with severe labor shortages.

**Type of Work:** In what types of work are foreign workers generally involved? Most commonly, foreign workers work as job assistants, often referred to as "helpers." Otherwise, they are "unskilled laborers" involved in simple machine operation, simple assembly, and miscellaneous tasks. In a word, the percentage of foreign workers whose jobs involve simple or unskilled labor is quite high. In the case of manufacturing, the process is divided into many various tasks with the so-called division of labor, and foreign workers are involved in the simple and unskilled tasks which do not require special skills (Table 15).

<15> Type of Industry

	Kor-Chin	Other	Trainee	Total
Agriculture		3.0	1.6	2.2
Forestry worker		.5		.3
Miner		1.0		.6
Metal processor	1.6	5.5		3.7
Wood, paper prep.	6.3	4.5	4.9	4.9
Chemical processor	1.6	2.0		1.5
Spinner, weaver		1.0	6.6	1.9
Tanner, fellmonger	1.6			.3
Food, beverage proc.	3.1	5.0	1.6	4.0
Tobacco prep.		1.0		.6
Tailor, sewer		11.6	8.2	8.6
Leather, shoemaker		1.0		.6
Cabinetmaker	1.6	4.0	1.6	3.1
Stone cutter		5.0		3.1
Machinery fitter		3.5	1.6	2.5
Electrical fitter	1.6	2.0	26.2	6.5
Plumber, welder	1.6	4.0		2.8
Jewellery, prec. metal		1.0		.6
Glassmaker, potter		1.0		.6
Rubber, plastic maker	3.1	12.6	11.5	10.5
Paper, paper prod.		3.0	3.3	2.5
Printer	1.6	4.5		3.1
Painter		1.0		.6
Construction worker	31.3			6.2
Stationary engine			1.6	.3
Driver, trans. equip.	1.6			.3
Simple laborer	6.3	14.1	3.3	10.5
Other production	6.3	4.0	16.4	6.8
Cook	23.4			4.6
Maid	4.7		6.6	2.2
Other service worker		.5	3.3	.9
Clerical worker	1.6	.5		.6

Language teach, trans.	1.0			.6
Singer, dancer	1.0			.6
Other professional	1.6	.5	1.6	.9
Job-seeking		.5		.3
<hr/>				
Total Incidence	100.0	100.0	100.0	100.0
	64	199	61	324
<hr/>				
Chi-Square	Value	DF	Significance	
Pearson	296.99341	70	.00000	

**Location:** Overstaying workers are concentrated in manufacturing factories, entertainment centers, construction/repair sites, and farming villages in "public corporation regions" in small and medium-sized cities on the outskirts of Seoul. Recently, they have also found work on remote fishing grounds and dried seaweed farms. Thus, foreign workers are not only employed in areas on the outskirts of metropolitan Seoul (e.g., Uijongbu, Ansan, Anyang, Buchon, Sungnam, Kuri, Kimpo, Namyang, etc.), but also, they are scattered throughout the country in places such as Kwangju, Taegu, Pusan, etc. They are also found throughout the city of Seoul proper, in areas which have a high proportion of small manufacturing companies (e.g., Myongmok-dong, Shinnae-dong, Choonggok-dong, Janghae-dong, Songsu-dong, Songjung-dong, Mangwoo-dong, etc.).

In Kyonggi Province which borders on Seoul, foreign workers are spread all over the cities of Buchon, Incheon, Sungnam, Kuri, and the counties of Paju, Yongin, Kwangju, Koyang, Namyangju, among others. Furthermore, there are even cases of foreign workers being assigned to remote farming villages in South Chungchong Province, North Cholla Province, and South Kyongsan Province. When foreign workers started entering Korea, they were concentrated within the metropolitan area of Seoul. Now, however, they have been spread all over the country, anywhere there exists labor shortage problems, or in other words, anywhere foreign workers are needed.

## 6. Working conditions of foreign workers

**Labor Market Conditions:** Overstaying workers work the same number of hours as trainees, and yet earn twice as much income (Table 16). This difference corresponds to the results of a survey of companies employing foreign workers (Table 17). As the amount of money remitted to foreign workers' countries of origin is decided by earning and spending patterns, the remittances of overstaying workers are more than twice as much as those of trainees.

Overstaying workers enjoy the freedom to choose their place of employment,

and at the same time receive much higher wages than trainees. Trainees, on the other hand, are not only prohibited from leaving their original place of employment, but their level of wages is relatively low. Though there are not significant differences in the number of hours worked by these two groups, there exists a very significant wage differential, which serves as incentive for foreign workers to flee their original workplaces and become "illegal" workers at other workplaces.

The monthly allowances for trainees of US \$210-260 are set in their contracts, as is the separate payment of allowances for overtime work. Though their allowances amount to only half of the level of income earned by Korean workers in manufacturing, it is high compared to the income levels in their countries of origin.

On the other hand, the income level of overstaying workers reflects the temperament of the concerned industries which suffer from labor shortage problems during ordinary times, and this level is fairly close to the market income level for their type of work. Of course, their type of work is dirty, difficult, and dangerous (3-D), their income level is lower than Korean workers overall. The average monthly wages of overstaying workers has risen from 300,000 won in 1992, to 500,000 in 1993, and to 600,000 won in 1994. Indeed, in many respects, overstaying workers are subject to much better conditions than are trainees.

<16> Labor Market Conditions

(Unit: hour, won)

		work hrs/day	rest hours/day	av. wage/month	av. spend/month	av. remit/month
leg. im. st.	overstayers (N=325)	11.0	3.6	628,969	196,191	322,398
	trainees (N=68)	10.6	4.1	310,043	87,705	121,082
	av. differential (F val.)	2.1	0.7	134.7***	36.4***	55.0***
eth & leg. im. st.	Kor-Chin. (N=104)	10.9	4.6	829,608	241,611	219,444
	other overstay (N=221)	11.0	3.3	574,829	182,861	343,577
	trainees (N=68)	10.6	4.7	310,043	87,705	121,082
	av. differential (F val.)	1.1	2.2	160.3***	25.8***	37.5***
cou of or.	Kor-Chin. (N=105)	10.9	3.5	829,608	241,611	219,444
	Philippines (N=84)	10.5	4.2	483,404	150,317	297,246
	Bangladesh, Pakistan (N=51)	11.6	5.2	532,240	174,255	325,077
	Nepal (N=112)	10.8	4.4	560,566	176,765	333,256
	Other (N=37)	11.0	1.9	452,258	128,250	168,971
	av. differential (F val.)	3.3*	4.0**	38.3***	7.4*	6.9***

\* p<.05 \*\* p<.01 \*\*\* p<.001

**<17> Wage Comparison for Male Overstayers & Trainees, October 1993**  
(unit: hours, won)

	# employee	work hrs/week	month wages	additional wages	total wages
trainees	31	54.8	345,000	141,500	486,500
overstayers	21	56.2	419,300	120,900	540,200

source: Industry Research Institute, 1994.

**<18> Trainee Allowances, by Country of Origin, 1994**  
(unit: US \$)

China	Philippines	Indonesia	Myanmar	Pakistan	Vietnam	Sri Lanka	Nepal	Bangladesh
260		250		230		210		200

source: Ministry of Labor, 1994.

**<19> Work and Life Satisfaction**

Country Satisfaction	Country of Origin					Legal Immigration Status		
	Kor-Chin	Philippine	Bang., Pakistan	Nepal	Other	Kor-Chin overstayers	Other overstayers	Trainees
current work & life satisfaction	0.69	0.86	0.98	0.78	0.29	0.69	0.89	0.27
# respondents(N)	105	84	51	112	37	104	221	68
av. different (F)	work F=1.15; life F=1.85					work F=4.04*; life F=8.91***		

\* p<.05 \*\* p<.01 \*\*\* p<.001

Note: answers to the question rating work and life satisfaction were scaled as follows: 3 points - very satisfied; 2 - satisfied; 1 - somewhat satisfied; 0 - neither satisfied nor dissatisfied; -1 - somewhat dissatisfied; -2 - dissatisfied; -3 - very dissatisfied.

**Quality of Life:** We also researched foreign workers' level of satisfaction in their work and overall lives. With no significant differences by their country of origin, almost all foreign workers felt satisfied about their work and overall lives (Table 19). There were, however, very marked differences in the level of satisfaction by legal immigration status. Overstaying workers were more satisfied than trainees; other overstaying workers were more satisfied than their Korean-Chinese counterparts.

The higher level of dissatisfaction among trainees and Korean-Chinese workers appears to stem partly from the lower quality of treatment afforded them compared to other overstaying workers and Korean workers. Overall, foreign workers' level of satisfaction differed according to which reference group they belonged.

**<20> Problems in the Workplace**

	Kor-Chin	Other	Trainee	Total
A	19.6	55.5	43.9	47.4
B	2.0	8.5	35.1	12.3
C	25.5	8.5	5.3	10.7

D	21.6	1.5	1.8	4.9
E	7.8	4.5	1.8	4.5
F	2.0	6.0	1.8	4.5
G	3.9	5.5		4.2
H		4.0	1.8	2.9
I	7.8	1.0		1.9
J	3.9	2.0		1.9
K	2.0	1.0	3.5	1.6
L		.5	3.5	1.0
M		1.0		.6
N	2.0			.3
O		.5		.3
P	2.0			.3
Q			1.8	.3

Total Incidence	100.0	100.0	100.0	100.0
	51	200	57	308

Chi-Square	Value	DF	Significance
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Pearson 136.31373 32 .00000

Note: Three answers were chosen for this question.

- A: Long working hours
- B: Low wages
- C: Overdue wages
- D: Discrimination from Koreans
- E: Curses and insulting language
- F: Poor working conditions
- G: Conflicts with Korean workers
- H: Occupational illnesses
- I: Industrial accidents
- J: Conflicts with Korean supervisors
- K: Other
- L: Conflicts with boss
- M: Physical abuse: sexual harassment
- N: Physical abuse: molestation
- O: Physical abuse: kicked
- P: Various wage deductions
- Q: Physical abuse: slapped

**<21> Methods to Solve Workplace Problems**

	Kor-Chin	Other	Trainee	Total
Move other comp.	29.8	34.7	21.2	31.4
Tell a manager	10.5	31.1	36.5	28.1
Simply endure	52.6	14.2	23.1	23.1
Ask help trade un.	7.0	13.2	13.5	12.0
Other		6.8	5.8	5.4
Total Incidence	100.0	100.0	100.0	100.0
	57	190	52	299

Chi-Square	Value	DF	Significance
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Pearson 44.01038 8 .00000

**Difficulties:** Table 20 illustrates the various problems which confront foreign workers in their workplaces. The most common problems appeared to be long working hours, low wages, overdue wages, discrimination from Koreans, curses or insulting language, poor working conditions, conflicts with Korean workers, and occupational illnesses and accidents. There appeared to be significant differences among respondents according to their legal immigration status. For Korean-Chinese overstaying workers, overdue wages (25.5%), discrimination from Koreans (21.6%), and long working hours (19.6%) were common problems. For other overstaying workers, long working hours (55.5%), overdue wages (8.5%), and low wages (8.5%) were common problems. For trainees, long working hours (43.9%), low wages (35.3%), and overdue wages (5.3%) were persistent problems.

**Solving Such Problems:** When such difficulties and problems arise, foreign workers reply that they "move to other companies" (28.1%), or "simply endure" (23.1%). Generally, the measures which foreign workers undertake to solve their problems are of an individual nature, and more constructive efforts, such as "requesting the help of a trade union," (12.0%) are largely not undertaken (Table 21). Examining the responses by legal immigration status, Korean-Chinese overstaying workers overwhelmingly responded that they would "simply endure" (52.6%), or "move to other companies" (29.8%). Other overstaying workers replied that they would "move to other companies" (34.7%) and "tell a manager" (31.3%). Trainees, however, replied that they would "tell a manager" (36.5%), or "simply endure" (23.1%).

As an important measure to improve the living conditions of foreign workers in Korea, they pointed to "providing industrial accident compensation insurance" (60.0%), "Providing medical services" (10.0%) and "establishing counselling centers in local administrative offices" (10.0%) were also chosen as important measures. Finally, "permitting foreign workers to join trade unions" (9.5%) was indicated as another positive measure.

**<22> Important Things to Improve the Experiences of Foreign Workers**

	Kor-Chin	Other	Trainee	Total
A	56.8	62.5	54.0	60.0
B	20.5	6.8	12.0	10.0
C	2.3	11.9	10.0	10.0
D	9.1	9.7	4.0	8.5
E	2.3	3.4	10.0	4.4
F		2.8	8.0	3.3
G	4.5	2.8	2.0	3.0
H	4.5			.7

Total Incidence	100.0	100.0	100.0	100.0
	44	176	50	270
Chi-Square	Value	DF	Significance	
Pearson	32.15161	14	.00381	

- A: Providing industrial accident compensation insurance
- B: Providing medical services
- C: Establishing counselling centers in local admin. offices
- D: Permitting foreign workers to join trade unions
- E: Providing information about job opportunities
- F: Improving the service of public officials
- G: Providing opportunities to meet Korean friends
- H: Providing information about housing

**Housing:** Examining the housing situation of foreign workers in Table 23, foreign workers generally live in company dormitories (55.6%) or rented rooms (18.5%). The housing situation is markedly different by legal immigration status, however. The percentages of Korean-Chinese overstaying workers who lived in rented rooms (33.9%), rented houses (14.3%), or in their workplaces/factories (21.4%) were quite high. For other overstaying workers and trainees, the percentage who lived in company dormitories was quite high (64.0% and 68.3%, respectively).

As Table 24 indicates, an average of 3.94 foreign workers live in a 3.23 meter by 4.16 meter room (14.25 sq. meters). The housing patterns showed no significant differences for any groups. Thus, foreign workers seem to live together in groups of four in quite close quarters.

**<23> Housing Type**

	Kor-Chin	Other	Trainee	Total
Comp. dormitory	12.5	64.0	68.3	55.6
Rented room	33.9	16.8	10.0	18.5
Shop-floor	21.4	7.1	3.3	8.9
Rented house	14.3	1.5	6.7	4.8
Private facility	7.1	3.6	1.7	3.8
Other dormitory	1.8	3.6	6.7	3.8
Other	3.6	1.5	3.3	2.2
Friend/rel's house	5.4	2.0		2.2
Total Incidence	100.0	100.0	100.0	100.0
	56	197	60	313
Chi-Square	Value	DF	Significance	
Pearson	70.09386	14	.00000	

<24> Size of Housing (Unit: m<sup>2</sup>, # of people)

	Kor-Chin	Other	Trainee	Total	Diff.
Size	14.70	14.55	12.16	14.25	F= 0.7
Persons per room	3.15	3.95	4.62	3.94	F= 2.8
Incidence	47	169	50	266	

Table 25 indicates the types of furnishings in foreign workers' places of residence. The most common furnishing was televisions (71.1%), followed by heating facilities (64.6%), shower and bath facilities (56.8%), and refrigerators (50.6%).

**Friends:** Foreign workers have a relatively large number of friends in Korea, most of whom are from the same country of origin. They have an average of 14.32 such friends, 7.47 Korean friends, and 4.93 friends from countries other than their country of origin and Korea. Foreign workers excluding Korean-Chinese workers had an average of 15-16 friends. Korean-Chinese workers had the smallest average number of foreigner friends who were not Korean-Chinese. Foreign workers, excluding the Korean-Chinese, had the largest average number of foreigner friends whose countries of origin were other than their own. These patterns hold true for the number of Korean friends per foreign worker. Korean-Chinese workers had an average of 5.51 Korean friends, other overstaying workers had 8.03 Korean friends, and trainees had 7.02 Korean friends.

<25> Furnishings (Unit: %)

	Kor-Chin	Other	Trainee	Total	
Television	70.5	76.9	53.2	71.1	$\kappa^2=12.9^{**}$
Heating facility	49.2	62.3	87.1	64.6	$\kappa^2=20.5^{***}$
Shower, bath	29.5	58.3	79.0	56.8	$\kappa^2=31.2^{***}$
Refrigerator	39.3	51.3	59.7	50.6	$\kappa^2= 5.2$
Radio, recorder	27.9	41.7	48.4	40.4	$\kappa^2= 5.8$
Gas range	29.5	44.2	29.0	38.5	$\kappa^2= 7.2^*$
Stove	6.6	37.2	41.9	32.3	$\kappa^2=23.3^{***}$
Telephone	41.0	23.1	37.1	29.2	$\kappa^2= 9.5^{**}$
Washing machine	11.5	31.2	37.1	28.6	$\kappa^2=11.6^{**}$
Private kitchen	21.3	30.7	24.2	27.6	$\kappa^2= 2.5$
Video player	11.5	16.1	6.5	13.4	$\kappa^2= 4.0$
Audio player	1.6	15.6	9.7	11.8	$\kappa^2= 9.0^*$
Incidence	61	199	62	322	

<26> Number of Friends in Korea

	Kor-Chin	Other	Trainee	Total	Diff.
Same country origin	8.13	15.40	16.53	14.32	F= 4.8**
Other foreigner	0.58	6.29	3.81	4.93	F= 8.6***

<27> Leisure Activities

(Unit: %, N=325)

On weekdays, after work		On Sundays and days off	
72.0	Ⓢ Watch TV ▲	60.7	Ⓢ Television ▼
63.7	Ⓐ Sleep ▲	57.6	Ⓝ Visit friends ▲
55.7	Ⓑ Take baths ▲	53.9	Ⓑ Take baths ▼
50.8	Ⓔ Listen to music ▲	52.6	Ⓐ Sleep ▼
44.3	Ⓝ Visit friends ▼	46.1	Ⓞ Go to church, etc. ▲
40.0	Ⓣ Read newspapers ▲	43.6	Ⓒ Listen to music ▼
37.5	Ⓒ Learn Korean ▲	43.0	Ⓜ Go shopping ▲
36.3	Ⓞ Go to church, etc. ▼	36.1	Ⓣ Read newspapers ▼
33.8	Ⓜ Go shopping ▼	34.9	Ⓒ Learn Korean ▼
26.2	Ⓚ Go for a walk ▼	30.8	Ⓞ Watch videos ▲
24.6	Ⓞ Watch videos ▼	29.6	Ⓚ Go for a walk ▲
23.4	Ⓜ Drink ▼	28.0	Ⓞ Take trips ▲
22.8	Ⓜ Exercise ▼	26.5	Ⓜ Drink ▲
20.6	Ⓞ Take trips ▼	24.0	Ⓜ Exercise ▲
17.2	Ⓜ Go to amuse. parks ▼	23.1	Ⓜ Go to amuse. parks ▲
16.6	Ⓞ Sing in karaoke ▼	20.9	Ⓞ Sing in karaoke ▲
16.6	Ⓚ Go to movies ▼	18.4	Ⓚ Go to movies ▲
12.6	Ⓣ Play computer games ≐	15.6	Ⓞ Tour ▲
12.6	Ⓞ Other ▼	13.8	Ⓞ Other ▲
11.1	Ⓞ Tour ▼	12.5	Ⓣ Play computer games ≐
8.0	Ⓞ Drive around ▼	11.5	Ⓞ Drive around ▲
7.1	Ⓞ Go on dates ▼	9.7	Ⓞ Gambling ▲
6.8	Ⓞ Gambling ▼	9.0	Ⓞ Go on dates ▲

▲ indicates increase in activity  
 ▼ indicates decrease in activity  
 ≐ indicates no significant difference in activity

## 7. Conclusion

Currently, our irrational policies and system are such that technical trainees, who enter Korea according to the appropriate legal procedures, are subject to much more inferior treatment than are overstaying workers. Also, human rights violations arising from the corrupt practices of brokerage agencies are a frequent occurrence. Thus, it is urgent that we undertake fundamental revisions of the system.

Translated by June Kim

<An Addition : Foreign workers' thinking about trade union>

<1> "Does Your Company Have a Trade Union?"

	Kor-Chin.	Illegal	Trainee	Total
Yes	17.2	11.4	13.3	12.5
No	41.4	41.5	31.7	39.2
Don't know	41.4	47.2	55.0	48.3
	100.0	100.0	100.0	100.0
	29	176	60	265

<2> "Are You a Member of Trade Union in Your Company?"

	Kor-Chin	Illegal	Trainee	Total
Yes	14.3	2.3	5.1	4.3
No	60.7	84.2	94.9	84.1
Don't know	25.0	13.5		11.6
	100.0	100.0	100.0	100.0
	28	171	59	258

Chi-Square=22.4 DF=4 p<.001

<3> "Have You Ever Been a Member of Any Trade Union in Your Home Country?"

	Kor-Chin	Illegal	Trainee	Total
Yes	50.0	28.5	17.5	28.7
No	43.8	62.8	82.5	64.8
Don't know	6.3	8.7		6.5
	100.0	100.0	100.0	100.0
	32	172	57	261

Chi-Square=17.6 DF=4 p<.01

<4> "Have You Ever Received Any Help From a Trade Union in Your Company?"

	Kor-Chin.	Illegal	Trainee	Total
Yes	12.0	8.1	9.3	8.7
No	76.0	82.1	88.9	82.9
Don't know	12.0	9.8	1.9	8.3
	100.0	100.0	100.0	100.0
	25	173	54	252

<5> "Have You Ever Contacted a Trade Union Concerning Your Working Conditions

	Kor-Chin.	Illegal	Trainee	Total
Yes	15.4	7.1	9.6	8.5
No	65.4	81.0	86.5	80.5
Don't know	19.2	11.9	3.8	11.0
	100.0	100.0	100.0	100.0
	26	168	52	246

<6> "Are You Afraid of Joining a Trade Union?"

	Kor-Chin.	Illegal	Trainee	Total
Yes	15.4	19.3	21.4	19.4
No	42.3	63.9	60.7	60.9
Don't know	42.3	16.9	17.9	19.8
	100.0	100.0	100.0	100.0
	26	166	56	248

Chi-Square=9.5 DF=4 p<.05

<7> "Would Your Boss Allow You to Join a Trade Union?"

	Kor-Chin.	Illegal	Trainee	Total
Yes	17.2	8.2	2.0	8.0
No	27.6	34.2	51.0	37.0
Don't know	55.2	57.6	47.1	55.0
	100.0	100.0	100.0	100.0
	29	158	51	238

Chi-Square=10.0 DF=4 p<.05

<8> (if you are not a member of a trade union in your company) why didn't you join it ?

Kor-Chin. Illegal Trainee Total				
Because I'm an illegal worker	93.6	82.4	5.5	69.6
Because I'm a company trainee	2.1	3.4	69.1	15.9
Because my boss don't like it	3.7	1.8		2.8
Because it is of no benefit to me	1.6	5.5	2.1	
Because I am against the organized labors	3.7	10.9	4.5	
Other(Specify)	4.3	4.8	7.3	5.2
	100.0	100.0	100.0	100.0
	47	187	55	289

Chi-Square=175.82504 DF=10 p<.0000

<9> "How Would You Act, if the Trade Union in Your Company Strikes?"

Kor-Chin. Illegal Trainee Total				
A	36.2	23.8	40.0	29.0
B	12.8	18.0	16.0	16.7
C	12.8	11.0	4.0	10.0
D	2.1	1.7	6.0	2.6
E	36.2	45.3	34.0	41.6
	100.0	100.0	100.0	100.0
	47	172	50	269

- A: Won't get involved in the strike at all
- B: Will get involved in the strike when the issues concern me
- C: Will get involved in the strike when the trade union's demands are met
- D: Will get involved in the strike over any issue
- E: Don't know

<10> How will you act, if the trade union in your company strikes for some reason ?

Kor-Chin. Illegal Trainee Total				
Won't get involved in the strike at all	36.2	23.8	40.0	29.0
Will get involved in the strike when the issues concern me	12.8	18.0	16.0	16.7
Will get involved in the strike when the trade union's demands are met	12.8	11.0	4.0	10.0
Will get involved in the strike over any issue	2.1	1.7	6.0	2.6
Don't know	36.2	45.3	34.0	41.6

100.0 100.0 100.0 100.0  
29 158 51 238

Chi-Square=11.82165 DF=8 p<.15934

<11> "How Much Do You Know About Labor Laws?"

Kor-Chin Illegal Trainee Total				
Very much	6.7	6.5	3.3	6.0
Somewhat much	35.0	8.5	3.3	12.5
Somewhat little	21.7	24.1	28.3	24.5
Very little	36.7	60.8	65.0	57.1
	100.0	100.0	100.0	100.0
	60	199	60	319

Chi-Square=37.7 DF=4 p<.001

## < 한국내의 외국인노동자상황과 보호대책>

박 석운(노동정책연구소장)

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5. 노동조합과 민간지원단체의 대책방향
6. 결론

### 1. 문제의 제기

한국정부는 지난 5.17 법무부 차관 주재로 노동부, 재정경제원, 통상산업부 관계자들이 모여 외국인산업기술연수생을 2만명 추가로입하기로 결정하였다. (중앙일보 95.5.18)

이어서 5.19에는 외국인연수생도입을 주관하는 중소기업 중앙회는 최저임금법상의 최저임금을 외국인연수생에게 지급해야 한다면서도 종전 식사를 전부 무료제공하던 데서 점심식사만 무료제공토록 하고, 또 수습기간 3개월 동안에는 임금의 80%만 지급하도록 하는 것을 주요내용으로 하는 새로운 외국인연수생 표준계약서를 정부의 승인을 받아 발표함으로써 외국인연수계약을 개악하였다(한겨레신문 95.5.20)

올해(95년) 1월 서울 명동성당에서 13인의 네팔인 연수생들이 "때리지 마세요" "월급주세요" "여권 돌려주세요" "We are human" "We are not animal"이라고 외치며 농성한 결과, 한국에서의 외국인노동자 인권문제의 심각성이 전국민적으로공유되고 또 외국인기술연수제도가 일정정도 개선되었던 것도 사실이다.

그런데 그로부터 몇달이 지나지도 않은 상태에서 제도개선 의지는 실종되고 종전의 연수생 제도를 유지, 온존시키면서 또다시 종전의 외국인연수생을 확대시키고 있는 것은 매우 심각한 사태라 아니할 수 없다.

현재 한국상황은 외국인노동자 관련 정책이 올바른 방향으로 정립되느냐 아니냐의 기로에 서있는 상태라고 볼 수 있다. 즉 기존제도의 획기적 개선방향과 기존연수제도의 문제점을 미봉해 둔 채 취업연수생도입 숫자를 대폭 확대하려는 방향사이의 분기점에서 있는 것으로 판단된다. 이 상황에서 어떻게 정책 방향이 잡히느냐에 따라 향후 외국인노동자문제의 양상이 달라지게 되어 있고, 또 한국내 노동시장의 판도가 달라질 수 있는 중차대한 시점에서 있는 것이다.

역시 문제해결을 위한 노력의 중요한 부분은 역시 외국인노동자 관련 정책, 제도를 획기적으로 개선하는 데서 찾아야 할 것으로, 아울러 노동운동진영이 외국인노동자들을 같은 노동자로서 인식하고 이들을 노조원으로 조직할 뿐 아니라 적극적 보호대책활동을 펼쳐 나가는 한편, 시민, 종교단체의 민간자원활동이 보다 체계적, 적극적으로 진행되는 것이 핵심적 과제라고 생각된다.

### 2. 한국내 외국인노동자 정책.제도의 역사적 전개

#### < 2 - 1 >

한국은 외국인의 국내취업을 기본적으로 금지하되, 필수불가결한 최소한의 범위 내에서 외국인 취업을 선별적으로 허용하는 정책을 쓰고 있다. 전문분야별로 한국인으로 충원하지 못하는 특수부문에 한정하여 엄격한 심사와정을 거쳐 선별적으로 취업을 허용하는 이른바 "대체성의 원칙"을 견지하였던 것이다. 이는 내국인의 취업기회를 늘리고, 실업문제에 능동대처하기 위한 목적에서 그러한 것이다.

#### < 2 - 2 >

90년대초 주택 200만호 건설 등의 이유로 단순노동자들의 인력부족현상이 나타날 무렵, 정부는 1991년 10월 26일 "외국인 산업기술 연수시중발급 등에 관한 업무처리지침(법무부훈령 제255호) 및 그 시행세칙을 발표하여 1991년 11월 1일부터 산업기술연수생제도를 시행하였다.

이는 출입국관리법시행령 제12조의 별표 제12호(D3)에서 법무부장관이 정하는 연수조건을 갖춘 자로서 국내의 산업체에서 연수를 받고자 하는 자(산업기술연수생)는 법무부장관이 따로 정하는 기간 동안 체류자격이 있는 것으로



로 규정한 것을 법적 근거로 하고 있다.

당시의 위 업무처리지침은 연수목적사증의 발급대상자로 외국환 관리법에 의하여 외국에 직접 투자하거나 외국기업과 합작으로 외국에 투자한 산업체, 기술개발촉진법에 의하여 외국에 기술을 제공하는 산업체, 대외무역법에 의하여 외국에 산업설비를 수출하는 산업체, 외국인에 대한연수가 불가피하다고 판단하여 주무부처의 장이 추천하는 산업체에서 연수하려는 자로 규정하고 있었다. (위 업무처리지침 제2조)

위 연수기간은 6개월 이내로서 법무부장관이 인정하는 때에는 6개월 연장할 수 있고, 연수인원은 50명을 한도로 하여 당해 산업체의 상시근로자수의 대략 10% 이내로 한정하였다. 당시 산업기술연수제도를 통해 입국한 외국인 노동자 숫자는 매년 약 8천-9천명 정도였지만 당시에는 사회적 관심이 기울여지지 못하였다.

### < 2 - 3 >

비슷한 시기인 90-91년경 관광비자나 방문비자로 입국하여 취업하는 불법체류 외국인노동자 숫자가 급증하여 약 10만 명의 외국인 불법체류노동자들이 수도권을 중심으로 한 전국의 영세, 중소기업에서 취업하게 되었는데 심각한 인권침해 사례 등이 발생하게 되면서 심각한 사회문제의 하나로 떠오르게 되었다. 그러나 이 문제에 대한 사회적 대응 태세는 거의 준비되지 못한 상태에서 상황이 빠른 속도로 전개되어 갔기 때문에 정책, 제도는 현실을 뒤쫓아가기에 급급한 실정이었다.

한편, 간헐적으로 시행되던 단속에 걸려 강제출국되는 외국인 노동자들이 늘게 되었고 그 과정에서 사용사업주까지 벌금형의 형사처벌을 받은 경우가 빈발하였다. 그러자 각 공단지역의 영세, 중소기업주들은 인력난을 호소하면서 외국인 노동채용을 합법화해 줄 것을 집단적으로 건의하기에 이르렀다.

그러자 정부당국은 1992년 6.10부터 7월말까지 일제신고기간을 정하여 신고토록 하였다. 신고한 경우에는 기왕에 출입국관리법을 위반하여 취업한 외국인 노동자나 사용사업주를 처벌면제하는 한편 신고한 사업주책임하에 92.12. 말까지 1차로 출국기한을 연장시켜 그때까지의 국내 체류를 사실상 허용하였다. 당시 정부당국은 불법체류 외국인노동자 채용을 법률상 합법화시키는 조치를 취한 것이 아니었다. 정부당국이 92.12. 말까지의 시한이 적힌 "출국권고서"를 발부하면서 그 시한까지는 강제출국이나 형사처벌하지 않겠다는 방식이었고, 한꺼번에 수만 명을 출국시킬 경우에는 항공편이 부족하니 일제히 출국시키지 못하고 몇 개월간 출국기한을 연장시켜 서서히 내보내겠

다는 식으로 공식 설명하였다.

그러나 실질적으로는 국내 영세 중소기업의 심각한 저임금노동력 부족상황에서 일시에 출국시키면 이들 기업이 문을 닫을 형편임을 고려하여 "시한부합법화", "유시합법화"시킨 것으로 판단된다. 그러다가 출국기한인 92.12. 말 이 다가오자 93.6. 말까지로 재차 출국기한 연장조치가 내려지고 93.6.에는 다시 93. 12. 15.까지로 출국기한이 3번째로 연기되었다. 법무부 당국은 이번에는 기필코 모두 출국시키겠다고 방침을 거듭 밝혔지만 경제 현실론을 앞세운 경제부처의 의견에 밀려 또다시 94년 상반기까지 출국유예시키는 4차 연장조치를 취하였다.

### < 2 - 4 >

불법체류외국인 노동자들의 인권침해 사례가 심각해지는 가운데 94년초 산재 당한 외국인 노동자들의 집단농성이 감행되면서 사회적 물의는 증폭되었다. 위 농성결과 대통령이 94.2. 불법체류외국인 노동자에게도 산재보험을 적용토록 지시하기에 이르러 최초로 정부당국의 긍정적 조치가 취해졌다. 이어 94.9.에는 이미 출국한 산재 피해자에게도 소급해서 산재보상금을 지급하기로 방침이 결정되었고, 또한 임금체불 등 노동법위반 사항에 대해 노동부에서 행정지도 하는 것으로 결정되었다.

### < 2 - 5 >

소규모로 실시되던 산업기술연수제도가 편법적 외국인력 도입제도로 광범하게 활용되기 시작한 것은 1994년부터이다.

정부는 93.11.24. 외국인 산업기술연수 조정협의회(법무부차관 주재)를 열고 외국인산업기술 연수생 도입기준을 대폭 허물어뜨리고 추가로 2만 명의 산업기술연수생을 도입하되 중소기업협동조합 중앙회가 연수생 모집, 알선, 연수, 사후관리를 담당하도록 결정하였다. 이에 따라 법무부는 1993. 12. 28. "외국인 산업 기술연수사증 발급 등에 관한 업무처리지침"을 개정(법무부훈령 제 294호)하였다. 종전의 연수비자 발급대상에 "주무부처의 장이 지정하는 산업체 유관 공공단체의장이 추천하는 산업체에서 연수하려는 자"를 추가하고, 연수기간도 1년 이내로 하되 1년을 연장할 수 있도록 변경하면서 이 개정지침을 94. 1. 1.부터 시행토록 하였다.

위 2만 명의 연수생이 신규도입되고 있는 사이, 정부는 1994년 9월 2일 '외국인 산업기술연수조정협의회'를 개최하여 이미 도입결정된 2만 명에 추가로 외국인 노동자의 입국을 1만명 늘리기로 결정했고, 이들 추가도입 1만

명은 섬유업종에 7,500명, 신발업종에 2,500명으로 할당되었다.

< 2 - 6 >

외국인 산업기술 연수생들의 심각한 인권침해실태를 개선하기 위해 95. 1. 9. 네팔인 연수생 13명이 명동성당에서 천막농성에 돌입하고, 38개 시민. 노동단체들이 모여 결성한 "외국인 산업기술연수생 인권보장을 위한 공동대책 위원회"가 적극적 자원활동을 하면서 외국인산업기술 연수제도의 일부개선책이 발표되었다.

95.2.3일 노동부차관 주재로 8개부처 국장이 모여 산업기술연수생제도의 개선책을 합의하기에 이르렀고, 이 내용을 95.2.14.노동부 예규 제 258호로 "외국인산업기술연수생의 보호및 관리에 관한 지침"으로 제정. 발표하게 되었다.

위 개선책의 주요내용은 1995. 3. 1.부터 외국인 산업기술 연수생에게도 산재보험, 의료보험의 혜택을 주고, 근로 기준법상의 강제근로금지, 폭행금지, 임금지불, 금품청산, 근로시간 준수 등의 법적 보호를 부여하며, 또 산업안전보건법상의 안전과 보건상의 조치 및 건강진단 등을 실시토록 한다는 것이다.

그리고 최저임금 법을 적용하여 연수수당은 국내 최저 임금인 월 264,000원 이상으로 지급하도록 결정하고(종전 월 210 - 260달러 -->월 330달러) 또한 임금은 본인이 직접 수령토록 하고 여권도 본인이 소지토록 제도화하는 한편, 송출기관의 횡포를 줄일 수 있도록 제도 개선한다는 것이었고, 95. 2.28. 까지 기존 연수계약을 위 개선책에 맞게 수정계약 하도록 규정하였다.

< 2 - 7 >

한편, 1995.3.1.부터 시행되는 연수제도 개선책과는 별도로 노동부는 금년 내에 광범한 의견을 모아 고용허가제를 축으로 한 외국인력도입관련입법을 추진한다는 내용이 발표되었다.

그러나 이에 대해 통산산업부, 법무부 등 관계부처는 물론 중소기업중앙회나 중소기업주들은 고용허가제에 대해 반대하면서 종전의 외국인연수제도를 유지시켜야 한다는 입장을 표명하고 있어, 입법화되기에는 여러 가지 난관이 있을 것으로 예상된다.

< 2 - 8 >

그런데 또한 정부당국의 위 연수제도개선책이 외국인연수생을 고용하고 있는 사업장에서 거의 준수되지 않고 취업연수생들의 인권실태가 현실적으로 개선되지 않고 있는 사이 중소기업중앙회측은 추가로 6만 명의 산업기술연수생도입을 추진하였고, 이어서 축산업계나 원양어업계 등에서 대량의 외국인 산업기술연수생 도입을 추진하고 있는 실정이었다.

그 결과 95.5.17 정부당국은 95년도에는 중소기업 중앙회를 통한 산업기술연수생 도입숫자를 기존의 3만명에서 2만명을 추가도입하여 5만명 수준으로 확대하기로 결정하였다.

한편, 95.5.19 중소기업중앙회는 94년에 도입된 외국인연수생들의 1년계약기간이 만료되는 시점에서 다시 1년을 기간연장하는 계약경신지침을 발표하였다. 그 주요내용은 정부의 위 외국인연수제도 개선지침을 대개 수용하는 것이지만, 임금부분은 교묘하게 도리어 개악하는 내용을 포함시켰다.

즉, 종전에는 숙박시설과 식사를 아침, 점심, 저녁 모두 무료제공하는 조건이었는데 비해, 새로운 계약서는 숙박시설과 점심식사는 무료제공하지만 아침과 저녁의 비용을 연수생에게 부담시킬 수도 있는 방식(표현은 "아침과 저녁의 비용부담은 자율결정"이라고 규정하고 있지만 실제내용은 연수생에게 부담시키는 방식)을 쓰고 있고, 또한 수습기간 3개월 동안은 임금(연수수당)의 80%만 지급하도록 규정하고 있는 것이다.

3. 한국내 외국인노동자의 실태 및 문제점

< 3 - 1 >

\*\*\* 합법취업자, 불법체류자 및 산업기술 연수생 \*\*\*

외국인 노동자는 출입국 관리법상의 법적 신분에 따라 합법취업자, 불법체류 노동자 및 산업기술 연수생으로 분류될 수 있다.

1994. 12.31. 현재 각 분류별 추정숫자는 다음과 같다. ( 명 )

합법취업 외국인	기 술 연 수 생		불법체류 외국인노 동자	합 계
	해외투자기업	중기협기 소 계		

	기술연수생	술연수생			
5.265 (6.4%)	9.512 (11.6%)	18.816 (23.0%)	28.328 (34.6%)	48.231 (59.0%)	81.824 (100.0%)

<자료; 노동부장관 기자간담회 자료 "노동인력 현황과 대책", '95.2.13>

한편, 1995년 3월말 현재 한국내 외국인노동자숫자는 합법취업자 5,181명, 불법체류 외국인노동자 53,232명, 산업기술연수생 30,581명으로 합계 88,994명으로 추정되는데 (중앙일보 95.5.17) 3개월동안 약 7,000명이 증가하였다.

위 추정숫자외에 1994년에 중소기업중앙회를 통해 도입하기로 한 총 30,000명의 산업기술연수생 중 미입국자 5,000여명과 1995년에 추가로 도입하기로 한 20,000명을 합치면 올해 한국내 외국인노동자 총숫자는 약 11만 - 12만 명정도일 것으로 예상된다.

< 3 - 2 >

\*\*\* 합법취업자 \*\*\*

출입국관리법상 취업활동을 할 수 있는 비자로 입국하여 체류하고 있는 이들 합법취업자들은 주로 미국·일본 등 선진국 출신들이 많은데 사전에 상대적으로 치밀한 계약과정을 거쳐서 비교적 유리한 노동조건 및 부대 고용조건을 확보한 상태에서 취업하고 있다. 이들은 공개적으로 해결할 수 있는 길이 열려 있기 때문에 이들에 대한 인권 침해 사례나 사회적으로 물의가 생길 일이 발생할 여지가 상대적으로 적은 편이다.

< 3 - 3 >

\*\*\* 불법체류외국인노동자 \*\*\*

3-3-1

불법체류 노동자들은 대개 처음부터 한국에서 취업할 준비를 하고 15일이나 3개월간의 체류만 허가되는 관광비자나 3개월간의 체류가 허가되는 친척 방문 비자를 받아 입국하여 한국업체에 취업한 뒤 비자만료기간이 지나서도 출국하지 않고 계속 근무하는 방식을 사용하는 것이 일반적이다.

최근 외국인산업기술연수생이 대폭 늘어나면서 연수 기간중 지정된 사업자를 이탈하여 보다 조건이 좋은 다른 사업장에 취업함으로써 자동적으로 불법체류상태로 된 경우와 연수기간이 종료된 뒤 귀국하지 않고 불법체류상태로 남아서 취업하고 있는 경우도 늘어가고 있다.

3-3-2

불법체류 노동자들의 숫자는 92년을 피크로 하여 현재 약 5만-6만명내외로 고정되고 있다.

<불법체류 외국인 노동자의 국적별분포(추정)>

	92. 6.10-7.31까지 일제신고	93.12 당시	94.9	94.12	95.3
중국	22,035	20,784	22,000	18,676	
필리핀	18,993	8,167	7,700	7,538	
방글라데시	8,950	5,561	5,500	5,256	
네팔	5,036	2,533	2,300	2,087	
기타	6,112	3,697	12,200	14,674	
합계	61,126	54,187	51,000	48,231	53,232

위 표에서 92.6-7월의 일제신고 당시 미 신고된 사람이 약 2만-3만명 존재했던 것으로 알려지고 있으므로 92년 당시의 숫자는 약 8만-9만명 정도였던 것으로 추정되는데, 이후 불법체류 노동자 숫자는 4만-5만명이 감소되었다. 한편, 92.6-7월 신고된 외국인 중 93.11월까지 잔류한 사람은 1만 3천명에 불과하였다.

이로 미뤄보면 결국 종전 근무한 외국인들 중 상당수가 출국하고 새로운 외국인 노동력이 훨씬 강화된 입국심사에도 불구하고 계속 유입되고 있어 일정한 규모의 불법체류 외국인노동자가 상존하고 있는 것으로 보인다.

3-3-3

몇 가지 조사를 통해 확인되는 것은 이들의 평균연령은 28-32세 정도이고 남녀간 비율은 남자 61-74%, 여자 26-39%이며 학력수준은 85%이상 고졸이상의 고학력자였다. 한편 이들을 채용한 사업장의 규모는 평균 3.8-9.3명의 영세 중소기업이었고, 1업체당 평균 3.8~8.3 명정도의 외국인불법체류자를 고용하고 있

으며 업종은 섬유, 봉제, 피혁, 플라스틱 사출성형, 전자조립 등 전형적 저임금업종이었다. 이들은 대부분 작업보조자 또는 단순기능인력으로 일하고 있다. 최근 노동정책연구소가 실시한 실태조사 결과를 표로 정리하면 다음과 같다.

< 민족 및 체류자격별 기본적 특성 >

구분	중국 교포 불법	기타 외국 불법	산업 기술 연수	전체
남자 비율*** (%)	59.6	86.9	58.8	74.8
평균 연령*** (세)	43.42	29.78	27.00	49.9
기혼자 비율*** (%)	80.8	41.6	28.8	49.9
교육년수(년)	10.58	10.58	11.56	
식구수*** (명)	4.46	7.21	6.64	6.38
평균 입국비용*** (US\$)	1147.36	2005.52	1591.21	1835.16
조사대상자수(N)	104	221	68	393

< 노동정책연구소 : 한국내 외국인노동자의 생활실태조사연구 1995.4.4 >

3-3-4

이들의 임금은 초기(91-92년)에는 31만-33만원 수준이었다가 최근 48만-50만원 수준으로 상승하고 있다. (중국교포제외)

< 임금 추이 >

	92.	93.2	93.11	94.10	95.4
월임금	31-33만	34-35만	40-41만	48-50만	57-65만

이들의 임금수준은 제조업 한국인 노동자 전체 평균임금의 약 40-55%수준이나, 동종동규모사업장 한국인 노동자 임금의 약 75-85%수준이다. 임금체불문제가 심각한 상황이다. 몇몇 조사에 의하면 평균체불일수는 약 50.8일이고 평균체불액수는 약 50만-80만원 정도이다. 초기에는 상담건수의 약 90%를 차지할 정도였으나 최근에는 불법체류 외국인노동자 중 40-60%정도가 임금체불을 경험하고 있는 것으로 나타난다.

위 실태조사 결과 확인된 노동시장 조건은 다음과 같다.

< 노동시장조건 >

(단위: 시간, 원)

구분	하루 노동시간	하루 여가시간	월평균수입	월평균소비	월평균승금
민족					
교포불법체류자(N=104)	10.9	4.6	829,608	241,611	219,444
기타불법체류자(N=221)	11.0	3.3	574,829	182,861	343,577
산업기술연수생(N=68)	10.6	4.7	310,043	87,705	121,082
체류					
평균차이 검정(F값)	1.1	2.2	160.3***	25.8***	37.5***

\* p<.05 \*\* p<.01 \*\*\* p<.001

< 노동정책연구소 : 한국내 외국인노동자의 생활실태 조사연구. 95.4.4 >

이들의 노동시간은 1일 약 10-12시간 근무하는데 1일 8시간을 초과하는 시간에 대한 시간의 근무수당이나 빈번하게 실시되는 야간근로, 휴일근로에 대한 할증수당을 지급받지 못하는 경우가 매우 많은 실정이다. 심지어는 한국인 노동자들이 모두 퇴근한 상태에서 외국인 노동자들만 남겨 연장, 야간 근로를 시키는 경우도 있고, 또한 휴가 기간이나 명절 기간동안 외국인 노동자들만 작업시키는 경우도 있다.

3-3-5

초기에는 산재보상문제가 심각하였으나 94.3.부터 정부당국에서 불법체류 외국인 노동자의 산재보험적용 조치를 취함에 따라 상당부분 심각성이 완화되기도 하였지만, 산재은폐문제등 여전히 문제는 남아있다.

언어가 잘 소통되지 않고 작업에 서툴러서 그렇기도 하겠지만, 대개 영세, 중소기업에서 근무하기 때문에 구식기계 안전장치도 제대로 되어 있지 않은 채 작업하기 때문에 유달리 산재를 많이 당하고 있는 것 같다.

또 94.9월에는 이미 출국한 산재 피해자에게도 3년소급해서 산재보상금을 지급하기로 노동부의 방침이 변경되어 여간 다행한 일이 아니다. 그러나 산재보험이 신청된 후 출국해야 되는 위험에 노출된다는 우려 때문에 또한 사업주들의 은폐기도 등의 이유로 아직도 적지않은 산재 피해자들이 은폐되고 산재보상받지 못하고 있는 실정이다.

3-3-6

그외에도 여권을 압류해놓고 사실상 강제노동을 시키는가 하면, 무차별구타나 성폭행사례도 있다. 또한 작업환경이 매우 열악한 편이고, 사업장의 합숙소나 골방 등에서 집단기거하고 있는 주거환경이나 식생활등에 있어 불편한것은 말할 것도 없으며 여러가지 문화적 차이로 고통받는 것은 기본이라 할 수 있다.

딱한 것은 개인적인 질병이라도 걸리게 되면 의료보험적용도 안되기 때문에 비싼 의료비를 감당못하여 제대로 치료받지 못하는 경우이다.

이들이 온갖 고생끝에 받은 임금을 고국에 송금하는 문제는 또다른 난관에 봉착되어 있다. 초기에 송금이 허용되지 않아 기업주나 한국인 관리자들에 의한 송금사기 사건이나 또는 동료외국인 노동자가 출국할 때 여러 사람의 돈을 모아 반출할 때 적발되는 문제들이 속출하였다.

그러다가 92.6-7월 일제신고 이후는 기업주들을 통한 송금이 허용되어 비교적 자유롭게 송금이 가능하였다. 그러나 작년여름 금융실명제 실시 이후로는 또 다시 송금이 어려워졌기 때문에 심각한 문제로 등장하고 있다.

### 3-3-7

빼 놓을 수 없는 문제가 불법 인력 알선 문제이다. 외국인 노동자들이 한국에 오게 될 때 대개 1,700-2,500달러 정도의 비용을 본국알선업자에게 여비, 소개비, 수속비용 등으로 지불하고 있는데, 대부분 한국에 와서 돈을 벌어 나중에 값을 요량으로 거액의 돈을 빌려서 입국하고 있다.

이들은 한국에 와서 여건이 예상보다 좋지 않아 귀국하려 해도 빚을 갚기 위해 울며 겨자먹기로 한국에서 일할 수밖에 없는 경우도 많고, 한국인 기업주들이 소개업자들이 지불한 소개비에 발목잡혀 불리한 조건에서 1년 이상의 기간동안 그 사업장에서 작업하도록 강요당하기도 한다.

### 3-3-8

피탐절은 임금을 모아 귀국하려고 하면 벌금이라는 함정이 도사리고 있다. 출입국 관리법상 3년 이하의 징역이나 1,000만원 이하의 벌금에 처하도록 되어 있는데, 관례적으로 불법체류 기간에 비례하여 1년당 100만원 정도의 벌금을 물리고 있다. 이 과정에서 93년 11월 어느 중국 교포(임호씨)가 자살하는 사건이 발생하는 등 가혹한 벌금이 문제되고 있다.

또한 단속에 적발되어 강제출국시 수용하는 과정에서 여러가지 문제가 발생하고 있다. 현재 서울 휘경동에 외국인 수용소가 설치되어 있고, 또한 각 출입국관리소에 좁은 보호(?)시설을 두고 있는데 사실상 구금시설로서 그 실태는 매우 열악한 실정이고, 구타, 폭행사건도 빈발하고 있어 한국에서의 "마지막 지옥"이 마련되어 있는 셈이다.

### 3-3-9

이들 외국인 노동자들은 불법체류자라는 신분 때문에 이러한 인권침해를 당하고서도 드러내 놓고 문제를 해결할 수 없는 어려움에 처해 있다. 초기에 노동부의 입장은 불법체류 노동자는 "불법취업"이므로 한국노동법을 적용할 수 없다며 일체의 근로감독을 포기하고 이들의 인권 침해사례를 방치하였다.

그러다가 비난 여론의 비등에 따라 94년부터는 노동부에서 방침을 바꾸어 임금체불에 대해서는 적극적 근로감독을 하겠다는 "불법취업 외국인보호대책"을 내놓았지만, 제대로 활용되고 있지 않아서 인권상황이 크게 호전되지 못하고 있는 실정이다.

### 3-3-10

헌법 및 노동관계법에 의하면 외국인 노동자의 경우에도 단결권, 단체 교섭권, 단체행동권이 보장되는 것으로 해석되어야 한다. 그렇지만 우리 정부는 외국인 노동자나 산업기술연수생의 경우에는 이들 권리가 보장되지 않는다고 주장하고 있고 또한 현실적으로도 그리 운영되고 있다.

그리하여 실제 이들은 노동조합에 가입하지도 못하고 있고, 또한 단체교섭을 실시하거나 단체행동을 하는 것이 불가능한 상태에 있다.

한편 노동조합측에서도 이들을 노조에 가입시키거나 동등대우를 요구 한다거나 이들의 인권침해에 대해 적극적 대응을 하지 못하고 있는 실정이었다가, 최근 들어 한국의 노동조합에서 적극적 보호활동과 외국인노동자 조직화를 모색하고 있지만 아직 제대로 조직화되지 못하고 있다.

### < 3 - 4 >

#### \*\*\* 외국인산업기술연수생 \*\*\*

### 3-4-1

외국인 산업기술연수제도의 본래의 취지는 외국인의 단기기술연수를 위해 만들어진 제도인데, 최근 국내의 제조업 인력난을 감안하여 정부 당국에서 편법으로 적용대상 범위를 늘리고 자의적 규정적용을 하고 있어 사실상 편법적 외국인 고용방법으로 활용되고 있다.

1991년 11월 1일부터 시행된 산업기술연수생 제도는 초기에는 해외 투자

기업의 현지 고용인력만 기술 연수생으로 들여 왔는데, 이들의 임금은 월 8만 - 16만원의 극히 저임금이었고, 대개 이들은 중·대기업에 근무하고 있다.(해외진출 기업이 중·대기업 위주이므로)

### 3-4-2

소규모로 실시되던 산업기술연수제도가 편법적 외국인력 도입제도로 광범하게 활용되기 시작한 것은 1994년부터인데, 중소기업협중앙회가 주관단체가 되어 중국, 필리핀, 베트남, 방글라데시, 미얀마, 네팔, 인도네시아, 스리랑카, 파키스탄, 이란 등 총 11개국 27개 인력 송출업체에서 연수생을 도입하였다.

### 3-4-3

이들 외국인산업기술연수생들의 경우 섬유업종, 고무 및 플라스틱제품 업종, 조립금속업종, 자동차 및 트레일러 업종, 달리 분류되지 않는 기계 및 장비 업종, 영상, 음향 및 통신장비 업종 등 전형적 저임금업종의 중소기업에 배치되었다.

이들 연수생들은 월 17-21만원(210불-260불) 수준의 임금을 받고 있는데, 한국인노동자보다는 말할 것도 없고 불법체류외국인들보다도 형편없는 (절반이하) 저임금수준이고 94 최저임금 월 260,400원보다 미달되는 수준이다.

### 3-4-4

이들 산업기술연수생들은 실제로 사업장에서 노동력을 제공하고 임금을 지급받는 "노동자"로 일하고 있는 것이 분명하지만, 정부당국에서는 이들이 노동자가 아니라 "연수생"이라는 명목을 붙여 "노동자"로 대우하지 않고 노동법도 부분적 적용만 하고 있기 때문에 갖가지 심각한 문제점이 파생되고 있어서 사실상 산업기술연수제도는 파탄상태에 있다고 아니할 수 없다.

그 결과 연수생들의 사업장 이탈이 대거 발생되고 있다. 즉, 불법체류자보다 현저하게 낮은 임금수준을 목도한 산업기술연수생들이 합법적 체류자격을 내팽개치고 불법체류자로 흘러가면서 상대적으로 더 높은 수준의 임금을 지급하는 다른 사업장으로 탈출하는 사태가 속출하고 있는 것이다.

통계에 의하면 95년 4월말 현재 중소기업협중앙회를 통해 입국한 24,552명의 산업기술연수생중 6,139명(25.0%)이 이미 연수지정 사업장을 탈출한 것으로 되어 있는데, 시간이 가면서 탈출 노동자 숫자는 엄청나게 늘어날 것이다.

### 3-4-5

외국인산업기술연수생의 경우 합법체류상태이기 때문에 불법체류자의 경우보다 인권침해될 가능성이 상대적으로 낮은 측면도 있지만, 또다른 측면으로는 불법체류자의 경우보다 훨씬 열악한 상황에 처해 있기도 하다. 연수생의 경우 문제점은 주로 현행 외국인 산업기술 연수 실시 제도의 구조적 문제점에서 파생되는 것이다.

우선 중소기업협중앙회에서 만든 "산업기술연수관련 사후 관리방안"에 의하면, 연수자의 여권을 연수업체에서 보관토록 한다든지, 연수업체가 중소기업중앙회에 이행 보증금을 예치토록 한다든지, 또한 정부는 외국인산업기술 연수생이 사업장에서 이탈할 경우 인력송출업체는 송출권을 박탈하고, 해당송출국가도 연수생 배정에 불이익을 주겠다고 발표하고 있는 실정이다.

이런 제도적 강제수단 때문에, 또한 엄청난 돈벌이에 혈안이 되어 있는 인력 송출업체, 국내인력업체 및 연수업체들은 합작하여, 한편으로는 1인당 350 달러를 사업주에게 예치시켜 탈출을 방지시키는 방법으로, 한편으로는 여권을 압수해 놓는 방법으로, 또다른 한편으로는 감시, 감금 및 폭행등의 방법으로 사실상 강제노동을 실시하고 있는 것이다.

### 3-4-6

이런 "제도적·구조적 악" 중에서 가장 심각한 것이 현지 인력모집 및 송출업체의 횡포인데, 현지에서 허위, 과장광고를 통해 인력을 모으고 있다는 것이다. 한국의 중소기업 협동조합중앙회의 계약기준은 월급여 210 - 260달러(숙식제공)인데도, 현지에서는 월급여 450 - 500달러인 것으로 허위, 과장광고하여 인력을 모집하고 있다.

이런 광고를 보고 부푼 꿈을 안은 채 거액(1,300-3,000달러)의 비용을 송출회사에 주고 한국에 취업하러 왔는데 막상 지급받는 임금은 월 210-260달러에 불과한 것을 알고는 엄청난 실망을 한다고 한다. 이 임금에서조차 한국내 인력회사에서 매월 11-60달러씩을 인력관리비 명목으로 중간착취하고 있다. 또한 그나마 인력회사가 임금을 지급받아 그 중 80%는 송금하고 나머지 20%는 보증금 명목으로 인력회사에서 보관하기도 한다.

한국내 인력관리회사에 의한 감시, 감금 및 인권침해상황도 심각한 실정이다. 불법체류자보다 훨씬 낮은 임금으로 작업시키면서 다른 사업장으로 옮기지 못하게 하기 위해 한국내 인력관리회사에서 철저한 감시체계를 가동시키고 있고, 연수업체에서도 외출을 금지시키고 있어서 사실상 감금상태에서 강제노동당

하고 있는 것이나 다름없는 실정이다.

이에 항의라도 하면 무차별 폭행과 감금을 일삼고 있는데, 이를 본 상담단체등에서는 “현대판 노예노동” 이라고 규정할 정도이다.

### 3-4-7

한국내 민간지원단체에 의한 산업기술연수생들의 실태폭로와 지난 1월의 네팔인 연수생에 의한 명동성당 농성 투쟁결과 국내외 여론이 비등하자, 한국정부는 위에서 살펴본 바와 같은 연수제도 개선책을 발표하지 않을 수 없게 되었다.

위와 같은 연수제도 개선대책이 시행되면 외국인 취업연수생들의 인권침해실태는 일정부분 개선되는 토대가 만들어지는것이 사실이지만, 실제 상황에 있어서는 위 개선대책이 연수생들을 고용하고 있는 사업주들에게 제대로 시달려지지도 않고 또한 당사자인 외국인취업연수생들도 개선대책의 내용을 거의 모르고 있는 실정이어서 개선대책이 제대로 실행되지 않고 있다. 또 한편으로는 중소기업주들이나 정부의 통상산업부 등에서 아침과 저녁식사비용을 연수생에게 부담시키는 등 위 개선책을 사실상 무효화시키는 조치를 추진하고 있기까지 하다.

그리고 위 개선대책이 모두 실행된다손 치더라도 일종의 응급처방에 불과한 것이어서, 문제의 근본적, 제도적 해결이 속행되지 않는 한 계속 다른 방식으로 문제가 파생될 수밖에 없다.

결국 이들 이른바 “산업기술연수생”들을, 현실에 맞게 “노동자”로 인정하고, 한국노동법의 전면적용 등 공명정대한 외국인노동자정책을 실행하는 것만이 근본적 문제해결의 출발점이 될 것이다.

## 4. 올바른 외국인노동자정책의 모색

### < 4 - 1 >

정책기조의 확립을 위하여

#### 4-1-1

외국인력 도입시 문제점

1) 기업주 등 세계에서는 현재 중소기업에서의 인력난이 심각하니 저임금의 외국인 단순기능 노동력 도입이 불가피하다고 주장한다. 그러나 기업주들은 우

선 필요하니 저임금의 “노동력”만 쓰고 싶겠지만, 노동력만 들어오는 것이 아니라 실제로는 “사람”이 들어오는 것이니, 사람이 살아가는데 필요한 여러 가지 측면의 문제들이 발생하게 되어 있다. 이런 점을 도외시하고 저임금노동력만 한눈 팔다보면 돌이킬 수 없는 부작용이 속출할 수밖에 없다.

2) 부분별한 외국인력 도입 정책의 문제점은 여러 가지로 지적될 수 있다.

첫째, 경기가 불황국면으로 접어들 때 대량 실업문제가 야기될 수 있고, 빠른 속도로 진행되는 기술혁신과 자동차 및 생산시설의 해외이전 등으로 필요 노동량이 줄어들고 있는 추세를 감안할 때 더욱 심각한 양상으로 발견될 우려가 현존한다.

이른바 “인력난”문제도 달리 해결 방안을 찾아야 한다.

현재 우리 나라는 인력의 절대량이 부족하다기보다는 왜곡된 교육제도 및 노동시장구조로 말미암아 인력배분이 잘못되어 있는 측면이 더 큰 것으로 보이고, 이런 마찰적 성격의 인력부족현상은 교육제도개혁 및 노동시장기능의 활성화 즉 정부의 능력개발 기능이나 직업안정기능의 획기적 강화로 해결 방도를 모색해야 한다.

이와 관련하여 국내 유휴인력을 일본이나 대만, 싱가포르 수준으로만 감소시키고 인력개발하면 노동력 부족분을 충분히 메우고도 상당한 여유가 있다는 한국노동연구원의 연구결과 (1994. 8. “국내 유휴인력 활용가능성에 대한 국제 비교”)가 주목될 필요가 있다.

한편, 언젠가 닥쳐올 남북인력교류시대나 남북통일시대에 새로 노동시장에 등장할 풍부한 양의 북한 노동력에 대한 고려를 하더라도 실업문제나 고용안정 문제를 가버리 보는 것은 파멸적 결과로 귀결될 위험이 있다. (독일 통일후의 상황을 참고할 필요)

둘째, 값싼 외국 인력이 도입되면 가뜰이나 심각한 국내 노동시장의 이중구조화가 더욱 고착되고, 또한 국내 노동시장의 질서가 엄청나게 교란된 위험이 현존한다.

셋째, 한국노동자들의 노조조직력이나 노동조건에 있어 결정적 영향을 미친다. 값싼 외국인노동력의 범람은 한국노동자들의 노동조건향상을 발목 잡는 결정적 요인이 될 것이고 분할통치를 통한 노동통제의 도구로 작용하게 되기 때문이다.

넷째, 단일민족사회로 오랫동안 살아온 한국의 경우 외국인 노동력의 대량 도입으로 생길 수많은 문제들을 소화해 나갈 수 있는 사회적, 문화적 기반이 대단히 취약한 상태이다. (공격적 민족주의의 폐해) 장기체류로 인한 결혼, 2세 출생, 2세 교육 문제가 속출할 것이고, 주거문제나 미비된 사회보장의 확산에도 상당한 제약 요인으로 작용할 것이다.

다섯째, 한국경제에도 도움이 되지 않는 측면이 있다.

즉, 한국중소기업의 경영혁신이나 산업구조개선에도 방해가 되고, 한국중소기업의 경영혁신이나 산업구조개선에도 방해가 되고, 한국경제의 중장기적 전망에서도 도리어 나쁜 영향을 끼칠 우려가 있다.

영세, 중소기업들은 우선 입맛에 달콤한 저임금노동력에 집착할 것이 아니라 당장은 고통스럽지만 뼈를 깎는 경영혁신과 산업구조개선을 통해서 경제성을 갖춰내는 것이 올바른 경제 발전에 도움이 되는 방향이다. 그런데 저임금의 외국인노동력을 계속 공급해나가는 것은 영세, 중소기업에 마약을 제공하는 효과를 가져올 따름이다.

3) 결국 외국인력의 도입은 위에서 본 것과 같은 많은 문제점을 야기시킬 것으로 보이고 따라서 현 단계에서의 무분별 도입은 곤란하다.

#### 4-1-2

여러가지 정책방향의 실효성 여부

1) 반대로 외국인력 도입을 종전대로 계속 금지시키고, 단속을 강력하게 펼치면 문제가 해결되는가? 필연적으로 실패하게 되어 있고, 다른 외국의 사례를 보더라도 이 점이 명백히 확인된다. 아무리 입국심사를 철저히 한다고 해도 관광비자로 입국하는 외국인들을 원천봉쇄할 수가 없고, 관광비자 등으로 입국해서 각 사업장에 박혀버리면 단속불가능한 상태로 될 것이다. 또 단속을 심하게 하면 할수록 문제가 음성화되어 폐단은 더욱 증폭되기 마련이기 때문이다.

2) 산업 기술연수제도도 실패임이 이미 확인되었다.

이런 난점들을 모두 해결해주는 방안으로 정부당국에서 산업기술연수제도의 대폭 확대 방안을 찾아내었지만, 이 또한 편법일 뿐 문제해결책이 되지 못한다. 우선 필요하니까 편법으로(명목만 "연수"이지 실제로는 편법적 외국인노동력 도입임) 들여다 사용하고, 나중에 우리 경제에 필요 없게 되면 그때 가서 내보내면 될 것 같지만 사태진행은 그리되지 않을 것으로 본다. 그리고 이 방식은 선

진각국에서 모두 실패한 역사적 경험이 있다.

현재도 이미 25%가 넘는 연수생들이 지정된 연수사업장을 이탈하여 불법체류 상태로 흘러가고 있고, 또 연수기간이 종료되었을 때 모두 돌아간다는 보장이 전혀 없으며 언제든지 불법 체류 자로 남을 가능성이 농후하다. 또 기간종료 무렵에도 여전히 외국인 노동력이 필요한 업종은 존재하기 마련이어서 그때는 더욱 자연스럽게 연수기간 연장을 외치게 될 것이기 때문이다.

또한 산업기술연수제도의 가장 큰 맹점이 제도적으로 인권침해 가능성이 매우 높다는 점이다. 이번 명동성당 농성과정에서나 이후 사태 진전과정을 살펴볼 때 결과적으로 국제사회 특히 동남아지역에서의 한국에 대한 반감이 확산되면서 중장기적 국익에 치명적 악영향을 미치게 될 것임이 분명하다. 비유하자면 당장 눈앞의 저임금에 현혹되어 큰 국익을 놓치는 "소탐대실(小貪大失)의 우(愚)"를 범하고 있는 것이다.

특히 우리경제 및 세계화시대의 미래상을 그려볼 때 미·일 편중에서 동남아 각국과의 유대강화나 경제협력이 필수적일 텐데, 이른바 "친한파"가 될 수 있는 확률이 가장 높은 이들에게 한국에 대해 적대감과 증오감만 지니게 한다거나 또한 한국사회의 도덕성과 양심에 대해 일말의 신뢰도 갖지 못하게 만든다면 결과적으로 우리가 우리발등을 찍는 것이나 다름없다고 보기 때문이다. 편법은 편법을 낳기 마련이며, 또 합리적 도입보다 더욱 큰 문제점을 야기시킬 수밖에 없다.

더욱 큰 문제점은 '눈가리고 아웅'하는 식으로 '이것은 「연수」이지 「외국인 노동력도입」이 아니'라면서 파생되는 여러 사회적 문제에 대해 아무 대책을 세우지 않고 있다는 점이다. "사람"이 이미 들어와 있는 것이 "현실"인데 머릿속이나 입으로만 아니라고 외치고 있다가는 사회적 문제가 견잡을 수 없이 확산되는 상태를 뒤쫓아가기도 힘들 수밖에 없다.

3) 중국교포에 대한 우대도 득책이 아니다.

중국 교포에 대한 관심이 높는데, 일용 상대적으로 폐단이 적은 방법이기도 하지만, 차라리 해외 교포의 모국 귀국 차원으로 접근하는 방안을 강구할 수 있을 것이다. 이 방법이 차별대우를 방지하고 또 이른바 "인력난"도 해소하는 방법으로 보이기 때문이다. 그러나 이 방안도 통일시대 북한 노동력의 등장과 연결해서 신중하게 연구, 검토, 판단해야지 졸속 결정할 문제가 아니다.

특히 같은 조건에서 중국교포만 우대하는 방식은 민족차별 논란과 관련하여 국제화시대에 현명한 방법이 아님이 지적되어야 한다. 남미출신의 일본인 2,3세



에게 특혜를 주는 일본식 혈통주의는 민족차별정책이라 아니할 수 없는 바, 우리 나라가 이런 일본정책을 답습하는 것은 옳지 않다고 보기 때문이다.

4) 결국 무분별한 외국인력도입이나 편법도입 모두 금물이다. 또한 금지와 강력단속방침도 성공할 수 없는 정책 방향이다.

5) 그러나 현실적으로 5-6만명 정도의 불법체류 노동자가 이미 "존재"하고 있고 또 산업기술 연수생도 3만명 가까이 존재하고 있다는 점이 분명히 고려되어야 한다. 바로 이것이 우리의 정책논의를 원점에서 출발할 수 없게 만드는 결정적 요소이다. 우리는 불가피하게 현재 서 있는 이 자리에서 정책방향을 잡아 나갈 수밖에 없기 때문이다.

#### 4-1-3

##### 외국인노동자 정책결정의 전제조건

1) 외국인력을 도입하려면 "정당한" 방법으로 도입해야 한다.

위와 같은 여러 가지 난점에도 불구하고 우리 경제사정상 부득이 외국인노동력을 도입할 수밖에 없다는 합의가 이루어진다면, 우리 사회가 이로 인한 "대가" 즉, 일정한 불편을 감수할 수밖에 없다는 각오가 전제되어야 하고 반드시 정정당한 방법으로 도입해야 한다.

명목이 어떠한 기간에 도입되는 외국인력은 한국노동자와 동등조건이 보장되어야 하고, 사회보장의 동등수혜, 사업장 이동의 자유(사실상 강제노동의 금지), 모집과 송출과정의 공공성 보장(송출업체 횡포의 제도적 방지) 및 노조가입보장 등 노동3권의 보장이라는 대전제 하에서 추진되어야 마땅하다. 편익주의는 성공하기도 어렵거니와 국제화시대의 중장기적 국익에도 도움이 되지 않는 것이다.

또한 "노동력"만이 아니라 "사람"이 들어오는 것인 만큼 이로 인한 여러 가지 어려움을 감내하고, 나아가 우리 사회가 다른 민족들과 함께 어울려 사는 지혜를 터득하고 다원주의적 사회로 변화해 나가는 계기로 삼아야 한다.

만일 이 정도의 필수적인 "대가"도 치르는 것이 불가능하다고 판단한다면 이런 상태에서의 외국인력 도입은 추진되어서는 안된다고 본다. 단물만 빼먹고 나머지는 버리겠다는 알팍한 생각은 옳지 않은 정책일 뿐더러, 현실에 있어서도 성공할 수 없고 부작용만 증폭시키는 결과를 초래할 것이기 때문이다.

2) 해외 인력도입 이전에 기존의 불법체류자 문제를 해결하는 것이 선결요건이다.

즉, 이미 국내에 존재하는 불법체류 외국인노동자들에 대한 사면과 합법적 신분부여가 외국인력도입과 동시에 진행되어야 한다.

우리가 제대로 대책기조를 세우고 대응태세를 갖추기도 전에 벌써 5-6만명 가까운 외국인들이 불법체류상태에서 한국경제에 숨은 일꾼 노릇을 톡톡히 하고 있는 것이 사실이다. 따라서 외국인력이 필요하여 도입해야 할 필요가 있다면 마땅히 이에 앞서 우리 경제에 필요하여 이미 우리 사회에 현실적으로 이미 존재하고 있는 이들을 우선 정상화시키는 것이 필수적이기 때문이다.

이 문제와 관련하여 외국인노동자를 사용하고 있는 중소기업주들의 의견도 귀담아 들을 필요가 있다. 지난 몇년동안 이미 위 사업장에서 근무하여 한국말로 어느 정도 알아듣고, 또 기술도 어느 정도 숙련되어 일하기 좋은 상태인 외국인들을 모두 내 보내고, 이제 와서 새로 외국인노동자들을 들여오면 언제 가르쳐서 지금 일하는 외국인들만큼 숙련시킬 것이며 또 계산하기 어려운 그 기간 동안의 엄청난 낭비는 어떡하냐는 것이다.

결국 타상공론으로 불법체류자는 모두 내보내고 새로 저임금 연수생이나 저임금 노동력을 합법적으로 들여오는 것이 좋다고 쉽게 단정짓는 태도는 경제효율의 측면에서도 그리 도움이 되지 않는 것이라 할 수 있다.

한편, 우선적으로 취업연수생중 사업장 이탈자에 대한 전면 사면 및 연수생의 자유로운 선택에 기반한 사업장 재배치가 선결요건이다.

현재 국내에 입국한 취업연수생중 25%가 넘는 인원이 이미 사업장을 이탈한 상태에 있는데, 이는 거의 전적으로 잘못된 산업기술연수제도 때문임은 재론의 필요가 없다고 본다. 이제 1995. 3. 1부터 취업연수제도가 개선 시행되는 마당에 종전의 잘못된 제도 때문에 생긴 이탈자에 대한 전면적 사면조치 및 연수생의 자유로운 선택에 의한 근로계약 및 사업장 재배치가 실시되어야 마땅하다고 본다.

3) 공개토론과 국민적 합의 형성과정은 필수적이다.

사실 이번 취업연수생 문제만 보더라도 공개토론과정이나 국민적 합의형성 과정을 일체 도외시한 채 몇몇 정책당국자들이 밀실에서 마치 사업주 단체에 이권주듯이 제도를 만들었기 때문에 이런 국가적 망신까지 당하게 된 것이다.

새로 제도개선을 모색하는 과정에서는 이런 잘못을 되풀이해서는 안된다. 그러기 위해서는 외국인노동자들의 실태와 대안에 대한 다각적이고 치밀한 조사, 연구가 선행되어야 마땅하고, 이를 바탕으로 다양한 공개토론과 국민적 합의과정을 거쳐 중장기적 정책기조를 확립하고 이에 따라 구체적 방안을 신중하게 결정하여야 한다.

4) 한편, 국민적 합의과정에서 또다른 측면에서의 직접 당사자인 노동자나 노조의 동의가 필수적이고, 그 연후에 비로소 정당하고 합법적 절차를 통해 도입해야 한다.

#### < 4 - 2 >

#### 외국인노동자정책의 구체적 내용

##### 4-2-1

#### 노동허가제와 연수취업제

1) 최근 외국인력정책의 대안으로 거론되는 것으로는 독일형의 노동(고용)허가제와 일본형의 기능실습제도를 본 뜬 연수취업제로 대별할 수 있다.

2) 노동허가제는 일정한 조건하에 외국인력을 노동자로 받아들이는 방법이다. 독일의 경우에는 국가간 쌍무협정을 통해 외국인력을 도입하되, 독일 국내에서는 독일정부, 사용자 단체, 노조간의 합의를 통해 제도운영하며 독일의 노동법관련규정을 전면적용하며 내외국인을 동등대우하는 원칙을 지키고 노동조합에도 가입시키고 있다.

대만의 경우 92년 취업복무법 및 외국인 고용허가 및 관리법을 개정 또는 제정 공포하면서 고용허가제를 실시하고 있다. 다만 외국인 노동자의 고용허가신청 이전에 반드시 국내근로자에 대한 구인광고를 내고 충원이 불가능한 경우에 한하도록 규제하고, 외국인력에 대해서는 대만국내 근로기준법을 준수하도록 하고 있다. 한편, 고용주는 국내노동자의 고용촉진과 고용안정을 위한 "보험금"을 부담토록 하고, 또한 외국인 출국과 사망에 따른 비용도 고용주가 부담토록 하고 있다.

싱가포르의 경우 단순, 미숙련 노동력에 대해서는 외국인노동자 고용법상의 노동허가제를 실시하고 전문, 기술직종에 대해서는 이민법에 따른 고용패스제로 대별하여 제도운영하고 있다. 한편 고용주에게는 외국인 고용세를 부담시키고 외국인 고용비율의 상한선을 설정하고 있기도 하다.

3) 연수취업제는 일본의 기능실습제를 본뜬 제도로 보인다. 최고 9개월까지의 기술연수 후 최고 15개월까지의 기능실습을 시키는 방법인데, 기능실습 기간에는 노동자로 인정하고 노동관계법을 모두 적용시키고 있다. 기술연수기간도 실질적 기술연수가 가능토록 몇 가지 제한을 두고 있다.

4) 우리 나라 현재의 제반 여건, 즉, 무분별한 외국인력도입은 곤란하다는 점, 그러나 현실적으로는 이미 5-6만 명의 불법체류 외국인력이 존재하고 있다는 점, 또 산업기술연수생이 이미 5만명정도 도입되어 있거나 도입되게 되어 있다는 점 및 이들의 인권침해 실태가 매우 심각하고 또 중장기적 국익에 비취 볼 때 이들에 대한 인권침해 실태는 시정되어야 한다는 점 등을 종합적으로 고려해 볼 때 노동(고용)허가제를 축으로 하여 제도개선안을 만들어 나가는 것이 불가피하다고 본다.

##### 4-2-2

#### 외국인노동자정책의 필수적 내용

1) 가칭 "외국인 노동자 보호법"을 제정해야 한다.

노동(고용)허가제를 축으로 하든, 연수취업제를 축으로 하든 기간에 제도개선의 기본방식은 외국인노동자 관련법률을 새로 제정함으로써 해결하는 수밖에 없다고 본다. 현재 법무부 훈령, 노동부 예규 또는 중기협 연수협력단의 외국인 산업기술 연수 협력사업 운용요령등의 방법으로 운용되고 있는 것부터가 편법적 문제해결 방식이고 또한 제도 운영에 있어 제반 근본적 한계가 존재하는 실정이다. 따라서 가칭 "외국인 노동자 보호법"을 제정하여 원칙적으로 또 근본적으로 문제를 해결할 필요가 있다.

2) 노사공익 3자 구성되는 공익기관에서 외국인력도입과 관리를 주관해야 한다.

노동허가제든지 연수취업제든지 간에 외국인력도입관련업무를 반드시 공익적 기관에서 담당하는 것이 바람직한데, 노사동수의 대표가 함께 참여하고 여기에 공익인사들이 함께 참가하여 노사공익으로 구성되는 독립적 기관에서 주관하여야 한다.

현재와 같이 산업기술 연수생을 사용자 단체인 중소기업협동조합중앙회에 계속 맡긴다든지 또는 유사 사용자단체에서 맡아서는 비슷한 유형의 폐단이 계속 발생할 수밖에 없다.

3) 국가간 쌍무협정을 통해 인력도입해야 한다.

정부간에 노동자의 자격, 고용조건 등과 기타 필요한 사항 등에 관해 쌍무협정을 맺고 도입해야 부작용을 줄일 수 있고, 이때에는 최소한 ILO규약 및 권고가 준수되어야 하고, 외국인노동자 인권보호에 발전을 기하는 방법으로 협정이 맺어져야 한다.

4) 상대국가의 국가기관이나 공익기관에서 인력송출을 담당해야 한다.

현지송출기관의 횡포를 근절하기 위해서는 사기업에게 인력송출을 맡겨서는 안되고 반드시 해당국가의 국가기관 또는 무료의 공익기관에서 담당토록 해야 하며, 수수료 등에 있어서도 노동자부담이 되지 않도록 강제되어야 한다. 이를 어기는 국가는 인력송출을 금지시켜야 한다. 또한 해외에서 모집광고할 때 표준문안을 주어서 그 내용을 포함하여 광고하게 하는 규제가 필요하다.

참고로 ILO조약에서도 유료직업소개는 금지되어 있고 정부 또는 공익기관에서 무료로 직업소개하도록 규정하고 있다.

한편, 항공료나 기타비용은 초청기업쪽에서 부담하든지 또는 한국정부가 지원하는 방식이 보색될 필요가 있다(제 3세계 등에 무상원조하는 금액의 일부만 투입해도 가능할 것이다).

5) 노동법이 전면 적용되어야 한다.

취업연수생이나 불법체류 노동자라 할 지라도 근로의 실질관계에 있어 이들이 사용종속 관계 하에서 근로를 제공하고 임금을 지급 받는 관계에 있으므로, 우리 나라 노동법상 이미 "근로자"신분에 해당되고 제반 노동관계법이 강제적용되어야 함은 우리 실정법 해석상 분명하기 때문이다.

참으로 우리 대법원 판례는 공고 실습생도 근로자로 노동법적용 대상이고(대법 87. 6. 9. 판결 86다카 2920호), 대학병원 전공의도 근로자로 노동법적용 대상이라고(대법 89. 7. 11. 판결 88다카 21296호)판결한 바 있으며, 또한 불법체류 외국인 노동자도 노동법상 "근로자"이고 노동관계법이 적용되어야 한다는 확정된 고등법원 판례(서울고법 93. 11. 26. 선고 93 구 16774호, 및 93. 12. 3. 선고 93 구 19995호 판결)가 있다.

또한 고용허가제로 도입되는 외국인에게도 모두 노동관계법이 전면 적으로 적용됨은 이론의 여지가 없을 것이다. 그런데도 정부당국은 노동법중 일부조항만 적용하겠다고 발표하고 있어 문제이고, 반드시 시정되어야 한다.

6) 충분한 사전 언어교육과 적응교육이 실시되어야 한다.

현재 국내에 있는 산업기술연수생들의 경우 언어교육이나 적응교육이 거의 전무한 상태에서 입국하여 무작정 산업현장에 배치되다보니 갖가지 인권침해사태를 더욱 악화시키는 주 요인이 되기도 하고 한편으로는 작업능률에 있어서도 현저한 지장이 초래되는 실정이다.

참고로 60-70년대 서독파견 광부들의 경우 한국 내에서 2개월간의 언어교육을 거쳐 현지에 가서도 3개월간의 언어교육과 적응교육을 거친 뒤 비로소 작업에 투입되었고 작업투입 후에도 상당기간 역할보조교육 과정이 진행되었던 경험을 활용할 필요가 있다.(이 경우 언어교육후 언어시험 합격자에 한해 취업이 허용되었다)

결국 노동허가제를 통해서든 연수취업제를 통해서든 도입되는 외국인력에 대해서는 적어도 2-3개월 이상의 모국에서의 언어 교육과정을 거치고, 또 한국에 도착한 후에도 3개월 이상의 언어교육과 적응교육을 거치도록 법으로 강제하여야 한다. 이렇게 하는 것이 피할 수 있는 제반 어려움을 극복하는데 도움이 되고 또한 작업능률의 제고를 위해서도 매우 중요하다고 본다. 물론 한국 내에서의 교육기간은 임금이 지급되어야 한다.(독일의 경우도 임금이 지급되었음)

7) 사업장 이동이 보장되어야 강제노동문제를 해결할 수 있다.

사업장 이동이 불가능한 제도로는 사실상 강제노동이 될 우려가 현존하므로, 한국인 노동자와 같이 사업장의 자유로운 이동이 보장되어야 마땅하고, 차별대우 논란도 불식시킬 수 있다. 만일 전면적 이동이 당장 시행하기 곤란하다면, 최소한 기업도산, 해고나 노동관계법 위반 및 사용자 측의 계약 위반의 경우 등이나 또는 계약기간(1년)의 도과후 계약갱신시에는 일정한 제도하에서 다른 사업장으로 이동 가능할 수 있는 방법이라도 반드시 강구되어야 한다.

8) 외국인 노동자의 권리구제 창구가 공공적으로 운영되어야 한다.

현재도 중소기업중앙회 산하 산업기술연수협력단에 중재위원회를 두어 중재하고 있지만 권리구제에 실효성이 없는 실정이다.

따라서 노동허가제나 연수취업제를 막론하고 노사공익 3자 구성되는 공익적 기구에서 권리구제기능을 담당하여 권리침해에 신속한 구제나 또는 고충처리를 담당할 수 있도록 함이 합당할 것이다.

9) 귀국시 지원조치가 제도화되어야 한다.

여러 가지 사유로 귀국하게 될 때의 비용등 귀국 시에 발생하는 여러 가지 문제나 귀국후의 직장생활에 관한 배려가 제도화될 필요가 있다. 이것은 한편으로는 귀국을 촉진하는 인센티브의 역할도 하고 현지에 진출한 한국기업의 원활한 인력관리에도 도움이 될 수 있다고 본다.

10) 기술연수제도를 존속시키려면 반드시 실질적인 "기술연수"가 실시되어야 한다.

현재 2일간의 교육이나 중소기업중앙회 개선 안의 1주일 교육 안은 "기술연수"라고 할 수 없고, 실질적인 "기술연수"가 중요할 수 있다. 특히 동남아 각국과의 차후 경제협력 증진을 위해서도 "기술연수"가 추진될 필요가 있다.

참고로 일본의 경우를 살펴보면, 9개월간의 기술연수와 15개월간의 기능실습 방식으로 절충적으로 제도를 운영하고 있다. 기능 실습기간에는 노동법의 보호를 받도록 되어 있고, 기술연수도 1/3이상이 공부(座學)기간이 되도록 강제하여 3개월간의 공부와 6개월간의 실무연수로 구성되어 있어서(예외적으로 일정조건 하에 1/4 또는 1/5까지 변경가능), 최소한의 실질기술연수가 가능토록 제도화되어 있는 것이다. 기술연수기간에도 노동법의 보호를 받도록 해야 함은 물론이다.

### 5. 노동조합과 민간지원단체의 대책방향

< 5 - 1 >

#### 노동조합의 대책방향

5-1-1

#### 외국인노동자정책결정과정에서 적극 개입해야

이때까지는 외국인 노동자 정책결정 과정에서 중요한 당사자인 일반국민들과 직접 당사자인 한국노동자와 노동조합은 철저히 배제되어 왔다. 그런데 앞에서 지적한 바와 같이 현재상황은 외국인 노동자 정책의 향방이 결정되는 시점이다. 종전과 같이 여기서도 계속 판이 잘못 짜이면 앞으로 훨씬 많은 노력을 기울이더라도 문제는 해결되지 않고 상황은 더욱 악화될 위험이 농후하다.

따라서 노동조합에서는 보다 적극적이고 단호한 방법으로 외국인노동자 관련 정책결정에 개입해 들어가야 하고, 또한 이것이 제도적으로 보장되도록 해야 한다. 만일 계속 결정과정에 노동조합을 배제시키면 단호한 투쟁도 불사해야 한다고 본다 중앙단위의 정책결정 과정에서 외국인노동자를 들여올 필요성이 있지, 얼마만한 숫자를 어떤 방식으로 들여오는지, 또 어떤 노동조건으로 들여올 것인지 등의 결정에 참가할 뿐 아니라, 각 개별기업단위에서도 단체협약을 통해 위의 사항들에 대해 노사합의하도록 제도화해야 한다.

5-1-2

#### 외국인노동자들을 조합원으로 조직해야

1) 외국인노동자 문제해결의 핵심적 방안은 외국인노동자들도 같은 노동자로 파악하고 이들을 노동조합의 조합원으로 조직하는 길이다. 조직화를 위해서는 기존의 기업별노조 방식 외에도 다양한 방식으로 이들의 조건에 맞는 조직방법을 개발할 필요가 있다.

2) 기존에 노조가 설립되어 있는 사업장의 경우는 외국인노동자들도 기존 노조에 가입시키는 것이 가장 손쉬운 방법이고, 이의 전제조건으로 일상적인 접촉공간이나 접촉통로를 확보하는 것이 긴요할 것이다.

3) 그러나 외국인 노동자의 경우 대부분이 영세중소기업에 근무하는 관계로 노조가 설립되어 있지 않는 경우가 많다. 그러므로 외국인노동자들을 조직하는 효과적인 조직형태는 기업별 노조방식보다 지역일반노조 또는 지역산별노조 방식이 될 것으로 본다. 참고로 일본의 경우 불법체류외국인노동자들을 주로 지역일반노조 방식으로 조직하고 있고, 노동인권 침해가 있을 경우 우선 지역일반노조에 가입시켜 조합원 자격을 확보한 후 고용주에게 단체교섭을 요구하여 문제를 해결해 나가는 방법을 쓰고 있다.

지역일반노조나 지역산별노조 방식은 한국인노동자들을 조직해서 운영하는 데도 상당한 어려움이 있는데 주로 가장 큰 문제는 전문적활동가의 확보와 재정문제인 것으로 보인다. 따라서 이 문제를 해소하기 위해서는 초기에는 상급단체나 노조 중앙에서 인력과 재정지원이 필수적으로 이루어져야 할 것이다.

5-1-3

#### 노동조합이 외국인노동자 보호활동에 앞장서야

현재 외국인노동자 보호활동은 주로 종교단체나 민간의인권구조 활동 단체

에서 수행해 왔다. 그러나 근 10만 명에 달하는 외국인노동자들을 제대로 보호하기에는 이들 구조활동단체의 숫자가 태부족일뿐 아니라, 가장 가까이에서 함께 일하는 노동조합에서 보호활동을 하는 것이 효과적이라는 점에서도 노동조합이 외국인 노동자들에게 실제로 필요한 보호활동을 적극 벌여 나가야 한다.

단위 노동조합이나 지역별 협의체또는 연합체 및 노조중앙에 외국인노동자의 고충처리나 상담창구를 상설할 필요가 있다. 또한 언어, 문화교육 및 의, 식, 주 등 기본생활상태에 대한 모니터 활동과 개선대책을 모색할 필요로 있다. 또한 동일 노동동일임금원칙 및 노동조건적 적정성 보장활동도 수행해야 함은 물론이다.

특히 노동조합에서 외국인노동자에 대한 한국의 노동법 및 노동조합활동 등에 대한 교육활동을 하는 것이 매우 중요하다고 본다.

노동조합의 외국인노동자보호활동은 민간지원단체와 협력하여 진행하는 것이 필수적인데, 뒤에서 구체적 내용을 설명하고자 한다.

## < 5 - 2 >

### 민간지원단체의 활동

#### 5-2-1

##### 민간지원단체와 노조의 연대의 필요성

외국인노동자구조활동을 하는 시민단체나 종교단체와 노조가 적극 연대할 필요가 있다.

영세, 중소기업에 종사하는 대다수 외국인 노동자의 특성상 초기에는 노동조합만으로는 보호활동을 벌이는데 한계가 있을 수 밖에 없고, 시민단체나 종교단체와 함께 지역 단위활동 공간을 만들고 활성화하는데 노동조합이 기여해야 한다.

#### 5-2-2

##### 산업기술연수제도 개선책의 이행감시

우선 가장 시급히 수행되어야 할 일은 노동부의 산업기술연수생제도 개선지침이라도 제대로 이행하게 만드는 일이다. 지난 2.14. 노동부예규 258호로 "외국인 산업기술 연수생의 보호 및 관리에 관한 지침"이 발표되었고, 이 지침에 맞게 95.2.28.까지 기존 연수계약을 고쳐 재 계약하도록 되었으나, 실제에 있어서는

1달 20일이 지난 현재까지 지침에 맞게 재계약 된 곳은 한군데도 확인되지 않고 있다. 특히 중소기업중앙회의 방침은 기존의 1년 연수계약이 만료되는 시점에서 재계약하도록 하는 방침을 표명하고 있어서 정부지침에 정면으로 어긋나는 방식으로 업무를 추진하고 있어서 연수생을 고용하는 업체에서도 이에 따라 위 지침을 묵살하고 있는 것이 가장 큰 문제이다.

따라서 노동조합과 제반 사회단체와 연대하여 이 지침이라도 즉각 지켜질 수 있도록 여론을 형성하고 즉각적인 감시와 이행강제활동에 돌입하는것이 긴요하다고 하겠다.

#### 5-2-3

##### 민간지원단체활동과 관련하여

1) 우선, 외국인 노동자들의 인권구조 단체나 모임이 절대 숫자에서 부족하다. 인권의 사각지대에 놓여있는 9만-10만명에 달하는 외국인 노동자의 숫자에 비해 상담등 구조활동을 하는곳은 20-30군데를 넘지 못하는 실정이다.

따라서 각 지역 단위로 훨씬 많은 숫자의 인권구조 단체나 모임이 형성되고 활동을 시작할 필요가 있다.

2) 할 수 있는 사업이 내용은 상담활동은 기본으로 하여야 하지만, 그외에도 구성원의 특성이나 제반 여건에 맞게 구조 활동을 특화시켜 진행하는 것도 좋다고 본다.

3) 구조활동을 함에 있어 반드시 노조나 종교의 틀을 고집할 필요가 없다는 점이다. 현재 우리나라에서도 각 종교단체단위로 구조활동하는 상담소 등이 설치되어 있기는 하지만 교회공식기구로 사업이 진행되다보니 연대활동 등에 여러 가지로 제약요인도 많이 있는 것 같다.

또한 외국의 경우는 종교단체별로 단위로 인권구조 단체나 상담소를 만들지 않고 각 지역 이나 지구단위로 연합해서 상담소나 모임을 만들어서 그 속에는 신부, 수녀, 목사, 스님 등 종교인, 교수, 변호사, 의사등 전문인, 자영업자나 일반 직장인 및 시민, 노동자, 학생, 주부 등이 다양하게 참여하여 구조활동을 수행하고 있는 경우가 일반적이기도 하다.

결국 넓은 의미의 지역 사회활동이나 시민운동의 차원으로, 또한 자원 봉사활동의 차원으로 진행되는 것이 효과적이므로, 교회나 사회단체 방식만이 아니라 교회나 사회단체에서 장소나 또는 제정을 일부 지원해주고 나머지는 활동단위나 모임 자율적으로 운영해나가는 방식이 더 효과적일 수도 있다고 본다.

4) 다음으로 대피소나 피난소 등이 각 지역이나 지구별로 필요하다. 외국인 노동자들의 인권침해시 탈출해 나오더라도 있을 것이 없어서 난감한 경우가 많으나 현재 이런 역할을 할 수 있는 곳은 매우 부족하기 때문이다.

5) 또한, 의료서비스제공 활동이 확대되어야 한다. 특히 자원봉사할 의료인들이 주도적으로 참가하거나 인력이 확보되면 매우 긴요한 활동이 될 것으로 본다.

공공장소 등에 진료소를 차리고 일요일 오후등에 진료 활동을 하면 매우 도움이 될 것이고, 이런 종류의 활동은 많이 생기면 생길수록 좋다고 본다. 진료소 운영에 필요한 약품대금 운영경비는 따로 모금을 하든지, 당사자들에게 약간의 실비(1인당 1,000원 -2,000원 정도)를 받는든지 또는 외국인노동자 의료공제제도를 확립하여 사적보험 형태로 운영하는 방법도 강구할 수 있을 것이다.

6) 또한 외국인노동자들에게 한국어나 한국문화에 대한 강습을 실시하는 것도 매우 유용한 것으로 본다. 언어소통의 난점이나 문화적 차이 때문에 파생되는 불필요한 낭비가 매우 많기 때문이다.

7) 그리고 든든한 후원회를 꾸리는 것이 중요하다. 전문적 능력이 있는 사람은 전문적 능력으로, 시간 할애가 가능한 사람은 시간을 투여해서, 시간이 안 되는 사람은 약소한 금액이나 후원금을 내는 방법으로 광범한 사람들의 참여를 가능케 하는 것이 중요하고 또 실제 구조 단체의 활용비용문제 해결에도 큰 도움이 되기 때문이다.

8) 또한 외국인노동자문제 해결을 위한 국제 연대활동이 필요하다. 다른 나라의 활동경험을 공유하는 것은 시행착오를 줄이는데 크게 도움이 되고 또한 송출업체의 문제점 개선이나 또는 국제적 제도개선을 위한 노력에도 국제연대방식은 효과적일 것이기 때문이다.

#### 5-2-4

##### 인력송출국으로서의 한국

한국은 인력유입국인 동시에 인력송출국이다. 요즘도 일본에서의 불법체류 외국인노동자의 출신국가별 분류를 보면 한국이 1,2위를 다투는 실정으로 많고, 또한 미국에도 한국인 불법체류외국인노동자들이 다수 존재하고 있다.

다행히 3-4년전부터 한국에 유입된 외국인노동자 인권문제는 사회적 관심도 높아지고 또 이 과제를 전문적으로 다루는 민간단체들이 늘어나고 있으나,

인력송출국으로서의 한국인 외국인노동자들의 인권문제와 관련한 민간단체는 전무한 실정이다.

이 문제에 대한 한국내 관심의 결집과 그에 따른 노력이 현실화되기를 기대한다.

#### 5-2-5

##### 해외진출 한국기업의 인권침해

최근 몇년 동안 한국기업이 동남아시아나 중남미 등으로 급속도로 사업장을 이전해가고 있고, 이 과정에서 현지 노동자들에 대한 인권침해실태가 매우 심각하게 나타나고 있다.

과거 60-70년대 일본기업들이 "경제동물"(economic animal)로 한국을 비롯한 동남아에서 지탄받던 그 형태와 유사하게 이제는 한국기업이 동남아나 중남미에서 경제동물로 지탄받고 있는 것이다.

마침 최근 "참여민주사회를 위한 시민연대"에서 해외진출기업의 노동인권침해문제에 대한 토론회를 개최하고 현지조사도 기획하고 있어서 매우 다행이지만, 이 문제에 대해서도 사회 각계에서 관심이 결집되고 의미있는 노력이 결집되기를 기대한다.

#### 6. 결론

외국인노동자문제는 현재 진행형이다.

또한 외국인노동자 인권문제는 외국인노동자들의 문제라기보다 한국인 자신의 문제라고 보는데서 출발해야 한다. 이 문제를 해결하기 위한 진지한 노력이 "세계화"시대에 각 민족의 공존공영의 기초가 될 수 있을 것이다.

Report from Japan:  
Migrant Workers' Conditions and NGO activities in Japan

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I. Some conditions of Migrant Workers particular in Japan

1. The last year, several racist violence cases have taken place in Immigration and criminal facilities. Song Jae-Yoo and Song Yung Jong, Korean men's case in Jun. 1994/at Osaka Immigration Bureau is one of them. (Refer the report titled "Immigration Review Task Force")

Some cases have been filed as lawsuit against the state authorities. This clearly shows that official system in Japan is hardly "friendly" but viciously racist against migrants. Actually, there are no comprehensive understandings on the rights system of foreign nationals in Japan, although we have more than 600,000 Korean permanent residents. The lack of comprehensive system of residents rights and increasing racism will be the most serious root causes in Japanese society which create difficulties for migrant workers.

2. Here, I will try to illustrate some aspects of migrant workers in Japan which are particular and sometimes unique in Japan. Those are,

- a. Sense of Homogeneity in the Society; Lack of multi-cultural training.
- b. Lack of officially declared "Immigration" system in real sense; Border control policy dictating everything
- c. Racist Immigration Control Policies; "Former" Japanese Nationals allowed to work
- d. Use of "marriage" status; family control by Japanese.
- e. Dual structure of Japanese Industries; 3-D character of

migrant labour

- f. High rate of Sex industries in women's job
- g. Relation to "historical" Korean Community
- h. Lack of Refugee protection
- i. Lack of Legalization Program
- j. TNC-oriented "trainee" system
- k. Role of labour union
- l. Japanese NGOs and Migrants organizations

3. As for "Great Hanshin Earthquake" which affected in many ways migrants' life, separate report will be given. So, I will mention to other general aspects.

II. Historical overview of "immigration control" policy

4. Japan's history of introducing foreign migrant workers goes back to the policy of using colonial subject peoples during colonization of Korea and Taiwan. They were not only brought to Japan but also to many other parts of Asia/Pacific region as forced labourers, and their sufferings were never compensated by the state nor companies of Japan. Manchuria, a puppet nation of Japan, also used many Chinese workers from Shantung as well as Koreans. Their main concern in using them was to avoid any political instability in the local community, for example, labour organization and its relation to anti-Japan guerilla resistance. Therefore, authority introduced ID card for legal migrants (even with labour fingerprint registry system) and tried to differentiate guerilla elements from ordinary residents and workers. You cannot escape and smuggle into factories or mines if all workers fingerprint within the nation is recorded. Even today, it seems that Japanese authority keeps this kind of understanding of foreign "migrants" as potentially "dangerous" elements in security control.

5. The present framework of Immigration Control system was established in 1952. when Japan became independent again

after WWII with U.S. strong guidance. Japanese Immigration Control Order took its basic framework from still "exclusionist" U.S. Immigration Control Act of that age. However, General Head Quarter(GHQ) of U.S. occupation forces did plan to give the citizenship of Japan to Koreans, former colonized people, so that they are excluded from the control of this law. For they came to Japan as "subjects of Imperial Japan" without foreign passports.

However, Japanese government unilaterally deprived them of voting right in 1946 and Japanese nationality in 1952. They have been treated as if they are temporary stayers in Japan under 1952 Immigration Control Order. Most of the social rights including right to basic day-life needs, social welfare and ethnic education have long been denied. This is how Japan could create lowest-paid worker class and small size factories exploited under multi-layer contract system, and succeeded in economic development and wage increase of Japanese workers without introducing foreign labour.

6. Only in 1982, when Japan has ratified the Convention related to the status of Refugees and its Protocol, it expanded social welfare system to Koreans (but still not as rights). At the same time, lack of labour supply in manual labour and service industries became serious. Informal migrant workers have begun to increase. Koreans, who bring them selves as family members of resident Koreans, has been prominent in the first stage Filipino women followed in the form of "entertainers" with six month visa. Construction boom in the 1980s necessitated undocumented migration of male south Asians, namely Pakistani, Bangladeshi and Iranians. Immigration Control system which was only planned to control Koreans became not-working. It was the time to consider whether to open-up the labor market or not.

7. Japanese government made the decision to introduce "Nikkei labour force," former Japanese and their descendants, and revised Immigration Control Order in 1990 and made it "Immigration Control and Refugee Recognition Act". One can get a "long-term resident(Teiju-sha)" status

with three month to three year length of stay, if one's grand parent was a Japanese national. This is clearly racist motivated policy, with which government intended to keep Japan as racially-homogeneous society. No serious discussion was made for preparing for multi-cultural community before introducing them. Most of the Nikkei migrants to Japan were those who have immigrated to Latin America. They are given no restriction under Immigration Law in participation in any job, and also allowed to invite members of family to certain extent.

However, most of them have been organized by labour brokers and employed mainly in car industries assemble line, so that they do not have freedom of choosing job practically.

8. Another way of introducing foreign labour force has been "trainee", which is de facto cheap workers. Specially after establishment of JITCO, government and private enterprises are cooperating in introducing more trainees which can be more easily "controlled". Their number increased from 10 to 20 thousands in late 1980s. They are not allowed to invite family members. Some Asian countries like China or Indonesia has government policy to send trainees to Japan and migration flow is easily controlled in government basis. Therefore, new system of providing "official worker status" to skilled trainees has been considered and finally, in 1993, "practical skills trainee" system was introduced. Those who passed examination by JITCO in a certain skill will be transferred from "trainee status" to "special status", which they are permitted to work under official labour contract. This is a form of "work permit" system, but only two years' stay is allowed and to invite family members is not allowed. It is still on the idea of the "guest workers", not the "immigrant worker" integral to the local society. Japanese government keeps strongly the idea of "rotating" foreign labour forces in the short period to avoid social costs.

9. 1990 Immigration Act also introduced the new clause on punishment of the employer of "illegal" workers. Immigration



Bureau has strengthened the campaign to arrest of the over-stayers and undocumented workers, sometimes focusing on those with a certain nationality. It is clearly impossible to eliminate estimated 300,000 overstayers, but government has never considered amnesty program, even in the Korean way of declaring postponement of deportation. "To deport all of them" is the only policy. They have built two new detention facilities for detainees before deportation. Number of deportation and refusal of landing is increasing every year.

### III. Legal status labour and other life condition of migrant workers

10. As for categories of migrants, they can be divided into three groups. The first group is the one of documented workers. Secondly, documented migrant with no(or time-limited )work permit can be seen as potential undocumented workers Third group includes undocumented workers who can be anytime arrested.

11. Japanese government officially declared that it is not "the country receiving immigrants" and it encourages only highly-skilled workers to be introduced as foreign workers. According to the 1992 Alien Registration(static data), the number of skilled migrant workers(including teachers and missionary) is about 63,000 They are given immigration status according to the speciality of their skills categorized under Attached Table 1 of 1990 Immigration Act. However, the number of documented migrants is far more greater. There are 632,000 permanent residents(mostly Koreans born in Japan still treated as non-citizen) and 175,000 Nikkei = Japanese Brazilians and Peruvians, whose legal status is long-term resident or spouse/child of Japanese nationals. These people with the special "personal relation" to the state of Japan are separately categorized under Attached Table 11 of the 1990 Immigration Act. This "personal relation" means either past treatment of colonized people as Japanese subjects or relation through marriage, childhood, etc in any case the state expects them to be

assimilated to the "pure blood"homogeneous Japanese society. This is "forced assimilation" but not "integration" since it is awfully difficult to get citizenship while keeping cultural identity. The historical struggles by Koreans in Japan against this myth of "homogeneous Japan" should be given due attention when we consider the reality and future of the more recent migrant workers.

12. "Practical skills trainees" system started in 1993 August. Those who passed examination and express the will to be transferred to "the special status" with work permit can now work under official labour contract, get salary under minimum wage law protection and receive almost equal treatment with Japanese workers. However, due to difficulty for small enterprises to provide necessary housing and so on, the number of the trainees who already express to transfer is only 1,701 after 10 months. They are mostly Chinese (980) and Indonesian(555). This system is mainly coordinated by JITCO and private enterprises who have projects relation with Asian governments. The problem of overstaying two-years official term and possible marriage and child care will be foreseen but not yet visible.

13. Estimated 117,000 members of family of Japanese are categorized as "spouse and child of Japanese national" they are not treated as independent immigrants, so that their status is extended as long as family relation continues. For example, if foreign women married with Japanese are divorced, she loses her legal status immediately. Even worse, Immigration Bureau daily tries to investigate family life to know whether they are living "truly married life" or it's only "disguised marriage". Given reality is that women have to use marriage to migrate to Japan because the job availability for women is very low. Brokers' and Japanese husband's oppressive control over foreign wives have become serious issues of human right violation. The last year, number of marriages with Filipino women became larger than those with Korean. To avoid racist and sexist oppression over migrant "bride", independent legal status should be

given even after divorce.

14. Documented migrants with no work permit belong to the categories of Entertainers, Trainees, College students and Pre-College students. More than half of 76,000 entertainers (yearly flow) are Filipinos. Trainees numbers 40,000 a year by flow data. There are 60,000 College students and 44,000 Pre-college students, both of whom are allowed to work for only limited hours per week with prior permission by the Immigration Bureau. They are not officially "employees" and not protected by labour laws. They will be deprived of the legal status itself and deported, once they are found working against Immigration regulation(ex students working without special permission by Immigration Bureau; entertainers doing hostess work). To extend visa is serious issue for students. In case of trainees, payment is not treated as salary so that "it should not be too high" according to the Immigration guideline. Insurance system is also not applied. Since early 1990s, many cases of "fake trainees"-de facto cheap labourers exploitation was reported.

15. Those who are in the most serious situation are of course undocumented migrants. Immigration Bureau estimates some 300,000 foreigners overstays their visa. 2,806,000 temporary visitors are landing every year and we don't know how many of them are working "illegally" within their period of stay. According to labour laws with no nationality clause, all the workers should be protected equally. After successful struggles with labour ministry, it is known that even undocumented workers' labour rights can be protected in case that one has been working as employee "in reality". Labour administration has adopted realist approaches in applying labour laws to solve wage unpayment, industrial accidents and dismissal notice payment. However, in reality in daily life of most of the unorganized undocumented workers, it is very difficult for them to expose themselves to any public offices, being afraid to be reported to Immigration office. Labour laws are paralyzed by the

immigration control system. Employers also use the weak status of the workers as threat and silent them.

16. All range of "residents' rights" is also grave concern. Social welfare system, which falls under supervision of Ministry of Health and Welfare, is only partly applied and it's not the right for foreigners to get them. National Health Insurance system is only available for migrants with more-than-one-year permit of stay, excluding most of entertainers and trainees. Emergent medical payment support under Livelihood Protection Law is only available for permanent and long-term residents. Add to exclusion from public services, there is racism in general. Private discrimination in availability in housing, employment, loan etc. widely exist and even permanent resident Koreans have long been suffering from these discriminations as well as xenophobia and racist violence. There is no support for ethnic education of the children. On the other hand, income tax is paid by all the workers including undocumented ones through withholding tax collection by employer.

17. Migrant advocacy groups have called for an amnesty and legalization program to provide official recognition to "invisible" victims of human right violation since late 1980s when immigration reform was discussed. As has discussed in 1993 forum in Japan on legalization issue, it can take different forms. First procedure internationally performed is refugee recognition system. However, Japan has recognized only 200 Convention refugees in 13 years. It is known that there are many politically-motivated migrants(Burmese, Pakistani Ahmadi, Chinese, Africans etc.) in Japan who dare not take this procedure hopeless to succeed and danger enough to be arrested as exposing themselves. Second way is to give "surrender period"and amnesty like Korean policy. Only case when Japan took similar action was in 1960s to legalize Korean "illegal entrants" who stayed Japan for long time since war. But it was still case-by-case decision and government said "it would consider as favorable as possible". In present

reality, marriage with Japanese is the only case where undocumented migrant can surrender to the immigration office and ask for individual amnesty (Minister of Justice unilateral administrative decision by its free discretion).

18. Lack of job availability for women workers necessitates high rate engagement in sex-related industries. Especially Thais and Filipinos are the victims of the most serious human right violation often under crime syndicates' control (sometimes disguised as marriage with Japanese). "Legalization of status" does not provide solution to this problem. Creation of job/training for foreign women must go together with effective prevention of trafficking in women (both international and domestic) and empowerment of migrant women themselves.

#### IV. Activities of labour Union, NGOs and Migrant Organization

19. Due to language barrier and legal weaknesses, most of the migrant workers with difficulties do not join labour union. Union side also has problems of sectarianism (divided by factories, full-time workers and part-time workers etc.) and even narrow nationalism. Therefore, Unions who intentionally work for migrant workers are very few in general. Most of the factories employing them are small-sized and union is not organized even for Japanese workers. However, there are some unions very active and successful solidarity cases. Zen-toitsu (a federation unions of small-medium sized enterprises) - FWBZ since 1992, Zenkoku-Ippan-FLU since 1992, Zenkoku-Ippan-Nanbu (community union) since 1974, and Kanagawa City Union (community union) since 1991, have been working for migrant workers. FWBZ has one Bangladeshi full-time unionist and its 591 migrant members most of which come from South Asia. Kanagawa City Union has 874 migrant members 84% of which is Korean mainly employed in daily-basis in construction work. Nanbu has 523 members who are mostly Caucasian language school teachers.

20. Daily struggle to solve labour problems includes cases of unpayment of wage, layoff, industrial accidents, organization of migrants union and sometimes traffic accidents. Above-mentioned four unions and other organizations have jointly published this year a "white paper" on their cases and struggles. Syunto (spring season joint struggle) is also jointly fought by them.

21. NGOs in various cities started relief work for migrants in late 1980s. Kalabaw-no-kai in Yokohama, CALL Network in Tokyo, ALS in Nagoya and Asian Friend in Osaka are the initial organizations among others who followed. Now AJIKON (Forum on Asian Migrant Workers Concern) has its correspondence with more than 100 NGOs nationally. Each small local NGO has telephone line for counseling, activity to solve labour issues, legal issues related to marriage, divorce, child care or immigration status, and support for court cases. Some groups are specialized in supporting women, providing temporary shelters. Some are lawyers groups for cheap legal counsel. Some organize private medical insurance unions for migrants.

22. NGOs have also come together to organize advocacy activity for policy making and talk with government. Labour Ministry was a target until it declared that labour laws should be equally implemented regardless of workers legal status. The ministry answered the NGOs that labour office will refrain from reporting Immigration office before labour issue is solved. The present target is Minister of Health and Welfare who is supervising policy on emergent medical care and insurance systems. However, the minister's attitude is so exclusionist that even in the situation like Hanshin Great Earthquake, migrants are discriminated in treatment. (as explained in a separate report) Minister of Justice is the key section for formulating government policy of "immigration control basic plan". But this was not discussed in depth even in national diet and lack popular discussion. The minister never consults NGOs or migrant organization in making decision.

23. In given condition of unilateral national policy making, the role of local communities should be important in implementing the system. For example, emergent medical care is responsibility of local government, even though a guideline is given by the state government. Kobe city has paid for medical care for an injured pre-college student without consulting state government (before earthquake) and this case is now filed as a law suit. Many NGOs are asking local government office to see migrant workers as "local residents" with full residents' rights, regardless of legal status under Immigration Act. The quality of "local autonomy" is being questioned before the issue of migrant workers.

24. Migrant organizations are not widely established because of weaknesses in legal status and lack of support by Japanese society. If Japanese society is "open" enough to allow third generation Koreans to use their ethnic name without any hesitation; or if it is "tolerant" enough to allow more refugees to become a part of society with keeping their cultural identity and forming each national fellowship more visible, or if migrant wives of Japanese national and their children are not forced to be assimilated to "homogeneous" society, then migrant communities themselves must have been able to support new-comer workers. There are several migrant organizations formed according to national, ethnic or cultural backgrounds. Catholic Church is one of the background conditions for such organization, for example, for Filipino. Japanese NGOs have to strengthen the solidarity tie with them.

#### V. International Effort on Migrant Issues

25. Some NGOs has made efforts for intervention in United Nations procedure for human rights. Japan's status in adopting international standards is not good and it is far worse in implementation. Therefore, international

instruments cannot be used practically in solving individual cases. So, NGOs has appealed in international fora about "scandalous reality" of migrant's situation in Japan to pressurize the government. Migrant women's situations have been many times reported in UN meetings as "comfort women today". AJIKON, together with National Christian Council (NCC) doing research and appealed to 1992 UN Sub-Commission on Human Rights regarding migrant workers' situation after 1990 immigration reform. In 1993, many alternative reports were sent to Committee on Civil and Political Rights who discussed Japanese government report on human rights situation in Japan.

26. Asian region is greatly involved in migration phenomenon. However there is no common (regional) legal framework for human rights protection. We must strengthen our trans-border solidarity to have common goal and vision for migrants. Although the initiative came from Europe, 1990 UN International Convention on the Protection of the Rights of Migrant Workers and Members of Their Families can be a basic document which visualizes the principles of the society where migrant workers can live with dignity and equality. We must develop joint studies and joint struggles. South Korea is now both sending and receiving country. It has very strong and progressive unions for nationals. It has experienced "revolutionary" change of its government. I expect very much what Korean people could do in realizing genuine workers' liberation not only for Korean nationals but also for migrant workers from the world.

## 일본에 사는 이주노동자들의 상황과 NGO의 활동

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### I. 일본에 사는 이주노동자들의 상황

1. 지난해 몇가지 민족차별주의 폭력 사례가 이민수용소에서 일어났다. 1994년 6월에 오사카 지방입관국에서 발생한 송재유와 송영정(한국인 남자)의 사례가 그런 사건 중 하나이다. (보고서 “이주대책위원회”를 참조하십시오) 몇가지 사례는 정부당국을 상대로 소송을 제기했다. 이것은 일본에서 공식체계는 이주자들에게 부도덕하게 민족차별적이지는 않지만 “친절하”지도 않다는 것을 보여준다. 실제로 600,000명 이상의 한국인 영구 거주자들이 있지만 일본에서 외국 국적을 가진 사람들의 권리체계에 관한 포괄적인 이해가 없다. 거주자들의 권리에 대한 포괄적인 체계의 부족과 증가하는 민족차별주의는 일본사회에서 이주노동자들을 곤경에 처하게 하는 가장 심각한 근본적인 원인이 될 것이다.
2. 여기서 나는 일본에서 특별하면서 때때로 독특한 이주노동자들의 양상을 설명하고자 한다.
  - a. 사회 안의 동질감; 다문화 혼련
  - b. 실제로 공식적으로 선언된 “이민”체계 부족; 국경통제 정책이 모든 것을 명령하기
  - c. 민족차별주의 이민관리정책들; “예전의” 일본국민들에게 노동을 허용했다.
  - d. “결혼” 자격 이용; 일본인에 의한 가족 통제
  - e. 일본산업의 이중구조; 이주노동력의 3-D 특성
  - f. 여성직종에서 성산업의 높은 비율
  - g. “역사적인” 한인사회와의 관계
  - h. 난민보호 부족

- i. 합법화 프로그램의 부족
- j. 진출기업(TNC)중심의 “연수생” 체계
- k. 노동조합의 역할
- l. 일본NGO들과 이주자 조직

3. 여러면에서 이주자들의 삶에 영향을 끼친 “한신 대지진”에 관해서는 다른 보고서에서 다루어질 것이다. 그래서 나는 다른 일반적인 양상에 대해 말하려 한다.

### II. “출입국관리” 정책의 역사적 개관

4. 일본이 외국인 이주노동자들을 받아들인 역사는 한국과 대만에서 식민통치기간 동안에 식민지민을 흡수하는 정책으로 거슬러 올라간다. 식민지민들은 징용노동자로 일본 뿐만 아니라 아시아/태평양 지역의 다른 많은 곳으로 보내졌고, 그들이 겪은 피해는 국가에 의해 보상된 적도 없으며 일본기업도 보상하지 않았다. 일본의 꼭두각시 국가인 만주국은 한국인 뿐만 아니라 산둥에서 온 많은 중국인 노동자들도 흡수시켰다. 식민지민을 이용해먹는 데서 그들의 주요 관심은 노동조합과 노동조합이 반일본 계렬과 저항과 연계되는 것 같은 지역사회내의 정치적 불안정 상태를 피하는데 있었다. 따라서 당국은 합법적 이주자들을 위한 ID카드를 도입했고 (심지어 노동자지문등록제도도 있었고), 계렬적 요소와 보통의 거주자들과 노동자들을 구별하려고 했다. 국가안의 모든 노동자들의 지문이 기록된다면 공장이나 광산으로 도망치거나 밀입국할 수 없다. 오늘날에도 일본당국은 이런식으로 보안통제안에서 외국인 “이주자들”을 잠재적인 “위험한” 요소로서 이해하고 있다.
5. 출입국관리체계의 현재의 뼈대는 1952년에 확립되었다. 그 때가 일본이 미국의 강력한 지휘로 2차대전 후에 다시 독립된 때이다. 일본출입국관리령은 기본뼈대를 아직도 그 당시의 “배타주의적인” 미국 출입국관리법에서 이어받았

다. 그렇지만 미국점령군 총사령부는 한국인과 식민지민들에게 일본시민권을 주려고 계획했다. 그들이 이 법의 통제로부터 배제되도록, 그들이 외국인 여권없이 “일본제국신민”으로서 일본에 왔기 때문이다. 그러나 일본정부는 일방적으로 1946년에 그들에게 투표권을 주지 않았고, 1952년에 일본국적을 주지 않았다. 그들은 1952년 출입국관리령 아래서 마치 일본에 임시 체류하는 것으로 대우받았다. 기본적인 일상생활의 필요와 사회복지와 민족교육을 포함한 대부분의 사회적 권리들은 인정되지 않았다. 이것이 일본이 다층계약체계 아래서 착취당하는 최저임금 노동자계급과 소규모사업장을 창출한 방법이고, 외국인 노동자 유입 없이 경제발전과 일본인 노동자의 임금인상에 성공한 방법이다.

6. 1982년에야 겨우 일본이 난민의 상태와 관련된 조약과 그 의정서를 비준했고, 사회복지체계를 한국인에게 확대했다 (그러나 여전히 권리는 아니다). 동시에 육체노동과 용역 산업에서 노동력 공급 부족은 심각하다. 비공식 이주노동자들은 증가하기 시작했다. 거주한국인의 가족으로서 데리고 온 한국인들은 첫번째 단계에서 두드러진다. 필리핀 여성들이 6개월 비자를 가지고 “接客업소 예능인” 형식으로 뒤이어왔다. 1980년대에 건설붐은 남아시아인들, 즉 파키스탄인, 방글라데시인, 이란인의 밀입국 이주를 필요로 했다. 단지 한국인들을 관리하려고 계획된 출입국관리체계는 작동되지 않았다. 노동시장을 개방할지 하지 않을지를 결정해야 될 때가 되었다.

7. 일본정부는 이전의 일본인들과 그 자손들인 “일본계 2,3세 노동력” 도입을 결정했고, 1990년에 출입국관리훈령을 개정했으며, “출입국관리와 난민인정법”을 만들었다. 조부모가 일본국민이었다면 그 사람은 3개월에서 3년간 머무를 “장기 정주자” 자격을 얻을 수 있다. 이것은 민족적으로 동질한 사회를 유지시키려는 의도를 가진 정부와 더불어

분명히 민족차별주의를 자극하는 정책이다. 그들을 받아들이기 전에 다문화공동체 준비를 위한 진지한 결정은 없었다. 일본계 2,3세 이주자 대부분은 라틴아메리카로 이주되었던 사람들이었다. 그들은 이민법 아래서 어떤 직업에도 참여하는데 제한이 없었고, 또한 어느 정도까지 가족을 초청하는 것도 허용되었다. 그러나 그들 대부분은 브로커에 의해 조직되었고, 자동차산업에서 조립공정에 고용되었으며, 실제로는 직업선택의 자유가 없었다.

8. 또다른 외국인 노동력 도입 방법은 “연수생” 제도로, 이것은 사실상 값싼 노동자이다. JITCO(국제연수협력기구) 확립 이후에 특히 정부와 사기업들은 더욱 쉽게 “통제”될 수 있는 더 많은 훈련생 도입에 협력했다. 그들의 수는 1980년대 후반에 만명에서 이만명으로 증가했다. 그들은 가족초청이 허용되지 않는다. 중국이나 인도네시아 같은 아시아의 몇 개 나라들은 일본으로 훈련생들을 보내는 정부정책이 있으며, 이주 흐름은 정부 원칙으로 쉽게 관리된다. 따라서 숙련된 연수생들에게 “공식 노동자 자격”을 제공하는 새로운 체계가 고려되어 졌고, 마침내 1993년에 “기능실습생” 체계가 도입되었다. 일정한 숙련으로 JITCO 시험에 합격한 사람들은 “연수생 자격”에서 “특정활동자격”으로 전환될 것이며, 그들은 공식 노동자 계약 아래서 노동이 허용된다. 이것은 “노동허가” 체계 형태이지만, 2년간만 체류가 허용되며 가족초청은 허용되지 않는다. 그것은 아직 “이주노동자”를 지역사회의 구성요소가 아니라 “손님 노동자들”이라는 개념에 기초하고 있다. 일본정부는 사회적 비용을 피하기 위해 단기에 “순환하는” 외국인 노동력이라는 생각을 강력하게 유지하고 있다.

9. 1990년 이민법은 “불법” 노동자를 고용한 고용주의 처벌에 관한 새로운 조항을 채용했다. 이민국은 초과체류자와 밀입국노동자들을 체포하기 위한 캠페인을 강화했고, 때때로 확실한 국적을 가진 사람들에게 촛점을 맞추었다. 300,000

명으로 추산되는 초과체류자를 제거하는 것은 분명히 불가능하지만 정부는 추방 연기를 공표해준 한국인들에게 마저도 사면 프로그램을 결코 고려하지 않고 있다. 그들은 추방시키기 전에 억류자를 위한 두개의 새로운 구치소를 세웠다. 국외추방과 상륙거절 수는 매해 증가하고 있다.

### III. 이주노동자들의 법적 지위, 노동, 기타 생활조건

10. 이주자들을 분류해보면, 세가지 집단으로 나누어 볼 수 있다. 첫번째 집단은 기록된documented 노동자들이다. 둘째는 노동허가 없는 (또는 시간 제한) 기록된documented 이주자들은 잠재적 밀입국 노동자들로 간주될 수 있다. 세번째 집단은 언제든 체포될 수 있는 밀입국 노동자들을 포함하고 있다.
11. 일본정부는 공식적으로 선언하기를 “이민수입국”이 아니며 외국인 노동자들로 받아들여진 고숙련 노동자들만 장려한다고 했다. 1992년 외국인 등록(static 데이터)에 따르면, 숙련 이주노동자들의 수는 (교사와 선교사를 포함해서) 약 63,000명이다. 그들은 첨부된 표1의 1990년 이민법 아래서 분류된 그들의 기술 장기에 따라서 이주 자격이 주어진다. 그렇지만 기록된documented 이주자들의 수는 훨씬 더 많다. 632,000명의 영주자들이 있고 (일본에서 태어난 대부분의 한국인들은 아직도 비시민 대우를 받고 있다.) 175,000명의 일본계 2,3세대들(일본계 브라질인과 페루인)이 있으며, 이들의 법적 자격은 정주자이거나 일본 국민의 배우자와 자녀이다. 일본 국가와 특별한 “신분관계”를 갖는 이 사람들은 첨부된 표2의 1990년 이민법 아래서 따로 분류된다. 이 “신분관계”는 일본의 식민으로서 식민지의 사람들에 대한 과거에 했던 대우나 결혼, 자녀, 등의 관계를 뜻한다. 이것은 문화적 정체성을 지키면서 시민권을 얻는 것이 몹시 어렵기 때문에 “강제적 동화”이지 “통합”은 아니다. 우

리가 최근의 이주노동자들의 실태와 미래를 생각한다면 이 “동질의 일본”이라는 신화에 대항하여 일본에 사는 한국인들이 벌인 역사적 투쟁들에 마땅히 관심을 가져야 한다.

12. “기능실습생” 체계는 1993년 8월에 시작되었다. 시험에 합격한 사람과 노동허가와 함께 “특정활동자격”으로 옮겨달란 의사를 표현한 사람들은 지금 공식 노동자 계약 아래서 일할 수 있으며, 최저임금법의 보호 아래 봉급을 받을 수 있고, 거의 일본인 노동자와 같은 대우를 받을 수 있다. 그렇지만 소규모 기업은 필수적인 주택공급 등이 어려운 탓으로, 이미 이동 의사를 표현한 훈련생의 수는 10개월 후에 1,701명이다. 그들은 대부분 중국인(980명)과 인도네시아인(555명)이다. 이 체계는 주로 아시아의 정부들과의 관계를 보호하는 JITCO와 사기업에 의해 조정되었다. 2년간의 공식적 기간을 초과체류하는 문제와, 결혼 가능성과, 아동보호 문제는 예견될 수 있지만 아직 가시화되지 않았다.
13. 117,000명으로 추산된 일본인의 가족은 “일본 국민의 배우자와 자녀”로 분류된다. 그들은 독립적인 이주자들로 대우받지 못한다. 그들의 자격이 가족관계를 지속할 때만 연장되기 때문이다. 보기를 들면, 일본인과 결혼한 외국인 여자가 이혼한다면 즉각 그녀는 법적 자격을 잃는다. 더 나쁘게는, 이민국은 그들이 “실제 결혼생활”을 하고 있는지 단지 “위장된 결혼”인지 알기 위해 가족생활을 매일 조사하려 한다. 여자에게는 구직 가능성이 매우 낮기 때문에 여자가 일본으로 이주하기 위해서는 결혼을 이용해야 한다는 것이 주어진 현실이다. 외국인 아내들에 대한 브로커와 일본인 남편의 억압적 통제에 관한 중대한 이슈로 되고 있다. 지난 해에 필리핀 여성과 결혼한 수는 한국인 여성과 결혼한 것보다 많았다. 이주자 “신부”에 대한 민족차별주의와 성차별주의 억압을 피하기 위해서 독

립적인 법적 자격은 이혼 후에도 주어져야 한다.

14. 노동허가 없는 기록된documented 이주자들은 접객업소 예능인들, 연수생들, 유학생들, 취학학생들의 범주에 속한다. 76,000명의 접객업소 예능인들(매년 유입)의 반 이상은 필리핀인들이다. 유입 데이터에 의하면 연수생의 수는 한해에 40,000명이다. 60,000명의 유학생과 44,000명의 취학생들이 있다. 그들은 출입국의 사전허가를 받아 일주일에 제한된 시간 동안만 일하는 것이 허용된다. 그들은 공식적으로 “고용인”이 아니어서 노동법의 보호를 받지 못한다. 일단 그들이 이민 규정(보기, 이민국의 특별한 허가 없이 일하는 학생; 접대부 일을 하는 접객업소 예능인들)을 어기고 일하는 것이 발각되면, 그들은 법적 지위의 혜택을 받지 못할 것이며 추방될 것이다. 비자를 연장하는 것은 학생들에게 중대한 이슈이다. 연수생의 경우에 보수는 이민 가이드라인에 따라서 “너무 높지 않도록” 하기 위해서 봉급으로 취급되지 않는다. 보험도 적용되지 않는다. 1990년대 이래로 “허위 연수생들” (실제로 값싼 노동자들)에 대한 착취 사례는 많이 보고되고 있다.

15. 가장 심각한 상황에 처한 사람들은 물론 밀입국 이주자들이다. 이민국은 외국인 초과체류자들을 300,000명으로 추산하고 있다. 2,806,000명의 일시 방문자들은 매해 들어오고 있으며, 우리는 그들 중 얼마나 많은 사람들이 체류기간 안에 “불법적으로” 일하고 있는지에 관해서 모르고 있다. 국적 조항이 없는 노동법에 따르면, 모든 노동자들은 동등하게 보호받아야 한다. 노동부를 상대로 투쟁을 성공적으로 한 후로는, 밀입국 노동자들의 노동권도 “실제로” 고용인으로서 일하고 있을 경우에 보호받을 수 있다는 것이 알려졌다. 임금체불, 산업재해, 해고시 임금지불 문제를 해결하기 위해 노동법을 적용하는데 현실적인 접근법이 노동행정에게 채택되었다. 그렇지만 대부분의 미조직된 밀입국 노동자의 일상적인 생활의 실재를 보면, 그들은 출입국

사무소에 보고되는 것을 두려워하기 때문에 관공서에 자신들을 드러내는 것은 매우 어렵다. 노동법은 출입국관리 체계에 의해 마비된다. 고용주들도 협박과 침묵으로 노동자들의 약한 지위를 이용한다.

16. “주민권”의 모든 범위는 중대한 사건이다. 후생성의 감독 아래서 실패한 사회복지체계는 단지 부분적으로만 적용되고, 외국인이 사회복지를 받는 것은 권리가 아니다. 국민 의료보험은 일년 이상 체류허가를 받은 외국인에게만 유효하고, 대부분의 접객업소 연예인과 연수생들은 배제된다. 생계보호법 아래서 응급치료비 지원은 영주자와 장기 거주자들에게만 유효하다. 공공서비스 배제를 포함하여, 민족차별주의는 일반화되어 있다. 주택공급, 취업, 대부 등의 이용면에서 개인적인 차별은 널리 존재하고 있으며, 심지어 영구 거주 한국인들마저도 외국인 혐오와 민족차별주의 폭력 뿐만 아니라 이런 차별로 고통받는지 오래이다. 자녀들의 자민족 교육에 어떠한 지원도 없다. 그런데 밀입국한 사람들을 포함해서 모든 노동자가 고용주에 의한 원천징수방식으로 소득세를 내고 있다.

17. 이주자지원조직들은 이주개혁이 토론되어졌을 때 1980년대 이후로 인권침해의 “보이지 않는” 희생자들에 대한 공식적인 인정을 제공하기 위한 사면과 합법화 프로그램을 요구해왔다. 1993년 포럼에서 합법화 이슈가 토론되자, 그것은 다른 형태를 취할 수 있었다. 국제적으로 수행된 첫번째 절차는 난민인정체계이다. 그런데 일본은 13년 동안에 200명의 국제협약 난민들만을 인정했다. 자신들을 노출하여 체포당할만큼 위험하고 성공할 희망이 없는 이 절차를 감히 받아들일 수 없는 정치적으로 자극받은 이주자들(버마인, 파키스탄 아마디Ahmadi, 중국인 아프리카인, 등)이 많다는 것이 알려져 있다. 두번째 방식은 “자신신고 기간”을 주고 한국의 정책처럼 사면하는 것이다. 단지 일본이 유사한 행동을 취한 경우는 1960년대에 전쟁후부터 오랫동안



일본에 체류했던 한국인 “불법 입국자들”을 합법화시킨 것이었다. 그러나 그것은 아직도 하나씩 처리되고 있고, 정부는 “가능한 호의적으로 고려했다”고 말했다. 현재 상황에서 일본인과의 결혼은 밀입국 이주자가 이민국에 자신 신고하여 개인적 사면(법무성의 자유재량에 의한 일방적이고 행정적인 결정)을 요구하는 유일한 경우이다.

18. 여성노동자들의 고용기회의 부족은 성관련 산업에서 높은 비율로 중사하게 했다. 특히 태국인과 필리핀인들은 범죄 조직의 통제아래서 (때때로 일본인들과 결혼으로 위장되어 있다) 가장 심각한 인권침해를 당하는 희생자들이다. “지위의 합법화”가 이 문제의 해답을 주지 않는다. 외국인 여성을 위한 직업/훈련 창출은 효과적인 여성불법거래 방지와 이주여성 스스로의 제어능력 갖추기와 함께 병행되어야 한다.

#### IV. 노동조합, 민간단체, 이주 노동자 조직의 행동.

19. 언어 장벽과 법적 취약성 때문에, 곤경에 처한 이주노동자들 대부분은 노동조합에 가담하지 않는다. 노동조합 측에서도 (공장들 사이의 차이가 커지고 정규노동자와 시간제 노동자로 나뉘어지는 따위의) 부채질 형태로 분할되는 (sectorarism) 문제를 갖고 있다. 그래서 이주노동자들을 위해 국제적으로 일하는 노동조합은 일반적으로 아주 적다. 이주노동자들을 고용한 공장들 대부분은 규모가 작고, 일본 노동자들을 위한 노동조합조차도 조직되어 있지 않다. 그런데, 아주 적극적이고 성공적인 연대를 이룬 노동조합 사례도 몇개 있다. 중소기업 노조연맹인 전통일노동조합 외국인노동자분회(Zen-toitsu-FWBZ)이 1992년 이래로, 전노협전국일반 동경노동조합(Zenkoku-Ippan)-FLU이 1992년부터, 지역사회 노동조합(community union)인 전국일반노동조합 동경지부(Zenkoku-Ippan-Nanbu)이 1974년

부터, 역시 지역사회 노동조합인 카나가와시 지역노조(Kanagawa City Union)가 1991년부터 지금까지 이주 노동자들을 위해 일하고 있다. FWBZ는 한 명의 방글라데시 정규노동조합 운동가를 두고 있고, 591명의 이주노동자 회원들 대부분은 남아시아 사람들이다. Kanagawa City Union은 874명의 이주노동자 회원을 갖고 있는데, 이들중 84%가 주로 건설 노동에 일용직으로 고용된 한국인들이다. Nanbu는 523명의 회원을 갖고 있는데, 대개는 카프카스어(Caucasian language)학교 교사들이다.

20. 노동문제를 해결하려는 매일매일의 투쟁은 임금체불, 조업 단축에 따른 일시 해고(layoff), 산업재해, 이주노동자 조합의 조직 사건들을 포함하며, 가끔은 교통사고 사례도 포함한다. 앞서 언급한 네 조합들과 그 외의 조직들은 금년에 이주노동자 사례와 투쟁에 관한 “백서”를 공동 발간했었다. 이 조직들은 춘투(春鬪)도 공동으로 수행한다.
21. 다양한 도시의 민간단체들은 1980년대 후반에 이주노동자 구호 작업을 시작했다. 요코하마의 Kalabaw-no-kai, 도쿄의 CALL Network, 나고야의 ALS, 오사카의 Asian Friend가 첫조직들이고 다른 조직들이 뒤이어 시작했다. 이제는 AJKON(아시아 이주노동자들에 관한 포럼)이 전국적으로 100개 이상의 민간단체들과 연락관계를 갖고 있다. 작은 규모의 지역 민간단체들은 상담용 전화를 설치하고, 노동 문제와 결혼, 이혼, 자녀 양육, 이주자격에 관련된 법적 문제를 해결하고 소송사건을 지원하는데 적극적이다. 몇몇 그룹은 여성을 지원하고 임시 피난처를 제공하는 일로 특화되어 있다. 몇몇은 저렴한 법률상담을 위한 변호사 집단이다. 그리고 몇몇은 이주노동자들을 위한 사적인 의료보험조합을 조직했다.
22. 또한 민간단체들은 공동으로 정부와 대화하고 정책형성에 영향력을 행사해왔다. 노동법은 노동자의 법적 지위와 관

계없이 평등하게 이행되어야 한다고 선언된 이래로 노동부가 표적이 되었다. 노동부 장관은 노동문제가 해결되기 전에는 노동 사무소가 출입국 사무소에 신고하는 것(reporting)을 참가하겠다고 민간단체들에게 답했다. 요즘의 표적은 응급 치료와 보험 시스템에 관한 정책을 관리하는 보건복지부 장관이다. 그런데 장관의 태도는 너무 배타적이어서 심지어 한신 대지진 같은 상황에서도 이주민들은 처리과정에서 (별도 보고서에서 설명했듯이) 차별받았다. 법무장관은 “이주통제 기본계획”이라는 정부정책을 형성시키는데 핵심적인 부분이다. 그러나 이 정책은 대중적 논의를 결여했고, 국회에서조차 깊이있게 토론되지 않았다.

23. 일방적인 국가정책 형성이라는 주어진 조건에서, 지방자치체는 정책의 체계를 완성하는데 (in implementing the system) 중요한 역할을 할 것이다. 예를 들어 응급치료는 중앙정부에 의해 지침이 주어짐에도 불구하고 지방 정부의 책임이다. 고베시는 정부 권고 없이 대학교 진학 이전의 학생환자들에게 응급치료비를 지불해왔고 이 사례는 이제 법률소송으로 제소된다(is filed as a law suit). 많은 민간단체들은 지방정부관청에 이주 노동자들을 이민법에 의한 그들의 지위와 무관하게 완전한 권리를 지닌 “지역주민(local residents)”으로 간주할 것을 요구하고 있다. 이주 노동자 문제 이전에 “지방 자율성”의 질이 의문시되고 있다.

24. 이주노동자 조직은 법적 지위의 취약성과 일본 사회의 지지 결핍으로 인해 널리 설립되어 있지 않다. 만약 일본 사회가 3세대 한국인이 그들 고유의 한국 이름을 어떠한 망설임도 없이 사용하는 것을 인정할 정도로 충분히 “개방적”이라면, 또는 난민들이 그들의 문화적 동질성을 유지하고 자기들 끼리 친교를 더욱 가시적으로 형성하면서 사회의 일부가 되는 것을 허용할 정도로 충분히 “관대”하다면,

혹은 일본 국적의 이주민 아내와 그 자녀들이 “동질적인” 사회에 융합되도록 강제받지 않는다면, 이주민사회 스스로가 새로 입국하는 노동자들을 지원할 수 있을 것이다. 일본에는 민족적, 종족적, 문화적 기반에 따라 형성된 이주민 조직들이 몇 개 있다. 카톨릭 교회는 그러한 (예를 들자면 필리핀인들을 지원하는) 조직을 위한 기초환경 중에 하나이다. 일본인 민간단체들은 이런 기초환경과 연대를 강화해야만 한다.

#### V. 이주 노동자 문제의 국제적 노력

25. 어떤 민간단체들은 인권옹호를 위한 국제연합(UN) 절차(procedure)에 따른 중재를 얻기 위해 노력해왔다. 일본은 국제적인 기준을 받아들이는데 인색하며 그것을 이행하는데는 더 인색하다. 그래서 국제적 수단은 개인적인 사건들을 해결하는데 실천적으로 사용될 수 없다. 그래서 민간단체들은 정부에 압력을 행사하기 위해 “수치스러운 현실”인 일본 이주민 상황에 관해 국제회의에 알리고 호소해왔다. 이주민 여성들의 상황은 “오늘날의 위안부(comfort women today)”을 주제로 소집된 유엔 회의에서 여러번 보고되어 왔다. AJKON은 일본기독교협의회(National Christian Council; NCC)와 함께 세계교회협의회(World Council of Churches; WCC)의 국제조사팀을 초청했고, 1992년 유엔 인권소위원회(UN Sub-Commission on Human Rights)에 호소했다. 1993년에는 일본의 인권 상황에 관한 일본정부 보고서를 논의하는 시민적 정치적 권리에 관한 위원회(Committee on Civil and Political Rights)에 많은 대안적인 보고서들이 보내졌다.

26. 아시아 지역은 이주 현상에 많이 관련되어 있다. 그런데 아시아에는 인권을 보호하기 위한 공동의 (지역) 법률 틀이 없다. 우리는 이주민들을 위한 비전과 공동 목표를 갖

는 국경을 초월한 연대를 강화해야 한다. 유럽에 의해서 시작되었지만, 이주노동자의 권리와 그들의 가족성원 보호에 관한 1990년 유엔 국제협정(1990 UN International Convention on the Protection of the Rights of Migrant Workers and Members of Their Families)은 이주노동자들이 존엄하고 평등하게 살 수 있는 사회의 원리를 가시화한 기본적인 문서일 수 있다. 우리는 공동 연구와 공동 투쟁을 발전시켜야만 한다. 남한은 이제 보내는 동시에 받아들이는 나라이다. 한국은 자국민들을 위한 매우 강력하고 진보적인 노동조합을 갖고 있다. 한국은 정부의 "혁명적" 변화를 경험했다. 나는 한국 국민들이 한국인들을 뿐만 아니라 세계각국으로부터 온 이주노동자들을 위하는 진정한 노동자유를 실현할 수 있으리라고 아주 많이 기대한다.

## HUMAN RIGHTS OF FOREIGNERS AT THE EARTHQUAKE

### 1. Sufferings of Foreigners

At the Hanshin Great Earthquake on the early morning of January 17, 1995, a large number of foreigners lost their lives and basis of living, as Japanese did.

The statistics show that 98,795 foreigners are on the record of the alien registration in Hyogo prefecture as of the end of July, 1994. It is consisted of 70,862 Koreans (both from R.K. and D.P.R.K.), 13,344 Chinese, 2,949 Brazilians, 2,133 Americans, 1,622 Vietnamese, 1,316 Filipinos, 1,074 Indians, 778 Peruvians and others.

The number of those who stay in the area with an expired visa is unknown. There are 250 Vietnamese sufferers who have moved to Kobe city from their previous place at the Settlement Promotion Center for Indochina Refugees in Himeji city of Hyogo. In Kobe city, Korean residents live and work around the chemical shoe industry in Nagata-ward, and Iranians, Bangladesh, and Pakistanis found their jobs at the related factories in the area. Newly arrived Koreans and Filipinos found their jobs in amusement quarters in Sannomiya and Shinkaichi. In the industrial zone stretching from Higashinada-ward in the west and Amagasaki city in the east, many foreigners including those with expired visas worked. Around Nada-ward, many foreign students mainly from China and South Korea live.

The estimate shows that about 4,500 foreigners suffered from the earthquake. It includes Korean permanent residents who concentrate in Nagata-ward, Chinese permanent residents, Indochinese refugees, the Brazilian and Peruvian workers and their families (the Japanese-descendants), 1,400 foreign students at universities or colleges, 800 foreign students at language schools, documented foreign workers, and undocumented foreign workers.

According to the announcement made by the Hyogo prefecture on April 14, 179 foreigners from nine different countries were killed by the earthquake in the prefecture including 117 Koreans, 44 Chinese, eight Brazilians, three Burma, two Americans, two Filipinos, and each one from Algeria, Australia and Peru. However, it is suspected that more foreigners were killed than the official death toll, since the alien registration is required for foreigners who intend to stay in Japan for more than 90 days and there are many undocumented foreigners. Regarding the missing

office set up in the middle of the earthquake stricken-area, they continually sent the up-dated information to the related groups. The Center was also very active in supporting the weak including foreigners, the aged, and the disabled. It also created the FM station called 'FM Yoboseyo (Hello)' to Korean listeners, and helped creation of the FM station 'Yumin' to Vietnamese.

To Korean sufferers with permanent visas (both from R.K. and D.P.R.K.), the Mindan and the General Association of Korean Residents in Japan as well as other organizations of Korean residents and Japanese have immediately started the relief work. They also received support from the home country. At the Western Kobe Branch of Mindan and the Western Kobe Primary and Secondary School of Korean Students, people provided meals not only to Korean residents but also Japanese or foreign sufferers.

With the support of International Department of Kanagawa prefectural government, the 'Center for Restoration of Life of Foreign Permanent Residents' will be opened in June in Nagata-ward where many Korean residents live. The Center will have a full-time staff and start the program to help foreign residents solve their problems in employment, housing, and etc.

#### 4. International Human Rights Guarantee

All sufferers are entitled to the human rights remedy and guarantee. It is supported by the fundamental principles established in the international human rights instruments including the International Covenants on Human Rights. 'Everyone is entitled to equally receive legal protection without discrimination (as set forth in the Article 26 of the International Covenant on Civil and Political Rights, or the Covenant B, and the Article 2-2 of the International Covenant on Social, Cultural and Economic Rights, or the Covenant A),' 'Everyone is to be respected as human being wherever he/she is (as set forth in the Article 16 of the Covenant B),' 'the right to receive social guarantee (as set forth in the Article 11 of the Covenant A),' and 'the right to enjoy physical and mental health (as set forth in the Article 12 of the Covenant A)' should be referred. To guarantee the human rights of everyone, the Japanese government needs to accept and follow what the International Covenants set forth in the articles. The administration should implement relief programs for all sufferers regardless of nationality, visa status, sex or age. Relief work in the private sector should also follow this principle. Especially, careful and thorough relief programs should be implemented for the weak and national or ethnic minority groups

including children, women, the disabled and foreigners.

#### 5. Medium-Term and Long-Term Goals in Relief Work for Foreign Sufferers

5-1. Persistent campaign towards the realization of equal provision of medical compensation, relief money and condolence money to foreigners by the national and local governments.

#### 5-2. Support to Korean Residents:

At the earthquake, 131 Korean residents lost their lives (105 people with the South Korean nationality, 19 with the North Korean nationality, and seven with Japanese nationality). 1,489 houses of Korean residents and 206 buildings owned by Korean businessmen were completely or partially destroyed (according to the announcement made by the Mindan on March 16). 1,489 Korean families stay in the evacuation centers as of March 27 according to the announcement of the Mindan made on the same day.

Among 13 Korean schools in Hyogo prefecture, seven schools were completely or partially destroyed. Reconstruction of Korean Schools is an important issue for Korean residents (both from R.K. and D.P.R.K.) as well as for Japanese. Under the 'Law regulating the State Liability for Recovery of Public Schools from Disasters' and the 'Law regarding Extremely Heavy Disaster,' the state subsidy is provided to public schools at two third (maximum nine tenth) of total reconstruction cost of school buildings and to private schools at a half of total cost.

The Korean schools have been discriminated against by the government in its classification of schools. As they are classified as 'vocational school,' they do not fall in the category set forth in the above two laws. This time, however, the government has decided to take an extraordinary measure in the provision of state subsidy to schools. Affected vocational schools are able to be compensated for their reconstruction cost at the same level the laws set forth for private schools. However, the government has also decided to add an extra money to the state subsidy to be provided to private schools, thus making a distinction from vocational schools. Realization of guarantee of national education for Korean children requires financial endorsement. Realization of human rights of minority groups should include realization of the right to education as the top priority.

Also the Hyogo prefectural government has decided the exemption of tuition to be applied for public and private high school

students in the stricken-areas while the local government provides schools with subsidy to compensate the exempted tuition. But it is not applied for students of Korean Schools. Campaign should be conducted to apply the exemption program for Korean students. On the other hand, Korean entrepreneurs of small and medium sized business who were affected mainly in Nagata-ward should be supported in their business reconstruction.

#### 5-3. Community Building with Participation of Residents

The administration is strongly pushing the implementation of city planning which greatly restricts exercise of the private right and gives an importance to the administration guidance. Building of community should reflect opinions of community people. It is the principle of the self-government of towns. Foreigners with permanent visas and short-term visas should be invited to community building as community members.

Some Korean residents have set out the plan to reconstruct Nagata-ward as to be a 'world town.'

#### 5-4. Mental Care

Mental care for foreign sufferer is required. Implementation of a thorough administration service to aged Korean residents, the disabled and women is also much needed.

5-5. To work for the solution of these human right problems, all groups and individuals regardless of nationality should work hand in hand. It is important for all of us to steadily build a reliance among ourselves while working together for a common goal. People in Kobe are getting more aware of the necessity to continue the consultation service to foreigners on various human right problems not limiting to those relating to the earthquake. Though the damage is extremely severe, we are determined to try to expand the network of human rights protection for foreigners in Japan.

prepared by:

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RINK

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After the earthquake, house rent is becoming more difficult to foreigners. Koreans or Chinese with a permanent visa are often rejected to rent an apartment room for the reason that they are 'foreigners.'

Foreigners are also facing labor problems such as dismissal or suspended payment. Close of language schools is also a serious problem to students forcing them to change their schools. Some foreign workers who lost their jobs at the earthquake are said to have found their jobs to dismantle destructed buildings in Kobe city. The work environment is not safe to their health as the dismantling accompanies the emission of asbestos.

### 3. Support to Foreign Sufferers

Right after the earthquake, the relief work for foreigners has started and developed steadily. As the earthquake is said to have invited the so-called 'Volunteer Era,' many volunteer groups were formed to help sufferers at the grass-root level. The volunteer spirit was quickly spreading. Foreigners also joined in volunteer works. When the Kobe city hall was recruiting volunteers, for example, some foreigners applied to it.

Support groups for foreign sufferers were formed in churches such as in Nakayamate catholic church and Takatori catholic church. YWCA in Kobe and Osaka was providing foods and daily goods to foreign sufferers. The Local NGO Relief Liaison Committee and the Network for Relief of Foreigners were formed. With the initiative of the Korean Church Committee, the Liaison Committee for Support to Foreign Sufferers was formed, and is currently communicating the Korean sufferers who have been back home after the earthquake and raising relief fund for them. The fund has amounted to seven million yen to date.

In Osaka, the Earthquake Information Center for Foreigners was set up by RINK, or the Network for Human Rights of Foreign Workers and Their Families, and other groups. The Center has been continually doing the support work to foreign sufferers including the provision of information. Toyonaka International Association has started the support work mainly by helping foreigners find their new housing immediately after the earthquake. Kobe Student Youth Center has started the support program to foreign students by providing 30,000 yen to each. As of April 4, 763 students have received its financial support.

Also, Nagata Center to Support the Weak Affected by the Hanshin Great Earthquake was formed right after the earthquake. From the

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the earthquake, the NGO negotiation group is considering to set up a fund to supplement medical fees of those foreign sufferers and later to claim the government to compensate the amount if the government will not come out with a positive answer.

The provision of relief money or condolence money under the Law of Condolence Money for Victims of Disaster is also another problem for foreign sufferers. Especially, in the case of undocumented workers, the availability of monetary relief is a crucial issue. The Hyogo regional headquarters of Japan Red Cross, which is responsible to the distribution of relief money, gave its comment on the issue of provision to foreign sufferers. It stated that foreigners without alien registration were also entitled to receive the relief money provided that they proved their stay in the area with an official evidence. The Red Cross gave many conditions to the foreign sufferers who came to apply to the provision. Some were said that certificates they got from their landlords were not acceptable as it was hand-written, or a certificate of consulate was necessary. The Red Cross expresses 'humanity' and 'peace.' The relief money is actually the contribution from people inside and outside the country, and it should be equally distributed to all sufferers. As a result of negotiations made by the local church people and NGO's rescue network with the Red Cross, foreigners became able to receive the relief money.

For the provision of condolence money, the Ministry of Health and Welfare gave their answer at the negotiation held on March 20 by saying, "Foreign sufferers are provided with condolence money on the condition that they are registered in the alien registration. We are afraid that tourists or 'illegal' residents would not be provided." The ministry's answer also indicated that the condolence money is provided according to the regulations of local governments and their opinions should be respected. The NGO groups will continue negotiations with Kobe city government.

### 2-3 Prejudice

The third wall is the discrimination and prejudice against foreigners. After the earthquake, there were many rumors about Asian workers. Some said that Chinese groups and Korean groups were on the streets to set a fire, or others said that Vietnamese were attacking women. These stories quickly spread over the evacuation centers where some 250,000 people in total were staying. However, the rumors were soon found to be groundless, and fortunately did not invite a tragic situation as was the case after the Kanto Great Earthquake.

Middle East, and 111 from other parts of the world. Of all calls, 715 were related to financial problem, 165 related to compensation, 155 related to housing, 150 related to jobs, 83 related to visas, 28 related to medical care, 22 related to transportation system, 11 related to tax payment, and 163 to other matters.

### 2.2 Law and System

Secondly, foreign sufferers have to face the wall of law and system. The Local NGOs' Liaison Committee and the Network for Relief of Foreigners have been negotiating with the Ministry of Health and Welfare for the provision of 'medical compensation' under the Disaster Relief Law. According to the Earthquake Information Center for Foreigners, the most costly medical cases as of March 13 are: the case of a Peruvian parent and child with expired visas who were charged two million yen each; a Korean with a expired visa charged one million yen; a Chinese charged 650,000 yen; and an American charged one million yen. The ministry responded to the request by saying, "The Disaster Relief Law is applicable to sufferers in disaster-stricken-areas who need to be relieved, regardless of nationality or visa status. As for the medical treatment, it is limited to an emergent aid provided by medical teams. If seriously injured and taken to a hospital, then the health insurance is applied." This means that foreigners who cannot subscribe the national health insurance have no assistance available to them.

Everybody equally suffer from natural calamity. From the viewpoint of guarantee of fundamental human rights, the position of the Ministry is very closed.

Subscription of the national health insurance requires a visa durable for more than a year. Recently exception was made for some cases. For example, when foreigners with visas to expire in a less than a year have a probability to extend their visas and stay for over a year, then they are qualified to subscribe the insurance before the first visa expires. However, when foreigners do not meet with these conditions, then they do not have an access to the health insurance. It is exactly the case with undocumented workers. It is becoming a big social issue.

At the negotiation table with the NGO negotiation group, Mr. Ozato, the minister in charge of measures to deal damage and suffer caused by the Hanshin earthquake, answered that the government would examine the availability of relief to foreigners while respecting the present systems. However, the problem still remains unsolved. Since more than four months has passed after

among undocumented foreigners, it is very difficult to confirm an exact number, since many of them try to keep eyes of others away from them or use different names.

Foreign sufferers have taken different actions to cope with the damage. It can be classified into four. One is those who went to evacuation centers as they lost their houses. The second is those who moved to other prefectures to find new jobs. The third is those who left for their countries out of dread of earthquake. Lastly, those who remain in the same houses which were not heavily damaged. 158 undocumented workers reported to the immigration office and left the country. From the alien registration record in Hyogo prefecture, 722 foreigners removed their names due to death or transfer to other areas. (The above statistics are as of April 15.)

## 2. Walls against Foreign Sufferers

### 2.1 Language

At emergency like the earthquake, problems that foreigners face come up to the surface at once. The language problem becomes very serious. The information and news about the earthquake was continually announced in Japanese, whereas a little was announced in foreign languages. One Korean who came to Japan to work met the earthquake. When he accidentally saw a notice in Korean, he felt a great relief, and immediately took his way to the Korean organization, which issued the notice, for rescue.

At the administration level, although it was not enough, the Hyogo prefectural government created a consultation desk open to foreign sufferers, and Kobe municipal government also did the same. Hyogo police gave the information in several languages in response to inquiries into victims or the missing among foreigners. The local FM radio station 'Kiss FM' also repeatedly gave news and announcements in foreign languages.

In Osaka, the Earthquake Information Center for Foreigners was set up by several non-governmental groups. The center issued newsletters in 13 different languages and gave information and consultation service on telephone. By April 23, the center received 844 calls for consultation and information from foreign sufferers. They include 183 calls from Spanish speakers, 168 from Chinese speakers, 80 from English speakers, 80 from Filipino speakers, 51 from Portuguese speakers, 31 from Korean speakers, 42 from other Asians, 25 from Europeans, 18 from Vietnamese, 14 from Indonesians and Malaysians, 11 from Thai, 11 from those from

## 제해시 외국인의 인권

발제 : RINK(외국인노동자와 그 가족들의 인권을 지키는 관서 네트워크) 사무국장 모리키 가즈미, 사무국 재일한국민주인권협의회 고정선

### 1. 외국인의 피해상황

95년 1월 18일 미명 한신 대지진으로 일본피해자와 마찬가지로 많은 외국인이 피해를 받고 사망하거나 생활기반이 파괴되고 말았습니다. 94년 6월말 현재 효고현에서 거주하면서 외국인등록을 하고 있었던 외국인은 한국,조선인 7만 862명, 중국인 1만 3344명, 브라질인 2949명, 미국인 2133명, 베트남인 1622명, 필리핀 사람 1316명, 인도인 1047명, 페루인 778명 등 다 합쳐서 9만 8천 795명입니다.

효고현 산하에서 초과체류자수는 정확히 파악되지 않고 있습니다. 효고현 히메지에 있는 베트남난민 정주촉진센터에서 고베로 옮겨져서 피해를 맞은 베트남인은 250명에 달합니다. 고베시내에서는 나가타구에 있는 케미컬 슈즈산업에 대표적으로 재일한국 조선인이 많이 살고 있고, 그 관련공장 노동자로서 이란 사람, 방글라데시 사람, 파키스탄 사람이 일하고 있었습니다. 산노미야(三宮), 신가이티(新開地) 등 번화한 거리에는 체류 한국 사람, 필리핀 사람, 히가시나다(東灘)에서 아마가사키(尼崎)에 이르는 공장지대에는 초과체류자를 포함한 외국인노동자들이 많이 일하고 있었으며, 또 나다구(灘區)를 중심으로 해서 중국인과 한국인을 비롯한 유학생 취학생들이 공부하러 와있었습니다.

이렇게 외국인피해자의 구성은 고베시 나가타구를 중심으로 한 재일한국, 조선인과 중국사람 등 영주자격자(특별영주를 포함), 인도시나난민, 브라질, 페루 등 일본계 2,3세 노동자와 그 가족들, 효고현에서 공부하러 온 약 1400명의 유학생, 약 8백명의 취학생들, 합법외국인 노동자, 초과체류자를 포함해서 약 4500명이라고 추정됩니다.

외국인 사망자수는 효고현내에서 9개국 179명이나 되고, 국적별로는 한국, 조선인 117명, 중국인 44명, 브라질인 8명, 미얀마인 3명, 미국인 2명, 필리핀인 2명, 알제리인 2명, 호주, 페루 각 1명씩입니다. (1995년 4월 14일 효고현 발표) 그러나 외국인등록은 90일 미만 단기체류자에게는 불필요하고 불법체류자에 대해서는 실상이 파악되지 않고 있는 것을 감안하면 실제 사망자수는 더욱 늘어날 것으로 보입니다. 행방불명자는 특히 초과체류자일 경우에는 숨기고 생활하고 있거나 위명을 쓰고 있는 사람이 많기 때문에 정확한 숫자는 파악하기가 어렵습니다.

지진직후부터 몇 일 사이에 외국인 피해상황은 집이 무너지거나 화재로 피

난처로 간 외국인, 한신지역에서 탈출하여 기타 부현으로 이동한 외국인노동자, 지진에 대한 두려움으로 귀국을 희망한 외국인, 그리고 지금도 집 손해가 미미하기 때문에 그대로 머물고 있는 외국인 등 크게 네가지 경우로 나눌 수 있습니다. 초과체류자 신분으로 귀국하기 위해 입관국에 출두한 초과체류자 등 피해 외국인노동자는 158명에 달합니다. 또 효고현에서 귀국 사망하거나 기타 부현으로 전출하여 외국인등록이 취소된 외국인 숫자는 722명에 달합니다. (4월 15일 현재)

## 2. 외국인 피해자에 대한 장애

### (1) 말 문제

긴급지진 때에는 지금까지 있었던 외국인노동자 인권문제가 집약적으로 나타날 것입니다. 외국인피해자 문제에 관해서는 먼저 말소통 문제가 있습니다. 일어로 진재에 관한 정보가 많이 보도되었으나 가스와 수도물이 차단된 상황에서 그리고 여진도 계속되는 조건에서 외국인을 대상으로 한 생활보도가 적었다고 지적되고 있습니다. 한국에서 와서 행방불명되었던 초과체류자가 재일동포단체가 붙여 놓은 배라를 보고 눈물을 흘리는 모습이 나타난 경우도 있었습니다.

그러나 불충분하지만 이번에 진재직후부터 효고현 국제과 교류협회에서는 외국인 피해자를 상대로 하는 상담활동을 개시하고, 고베시도 외국인을 대상으로 하는 상담창구를 설치했습니다. 또 효고현 경찰서도 외국인 행방불명자와 사망자에 대한 문의를 외국어로 받도록 했습니다. 효고현에서는 외국인을 대상으로 하는 [FMKISS]가 개시되고 외국인을 대상으로 하는 지진미디어로서 활동을 시작하고 있습니다.

오사카에서는 1월 22일 관서에서 외국인노동자 문제를 다루고 있는 단체들이 모여서 외국인 지진정보센터를 설립하여 13개 언어로 [news letter]를 발간하고 외국인피해자에게 정보제공을 시작했습니다. 상담 건수는 4월 23일까지 844명의 외국인과 상담이 있었습니다. 국적별로 보면 스페인어권 183건, 중국어권 168건, 영어권 80건, 필리핀 80건, 포르투갈어권 51건, 한국 31건, 기타 아세아 42건, 구라파 25건, 아프리카 19건, 베트남 18건, 인도네시아 말레지아 14건, 태국 중동 각 11건, 기타 11건입니다. 상담 내용별로 보면 금전문제 715건, 보상 165건, 주택 155건, 일 직장문제 150건, 사증 83건, 안전 67건, 의료 28건, 교통기관 22건, 세금 11건, 기타 168건입니다.

### (2) 법률 제도 문제

두번째로 법률 제도의 문제가 있습니다. 효고현에서 NGO연락회의 외국인 구원네트 등을 중심으로 재해구제법에 따른 의료보상을 후생성에 요구하고 현재

교섭이 진행중입니다. 외국인피해자의 높은 의료비의 예로서, 페루 부자 각 2백만엔, 한국인 1명 2백만엔 (이상 초과체류) 중국인 1명 65만엔, 미국국적 1명 백만엔으로 교섭중에 있습니다. (이상 외국인 지진정보센터 3월 13일 현재 파악분) 후생성은 [재해구제법 적용대상자는 피해지역내에 있고 지금도 구제를 필요로 하는 자이고 국적, 합법, 비합법에 관계없이 적용된다. 그러나 의료내용에 대해서는 구호반이 실시하는 일시구호활동에 한정되고 증상환자를 다른 병원으로 옮기는 경우는 건강보험이 적용된다]고 대답하고 국민보험에 못들어가는 외국인의 경우에는 실제 의료보상을 받지 못한다고 대답하고 있습니다. 피해자 평등이라는 기본적 인권보장 관점에서 보면 후생성의 대답이 너무 폐쇄적이라고 말할 수 밖에 없습니다.

현재 일본의 국민보험에 가입하려고 하면 1년 이상 합법적 재류자격이 있어야 합니다. 예외로서 취학생의 경우는 재류자격이 6개월이라도 앞으로 1년 이상 일본에 체류할거라고 전망된 사람은 국민보험에 들어갈 수 있게 되었습니다. 그러나 재류자격기간이 이 조건 미만이거나 초과체류자인 경우에는 현재 국민보험에 들어가지 못하고 있으며 지금은 큰 사회문제로 되고 있습니다.

5월 10일에 실시된 코자토 사다토시(小里貞利) 지진대책담당대신하고 한 교섭에서는 [현행제도를 존중하면서 구제할 여지가 없는가에 대해서 검토하고 싶다]는 말을 얻었으나 아직까지 이 문제에 대해서는 해결되지 않고 있습니다. 효고현 NGO 외국인 구원네트 쪽에서는 진재 4개월을 맞은 5월 17일 잇점에서 명백한 대답이 없으면 의료비를 대신해서 지불할 기금을 만들어서 그 금액을 일본정부에게 청구할 것을 생각하고 있습니다.

다음으로 [의원금]과 재해조위금법에 따른 조위금수급자격 문제가 있습니다. 특히 초과체류자의 경우 그런 금전적 급부를 받을 수 있는지 없는지가 큰 문제로 됩니다. 일본적십자사 효고현본부는 [의원금] 지급에 대해서는 [외국인등록이 없다고 해도 거주 사실이 증명되면 지불할 수 있지만 그 증명은 공적 서류가 안되면 접수하지 못한다]고 말했습니다. 집 임자의 증명이 있어야 한다면 영사관의 증명을 받아야 한다고 비협력적인 대응에 대해서, 박애와 평등을 부르고 있으면서 그런 태도를 취하는 일본적십자사는 잘못하고 있습니다. 의원금이란 일본국내외에서 사람들의 성의가 담겨져 있는 기부금이요 같은 피해자에 대해서 평등하게 지불되어야 한다고 효고현에 있는 교회 외국인구원네트가 교섭을 되풀이 한 결과로서 겨우 의원금문제에 대해서 지급하게 되었습니다.

조위금문제에 관해서는 3월 20일 후생성교섭에서 [외국인등록이 있다면 지급하겠습니다. 다만 여행자 불법체류자의 경우에는 지급이 곤란하다]라는 대답이 있었습니다. 이번에 다시 실시된 교섭에서는 [시조촌 조례로 지급하게 되는 것이다. 시조촌의 의견이 존중되어야 합니다] 하는 것이었습니다. 앞으로 고베시하고 재차 교섭하려고 외국인노동자 구원단체쪽에서 생각하고 있습니다.



### (3) 편견의 벽

세번째로 편견의 벽이 있습니다. 실은 아시아계 외국인 노동자에 대한 유언비어가 흘렀습니다. 중국인 그룹이나 한국인 그룹이 불을 내고 있다거나 베트남 사람들이 여성들을 강간하고 있다는 유언비어가 나돌았습니다. 25만명이 피난지 생활을 하고 있는 조건에서 순식간에 진실처럼 유언비어가 유행되었습니다. 그러나 관동 대지진 때처럼 되지는 않고, 유언비어는 유언비어일 뿐이라고 순식간에 명백히 되어 그리 크게는 유행되지 않았습니다.

현재 중국인 한국인이라는 이유로 민간임대주택에서 임대를 해주지 않는 경우가 많아지고 있습니다. 그리고 외국인에게 있어서 재류자격에 직결하는 해고 문제, 체불문제 등 노동문제 일본어학교도 괴로 생각하고 있는 취학생의 진교문제가 지금 문제로서 나타나고 있습니다. 일자리를 잃은 많은 외국인 노동자가 있습니다. 현재 그 일부가 지금 고베에서 하고 있는 건물 해체사업에 종사하고 있는 것 같습니다. 아스베스트 문제 등 환경악화가 지금 우려되고 있는 상황에서 그들의 건강문제가 걱정이 됩니다.

### 3. 외국인피해자에 대한 지원활동

진재직후부터 외국인피해자에 대한 구원활동이 착실히 진행되어 왔습니다. [volunteer 원년]이라고 불리듯이 풀뿌리처럼 이번에 봉사단체가 많이 만들어지고, 같은 인간/시민이라는 입장에서 구원의 목소리가 커지고 있습니다. 외국인 자신도 구원활동에 참여하고 고베시청에서 보란티이를 모집했는데 모집에 온 외국인의 모습도 있었습니다.

외국인피해자를 지원하는 조직으로서 먼저 교회를 들 수 있습니다. 나카야 마테(中山手) 교회, 타카토리(鷹取) 교회 등이 구원활동을 전개했습니다. 또 YWCA도 외국인 피해자에 물자공급활동을 했습니다. 아까 말씀드린 효고현 NGO 연합회의 -- 외국인구원네트도 만들어졌습니다. KCC를 중심으로 한 외국인 지원 연합협의회가 결성되었습니다. 현재 외국인피해자 지원연합협의회쪽에서는 한국에 귀국한 피해자와 연락을 하고, 그들을 위한 기금활동을 하고 있으며 벌써 7백만엔이 모금되었습니다.

오사카에서는 RINK를 비롯한 외국인노동자 지원단체가 모여서 지진정보센터를 설립하고, 외국인피해자에 정보제공을 위주로 하는 지원활동을 지금도 전개하고 있습니다. 토요나카시(豊中市) 국제교류협회는 피해 직후부터 주로 외국인 피해자에게 주거제공활동을 하고 있으며, 고베 청년학생센터에서는 유학생과 취학생에게 지원활동을 했습니다. (765명의 유학생과 취학생에게 생활일시금으로 3만엔을 지급했습니다. (4월 4일 현재) 지진 직후부터 현지에 본부를 두고

한신대지진 약자자립지원을 하는 나가타센터가 현지상황을 수시로 관서관련단체에 팩스통신을 하고 현장에 들어가서 외국인, 고령자, 장애인 등 [진재약자]에게 지원활동을 활발히 전개했습니다. 또 재일동포와 한국사람을 대상으로 하는 FM여보세요를 개설하고 베트남으로 방송하는 FM유우민 개국을 원조했습니다.

가장 산재피해를 많이 입었던 재일동포는 총련과 민단을 비롯한 많은 재일동포단체와 일본단체와 본국으로부터 따뜻한 지원을 받았습니다. 민단 서고베지부에서도 서고베 초중급학교에서도 일본사람 재일동포 가리지 않고 따뜻한 음식 제공을 해서, 일본사회가 이에 대해서 크게 감동했습니다. 현재 카나가와(神奈川)현 국제교류과에서 지원을 받아가지고, 재일동포가 많이 살고 있는 나가타에서 [정주외국인생활복지센터]가 이번에 6월에 발족됩니다. 상근을 한 명 두고, 주로 취직문제와 거주문제를 중심으로 각종 사항을 다룰 계획입니다.

### 4. 인권의 국제적 보상

모든 피해자에 대한 인권구제보장이라는 기본이념은 [모든 차별없이 법률로 평등히 보호받을 권리](B규약 26조, A규약 2조 2항)가 있고, [모든 사람은 모든 장소에서 사람으로서 인정받고(B규약 16조)] [사회보장(A규약 11조)] [신체 및 정신의 건강을 향유할 권리(A규약 12조)]가 있습니다. 일본정부는 A,B규약조항을 그대로 인권의 국제적 보장이라는 면에서 생각하는 것이 필요합니다. 모든 피해자에게는 국적, 재류자격의 유무, 성, 연령 등의 차이에도 불구하고 각종 행정시책이나 민간구호활동이 실시되어야 한다고 생각합니다. 특히 아이들, 여성, 장애인, 외국인 등 [재해약자] [내셔널 마이노리티] [에스닉 마이노리티]에 대해서는 따뜻하고 충분한 시책이 필요합니다.

### 5. 외국인피해자에 대한 중장기적 과제

(1) 의료비보상, 의원금, 조원금, 평등급부를 위해서 일본정부와 지방자치체에 대해 끈질긴 요구투쟁을 전개하고 실현해야 합니다.

(2) 재일동포가 많이 희생당했습니다. 사망자수는 131명(한국 국적 105명, 조선국적 19명, 일본국적 7명) 이고, 부상자수는 122명, 가옥피해는 전.반괴가 1489가옥이나 되고, 동포기업 건물도 전.반괴가 206호로, 합쳐서 1695호수나 됩니다. (이상은 민단 3월 27일 현재 발표분) 그리고 피난하고 있는 가구가 2671가구나 됩니다. (3월 27일 현재 민단 발표) 특히 효고현 산하에서는 우리학교가 13개 있고 그중에서 7개 학교가 전.반괴의 피해를 입었습니다. 효고현 산하에 있는 우리학교 재건문제는 재일동포와 일본사람 전체에게 중요한 과제로 되고

있습니다. [공립학교 재해복구비 국고부담법] [식진재해법]에 따르면 교사복구 비용 중 보조로 공립학교에 대해서는 3분의 2에서 최대 10분의 9를, 사립학교에는 50%의 국고보조를 결정하고 있습니다. 그러나 우리 학교에는 [각종 학교]로 간주해왔기 때문에 차별대우를 받아 왔습니다. 그 결과로서 각종 보조 대상에서 빠져 왔습니다. 이번에 일본정부는 특례조치로서 각종학교의 경우에도 종래 사립학교 기준의 복구비 보조를 결정했습니다. 그러나 사립학교에는 50% 보조에서 더 보조액을 늘이도록 결정한 결과 사립학교와 보조율에서 차이가 생겼습니다. 민족교육보장은 재정적 보상이 불가피하고 마이노리티 인권과제에 있어서 교육은 가장 중요한 과제입니다. 또 효고현은 피재 효고현립학교와 사립학교 수업료 면제를 결정한 바 있으나 우리학교에는 적용하고 있지 않습니다. 우리학교 학생에게도 수업료면제 특별조성조치를 요구해나가는 것이 필요할 것입니다. 더우기 나가타구를 중심으로 한 재일동포 중소기업체 기업가에 대한 기업재건 지원활동도 중요합니다.

(3) 현재 일본 행정은 주민의 의사를 무시하면서 재해복구를 구실로 삼아 엄청난 사권제한과 행정주도형의 도시계획을 실시하려 하고 있습니다. 지역 커뮤니티를 어떻게 창조하는가, 주민/시민의 의사에 의거해서 어떻게 실현하는가가 주민자치의 기본이라고 생각합니다. 지역에 거주하는 재일, 체류외국인의 의사를 새로운 거리창조 정책과정에 어떻게 반영시키는가가 문제로 되고 있습니다.

(4) 재일, 체류피재자의 정신적 보살핌, 특히 재일동포 1세 등 고령자, 장애인, 여성에게는 충분한 시책이 필요합니다.

(5) 그러한 인권과제를 해결하기 위해서 재일 체류단체의 개인과 외국인지원 연대단체의 개인과 공동운동이 필요로 되고 있고, 양자간의 신뢰관계에 기초한 연계관계를 착실히 만들어 나가는 것이 필요합니다. 이번에 진재를 계기로 고베에서도 피재외국인 뿐만 아니라 일반 외국인을 상대로 한 인권상담을 계속 해나가야 한다는 자각이 높아지고 있습니다. 피해는 막대한 것이었으나 앞으로 외국인 인권을 지키는 활동을 힘차게 해나가겠다고 마음먹고 있습니다.

## Abstraction

Jurgen Eckl

### Union Perspectives for an integrated Migration Policy

#### 10 Thesis

1. Migration is a feature of every modernization process and all open societies. The Federal Republic of Germany has been a country of immigration for more than 40 years. To many of the foreigners who immigrated to the Federal Republic of Germany in the course of these years this country has become the place where they spent a very important part of their lives, some have acquired German nationality but all of them have their home here and are now part of this society. Legislation, however, has not paid sufficient heed to these changes in society.

2. Considering the expected economic, social and demographic development of the European Union, we will need immigration also in the future and at the same time, more and more citizens of the Union will be living and working in foreign countries. We have to adapt ourselves to this situation and develop adequate regulations.

3. It would be wrong to regard immigration as a mere menace. Especially the variety of cultures represents an enrichment of social and daily life. This has been proved by decades of coexistence with the foreign workers. The DGB and its trade unions have created essential conditions for the integration of foreign workers within the professional ambit. The possibilities of the works councils' and the trade unions representation of interest had been and are used to further and improve the understanding between foreign and German workers. People of all nationalities have fought together in the Confederation of German Trade Unions for social security and better working conditions.

Without the foreign workers, the existence of whole branches would be threatened. We need our foreign fellow-citizens.

4. Due to the German experience the DGB warns against the conclusion that employment for migrants is only available when there is a shortage of labour. Recruitment in the 1950s (when 1,5 million were registered as unemployed) and the employment situation in the 1980s as well as the influx of settlers from abroad at the beginning of the 90s have shown that the demand for labour cannot be covered by the indigenous (German and foreign) unemployed or job-seekers alone. The interest of the indigenous (German and foreign) population in social security must be acknowledged as justified but placed on one level with the interest of migrants who want protection and better lives.

5. The Confederation of German Trade Unions supported and supports the demands for integration of foreign workers and their families in the Federal Republic of Germany. Future migration policies will have to deal with the consequence of migration which took place in the wake of labour recruitment agreements. Integration of these foreigners and their families was either not promoted at all or in such a belated or insufficient manner that even today these people suffer disadvantage in the society of the Federal Republic of Germany.

6. These deficits still remain in spite of a trade union policy from the beginning of foreign workers' immigration, that provided equal rights before labour laws and social laws as a condition for their employment. Provisions of social security systems concerning dependents and transfers to home countries had been based upon the proven principles of bilateral social security agreements and the EC's social legislation since the Roman treaties in 1957. The trade unions demand since two decades, therefore, regulation which grants a staggered right of residence linked to the time of residence until an absolute right of residence is granted

after five years, the right to vote in local elections after five years of legal residence, the option of dual citizenship, the right of establishment and a law for the protection against ethnic discrimination.

7. To the Confederation of German Trade Unions integration does not imply the giving up of one's ethnic, cultural and religious dignity. Learning the German language and recognizing the constitutional basic and human rights of everyone who lives in this country, however, are considered indispensable for integration. Policy of integration means treating migrants according to the democratic and social standards of all states which endorse human rights.

8. With the opening of borders in Central and Eastern Europe the growing economic and social divide between North and South has been complemented by a corresponding East-West divide which has a dynamic of its own. A divide in terms of opportunities in life, wealth, and prosperity generates migration. Reliable prognostication of further migration is not possible as the causes of refugee and migration flows are extremely varied.

Much will depend on the success or failure of building democracies, improving the economic situation and settling the rampant nationality conflicts in the countries of Central and Eastern Europe. In view of the recent historical changes the Federal Republic and the countries of the European Union have to contribute to the social, political and economic restructuring in Central and Eastern Europe. Trade policies and economic support have to be linked with a controlled migration policy.

9. In any open society there will always be export of jobs and immigration of new groups. Trade, economy and social policies can be much more effective if they are complemented by labour market and migration policies which facilitate the process of change and make it reasonably controllable and sustainable.

10. Migration policies are an integral part of social and economic policies and activities. That requires a wide range of instruments which complement one another to structure migration in a socially acceptable way. Conflicts of interests arising in this context have to be clearly identified and reconciled in a fair manner. A main task of trade union policy is to create a climate where the indigenous (German and foreign) population understands migration as a natural part of their life. We need to develop a political culture where migration can be openly discussed and no migrant needs to feel threatened, marginalised or unwanted.

Post scriptum:

Cooperation of trade unions of sender and recipient countries is extremely important. The German Trade Unions took care that every new group of migrant workers has been integrated in the trade unions with full rights of membership. 80th, close cooperation with the trade unions in the countries of origin and organizing the migrant workers, made the process of migration to a certain extent socially sustainable.

Dr. Jürgen Eckl, Confederation of German Trade Union

## FOREIGN LABOUR IN GERMANY

### Germany as the Center of Migration

The end of the cold war gave millions of people in central and eastern Europe new freedom of movement. The Federal Republic of Germany finds itself as the center of new movements of migration. This country has always attracted many immigrants. Since the Second World War, the Federal Republic of Germany, that means West Germany, has taken in millions of people. They were German refugees from the East, people from the East-Germany and people of German extraction resettling from eastern and southeastern Europe. Foreign workers, asylum-seekers and refugees allocated to Germany. For a long time Germany has therefore been an immigration country. Today every third inhabitant of the western part of the country comes from a family which lived outside West-Germany before 1945. They were given a opportunity to live and to work in the Federal Republic of Germany. This migration contributed to the economic and political development of the Federal Republic of Germany.

Actually of Germany's more than 80 million inhabitants 6,5 million are from abroad. This number of the total foreign population includes 4,7 million foreign workers and their families. The recruitment of foreign workers started in 1955 with the first German-Italian convention on recruitment of foreign workers. The following millions of foreign workers had been recruited by commissions of the Federal Office of Labour. They had been signed conventions on recruitment with Spain and Greece in 1960, with Turkey 1961, Portugal in 1964, Tunisia and Morocco in 1965 and finally Yugoslavia in 1968. Of this conventions only that with Tunisia and Morocco had more or less modest results. The employment of foreign workers were seen in this period as a phenomenon of exception; it was calculated the foreign workers would return after two or three years to their home countries and in fact till the stop of recruitment on 23rd of November 1973 more or less 14 million foreigners had come between 1955 till 1973 into the Federal Republic and 11 million, that means, 80 % of them had returned.

In correspondence to the recruitment conventions the composition of nationalities was changed. The main part of Italiens was reduced to 10 %, but that of the Turks were increased to 30 %.

The Turks who number 1,850,000 have long been the largest foreign community, followed by people from the States, which belonged to the former Jugoslavia, whose number, including war refugees, can only be roughly assessed at 1 million, because of the many war refugees. Next came Italians 558,000, the Greeks 346,000, Poles 286,000, Austrians 185,000, Rumanians 167,000 and Spaniards 134,00. The Portugese, British, Americans and Dutch each number between 100,000 and 115,000. And the Bulgariens, Hungarians, Tcechs, Slowaks and French each between 60,000 and 90,000. People of none-European region are the 86,000 Vietnamese, 80,000 Moroccans, 53,000 Lebanese, 44,000 Sri Lankas, 42,000 Afgkans and 36,000 Indians. The 61,000 people of the former Soviet Union are more conspicuous in the eastern part of the country than in the west.

Nearly 60 % of all foreigners have been living in Germany for 10 years or more. Over two Third of foreign children were born here.

Germany owes a great deal to her foreign workers. They have contributed largely to the countries economic growth and every year add some hundred billion DM to the countries gross national product. 49 % of the work force of some of Germany world's famous companies such as Siemens AG are foreigners. Cooperation between German and foreign work-mates is good and forsted mutual respect.

This is mainly due to the fact that the German trade unions integrated the foreign workers from the very beginning with full rights of membership. It was in the year 1954 when the leading bodies of the German Confederation of Trade Union, the DGB, made the fundamental decision to engage in favour of the equal treatment of all foreign workers. This trade union position contributed that soon after the foreign employees could participate in the elections for workers committees and could take functions as shop stewards, they could be elected as members of the workers committees based on the constitutional law of enterprises.

The trade unions established promotion programmes to favour a participation of foreign workers as candidates in the elections for shop stewards and even as a full time functionaries of the trade unions.

Actually 33,8 % of all foreign workers are organized in trade unions. There are differences by nationalities: Turks are organized by 44, 9 %, Greeks by 45 %, Italians by 41, 7 % and Spaniards by 41 %. Exceptional is the organization rate of female foreign workers, they are organized by 53 %. Meanwhile the social rights of foreign workers are generally guaranteed, but on the field of political civilian rights, there are painful lacks. This lack of political rights made it possible, that foreigners had been victim of xenophobic and recist attacks, especially in the last four years after the unification of Germany. It was only after the GDR became part of the Federal Republic, that attacks on foreigners began to occur which focused not on the individual victim, but on his identity as a "foreigner", irrespective of the persons actual nationality.

In the autumn of 1991 foreigners and Germans alike were alarmed by the violence and firebomb attacks in Hoyerswerda, Saarlouis and other towns where it was all to easy for the perpetrators to commit their appalling crimes. The tragic climax of the attacks on asylum-seekers, following in new wave of violence in Rostock, were the murders committed in Mölln in November 1992 and Solingen in May 1993. In those firebomb attacks 8 turkish women and children died. In both cases the offender were young people and in fact the majority, who commit such crimes out of blind hatred are youngsters between the age of 12 and 20. The public have demonstrated their concern for the foreign members of the community in rallies and candle light vigils, for example, the one in Munich being the largest demonstration since the Second World War. The unions and business community together with the churches have organized many different activities to stress the solidarity of the workforce irrespective of nationality. But there must be done more. In the following paragraphs I shall summerize some of the demands of the trade unions for an positive action for an integrated migration policy.

## Creating socially fair and just conditions for everyone: Citizens and Migrants

In view of the foreseeable economic, social and democratic development the Federal Republic of Germany will certainly need migrant especially as more and more Germans will live and work in other countries. Migration, however, needs to be structured and organized. If migration policies are exclusively directed to public order and domestic security, they will contribute to increased fears on the part of society.

The interest of the indigenous (German and foreign) population in social security must be acknowledged as justified but placed on one level with the interest of migrants who want protection and better lives.

The people of this country and the migrants need:

Affordable housing. Housing construction must be structured in such a way, that people of different origin and income can live together. Formation of ghettos must be prevented.

Sufficient training places and jobs, so that everyone who wishes to learn and to work may have an opportunity to obtain a place of training or work.

An educational system which gives all children and young people equal chances to obtain qualification according to their possibilities and needs, so that they may secure the prospects for the future.

The present demographic development of population, which is both ageing and declining in numbers will increase the social burden for the working population in the medium term. Less and less people will be active and available on the labour market. Shrinking population figures also mean less purchasing power for industry. In this context, migration will make an important contribution to relieving the burden.

We should, however, warn against the conclusion that employment for migrants is only available when there is a shortage of labour. Recruitment in the 1950 (when 1,5 million were registered as unemployed) and the employment situation of the 1980 as well as the uncontrolled influx of settlers from abroad at the beginning of 1990s have shown, that the

demand for labour cannot be covered by the indigenous unemployed or job-seekers alone.

## Control instead of Chaos

Uncontrolled and chaotic migration must be replaced by socially sustainable control, economic cooperation and democratic participation. In view of the ongoing migration pressure created by migration from east to west and south to north, it is necessary to develop criteria of acceptance.

Fortress building and protectionism must be counteracted.

German migration policies are a part of European migration policies. They must be developed by national parliaments together with the European Parliament and be harmonized with one another.

Stopping international criminal organizations is as important as the protection of migrants against those criminal activities, for example, human trade, organizers of illegal migration.

In order to eliminate human trade and exploitation, workers must be given an incentive to give up illegal jobs. Any economic incentive that encourages employers to hire illegal workers under conditions of social dumping must be removed.

The public must be made fully aware of the consequences of illegal employment. Migrants are to be informed about their rights, both in their home country and in Germany in their native language.

Fighting the causes of migration by assisting the countries of origin

With the opening of borders in central and eastern Europe the growing economic and social divide between north and south has been complemented by a corresponding east-west divide which has a dynamic of its own. A divide in terms of opportunities in life, wealth, and prosperity generates migration. The debt crises and collapses of traditional economic and social structures aggravate the poverty of the masses, so that many

countries are not in a position to pay the social cost of massive economic restructuring.

Reliable prognostication of future migration is not possible as the causes of refugee and migration flows are extremely varied. Much will depend on the success or failure of building democracies, improving the economic situation and settling the rampant nationality conflicts in the countries in Central and Eastern Europe and especially the Common Wealth of Independent States and its neighbouring countries.

The most pressing task is to eliminate the reasons for which people leave their home and look for shelter and economic survival in other countries. We therefore need a development policy which really reaches the poorest group in society and, above all, aspires to improve the prospects of young people who otherwise are prone to migrate.

It is necessary to solve the debt crises, which has increased mass poverty in Eastern Europe and the Third World. Thirty years ago, the United Nations set a target according to which each country should set aside 0,7 % of its gross national product (GNP) for development assistance. This target must finally be reached by the Federal Republic of Germany now.

In view of the major historical changes in Central and Eastern Europe, the Federal Republic and the countries of the European Union have to contribute to the social, political and economic restructuring and rebuilding of the economy. Trade policies and economic support have to be linked with a controlled migration policy. In any open society, they will always be some export of jobs and some immigration of new groups. Trade, economy and social policies can be much more effective if they are complemented by labour market and migration policies which facilitate the process of change at make it reasonably controllable.

The opening of market constitutes a stabilizing factor for the economies of Central and Eastern Europe and also for those of developing countries as it helps to create and secure jobs. Open trade policies need to be supplemented by quotas negotiated for certain sectors, for example, steel, aluminium, coal, textiles, leather, in order to avoid an uncontrollable collapse of sectorial and regional structures.

Cooperation of trade unions of sender and recipient countries is extremely important. Especially in phases of great change, migration cannot be organised in a socially acceptable way without trade union cooperation.

Some of the most urgent requirements are: the establishment of labour administrations with equal representation in the countries origin, participation of these countries in the conclusion of social security agreements between states, extension of social and economic rights of protection on mutual bases, guarantees of rights of residence and return, and the rights of codetermination in the regulations for transitional periods.

#### An offensive strategy for Global Challenges

Migration is one facet of a general economic, social and ecological system and can therefore indicate precisely where global developments have gone wrong. It is a consequence, not the cause of abortive course of abortive developments. But even the most extensive battle against the causes would not end migration, because it is a feature of every modernisation process and all open societies.

A comprehensive concept for migration could generate incentives of development in the countries of origin and, above all, facilitate and accelerate the necessary process of social and economic restructuring in the countries of Central and Eastern Europe.

Persons suffering from political persecution, war and civil-war refugees as well as refugees under the Geneva convention must be guaranteed free access to the Federal Republic of Germany and guaranteed right of residence. Protection of marriage and family guaranteed by the constitution has to be extended to every legal resident in the Federal Republic of Germany.

#### Migration policy as an integral part of a political concept for the future

Seen from this angle, migration policies are no longer a political issue competing with many others, but an integral part of future social and economic policies and activities. Migration policy therefore requires a wide

range of instruments which complement one another in removing the causes of migration or, to structure migration in a socially acceptable way where it exist. Conflicts of interests arising in this context have to be clearly identified and reconciled in a faire manner. Another task of German migration policy is to create a climate where the indigenous (German and foreign) population understands migration as a natural part of their live. We need to develop a political culture where migration can be openly discussed and no migrant needs to feel threatened, marginalized or unwanted.

An integrated migration policy has to be based on broad social consensus. Thus, the indigenous population must be prepared to accept migrants. Integration of migrants must be secured and migration pressure in the countries of origin must be eased by fighting its causes.

If migration flows are to be controlled in a socially sustainable way it is necessary to create instruments similar to the acceptance procedure for ethnic German immigrants from Eastern Europe. It will not be possible for every person willing to migrate to immigrate at any time or to any place. Annual quotas will have to be negotiated. This quotas and the provisions of migration must strictly exclude any discrimination due to origin, ethnicity, sex or religion. Quotas will have to be determined with due consideration of the social situation in the Federal Republic of Germany and the situation in the regions of the origin in a spirit of international cooperation and solidarity. Migration to Germany has to be controlled to through the German diplomatic missions in the respective countries. If migration quotas are staggered over period of time this will facilitate more intensive preparation in terms of language and employment.

All groups of society have the task to inform others about groups of foreigners in this country, about their history, culture and the contribution they made to the economic and social life of the community in order to promote coexistence in harmony. Disseminating information about the real causes of the major streams of migration is as important as controlling it.

Schools, organization involved in child and youth work, and other educational institutions have especial responsibility in this field. Educational programmes aimed at integration on the local level, promotion of action

groups and independent projects are necessary to implement the ideas of peaceful coexistence and equal rights.

#### Promoting the integration of migrants

The German Confederation of Trade Unions supports the demands for integration of foreign workers and their families in the Federal Republic of Germany. Future migration policies have to deal with the consequences of migration which took place in the wake of labour recruitment agreements. Integration of this foreigners and their families was either not promoted at all or in such a belated or insufficient manner that even today these people suffer disadvantages in the society of the Federal Republic of Germany. Integration programmes, however, are equally necessary for all groups of migrants. That means, ethnic Germans from the East, refugees, dependents of foreign workers, European-Union-citizens from other countries.

So the German Confederation of Trade Unions integration does not imply the giving up of one's ethnic, cultural and religious identity. Learning the German language and recognizing the constitutional basic and human rights of everyone who lives in this country, however, are considered indispensable for integration.

All migrants must have a right to benefit from integration programmes from the first day onwards. For migrants who's application is subject to examination, integration programmes have to start at least six weeks after arrival.

Subscribing to a policy of integration means treating migrants according to the democratic and social standards of all European states which endorse human rights.

Successful integration of migrants is an important contribution to the removal of conflict between the indigenous population and the migrants and helps to prevent criminality among migrants.

Educational systems must be equipped to make a contribution to the occupational and social integration of migrants by, for instance, providing native language teaching and courses in the German language.



A regulation is required which grants a staggered right of residence linked to the time of residence until an absolute right of residence is granted after five years, the right to vote in local elections after 5 years of legal residence, the option of dual citizenship, the right of establishment and a law for the protection against ethnic discrimination. Such a regulation has been often demanded and would be an important condition for the integration of future migrants.

Equal rights for labour laws and social laws for migrants is a condition for their employment.

Provisions of social security systems concerning dependents and transfers to whole countries are to be based upon the proven principles of bilateral social security agreements and the European Union's social legislation.

Employment is an important precondition for integration. Migrants face the danger of being employed only where wages are low, working conditions are bad and the work is heavy or monotonous. In order to counteract the formation of a new lower class and to prevent discriminating hiring policies the staff of the employment administration has to receive target oriented training and information similar to the training for vocational councillors for young foreigners.

Previous training and occupational experience of migrants in their home-countries must be duly considered.

The general target of permanent and fulltime occupation is also valid for foreign workers. Subcontraction of labour must be generally banned. Contracts with Eastern European construction companies must be brought to an end as quickly as possible as it in fact means wages below collective agreement minimum, illegal employment and an erosion of the ban of sub-contraction of labour.

German migration policies cannot be seen under labour market aspects alone but must take all aspects into account. The recruitment ban and its exceptions ought to be replaced by regulations on migration. This would remove the need of preferential regulations under the labour law because the right to live in the Federal Republic of Germany must include the right to work as well.

The trade unions must and will adjust to the new conditions of migrations and take care that new groups of workers are integrated in the trade unions. The German Confederation of Trade Unions will as in the past closely cooperate with the trade unions in the countries of origin in order to make sure, that proper regulations and guarantees are issues to make the process of migration socially sustainable.

#### European Perspectives

The European Union functions today with respect of migrations like a great national state. People are free to settle where they want: where they find a working place, where they see a bases for business, where they learn, study or want to live as pensioner. In spite of the disparities between the economic levels of the countries of the European Union the liberty of settlement does not provoke mass-migration. On the contrary: much of the "guest workers" from countries of the European Union which had been recruited before 1973 by German enterprises have now returned. The number of Spaniards in Germany has diminished between 1973 and 1989 by 56 %. Of Portugese by 32 %, of Greek by 28 %, that of Italians by 18 %. One of the causes is the opening and stability of the European Union, which makes revision of decisions on return possible at every time.

The migrant movements are not balanced, but they equalize themselves between much countries. In relations to Spain, Italy, Germany perhaps will have a certain overflow of migrants. In comparison with the United States, which have a similar dimension as European Union, one can remark the difference of 12 languages in the European Union and the different nationalities are a blockade against migration. Even confronted with unemployment many people are not prepared to change the country to find work.

In the whole western Europe the people have now the sovereignty on their decision where they want to live. In combination with this, there will be no explosion with remarkable social problems. Outside of this open economic area stay Polen, Hungary, the Tczeh and Slovakia Republic, but there relations with the European Union are developing more intensively. The next group of countries are Bulgaria, Rumania, Albania, Jugoslavia and its successor-states. Third category outside of the European

Union are the countries of the Common Wealth of Independent States and Georgia and finally Malta and Turkey.

The Policy of opening for Poland, the Tczechs, the Slovaken Republic and Hungary, did mean by no way new streams of migration from these countries. On the contrary: the number of asylum-seekers from Poland in Germany has reduced to zero. It seems that in the course of the next years it could be possible to open the frontiers for these four countries and to allow free looking for working places.

If it is possible to establish political and economic structures in Eastern Europe, which are solid, there can be intended more free movement. Necessary conditions are peace that means, the lack of war and the suppression of ethnical groups. Germany has, as other countries in western Europe, a vital interest in the economic and political stability in Eastern Europe. Help has therefore to be concentrated on discriminated groups or groups in peril of marginalization. If stability and integration of that marginalized ethnic groups will be reached, the principal problems are solved which prohibit at the moment an opening in all Europe. For the countries of eastern Europe and in Turkey, the opening would be an enormous profit. Such a perspective could free energies and motivations to reach detension and equality. From the demographic base all European countries are today deficit-countries. With an stable economic development Europe will stay an area for migration. With the Treaty of Maastricht the citizens of the European Union have reached a status which doesn't make them "foreigners" in the other European countries. They have the right to vote on European and local level, they can be employees of the state and they have an widespread protection of their rights by the supreme court of the European Union. Meanwhile the same number of Germans works outside Germany in countries of the European Union as citizens of the European Union are working in Germany. Germany has a birth-deficit more or less 400,000 a year. That means, to overcome this deficit we need till the year 2010 un immigration of about 8 million people, only with regard to maintain the actual status.

## Conclusions

Migration is a feature of every modernization process and of all open societies. The Federal Republic of Germany has been a country of immigration for more than 40 years. To many of the foreigners who immigrated to the Federal Republic of Germany in the course of these years this country has become the place where they spend a very important part of their lives, some have acquired German nationality but all of them have their home here and are now part of this society.

Considering the expected economic, social and demographic development of the European Union, we will need immigration also in the future and at the same time, more and more citizens of the Union will be living and working in foreign countries. We have to adapt ourselves to this situation and develop adequate regulations.

It would be wrong to regard immigration as a mere menace. Especially the variety of cultures represents an enrichment of social and daily life. This has been proved by decades of coexistence with the foreign workers. The DGB and its trade unions have created essential conditions for the integration of foreign workers within the professional ambit. People of all nationalities have fought together in the Confederation of German Trade Unions for social security and better working conditions. Without the foreign workers, the existence of whole branches would be threatened. We need our foreign fellow-citizens.

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**Appeal**  
**For the Dignity of Man and Cosmopolitanism**  
**- against Xenophobia**

presented in Bonn, November 21st, 1991

Subscribers:

Aktion Gemeinsinn e.V. (Action Group Civic Sense) / Arbeiterwohlfahrt, Bundesverband e.V. (Federation of Industrial Welfare Organizations) / Arbeitskreis für Weltoffenheit und inneren Frieden gegen Fremdenfeindlichkeit (Working Group for Cosmopolitanism and Domestic Peace against Xenophobia) / Börsenverein des Deutschen Buchhandels e.V. (Association of the German Booktrade) / Bundesverband der Deutschen Industrie e. V. (Federation of German Industry) / Bundesverband Deutscher Zeitungsverleger e.V. (Federation of German Newspaper Publishers) / Bundesvereinigung der Deutschen Arbeitgeberverbände (Federal Society of German Employers' Associations) / Das Diakonische Werk der Evangelischen Kirche von Deutschland e.V. (Charity Organization of the Lutheran Church of Germany) / Deutsche Angestellten-Gewerkschaft (Trade Union of German Employees) / Deutscher Caritasverband e.V. (Catholic Charity Organization Society) / Deutscher Frauenrat, Vorstand (German Women's Council, Executive Board) / Deutscher Gewerkschaftsbund (Federation of German Trade Unions) / Deutscher Hotel- und Gaststättenverband e.V. (Federation of German Hotels and Restaurants) / Deutscher Industrie- und Handelstag (Society of German Industry and Commerce) / Deutscher Paritätischer Wohlfahrtsverband (German Parity Welfare Organization) / Deutscher Sportbund (German Sports Federation) / Frauenbündnis '90 (Women's Alliance 90) / Industriegewerkschaft Medien, Druck und Papier, Publizistik und Kunst (Industrial Trade Union Media, Print and Paper, Journalism and Art) / Interessengemeinschaft der mit Ausländern verheirateten Frauen e. V. (Community of Interest of Women Married to Foreigners), - Verband bi-nationaler Familien und

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Coordination:

Working Group of the Commissioner of the Federal Government for the Affairs of Foreigners, P.O.B. 14 02 80, 5300 Bonn 1

## For the Dignity of Man and Cosmopolitanism - against Xenophobia

We have united to jointly declare:

**Xenophobia, right-wing extremism, racism and anti-Semitism are not accepted in our society. The dignity of man is inviolable.**

We, that is citizens of all walks of life, of the most varied religions, *Weltanschauungen* and professions; employees and employers, christians, muslims and jews, artists, craftsmen and businessmen, journalists and publishers, members of welfare organizations and local initiatives, students and professors, Germans and foreigners.

We are concerned that in our country people are threatened because they are foreigners, asylum-seekers or resettlers or because they have a different skin colour. We condemn that parts of the public tolerate xenophobia and the use of violence or even approve of them.

We must not allow anybody to take advantage of the insecurity and fear that have contributed to the rise to this xenophobia. But we must not overlook them either. We must uncover the causes of xenophobia. We must not allow foreigners, asylum-seekers and resettlers to become scapegoats for existing deficiencies and unresolved conflicts in our society.

Surely, the living together of people with different religious beliefs and cultural traditions does not always go smoothly. But our experience shows that in most cases these difficulties can be resolved and coexistence works. No other country in Europe has taken on as many people since World War II as the Federal Republic of Germany and these people - not least the foreign workers and their families - have contributed considerably to prosperity and cultural variety.

We call upon politicians:

- to de-emotionalize the highly emotional debate on the asylum issue and to agree upon ways to handle immigration responsibly. The politically persecuted must find shelter in our country also in the future.

We call upon everyone:

- Make it clear that you do not agree with xenophobe statements and acts. Protest against them.
- Do not tolerate people being threatened in your vicinity. Do something about it. Go for help.
- Make it clear together with others at home, in the workplace and on any other occasion: xenophobia, right-wing extremism, racism and anti-Semitism have no place in our society.
- Seek contact with the immigrants. Getting to know each other eliminates fears, distrust, shyness and misunderstandings. Near your home there are initiatives that have been working for a better understanding for a long time. They need your active support.

Our society lives on the open exchange with people of different cultural backgrounds. Support all efforts towards understanding.

"Foreigners need friends. So do we."

Bonn, November 21st, 1991

## As Colourful as life

It is time to resist...

Examples of trade union  
activities against xenophobia and racism

DGB:

Let us shape peace and overcome violence

September 1994

## Foreword

By the day of the cowardly murders of Solingen it became clear that xenophobia and racism are no temporary occurrences in the Federal Republic. The DGB and its affiliated unions have continuously been committed to the cause of foreign workers and their families, and they have struggled against xenophobia and right extremism. A pamphlet of the 1980s was entitled "*The Foreigners-get-out-of-here* slogan is no solution". In the mid-1980s the *Do-not-slam-my-comrade* campaign was launched and it is more relevant now than ever before. In the late 1980s the *Let-us-create-a-climate-of-applied-solidarity* appeal was formulated in view of the increasing numbers of immigrants.

A change of climate in our society, a policy of social justice are essential preconditions for our living and working together, as claimed by the 1991 DGB Federal Executive Council. A number of trade union approaches were suggested at that time, based on the conviction that xenophobia, racism and right extremist attitudes must be tackled on the spot, right there where people meet, where they are faced with social problems and where they seek to develop workable solutions.

Though public statements and rallies are important components of this work they need to be supplemented by a major information campaign to overcome fears and break up prejudices. This was our aim when making the issue of "*Germany as an immigration country: Will we be strangers in our own country?*" the 1992 central subject of trade union educational work. A number of antiracism seminars focused on this issue, which is being followed up by the 1993/94 central subject of "*A change of climate is needed: Ways out of social coldness*".

The many signs of personal courage and the various forms of spontaneous action by a number of colleagues show that the population is not prepared to accept xenophobia and racism. Candlelight demonstrations, concerts and statements are well-meant and effective, but they only reach those who are already convinced. They encourage those who are afraid of xenophobia and violence. This is necessary. They show that more and more people become conscious and act accordingly: "It is time to resist". This is also the guideline for trade union action formulated by the 1992 DGB Federal Executive Council. For the sake of the defense of our social democracy but also and above all for the benefit of the people we need to keep up and if possible strengthen and extend our commitment. In the past year many things were achieved through action on the spot.

Our documentation of DGB activities does not see itself as a "record of performance". It is supposed to show everybody: You are not alone, the DGB is active in all parts of the Republic. This documentation is to furnish new ideas, and it is to demonstrate that any activity, whatever small, is an important component of our joint effort. It is to offer opportunities for an exchange of views. But it is above all supposed to encourage people by giving many examples of men and women standing up for their beliefs. "It is time to resist"

in order to make sure that the following sentence is applied again without ifs and buts in the Federal Republic of Germany: "The dignity of man is inviolable".

Regina Görner  
Jochen Richert  
Members of the  
DGB Executive Committee

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## LABOR SITUATION OF FOREIGN WOMEN IN JAPAN

KAZUMI MORIKI

### Introduction

It was international trend that most immigrants or people who went overseas to work were men. Most of these went to work in agricultural development, coal mining and such labor-intensive fields. On the other hand, women that immigrated usually did so to follow their husbands or families. This kind of immigration by women is dictated by commonly held concepts of sexual roles. However, from the other country's experiences where research about the problems of female immigrants is on the increase, we can see today that female laborers are found working in factories and doing household labor. These researches shows that the working conditions and wages of these immigrant female laborers are worse than that of either immigrant male laborers or local female laborers.

In Asia countries women are encouraged to go overseas and work, as these women then provide a valuable source of foreign currency for their home country. There isn't always appropriate work for female laborers in their own countries but even if there was, most prefer to go overseas to make higher income in the short term. But what kind of work can she obtain?

Women in developed countries employ migrant female labor as household help. Even though these women are then free to pursue traditionally male work or full time work, the position of immigrant female laborers doesn't change. Furthermore the entertainment and service industry has a large market for migrant female workers. Many foreign females are tricked by brokers at employment agencies and forced into prostitution. Flesh traffic and labor exploitation of foreign women in Asia has prompted the formation of support groups here and there. However this market that puts foreign women's sexuality up for sale will remain as long as men dictate the term of women's sexuality. And migrant female workers will continue to be employed in the limited field of household help for as long as the concepts of sexual roles remain.

There were 1,281,644 foreigners registered in Japan in the end of 1992 (more than 1% of Japanese population). The number of men and women was about the same. Most permanent residents were Korean and Chinese, and then Brazilians, Philippines and Americans were the most common nationality to nationality but overall there were more men. However Philippines and Thai women outnumbered their fellow countrymen by far (8,352 Philippine males, 53,866 females). It is also estimated by Minister of Justice that more than 290,000 foreign workers, having overstayed their visas, were not registered. Under the Japanese Immigration law that limits entry of foreign workers to specialists, the number of people overstaying visas or working outside the activities specified on their visas cannot help but increase. Taking Thai as an example, the number officially registered in Dec. 1992 was 10,460 but the number of those actually living and

working in Japan according to the Ministry of Justice was 53,219 in Nov., 1992.

The situation of foreign workers depends on the conditions and character of the country that they came from as well as the peculiarities of the country they are entering. I would like to examine how foreign women manage in framework of Japanese society, and examine those with "legal status", and those staying "illegally".

Japan : the "closed country" for foreign laborers.

The revised Immigration law of June, 1990 that the government offered as its answer to recent globalization was a great disappointment to foreign laborers support groups. Under the revised law the provisions for specialist workers and technicians were expanded however in exchange any other kind of foreign workers are strictly denied entry. Furthermore, businesses employing illegal foreign labor now can be charged with aiding and abetting illegal foreigners. To help alleviate the labor shortage problem in Japan, the Japanese government created a "long term resident" visa status for the children and grand-children of Japanese emigrants. This visa status doesn't any limit on the kind of workers allowed entry and so treats these Japanese descendants differently to other foreigners. The movement of foreign workers depends on exchange of information, and gravitates towards more economically attractive areas. Even though the flow of workers to Japan has been legally stopped, foreign workers can be divided into two groups. Namely, those whose work is recognized and those whose is not. And divided into those who have freedom to choose what job they do, and those who don't. The wave of people coming to Japan to work however has not been stemmed. These people are coming on spouses visas, as students, on holiday visas, <sup>or are</sup> being smuggled into the country. And this includes numbers of female foreign laborers.

[Long-term residents visas]

Among those coming to Japan with permission to work, the number of Brazilians has increased dramatically. In 1988 there were only 4159 Brazilians (1907 of these women) but 2 years later there were 56429 (21145 of these women). 13 times the previous number. 57% of these Brazilian males, and 46% of the females are registered as skilled laborers and production line workers, and 80% of those with work are employed as factory workers.

(The percentage of women with work is 58% (men 68%), and whether it is the number of people coming with the express intention of working or that the number of Japanese women with work is only 30%, comparatively speaking the percentage of Brazilian women working is high. They work in factories, in hospitals as practical nurses (attendants employed by the patient), or in supermarkets---in the skills will not be a problem. Some problems do arise through language and culture differences, but these workers try to maintain their jobs with all their might, and ignore contravention of contract agreements by their employers and put up with having to work overtime with no pay.



There are many women already married with children to look after and house work to do, called "Donna de casa" (housewives) and they mostly prefer part-time laboring work. There are many female Japanese descendants working here, and because their status is legal it is easy to forget about their problem. However sometimes their residence status is canceled or they lose their jobs due to company cut-backs. Those with children have look to their children or the children themselves refuse to go to school). And some of these women have divorce difficulties. Despite having legal status these women by no means have a settled life.

The long-term residence visas given to a need created by labor shortages in Japanese descendants were introduced to fill a need created by labor shortages in Japanese industries. Utilized as a stop-gap for the Japanese labor market, these people are often employed at cheaper rates than Japanese laborers, or as easily expendable labor. And female laborers are part of this phenomena.

#### [Entertainment visas] and [Teaching visas]

Filipino women far outnumber their fellow countrymen in Japan and of the 43260 Filipino women here (1992) 45% have work and are registered as artists, performance artists or as working in the service industry, Entertainment visas last for either a year or only 3 months but apparently most can only get the 3 month visa. Even looking at recent figures of Philippines coming to Japan the greatest number come on an entertainment visa. The traffic back and forth of those with 3 month visa is very heavy. Because the Philippines are close to Japan, there is a pattern of those going home to renew their visas, and returning to Japan.

But why do most come on entertainment visas? Those who have come here as English specialists are all turned down by Japan's English Conversation Schools. They are told that they would have no problems if they were white native speakers. Instead looking at the figures for American women 52% of those working (37% of American women in Japan) are registered as teachers. However asking the opinion of the American women reveals that even if they don't want to teach, they say they have no other choice in Japan. Transition to other kinds of business is difficult.

It is said that language schools employ westerners to fill the desires of the students coming to learn. Their ability to teach is not judged accurately. Although this is a clear case of racial discrimination, considerations of economy come before consideration of human dignity. To be employed by Japanese, Philippine women are doing special dance training and a market has formed for those Phillipino women who have made themselves fit into an image according to Japanese, particularly male Japanese tastes.

#### [ Escort Service Industry ]

In 1980 Japanese males were criticised for their sex tours to Asia and the trend started to decline. As their numbers dropped

the Japanese escort service industry increased. Phillipino women being good at singing and dancing became the target of recruiters for the escort industry. These women are placed all over Japan. As a result of this, a difference in the number of male Phillipino to females has appeared.

Work done on an entertainment is not limited to stage work. After the recipient of the visa comes to Japan, they are often forced to do cleaning work, attend to other people's guests, or engaged in prostitution. The problem is that there is an intermediary exploiter who controls the women, never paying them according to their wishes and often ignoring their human rights. In 1991 two Phillipino girls working in night clubs in Fukushima Prefecture died one after the other. Both of them were reported in Japan as having died of illness, but their was bruising on their bodies. The result of an autopsy carried out in the Philippines on one of the girls showed that the cause of death was external wounds to the head. This case progressed as far as the Phillipino government making a protest to the Japanese government, but this is another case where the facts have not been clarified.

Foreign workers without choice of work, also can't change jobs. The Immigration Law is designed to prevent foreigners from setting down here. This is the current policy of the Japanese government, saying that the strict control of foreign workers is to protect employment opportunities for Japanese. However the posture of refusing foreigners work only pushes them into illegal work. For as long as the phenomenal economic difference remains between Japan and her neighbors, there will continue to be women being tricked and exploited on that market.

#### [ Black Market ]

From the second half of the 1980's, Thai Women started coming to Japan, and since 1991 the cases of Thai women being killed, or killing others are increasing (In 1992 more than 10 cases). In most cases the women are working in sex-related industries. Even at Asian Friend (a group at Osaka) where the writer gives telephone consultations to foreigners, there have been cases where Thai women call up saying that they have escaped to the Thai embassy or to the police and they need help. Help organizations throughout Japan are giving shelter and care to over 1,100 foreign women.

Borrowing money from recruiters to come Japan and then being forced into prostitution to repay it, is the main reason why those women run away. However some are also victims of violence, forced confinement, have their passports taken off them etcetera - things that they never imagined before coming to Japan. The murder cases mentioned earlier were all cases of young Thai girls killing their Thai, Singaporean or Phillipino club Mama's (managers - although the real managers are generally Japanese men). There is now a Thai girl on trial in a similar case for killing her female Thai friend in Osaka in May 1992. In her case it can be said that murder was triggered by her psychological

instability when the Japanese father of her two children left her.

Thai women assert that in their patriarchal system it is only natural to help support the family monetarily, and the women must put their all into helping their father. Hearing little bit of information about working in Japan makes the place sound very attractive. However with the Japanese immigration Law as it is, these women can't work legally. Utilizing the situation, there are recruiters in Thailand who invite the girls over and trade in flesh goes between this recruiter and a Japanese go-between and prices are put on the girls at auctions just like slaves of old. The money goes to the go-between, and the girls being in confinement are forced into accepting customers (forced violently if they refused) and in this way pay back their original debt. There are girls who have paid back their debt only to be arrested when they try to solicit customers for themselves.

It is impossible to consider foreign female laborers in Japan without also thinking about the sex industry and the Yakuza (Japanese mafia) so intertwined in it. However that is because of the "push - factor" the economic differences between Japan and the countries of origin of these girls, with Japan not opening up the labor market and allowing these girls in but rather pushing them into working in the sex industry. It is true that there are recruiters and brokers bringing girls to Japan but in the background is a society that discriminates against women and allows the existence of a sex industry, a society that makes foreign women a curiosity - which is reverse discrimination - and all of these things combine to make the "pull factor". In Japan there is a structure where Asian women coming to Japan to work can at any time be pulled into the sex industry or the black market. This can also be said for western women, and advertisements of this nature can be found in English language newspapers.

Conclusion

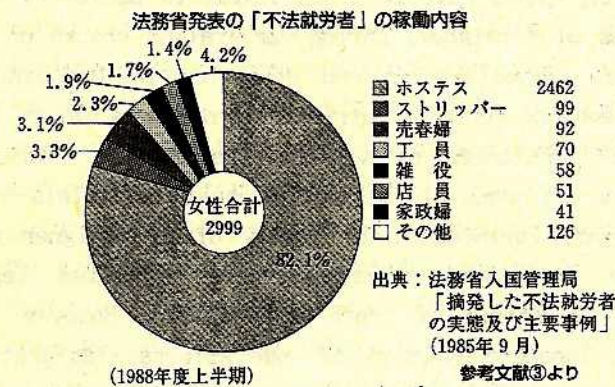
The workplace for foreigners coming to work in Japan is limited. But women have the sex market to contend with. Men control this sex market and economic power gives further controlling power. In Japan which has both men controlling society and economic power foreign women are used both legally and illegally, from prostitution, as entertainers and (although not discussed in this article) mail - order brides.

As we can see in articles like "A wife confesses she can't refuse her husband his sex tour" (Asahi Newspaper 23rd March 1992, letter to the editor), this problem is being reflected in the relationships of men and women in Japan.

Some people think that if we legalize the status of foreign female workers it will only worsen, not improve, the situation, by increasing the numbers working in the sex industry. However I think rather than considering whether these numbers will

increase, it is much more pertinent to put the focus on the unchanging attitudes about men's and women's status in Japan to resolve the problem. In any case, we must legalize the status of foreign women and protect their human rights.

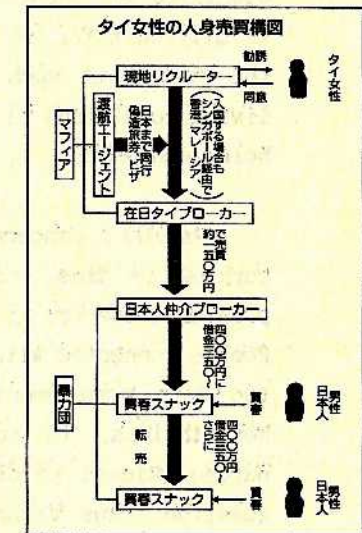
外国人女性の労働形態



興行活動者の新規入国状況 参考文献④より

国籍	年	1982 (昭和57)年	1984 (昭和59)年	1986 (昭和61)年	1988 (昭和63)年
計		23,844	32,952	44,989	71,026
フィリピン		9,103	11,941	25,996	41,357
韓国		2,691	7,091	375	994
中国		1,554	1,563	3,021	3,105
米国		4,591	4,741	5,610	8,107
英国		1,197	1,730	2,170	3,056
その他		4,708	5,886	7,817	14,407

Labor situation of Foreign Women  
1993, July  
TEXT in Japanese



Investigation on Infringements of the Human Rights of People  
Detained at Japanese Immigration Bureau Facilities

We are trade unions and support groups concerned about the human rights of foreign workers in Japan.

Recently there have been infringements of the human rights of foreigners during immigration checks on entering Japan, investigation and detention in Immigration Bureau centers and during repatriation procedures. Since the end of 1994 instances of violent treatment of foreign detainees at the hands of Immigration Bureau officials have come to light. Furthermore, the family of a foreigner who died while in police detention have initiated legal proceedings in search of truth and justice. However, at present the Japanese Ministry of Home Affairs, Immigration Bureau and Police are basically continuing to deny that these incidents took place. Foreigners who were maltreated in detention centers before being sent back to their home countries are unable to initiate legal proceedings, and it is difficult for us to gather information and evidence from the victims of such treatment. Even problems concerning the living conditions of people in the detention centers are not being addressed.

As NGOs concerned about the human rights of foreigners working in this country, we have formed an 'immigration problems research group' composed of scholars, lawyers. People connected with the media and representatives of NGOs to learn more about such infringements of human rights. Nevertheless, in spite of our requests the Immigration Bureau refuses to disclose information on the incidents in question. Thus we have decided to collect information from people who have been extradited from Japan. We request your cooperation in this endeavor.

During July and August of this year we are planning to send delegations to visit the Philippines and Korea. We hope to hold press conferences to publicize our campaign, and interview people who have been in Japan.

Purpose of visit

- a) to gather evidence from people who have been treated violently or sexually harassed while in police or Immigration Bureau detention centers;
- b) to obtain information about actualization conditions of detainees in Immigration Bureau detention centers, especially with regard to food, medical care, hygiene, sleeping arrangements and exercise.

We hope that local NGOs will cooperate with us by collecting testimony from people who have been in detention centers in this country. To facilitate the gathering of information by our delegations, we have decided to circulate this questionnaire before hand and gather as much information as possible from people who have experienced Japanese detention centers. We intend to send this questionnaire also to people already known to have been detained here. However, such people are few in number, and so we would be grateful if you could look for people who have been detained by authorities in Japan, circulate this questionnaire among them, and ensure that replies are returned to us by the end of July.

★ ★ ★

QUESTIONNAIRE  
for People Detained by the  
Japanese Immigration Bureau

① Nationality \_\_\_\_\_ sex: M / F Age: \_\_\_\_\_

② where were you detained? Please circle one of the following:

A : Detained by:

- a. Immigration authorities
- b. police
- c. don't know

B: At the time of arrest:

- a. Detention Order was shown
- b. passport was checked
- c. you were suddenly arrested without explanation

③ Time and place of questioning. Please give details also of any harassment. or violent treatment you received:

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④ Where, and for how long were you detained? If you were kept in more than one place please give details.

Location: \_\_\_\_\_

From: \_\_\_\_\_ to: \_\_\_\_\_

Location: \_\_\_\_\_

From: \_\_\_\_\_ to: \_\_\_\_\_

⑤ If any official took money from you, hit you, or harassed you in any way, please give details. If you witnessed any such acts, or heard about them from another inmate, please describe what you saw/heard, and give the name of the place where it happened.

(Please specify clearly whether this is your own experience, or something you saw or heard.)

⑥ Did anyone ever commit suicide while in a detention center? Please give details of nationality, name, sex and reason for suicide.

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⑦ Describe anything you noticed about living conditions (food, toilet, shower, exercise facilities, sleeping arrangements, etc.) in the detention center.

⑧ Anything else you wish to say about the way you were treated by the Japanese Immigration authorities/police.

⑨ During July/August of this year a group of Japanese NGO members will visit your country to collect information from people who were detained in Japan. Would you be able to meet us?

YES.

NO.

⑩ If you have no objection, we would like to know your

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

⑪ What do you wish of Japanese NGO's ?

## Immigration Review Task Force

Tokyo, March 1995

**Summary Report on the Physical Abuses and Assaults  
by Immigration Control Enforcement Officers  
against Foreign Nationals in Japan  
at Various Stages of Compulsory Deportation Procedures,  
with Legal Commentary<sup>1)</sup>**

prepared by  
Attorney Tadanori Onitsuka  
and  
Attorney Ayako Mizuno

<sup>1</sup> This report was written and organized by Attorneys Tadanori Onitsuka and Ayako Mizuno of the Tokyo Kyode Law Office, who currently represent foreign nationals in law suits regarding labour and immigration problems, several of which are referred to in this report.

## Introduction

Foreign nationals arrested by immigration control authorities on charges of overstaying their visas (residence permits) or participating in activities their visa permit f.c. working illegally, are deported from Japan by compulsion.

From the time an alien is arrested until his or her actual deportation, s/he must undergo a certain scheme of procedures. After being arrested on suspicion of an immigration law violation, an alien is first cross-examined by an immigration enforcement officer, whereupon a detention order is usually issued by an immigration inspection officer. Successively, the alien is held in custody at an immigration control bureau operated detention house. During detention, immigration inspection officers conduct further criminal interrogations to determine whether the alien is deportable or not. If found deportable, the alien is issued an official deportation order until actual implementation of which the alien is held in an immigration detention facility. Due to the immigration policy which stipulates an alien must burden his or her own departure expenses, detention may be extended over an indefinable period of time until the alien acquires sufficient funds to return to his or her country of origin.

At these precursor stages to deportation-arrest/seizure, cross examination, criminal interrogation, and detention-immigration officers have carried out acts of physical assault against foreign nationals. This report seeks to introduce case summaries of recent such acts of violence and human rights violations.

Stage One: Arrest/Seizure

Case: Iranian national dies in police custody; cause of death unknown remain

On the early morning of 21 June 1994 an Iranian man Arjang Mehrpooran, age 31 years, suddenly died while being held in custody at the Minami Senju police station after his arrest in Ueno Park on the previous day by Ueno police and immigration control authorities on account of non-possession of travel document/passport in Ueno park.

At 7:50pm on the night of 20 June, Arjang along with 35 or so other aliens (most Iranian nationals) was arrested and filed onto an armored police bus and driven to the Ueno police barracks for further interrogation. During the ride to the police station, Arjang reportedly banged his head against the window frame of the bus causing a three centimeter gash on his top left forehead. After arriving at the police station around 8:00pm, Arjang's upper body clothing were covered with blood due to external hemorrhaging.

After procedures of arrest were completed, Arjang was placed in police cell custody where, around 10:00pm., he began complaining about head pains and shortness of breath. Arjang was subsequently taken to the Ueno hospital where he underwent medical treatment. He was then returned to the Ueno police station from the hospital around 11:00pm. from where he was subsequently moved to the nearby Minami Senju police headquarters. Around 3:00am of the next day, Arjang again began complaining of shortness of breath and head pain whereupon he was taken to the Shirohigehashi Hospital for medical treatment after which he was taken back to the same police station around 4:00am. Two hours later Arjang developed a cold sweat and his complexion turned extremely pale. According to the police report, at this point Arjang was taken by ambulance again to the Shirohigebashi Hospital where he died soon after arrival at 7:42am. The cause of

death was listed as "Pulmonary Embolism."

Later, it was confirmed that there were numerous injuries and wounds on the dead body which had caused severe internal hemorrhage. However, according to Arjang's wife, when Arjang left their house around 4:00pm. on 20 June, he was in perfect health with no apparent physical injuries nor changes in his physical condition. It may substantially be concluded that the actual cause of death was the result of external injuries-incurred when police and/or immigration enforcement officers physically assaulted Arjang during the seizure/arrest on this same day-which led to the pulmonary embolism or blood clotting in Arjang's pulmonary artery. Testifying to this fact, Arjang's wife and mother have filed a suit against the state for damages which is currently under examination at the Tokyo District Court.

In response to the suit, the police have declared that the injuries in question were self-inflicted, brought on when Arjang hit his head against the seat or window glass in the armored vehicle in which Arjang was transported to the police station directly after the arrest.

#### Legal Commentary

As in the case described above, many seizures or arrests are conducted as a cooperative effort between police and immigration organs. By this compact cooperative, police and immigration officers can unite forces to lawfully and successfully complete arrests and subsequent detaining of the suspect. Concretely, the police who maintain judicial authority to arrest culprits "at the scene of the crime"(in cases involving aliens this usually means immigration law violations i.e. not-possession of proper travel documentation), and immigration enforcement officers who are lawfully warranted to detain aliens in "emergency and necessary situations" can combine these roles and simultaneously accomplish the two objectives of arrest and detention with one stroke.

Immigration detention is procedure which, in principle, should take place after criminal interrogations are conducted by an immigration enforcement officer and detention orders are subsequently issued by an immigration control inspection officer. However, where immigration law violations are concerned, the majority of arrests/seizures are carried out under the premise of an "emergency and necessary situation." Consequently, interrogations are conducted after the accused is physically placed in custody.

The above has been described as "hunting for aliens." In reality, the blatant misuse of the provision for arrests in "emergency and necessary situations" fails to recognize and uphold legal procedural guarantees warranted to individuals at the time of and proceeding arrest, and has become the breeding ground for uncountable acts of violence committed against aliens. The very legal system which warrants the physical custody of an individual based on the sole determination of a governmental administrative agency must be called into question in light of standards and laws set forth in important human rights documents of the day.

#### Stage Two : Physical Assault during Criminal Investigation Case: Physical assault of Chinese woman

On 1 November 1994, at the Tokyo Regional Immigration Control Burdan Detention Center, a Chinese woman Tao Ya Pin was physically assaulted and wounded while undergoing criminal interrogation.

On the previous night of 31 October around 9:30pm, Tao Ya Pin along with eight other co-workers was arrested at her place of appointment in a joint immigration/police seizure. Tao was then taken to the Shinjuku Police Station where she was detained for questioning. On this same night, a total of 20 other aliens were brought into the police station for criminal interrogations on suspicion of illegal status activities. Successively, Tao and six of her co-workers were

taken for further interrogation to the Tokyo Regional Immigration Control Bureau Detention center located in Kita ward.

Around 10:00am the following day, while Tao was undergoing further criminal investigation, the immigration enforcement officer in charge of Tao's case who grew angry at her for not obeying his instructions, slapped the Chinese woman across the face two times with the wallet she had in her possession. In response, Tao grabbed a picture of herself that had been in her wallet and put it in her mouth to swallow it. Upon doing so, several immigration enforcement officers rushed over and surrounded Tao. While the officers restrained Tao's arms and body, the enforcement officer in charge began hitting her in the face and elsewhere. Other officers followed by kicking Tao until she fell to the floor. Lying prostrate on the floor in front of twenty other foreigners after the brutal attack and insult, Tao hit her head twice against the floor. It was then that immigration enforcement officers fastened her hands behind her back with handcuffs and took her to another room.

In the room where Tao had been taken, she was made to sit on a sofa with her hands still restrained behind her back. The immigration enforcement officer in charge resumed beating her above the shoulders with hard, repeated blows. Tao lost consciousness. At the time Tao was being assaulted, many immigration officers were present, yet not one attempted to stop the violence. On the evening of this same day, Tao began to complain of shortness of breath and pain in her head and face and asked to be taken to a hospital. However, her request was denied for purposes of continuing the interrogation. Interrogations concluded Tao be officially detained. It was not until the late afternoon of the following day that Tao was finally taken to a hospital.

This physical assault case was witnessed and reported by Tao's co-workers who were in the same interrogation room at the time the incident took place and were released

following their interrogations. On 2 November, an attorney accompanied by the head woman manager of the place where Tao had been employed, went to visit Tao. Upon this visit, the fact that Tao had been brutally assaulted and had undergone severe mental shock was confirmed. During the visit, Tao complained of shortness of breath and head pain. The area around Tao's left eye was dark purple and swollen.

Tao has since filed a law suit for damages against the state which is currently underway, and a criminal action against the immigration enforcement officer who assaulted her. The suit is currently being examined by the Tokyo district prosecutor.

In response to this incident, the Tokyo Immigration Control Authorities have admitted immigration officers physically assaulted Tao during the said criminal interrogation. However, they have prefaced the admission by affirming, "Only one immigration enforcement officer in charge assaulted Tao....she was hit only twice in the interrogation room and twice in another room....and this was done so as to stop her from acting violently or try to kill herself."

#### Legal Commentary

Protection for the rights of foreigners who undergo criminal investigations or interrogations is extremely insufficient. In addition, competent interpretation, notification of the right to remain silent and the right to seek legal counsel, explanation of basic and important legal procedures are certainly far from being anywhere near adequate. In the worst case scenario, interrogations are carried out without the accused ever being informed the reasons why s/he is suspected for criminal activity.

Further, in the deportation program, the procedure of



filing an objection which entails an aural hearing in front of a special examiner and a pursuant judgement on deportation issued by the Minister of Justice. However, in this procedure, it is extremely crucial that an attorney or other assisting person be present, and that foreigners prepare a strong argument and gather supportive and concrete evidence on their behalf- neither of which does the foreign national in this situation have the opportunity to obtain or secure. The whole procedure of filing objections to deportation rulings is, if at all, conducted silently behind closed doors leaving the foreign individual at an immense disadvantage. In effect, the overall proclivity to discount the right to appeal has turned the legal procedure into a hypocrisy while insuring checks of legal discrepancies such as physical assault existing within deportation procedures remain repressed.

In Japan, deportation procedures have been structured so that antecedent interrogations are conducted solely by internal administrative bodies, absent of any outside control by a third party such as the courts. This system has formed the background for acts of violence, assault and torture predicated during such procedures which prevalently have gone uncensored.

#### Stage Three : Detention

Case A : Physical Assault of Iranian Male at the Tokyo Regional Immigration Control Bureau Detention Center-Kita Ward

On 6 May 1993, ten or more Iranian men held in custody at the Tokyo Regional Immigration Control Bureau Detention Center in Kita ward were physically assaulted by immigration enforcement officers. One of the men assaulted Amjadi Khorasani Muhammad Mehdi suffered serious injuries i.e. first degree spinal cord fracture of the lower back caused by vertical pressure.

Two days before Amjadi was brutally beaten and tortured

, at the same detention facility another Iranian man was repeatedly beaten resulting in critical eye and face injuries. Several other Iranian detainees who had witnessed this assault, in protest began yelling causing loud disturbances and throwing food within their cells. In protest began yelling causing loud disturbances and throwing food within their cells. In response to the rebellious acts, 20 or more immigration officers seized, hand cuffed and proceeded to violently beat each Iranian detainee party to creating the disturbance.

Two days, Amjadi who was considered to be the instigator of the disturbance, was called out of his cell and met by several immigration enforcement officers who immediately restrained him with metal hand cuffs. Here, the officers began brutally kicking and beating Amjadi in the head, face, arms and legs. The officers then took Amjadi to a small empty room where they continued the assault- this time attacking the man's whole body, even more violently.

Weakened by the blows, Amjadi fell to the floor. Several of the officers then picked him up, holding his legs and upper body and then suddenly dropped him on the concrete floor in a vertical sitting position. The fall was proceeded by relentless kicking to the lower back region of Amjadi's body. Amjadi remembers the excruciating pain he experienced at this time. His cries "Why do you kick me?!" and "I'm going to die!" were only met with stronger and more violent hits to his face. When the fortuous ordeal finally ended, Amjadi was on the verge of losing consciousness.

Suffering severe injuries and with the handcuffs unremoved, Amjadi was then taken to a solitary confinement cell (commonly known amongst detainees and immigration officers as the "special room") where he and two other Iranian men were detained for 15 days in continuum. Solitary confinement cells or special rooms are about 3 tatami mats in size, have no windows and contain only a floor in-built (non-protruding) sink and toilet- the water flow of

which is controlled outside the cell by immigration officers. It was in this small, cramped cell where Amjade-his whole body in pain and unable to move-was left to lay on the floor for over two weeks. And, with his hands restrained behind his back by manacles, the man was forced to eat using only his mouth alone as if he were an animal

In response to Amjadi's case, the immigration authorities have insisted that he was not physically assaulted or act upon violently but rather consirained by use of physical forces in order to suppress riotous activities initiated by several Iranians. Needless to day, the acts against Amjadi were committed after the "riot" had already placated. Moreover, the level of violence exhibited goes way beyond any formidable so-called "use of physical force" for containment.

Further, the act of placing a detainee in solitary confinement as a punitive measure-as was done in Amjadi's case-is explicitly restricted by both international and Japanese domestic law. In the Immigration Bureau's "Regulations on the Treatment of Detained Persons," the provision regrading solitary confinement cells explicitly delermine their use to be restricted to cases where in a detainee 1) acts to violate a penal ordinance; 2) obstructs the business or duties of an officer, and 3)plans or attempts to conunit suicide and/or self-injury. These requirements clearly do not warrant unlimited use of such cells. To stress, punitive use of solitary confinement in detention is strongly prohibited.

In October 1994, Amjadi filed a law suit against the state for damages. Notwithstanding, two months later, just prior to the first public hearing on his case, Anijadi was deported to Iran against his will. The state funded all Amjadi's deportation costs.

Case B: Physical Assault of Peruvian Make at the Tokyo

Regional Immigration Control Bureau Detention Center-Kita Ward

In November 1994, a Peruvian man was assaulted by an immigration security officer. Without receiving any medical treatment, the man was deported from Japan.

Case C: Former Tokyo Immigration Control Enforcement Officer publicly denounces "routine violence and torture"at the detention center.

At a press conference held in December 1994, a former immigration security officer publicly charged immigration authorities for daily conduct of physical abuse and assault at the Tokyo Regional Immigration Control Bureau Delention Center in Kita ward. From April until July 1993, the former officer was employed at Kita ward Tokyo Regional Immigration Control Bureau Fifth Division which handles the management of detainees and the execution of deportation.

Detainees who talk back or do not follow instructions are restrained and taken to a separate room where they are surrounded by, and violently bealen and kicked by 3-4 immigration officers, said the former officer. In addition to actually witnessing assnults on two or three occasions, the former officer also said he heard screams from and sound of officers beating on foreigners while he was working in his office. Acts of violence are perpetrated routinely on foreigners who inadvertently violate a trivial detention center rule, he explained.

In response to the former officer's charges, the chief of the immigration bureau's enforcement division(under the Ministry of Justice) said, "We conduct reprimands-such as making them sit in "Seiza"(sit in kneeling position) on persons who do not follow instructions, so as to promote their repentance....there are cases when we handcuff and place persons in solitary confinement who try to hit and attack our officers."

Case D: Physical Assault against Chinese at the Fukuoka Immigration Control Bureau.

On 13 June 1994, a number of Chinese youths who attempted to abscond en masse from the Fukuoka Immigration Control Bureau Detention Center underwent physical assaults by immigration enforcement officers after and at the time they were re-arrested and detained.

On 18 May, these Chinese youths who had entered Japan illegally were hiding in a warehouse in Fukuoka city with 130 other illegal Chinese, were found and arrested on charges of violating immigration control laws. At the time of arrest, the youths were referred to the family court. However, the public hearing never took place and the youths were simply re-routed to the Fukuoka Immigration Control where they were detained for interrogation.

Then, on 12 June, 26 of the youths lied up three immigration officers and sought to escape. On the following day, three of the 26 youths were found by police officers in Fukuoka City who in turn physically handed the three over to fukuoka immigration control. Here, the three Chinese youth were each surrounded by several immigration officers, held down and beaten, punched, slapped and kicked repeatedly. One of the youths (age 19) whom an attorney went to visit, said he was assaulted twice the night of his second arrest. In the first assault four officers and in the second assault three officers surrounded him and beat and kicked his entire body.

The attorney confirmed the youth had visible injuries of red contusions to his right knee, the left side of his chest and on the top of his hands. The same attorney who also went to visit others of the 26 youth who were later re-arrested after their escape was told by many of them that they too had been battered and assaulted. Many of the youths also complained that because they tried to escape,

their daily food provisions were cut in half (some only received a tenth of their normal allowances).

The Fukuoka Immigration Control authorities have explained their above actions to be "inevitable strong force" in face of the youth's resistance to return to the detention center. The authorities have also stated that everything that happened was legitimate and in the scope of occupational duty and that no physical violence was involved. However, according to the attorney representing one of the assaulted youths, as there is absolutely no necessity for such physical violence in the "occupational duties" of immigration officers, the violent assaults should be seen as retaliation from the officers over the youth's attempted escape.

Case E: Physical Assault against Korean males at the Osaka Immigration Control Bureau.

On 29 June 1994 at 11:30pm, A Korean male Mr. A. in a cell at the detention center, could not sleep because a cockroach was bothering him. Mr. A got out of bed and began slapping the wall with his slipper. Hearing the noise, 3-4 immigration officers came to Mr. A's cell from where they took him to another room. Next to the room where Mr. A had been taken was the cell of another Korean male Mr. B. After Mr. A and immigration officers went into the room, Mr. B soon heard terrible screams coming from the room. Mr. B then asked an immigration officer, "Isn't someone being beaten?" At the same time, someone else in Mr. B's cell kicked the door. Hearing the noises, the officers came to the cell and asked who kicked the door.

Mr. B was then taken to an office next to a visitation room. When Mr. B entered the office he saw Mr. A had fallen to the floor from repeated beatings. Mr. B was made to sit in "Seiza" on the floor and his arms were restrained behind his back by a number of officers. When Mr. B tried to throw off the officers, he tore one officer's clothing. Mr. B

immediately received a series of violent blows. 3-4 officers came around him and all of them took turns beating him, particularly under the arms and in the face.

During Mr. B's assault, Mr. A was taken by an immigration officer to sit on a sofa in a visitation room from where a horrifying scream was heard. An immigration officer then brought Mr. A back to the office and beat Mr. A with all his might in front of Mr. B. Mr. B's nose was bleeding and he wanted to drink water, but the officers said he wouldn't give Mr. B any water until Mr. B apologized.

The next day both Mr. A and Mr. B were taken to the hospital. Mr. A suffered from painful wounds to his whole body. Mr. B's ear drum was ruptured and is causing him a serious hearing impairment. Without receiving proper medical treatment, on 2 July, Mr. A was deported. Mr. B, who was also deported half-way through his medical treatment, now suffers difficult in hearing.

After the incident, Mr. B hired an attorney and in August 1994 filed a plea for human rights assistance from the Osaka Mr. BAR Association which is currently under examination. Mr. B is also planning to file a law suit for damages against the state in the near future.

Case F: "Routine Violence" at the Osaka Immigration Control Mr. Bureau.

At the detention center of the Osaka Regional Immigration Control Mr. Bureau, an American male (who has already been deported) witnessed two or three assault cases against Chinese or Israeli individuals and submitted a plea for human rights assistance from the Osaka immigration control bureau. This plea is also under consideration at this time.

Legal Commentary

As seen with the cases of assaults cited above, incidents of physical assaults against foreign nationals by immigration officers are not special, singular or isolated events. To the contrary, these acts of violence are to be expected considering the framework and principles forming the immigration bureau which seeks to ignore the human rights of aliens.

The following is a portion of the statement released by the Labor Minister on February 13, 1995, concerning changes in laws and practices which will affect foreign technical trainees in Korea.

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### III. Reform Measures

#### 1. Improving the basic training conditions and treatment of foreign trainees.

\* Protection of foreign trainees under the Labor Standards Law, Minimum Wages Law, Industrial Safety and Health Law, Industrial Disaster Compensation Insurance Law, and Medical Insurance Law, as follows.

- Timely and direct payment of wages to trainees in cash.  
- Application of other provisions, such as for working hours, holidays, leave, overtime, and working on days off or the nightshift will also be applied to trainees.

- Forbidding violence against trainees and forced labor.  
- Guaranteeing minimum wages for trainees (1,170 won/hour; 9,360 won/day; 264,420 won/month for those working 8 hours/day or 44 hours/week).

- Annual medical check-ups and prevention of industrial accidents and occupational diseases.

- Coverage of trainees under the industrial disaster compensation insurance and medical insurance administered by the government.

Opportunities for acquiring national technical qualifications will be guaranteed, and these opportunities will be made readily available.

\* Relevant regulations will be enacted and reformed for the improvement of the basic conditions and treatment of foreign trainees.

- Regulations for protection and management of foreign industrial technical trainees will be put into effect on March 1, 1995.

- The trainees' original employment contracts will be changed to abide by the new regulations in effect March 1, 1995.

2. Administrative guidelines and inspections for enforcement of regulations will be reinforced to protect the trainees.

\* The local labor office will make administrative guidelines and strict inspections so that the employer will observe the above regulations.

- Placement of foreign trainees in workplaces which violate the regulations will be stopped.

- Employers who violate the regulations will be punished severely according to the relevant laws.

\* Administrative functions will be expanded to counsel trainees with various difficulties and to protect their human rights.

- Counselling offices or hotline numbers will be established (45 for the Labor Ministry, 12 for the Immigration Offices, and 11 for the Korea Federation of Small Business).

- A public prosecutor will be appointed to be in charge of these duties exclusively.

\* The trainee has the right to maintain possession of his own passport as well as the right to go out on his days off, and these rights must be fully protected.

3. Only governmental or other government-approved public institutions in the countries sending the trainees to Korea have the authority to recruit and send the trainees.

\* In case a private company in the sending country recruited and sent the trainees to Korea, the functions of the Korean agency serving that company will be reduced, and the Korea Federation of Small Business will take charge of these functions.

\* Staff members of the Korea Federation of Small Business will be sent to the sending countries to observe the recruiting methods and protect the trainees.

\* Education of the trainees will be extended before and after entering Korea.

- 2 weeks of education in the sending country (previously 6 days) and 1 week after entering Korea (previously 2 days).

- 3 days of education for the supervisors in the companies who oversee the trainees.

- The company must provide on-site training to the trainees as necessary.

\* Medical examinations of the trainees to check for the presence of HIV/AIDS and other diseases will be conducted upon entering Korea.

\* The sending countries should have officials at their embassies in Korea who are responsible for handling matters related to the trainees from their countries.

4. Strengthening control over illegal workers, including trainees who escaped from their original companies.

\* Illegal workers, including trainees who have escaped from their original companies, will be deported back to their countries.

\* The company hiring trainees must abide by the training period, which is not to exceed 2 years, after which the trainees should return to their original countries.

\* Employers who knowingly employ illegal workers will be punished to the full extent of the law.

\* The Korean government will increase the numbers and functions of immigrant enforcement officials to enforce the provisions above.

- Increasing the number of immigration enforcement officials.
- Increasing the capacity of immigrant processing center facilities.

The Ministry of Labor instituted some changes in the law which will affect foreign technical trainees in Korea. Any provisions in your employment contract which conflict with these changes must be revised by February 28, 1995. These changes will be in effect starting March 1, 1995.

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1. Korea's labor laws provide protection for foreign technical trainees in several ways, beginning March 1, 1995.

a. The employer must pay your full salary in cash on a specified day every month. This money must be given to you directly. In no case can your employer give your wages to other persons, including your sending company, sending agency, or brokers who introduced you to the company.

b. For working 8 hours a day, or 44 hours a week, you must be given at least the minimum wage of 1,180 won/hour, 9,360 won/day, or 264,420 won/month. Of course, your company may pay you a wage higher than the minimum wage. If your employment contract sets a wage that is lower than this minimum wage, then, that wage in the contract is null and void, and your contract must be revised by February 28, 1995, so that you can receive either the minimum wage or a higher wage.

c. If you work more than 8 hours a day or 44 hours a

week, you must receive 150% of your wages for your overtime work. The same applies for if you work the nightshift, on holidays or on your days off.

d. The industrial accident compensation policy of the Ministry of Labor pays for the medical costs and compensation for your injury or sickness due to work. It does not matter who is at fault. You can still receive compensation. Also, even if you have a non-work related injury or accident, the Medical Insurance Law states that your illness or sickness will be covered by insurance so that most of your medical treatment costs will be paid for.

e. Your employer should never physically harm you or lock you in the company or factory against your will. In such cases, you should flee and seek the help of volunteers and counsellors who can help you get medical treatment and appeal to the police, the public prosecutor, and the local labor office. Even if you were only slightly injured, you should show the officials your certificate of medical treatment signed by your doctor which will serve as proof of your injury.

f. Your employer must institute practices in the workplace to provide for occupational safety and industrial hygiene, for example, safety mechanisms on machines and harmful substances control. Also, your company must provide you with free medical check-ups at least once a year.

2. In order to protect the trainees, the law will be revised so that the government can increase its supervision of companies to enforce their new guidelines.

a. Companies which do not obey these guidelines will be subject to inspection. An inspector from the Ministry of Labor can punish your company if they do not follow the guidelines according to the law.

b. In case your company does not follow the guidelines, and you feel that your rights have been violated, you should report the misconducts to the Ministry of Labor and other organizations which can help you.

c. You have the right to keep your passport in your own possession, and no one, including your employer, should violate this right. Also, on holidays or your days off, while you are not working, you should be free to go in and out of the factory as you like.

3. Education of the trainees will be reinforced. The education period before you enter Korea will be extended to 2 weeks (before, it was 6 days). The education period after you enter Korea will be extended to 1 week (before, it was 2 days).

4. In addition to these changes, the laws concerning your transfer to another company and the hiring of illegal workers, including trainees who have escaped from their original factories will be made more strict.

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