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**ECONOMIC, SOCIAL AND
CULTURAL RIGHTS
IN SOUTH KOREA**

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ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN SOUTH KOREA

NGOs' Counter Report
to the UN Committee on Economic, Social and Cultural Rights
on the Initial Report Submitted by the Republic of Korea
Under Articles 16 and 17 of the International Covenant
on Economic, Social and Cultural Rights
(Initial Draft of the Final Report Following the NGO's Initial Report
Submitted to the Working Group in June 1994)

April 1995

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Preface

We, non-governmental organizations working in the field of human rights, respectfully submit this initial draft of the Counter Report to the Committee on Economic, Social and Cultural Rights, following the submission of the NGOs' Initial Report in June 1994. We hope this Counter Report will help the Committee in examining the Initial Report Submitted by the Government of the Republic of Korea (E/1990/5/Add.19) under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights.

This Counter Report contains viewpoints, analyses, recommendations, and criticism concerning the government's Report, as submitted by non-governmental organizations which have actively pursued the improvement of human rights and continuously conducted research on each of the specific issues addressed herewith. The section entitled, "Working Conditions of Foreign Workers," merits special attention, since the government's Report fails to mention this issue entirely.

Although we have earnestly endeavored to prepare this Counter Report, it is not free from certain limitations. The short preparation period precluded the participation of and consultation with many capable NGOs, as well as a more comprehensive description of each of the issues addressed. In particular, the government's refusal to cooperate and provide us with necessary information posed significant difficulties in our process of preparation. NGO representatives from Korea will submit the revised and final draft of the Counter Report to the Committee in May 1995.

We sincerely hope that our Counter Report will be given serious consideration by the Committee and help to bring about an improvement in the human rights situation in Korea.

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Introduction

1. Introduction

We, NGOs, who are working to protect human rights and foster democracy in Korea, respectively submit this Counter Report to the Committee on Economic, Social and Cultural Rights, in response to the Report submitted by the Republic of Korea to the Committee (hereinafter referred to as the "Committee") in October 1993 (hereinafter, the "government's Report" or "Report"). We hope that this Counter Report can assist the Committee in examining the government's Report by providing information and facts that were either not fully disclosed or completely omitted in the government's Report. We hope that our Counter Report will be helpful in establishing a productive dialogue between the Committee and the Republic of Korea, and in leading to improvements in the implementation of the Covenant on Economic, Social, and Cultural Rights (hereinafter, the "Covenant"). Because not all NGOs could participate in writing this Counter Report, we regret that there may be some issues concerning economic, social, and cultural rights in Korea which are not covered in this Counter Report. The NGOs participating in the preparation and submission of this Counter Report are the following: Minbyun (Lawyers for a Democratic Society), PSPD (People's Solidarity for Participatory Democracy), Sarangbang (Center for Human Rights), KCTU (Korea Council of Trade Unions), RIHRK (Research Institute for the Handicapped Rights in Korea), KCCER (Korea Center for City and Environment Research), KTEU (Korea Teachers' and Educational Workers' Union), KRIWHRJ (Korea Research Institute for Workers' Human Rights and Justice). This Counter Report received endorsements by the KWAU (Korea Women's Associations United) and the KWHSRA (Korea Workers' Health and Safety Research Association)

2. Overall evaluation of the government's Report

1) The Republic of Korea has achieved tremendous economic growth within a very short period of time. In fact, in terms of Gross National Product (GNP), South Korea will shortly join the top ten economies in the world, and is currently pushing for membership to the Organization for Economic Cooperation and Development (OECD) by 1996. During the course of such rapid economic growth, the Korean government has neglected human and social developments, causing social welfare programs to lag far behind the level of economic development. The government's Report only emphasizes economic accomplishments and unrealistically portrays the quality and standard of living in Korea.

2) However, we believe that the government's Report does not even accurately portray the current situation regarding economic, social and cultural rights in Korea. First, it fails to describe the factors and difficulties in implementing the Covenant. Second, most statistics in the government's Report are such that it is almost impossible for one to compare them to any objective international standards or norms. Third, the Report does not mention government plans

in detail but is rather filled with ambiguous promises; therefore, it is hard to conclude which groups of people are denied of their rights in Korea, what the most pressing issues are, and which policies should receive priority. Finally, the obligations in the Covenant specifically state that government Reports should provide sufficient information to the Committee and to other nations so that "they can clearly see if rights specified by the Covenant are implemented." However, we believe that the Report submitted by the Republic of Korea is far from adequate in fulfilling its obligations as stated in the Covenant.

3) The content of the government's Report is severely limited; most sections simply list the provisions in Korea's domestic laws which are related to the items in the Covenant. It completely fails to explain sufficiently aspects of the legal structure which affect the exercise of the rights contained in the Covenant. For example, the legal structure related to the exercise of the rights of labor is not adequately explained. As is already well known, many international bodies, including the International Labour Organisation, have recommended that the Korean government revise or repeal certain provisions which place restrictions on membership to trade unions, suppress activities, political and otherwise, of trade unions, and effectively prohibit the vast majority of all labor disputes. The government's Report contains no mention of its plans to revise or repeal such provisions, and instead devotes much of its content to asserting the propriety of existing laws. Therefore, it can be said that the efforts undertaken by the Korean government and judiciary have been far from sufficient in integrating the Covenant into the domestic legal system.

4) The Korean government has failed to fulfill its obligation of publicizing actively the ratification and implementation of the Covenant to the public. Furthermore, the government did not notify NGOs as to its preparation and submission of the Report to the Committee. In fact, the NGOs in Korea were entirely unaware of the government's submission of the Report until they were informed of such information by the Committee in April 1994. Furthermore, the NGOs had to obtain a copy of the government's Report from the Committee, instead of from the Korean government itself. As a result of the government's reluctance to comply with its obligations, the NGOs were unable to complete the preparation of the Counter Report until now. Considering the comprehensive nature of the Covenant, one would think that it would be necessary for the government to establish fruitful dialogues with and receive proper advice from experts and specialists in order to prepare a comprehensive and objective Report. However, it prepared and submitted its Report secretly, perhaps indicating its unwillingness to disclose the actual conditions concerning the rights contained in the Covenant. Also, the government based their Report solely upon statistics and information from governmental organizations and bodies. Thus, we believe that the Report submitted by the Korean government is incomplete and inaccurate.

3. The factors and difficulties in the implementation of the Covenant

1) The lack of information and proper education concerning the Covenant

Although it is very important to publicize and educate properly the citizens of Korea about the Covenant, the government has failed to perform its obligation. There is no translated version of the Covenant available for the public, and the fact that South Korea has joined other nations in the ratification of Covenant has never been mentioned in the textbooks for Korean students. In fact, most Korean people have never heard about the Covenant. Moreover, there are no

institutional educational programs for government officials, law enforcement officials, and teachers, with the effect that almost none of the government officials working in relation to the protection of human rights have a proper understanding of the Covenant. The mass media, mainly due to the pressure from the government, also has not actively covered the issues regarding the Covenant.

2) The division of the Korean peninsula and excessive defense spending

One of the most important factors and difficulties in the implementation of the Covenant in South Korea is the division of the Korean peninsula, and consequently, the excessive spending on defense. The government spends 25 to 30 per cent of its national budget (24.25 per cent in 1994) on the military. Undoubtedly, this is one of the key factors limiting the level of resources the government can allocate for human and social development programs. In addition, the South Korean government has been led by military dictatorships until the present civilian administration under President Kim Young-sam, leading to the social exclusion of non-privileged classes and other serious inequities within the Korean society. As these inequities have fractured societal unity, and it is very difficult to forge political consensus on policies for the next stage of human and social developments.

3) Problems in the government's globalization (Segyehwa) strategy

The Korean government recently declared that it would pursue the policy of globalization as its "national development strategy" and established the Committee to Promote Globalization by Presidential decree on December 31, 1993. While the term "globalization" conjures up notions of mutual cooperation and mutual co-existence of nations in today's global village, the Korean government's notion of globalization focuses intently on encouraging competition among Korean enterprises in order to strengthen Korea's economic standing and pays little attention to improving the lives of the Korean people. The Korean government is now receiving public criticism pointing to the fact that its globalization policy is being used to break the current political deadlock. Clearly, a major problem with the government's globalization strategy is that the government places considerably less priority on its social welfare policies than on its economic policies. Under recent past administrations, there were many incidents of workers and others involving their prosecution under the National Security Law, under the pretense that their activities not only threatened national security, but also sided with North Korea. The current administration, however, continues to manipulate public opinion and claims that the demands of workers, the poor, and the disabled for their social rights hurt national economic competitiveness. The courts, which have historically blocked labor union activities by use of the National Security Law, still favor employers' interests and punish workers for their participation in labor dispute activities. The NGOs in Korea are very concerned about the government's Segyehwa strategies.

4) The lack of national responsibility

According to Limburg's Principle, violations of the Covenant are those in which the government "willfully fails to meet a generally accepted international minimum standard of achievement, which is within its powers to meet." Limburg's Principle also states more general governmental responsibilities, such as the necessity of undertaking of "a concerted national effort to invoke the full participation of all sectors of society" and that "particular attention should be given to measures to improve the standard of living of the poor and other disadvantaged groups." Regarding the inadequate social welfare system in South Korea, the government falls far below

meeting the requirements of Limburg's Principle, considering Korea's economic capabilities. In fact, the welfare system in Korea does not even meet the minimum international standard. Although Korea is ranked as tenth in the world in terms of GNP, the government shamefully neglects two million people living below the poverty line. The level of expenditure on social welfare programs in 1992 was 9.7 per cent of total expenditure (UN Report on the World Social Situation, 1993), which is far less than that of the industrialized nations, and even lower than many nations which are much lower-ranked in terms of GNP. Although such conditions could have been justified as necessary for achieving economic growth in the past, such explanations are no longer acceptable today.

The government's failure to improve social conditions has become a pressing social problem. This failure is partly caused by the government's refusal to assume the responsibilities of a state. Korea's welfare system thus relies on the principle of placing the entire burden on citizens to provide for their own livelihood. It violates the fundamental notions of welfare as social policy to protect those in need when the market fails to do so. While the government holds administrative authority over the management of the welfare systems, it fails to give equal recognition of its financial obligations. Therefore, the management of social welfare programs is ineffective, non-democratic, and exclusive of the people's participation.

5) Improper interpretation of social rights

Most of the academic and legal circles in South Korea support the claim that a "social right is an abstract right which does not have any definite or practical right of claim." In other words, many consider economic, social, and cultural rights as nothing more than a "privilege" by no means extended to all citizens. NGOs and trade unions, on the other hand, believe that society has an obligation to extend the exercise of social rights to all members of society, for example, by maintaining an adequate welfare system and providing for the full participation of citizens in the welfare system. For this reason, we NGOs have filed law suits and initiated campaigns in order to guarantee full economic, social and cultural rights for all citizens.

The time has come for the Korean government to recognize social rights as the rights of the people by honoring the provisions which set the minimum standards for a social welfare system, as stated in the Covenant, as well as in ILO Convention No. 102, and by taking the appropriate measures to enact legislation that upholds the social rights of every citizen.

6) Conclusion

We believe that the Report submitted by the Republic of Korea is a superficial and deficient document, submitted to the Committee simply to fulfill its obligations as party to the Covenant. The actions of the government indicates the lack of sincerity in its efforts to protect human rights in Korea, as well as its unwillingness to establish fruitful dialogues with and accept criticisms from both national and international bodies concerning its human rights policies and practices.

Article 6. The Right to Work

Section 1. Overview

The Korean economy achieved rapid industrial growth since the 1960s due to the economic development policies instituted and implemented by the government. This growth, however, was achieved only through the collective sacrifices of workers who toiled long hours for low wages. One could say that this still holds true even today, albeit to a lesser extent than before. The unprincipled labor policies of the government were implemented in order to suppress the massive efforts by workers to gain their rights during that time. In 1992, the government diagnosed the current Korean economy as in need of further development of its "substructure," such as industrial management and industrial relations, while the "superstructure" was sufficiently developed. To facilitate strengthening economic competitiveness through the reconstruction of the substructure, the government launched its "new labor policy." This new policy is based on the subordination of labor interests to economic ones. Superficially calling for "sharing the suffering," this policy only lays the groundwork for the one-sided sacrifices of workers to achieve the government's goals. In conclusion, basic labor rights which are being violated despite the formal provisions protecting such rights in the Constitution and Labor Relations Act are in need of stronger protection.

Section 2. The Situation of the Labor Market

The overall situation concerning employment

The government's Report states that the increasing rate of employment from 1992 to 1996 remains or will remain level at around 2.2 per cent, and the rate of unemployment will remain level at about 2 per cent. However, the government's data is not reliable because of its questionable methods of calculating the rate of unemployment. In the government's statistics, the rate of employment includes part-time workers who may work as little as one hour per week. Thus, because they are so underemployed, their inclusion in calculation of the official rate of employment provides an inaccurate picture of the actual situation. The government's statistics do not allow the full understanding of the situations of underemployed self-employed workers, workers who have become unemployed due to the suspension of their companies' operations or the closure of their factories, and workers who have experienced forced retirement. Therefore, the actual employment situation in Korea is not as stable as the government's overly optimistic statistics would suggest.

Trends of workers by their conditions of employment and by the size of their workplaces

[Table] Trends of workers by their conditions of employment

	(Unit: thousand, x)							
	1985	1986	1987	1988	1989	1990	1991	over 1992
<employers>								
unpaid workers	6,866	7,072	7,164	7,260	7,157	7,171	7,289	7,222
self-employed	4,679	4,868	4,994	5,093	5,052	5,100	5,260	5,337
family workers	2,187	2,204	2,170	2,167	2,105	2,071	2,029	1,885
paid workers	8,104	8,433	9,191	9,610	10,354	10,865	11,287	11,486
(regular employment)	6,714	6,979	7,662	8,114	8,635	9,034	9,465	9,712
(day-to-day employment)	1,390	1,454	1,529	1,496	1,719	1,831	1,822	1,774
<rate of the components>								
unpaid workers	45.9	45.6	43.8	43.0	40.9	39.8	39.2	38.6
self-employed	31.3	31.4	30.5	30.2	28.9	28.3	28.3	28.5
family workers	14.6	14.2	13.3	12.8	12.0	11.5	10.9	10.1
paid workers	54.1	54.4	56.2	57.0	59.1	60.2	60.8	61.4
(regular employment)	44.8	45.0	46.9	48.1	49.3	50.1	51.0	51.9
(day-to-day employment)	9.3	9.4	9.3	8.9	9.8	10.2	9.8	9.5

Source: Ministry of Labor "Fact-finding annual report on the industrial labour environment"
note: These figures represent each employment type's percentage of the total workforce.

[Table] Trends of workers by the size of their workplaces

	1985	1986	1987	1988	1989	1990	1991
< # of emp. >							
total	4,107	4,470	4,795	5,128	5,273	5,366	5,461
5 - 9 person	321	309	293	300	319	322	342
10 - 29	534	589	640	705	762	816	901
30 - 99	933	1,025	1,149	1,227	1,270	1,316	1,367
100 - 299	830	918	1,008	1,038	1,036	1,055	1,053
300 - 499	337	366	373	393	395	394	384
500 - 999	385	419	448	467	475	487	495
over 1000	767	843	884	998	1,017	997	918
< components >							
total	100.0	100.0	100.0	100.0	100.0	100.0	100.0
5 - 9 person	7.8	6.9	6.1	5.9	6.0	6.0	6.3
10 - 29	13.0	13.2	13.3	13.7	14.4	15.2	16.5
30 - 99	22.7	22.9	24.0	23.9	24.1	24.5	25.0
100 - 299	20.2	20.5	21.0	20.2	19.6	19.7	19.3
300 - 499	8.2	8.2	7.8	7.7	7.5	7.3	7.0
500 - 999	9.4	9.4	9.3	9.1	9.0	9.1	9.1
over 1000	18.7	18.9	18.4	19.5	19.3	18.2	16.8

Source: Ministry of Labor, "Fact-finding annual report on the industrial labor environment."
note: All workplaces with five or more workers are surveyed at the end of April every year.

As of 1992, the economically active population increased 2.0 per cent over the previous year, and the population of employed persons increased 1.9 per cent, down 1 per cent over the previous year. In particular, the number of unemployed individuals in all sectors except for agriculture was 437,000, a 6.9 per cent increase over the previous year, an indication of the deterioration of employment stability. As of the end of 1992, according to the statistics of the Economic Planning Board, the total labor force over the age of 15 was 32,330,000, and the economically active population was 19,380,000, or 59.9 per cent of the potentially active population. In other words, about 40 per cent of the potentially economically active population does not participate in economic activities. As of 1992, the number of regular employees working in non-agricultural workplaces was 4,478,000, down 2.5 per cent from 1991, showing the larger decreasing trend. While the rate of male workers decreased by 0.9 per cent, the rate of women workers decreased by 5.7 per cent, or 1,372,000 workers, due to the reduction in exports and the economic recession in labor-intensive manufacturing industries, in which women workers are concentrated. In terms of size, workers in large workplaces employing 500 or more workers decreased by 4.2 per cent, and workers in workplaces employing 300 to 499 regular workers decreased by 3.0 per cent. The normal rate of unemployment was 2.4 per cent, up 0.1 per cent over the previous year, but the increasing rate of employment in all industries is 1.9 per cent increase (an increase of about 350,000 persons), compared to the 3 per cent figure (an increase of about 550,000 persons) in 1991. A total of 200,000 fewer persons were able to find gainful employment in 1992 than in 1991. In particular, the number of workers in the manufacturing industries decreased by 168,000 workers, for the first time since 1980. This decreasing trend is expanding from the light manufacturing industries to all industries. The economically active population increased by 1.9 per cent over the previous year, and the increasing rate of the employment stayed level at 1.5 per cent from the previous year. Therefore, the rate of unemployment was 2.8 per cent overall, up 0.4 per cent from the previous year.

The double structure of the labor market

The Korean labor market is divided into two markets: first, the labor market centered around highly-educated men employed in the white-collar sectors and second, the labor market centered around low-educated women mainly employed in the light manufacturing industries. While the rate of unemployment among people with high levels of education is increasing, the small and middle-sized manufacturing industries feel an acute labor shortage. The reasons for the increase in the unemployment rate among people with high levels of education are that highly-educated persons who majored in non-engineering fields are very reluctant to gain employment which offers them low benefits, and also, there is a new large generation of persons with high levels of education due to the elimination of limitations on the number of students entering college. That is to say, the increase in the unemployment rate is deeply related to problems within the educational system. Unemployment among teen-aged workers is also on the rise, indicating that entrance to the labor market is very difficult due to the economic recession. Also, this may be caused by the widespread preferences among students and students' parents of receiving a liberal arts education over entering the workforce at so early an age. In spite of the increase in the wage level, factors which aggravate the acute labor shortage in small and medium-sized manufacturing enterprises are the decrease in rural-to-urban migration, the outflow of the labor force to the abnormally expanded service industry, and the general avoidance of dirty, difficult, and dangerous jobs. This shortage, however, is not equal across all industries. This tendency is much more severe in small-sized

businesses and in the following declining manufacturing industries -- mining, textiles, clothing, leather, and in particular, those industries which have undergone industrial adjustment. Due to this labor shortage, small and medium-sized companies have resorted to employing foreign workers, leading to other social problems.

The employment situation of women workers

Since 1990, the percentage of Korean women who have become economically active has been increasing year after year. In 1992, a total of 7,860,000 women workers accounted for 40.19 per cent of the total economically active population. Also, the economic activity participation rate for women continues to increase from 47 per cent in 1990 to 47.6 per cent in 1992. The fact that women's economic activity rate and employment rate are increasing, while the overall unemployment rate is increasing, indicates that the shortage of the male labor force is being met by the reserve labor force composed of women and middle-aged and aged workers. However, as the barriers of women's entrance into the labor market and other forms of discrimination against women workers continue to exist, the increasing proportion of women workers may not contribute to the realization of gender equality,

Examining women's economic participation according to their type of occupation, as of 1992, 33.5 per cent of all women workers were employed in the manufacturing sector, 23.4 per cent in the clerical sector, 17.6 per cent in the service sector, 12.8 per cent were professionals, 10.2 in the retail sales sector. From these statistics, one can easily see that the jobs in which women are concentrated are accompanied by lower social status than those of jobs in which men are predominant. Furthermore, even within a particular industry, such as in the case of women in the male-dominated fields of professionals, women tend to hold positions which are lower in social status than that of men. For example, looking at the medical care sector, the percentage of women who are pharmacists is much higher than that of women who are doctors, who enjoy a better social status. Accordingly, in spite of the fact that employment among women has increased greatly, women with high levels of education, on the contrary, have faced enormous difficulties in gaining employment. The reason for this lies in the fact that notions that the female workforce is to be used for simple labor tasks or as a labor reserve force still prevail in our society. As of 1993, the employment rate among female college graduates was only 39.4 per cent. Moreover, a considerable number of these women are employed as temporary workers or workers with formal contracts.

Comparing the division of employment, there is a large number of female unmarried regular wage-earners with clerical jobs. In the case of married women, however, the number of those in the retail sales and service industries is high. The cause of this difference lies in the fact that the majority of women quit their jobs when they marry, but when they want to return to work after having lost their opportunity for reinstatement to their original positions, they gain employment in temporary jobs. This points to another stinging reality that neither childcare facilities nor motherhood protection system have been established in Korea to alleviate women's burdens associated with marriage and pregnancy.

Examining the economic activity participation rate of women according to their age also illustrates the actual situation well. As of 1992, 17.4 per cent of women aged 15 to 19 were economically active, 65.4 per cent of women aged 20 to 24, 44.3 per cent of women aged 25 to 29, 57.8 per cent of women aged 30 to 34, 60.7 per cent of women aged 40 to 45, and 35.5 per cent of women aged 50 and over. That is, the number of women entering the workforce after reaching

the age of 15 gradually increases. This rate continues to increase until women reach the age of 25 years, at which point their economic activity participation rate is the highest. Then, as women aged 25 to 29 years marry, become pregnant, and raise their children, there is an abrupt and steep decrease in their economic activity. After they pass the age of 30, however, their rate of economic activity increases once again (an M-shaped distribution curve). The fact that the economic activity participation rate for women after the age of 15 continuously increases until the set year for "retirement," at which point the rate drops dramatically (an upside-down U-shaped or bell-shaped curve) provides a sharp contrast to Northern European nations. This is due to the fact that Korea has not established institutions such as childcare facilities and childcare leave to protect a woman's secure employment status in cases of her marriage and pregnancy.

The percentage of women workers who are employed at enterprises hiring four or fewer employees is 69.0 per cent, while those employed at large-scale workplaces hiring 300 or more employees only represents 3.3 per cent of all women workers. As the majority of women workers are employed at small businesses, the status of their employment is quite insecure, and a considerable number are not even protected under the Labor Standards Act. Moreover, since 77.5 per cent of all married women workers are employed at workplaces with four or fewer employees, the Nursery Law for Babies and Infants, which mandates workplace childcare facilities at enterprises with 500 or more regular women workers, is completely irrelevant to their welfare.

The employment situation of foreign workers

As stated above, due to the labor shortage in the manufacturing sector in Korea, coupled with the relatively high wages in Korea, compared to Southeast Asian countries in particular, after the labor movement developments from 1987, there has been an influx of foreign workers in Korea starting in the first half of 1990. As of December 13, 1994, there are currently 82,000 foreign workers according to the government's calculations. There are approximately 11,200 people who are scheduled to enter Korea as technical trainees under the auspices of the Korea Federation of Small Business, which would bring the total number of technical trainees in Korea to 30,000, and the total number of all foreign workers in Korea to 90,000 or 100,000.

Table. The Korean government's tally of foreign workers in Korea.

Total	Workers and Trainees			Subtotal	Illegal Workers
	Legal workers	Overseas investment	Technical trainees		
81,824	5,265	9,512	18,816	33,593	48,231
(100)	(6.4)	(11.6)	(23.0)	(41.0)	(59.0)

(unit: number of person: x)

Section 3. The Problem of Job Insecurity

Temporary suspension of operations and closures

In spite of the government's falsely optimistic account of the unemployment rate, very serious problems in employment are now emerging. The number of workers who have been dismissed or laid off due to their companies' suspension of operation is on the rise. In 1992, on account of the suspensions of operation of companies normally employing 50 or more workers, 7,600

workers became unemployed, representing a 33.7 per cent increase over the 1991 figures. If, however, insolvent companies employing fewer than 50 workers are taken into account, then the number of workers who became unemployed in 1992 due to suspensions of operations is 10,769, representing a 74.6 per cent increase over the 1991 figures. Based on these figures, it is estimated that more than 100,000 workers have lost their jobs due to their companies' insolvency. In 1993, companies with 50 or more employees which temporarily suspended their operations numbered 188, and the workers at these companies totally 25,306. It has been reported that the most common reason for companies' suspension of operations is their financial difficulties. Examining such companies in terms of their sectors, over 80 per cent were manufacturing enterprises. In particular, a majority of the businesses were in declining industries, such as textiles, clothing, leather, petroleum, and chemicals. Thus, the companies' difficulties did not so much arise from seasonal market fluctuations or problems of capital as from more structural problems in the declining industries. To provide protection to workers whose job security is poor as they work in declining industries, special measures such as vocational training for these workers must be provided.

Rationalization of management

The rationalization of management was suggested by President Kim Young-sam as one way to strengthen Korea's international competitiveness. Many workers are currently unaware of their severe problems in terms of job security which would arise from such processes. As part of the rationalization of management policies which would concentrate on large-scale enterprises, the reduction of the workforce will follow as the result of the rationalization of management. Since July 7, 1992, companies which have reduced their workforce by at least 50 workers numbered 129, resulting in the unemployment of 19,000 workers. On December 20, 1991, concerning the case of the "management's necessity" as one of the conditions satisfying the principle of "dismissals by just cause," the Supreme Court stated that "if, after objectively examining the technical reasons for a reduction in personnel, the reasons are deemed as reasonable, then they can be deemed as appropriate," thereby mitigating the legal effect of the principle itself. As a result, individual companies continue to ignore the Ministry of Labor's guidelines for the workplace, for which violations the Court's decision has now provided a theoretical basis. Companies are now free to execute extensive reductions in their workforce under the guise of the "management's necessity."

As the number of individuals gaining employment in temporary, service corps, and hourly-based work, as well as subcontracting, is increasing, restrictions on these workers' three basic labor rights are becoming more evident. They are being employed under increasingly disadvantageous conditions, including low wages. While the employment of these workers as regular workers is restricted, the employment of irregular workers under relatively poor working conditions jeopardizes the job security of the regular workers around them. In addition, due to companies' decisions to shift to production to other industries, the automatization of the workplace, the transfer of companies to other locations, and other measures arising from the rationalization of management process, workers remain in a state of severe job insecurity, especially since the voicing their concerns is obstructed by reason of the management's assertion that it has sole authority to oversee matters relating to personnel.

The use of contracted labor

The use of contracted labor outside the auspices of a trade union is illegal according to our present labor laws. Despite this, the use of illegally contracted labor is on the rise. According to

the Ministry of Labor's research, as of 1993, there were 1,514 businesses which used illegally contracted labor, and a total of 129,836 workers who fell under the category of contracted laborers. Taking a closer look at the particular characteristics of these businesses, the majority, 61.3 per cent, were small-sized businesses employing fewer than 50 workers. Also, 924, or 61 per cent, of the total 1,514 businesses were enterprises in the janitorial, security, and building superintendent fields. Workers in the janitorial business totalled 35,520 (27.4 per cent), those in the security business totalled 35,214 (21.7 per cent), while those in the building superintendent business totalled 9,926 (7.6 per cent). Thus, workers in such "unskilled" jobs comprised 56.5 per cent of the total contracted labor force. According to a study of enterprises which employ contract laborers, the rate of contracting unskilled laborers to work at their enterprises was 35.1 per cent, while in 64.9 per cent of the cases, the service or task itself was contracted by the enterprises. In the latter's case, the vast majority were for unskilled tasks or security, janitorial, or building superintendent jobs.

Caused by the insufficient functioning of public Job Security Bureaus, the use of contracted labor threatens the job security of other workers. Therefore, these problems must be addressed by expanding the public Job Security Bureaus, lowering the unemployment rate, and activating the vocational training system. More specifically, the use of contracted labor must be done under the auspices of trade unions, the public Job Security Bureaus, and an autonomous regulatory institution. The government recently drafted the proposed Contracted Labor Workers' Act. The Act, however, was drafted only from the standpoint of employers' concerns for efficiency, and thus received much opposition from the labor camp, whose interests were not reflected in the Act. Thus, the government temporarily conceded to the strong opposition from labor interests, and deferred enactment of the Act.

Section 4. Job Security Bureau Offices

In Korea, the Job Security Bureau offices are insufficient both in number and function. The figures for how employed individuals in 1993 had gained employment are as follows: 31.5 per cent of all employers had been introduced to their employers by friends or acquaintances, 7.8 per cent had been recommended by their academic institutions, 15.1 per cent had taken employment examinations, 3.8 per cent had responded to help-wanted advertisements in newspapers or on billboards, 1.9 per cent had received help from Job Security Bureaus, 36.5 per cent were self-employed or worked for family-owned businesses, and 3.4 were employed by other means. In the case of unemployed individuals, only 5 per cent had gained employment through the Job Security Bureaus. These figures indicate deficiencies in the government's policies concerning the labor market.

One such deficiency is that the insufficient information provided by the Job Security Bureaus for individuals' employment often results in their subsequent early loss of employment. Also, the excessive costs associated with searching for and gaining employment represent enormous wastes of public monies. Furthermore, in 1994, the government loosened administrative regulations concerning approval standards for privately established job placement agencies, which casts strong doubt on the government's sincere support of workers' job security.

Section 5. Vocational Training Facilities

As of 1994, of the 479 total vocational training centers, 95 were public vocational training facilities and 141 were authorized vocational training facilities run under the government's auspices. However, as 62 of the 141 authorized facilities were operated by private individuals, the facilities can only fall short of their expected purpose of increasing job security. Of the 23,323 people who completed vocational training in 1993, only 35.2 per cent (6,218 men and 1,954 women) gained employment. Also, companies are generally reluctant to provide workers advanced training for greater skills and qualifications, and workers often only receive the basic level in-plant vocational training to learn the skills necessary for employment. Thus, training is not implemented with the benefit of the recipients in mind. Finally, though the government's vocational training facilities are mandated to implement advanced training programs, the actual implementation rate is only 1.2 per cent.

Though vocational training is mandatory at workplaces with 150 or more employees, the actual rate of implementation is very low as companies have unsound labor management practices. According to a report by the Ministry of Labor, 74 per cent of workers with special skills are recruited by "scouting" for prospective employees in schools or other workplaces. Also, of the 3534 companies which are required to establish vocational training, only 685, or 19.4 per cent of the companies complied with the regulation. In particular, 2081 or 59 per cent of the total number of companies which are so required, are small or medium-sized enterprises. Of these 2081, a mere 277, or 13.3 per cent, have instituted the mandated vocational training programs. When asked the reasons for small and medium-sized businesses' non-compliance, 49.0 per cent noted the excessive costs of training equipment and facilities, 20.4 per cent stated that their workers did not require advanced skills necessitating training, 8.2 per cent noted the Ministry of Labor's regulations on vocational training standards, 6.1 per cent noted the early loss of employment of training recipients, and 4.1 per cent stated other reasons. The most common answer for these companies' non-compliance was the difficulties in furnishing the training facilities. Thus, the government must pursue a more active policy to support vocational training in small and medium-sized businesses.

Section 6 Recommendations

First, the fact that unemployment is increasing among the highly-educated, while there is a labor shortage in small and medium-sized manufacturing firms indicates that the government's labor market policy has failed. Thus, the government needs to enact more active labor market policy to strengthen the economic and social conditions of workers in manufacturing.

Second, the government should taken measures to protect workers' right to secure employment in the face of increasing job insecurity due to the management rationalization process.

Third, despite the fact that the use of illegally contracted labor is prohibited outside the auspices of trade unions, its use is increasing. Since effective job information services are not provided in the use of contracted labor, the employment security of workers is increasingly being jeopardized. Thus, the government must enact institutional reforms so that the use of contracted labor comes under the auspices of trade unions and official Job Security Bureaus, with the mutual agreement of the working parties.

Fourth, currently, the percentage of newly-employed workers who gain employment through the Job Information Bureaus is extremely low: 1.9 per cent for previously employed workers seeking new jobs, and 5 per cent for previously unemployed workers seeking jobs. Thus, the government must greatly increase the number and function of Job Security Bureaus and hire job security experts in order to regulate the labor market supply and garner public trust.

Fifth, the public vocational training facilities only account for 16 per cent of the total training facilities, and they are inefficiently run at that. Thus, the government must improve its system of vocational training to enable workers to handle changes in the labor market demand structure caused by industrial structural adjustment, by providing advanced training with specialized curricula in all types of enterprises.

Article 7. Labor Standards

Section 1. Overview

After thirty years of dictatorship, Korea's new civilian administration called on all citizens to join in the struggle to forge a "new Korea" under the slogans of internationalization, openness, and globalization. The goal of strengthening economic competitiveness has once again become a national priority. Meanwhile, the government pointed to high wages as the major obstacle in the way of strengthening economic competitiveness and raised the need to stabilize wages to create an atmosphere more favorable to industries. The current labor policy is based on wage suppression and control over labor to achieve the government's outward goals.

According to the government's Report, the government has been providing equal treatment to labor and management, allowing self-regulation and democratic conciliation in regulating industrial relations, improving the welfare of workers by improving the working environment to prevent industrial accidents and occupational diseases, and decreasing the number of work hours per week. The government stated to do so, it decreased the number of work hours in the Labor Standards Act, enacted the Minimum Wage Act, constructed housing facilities for workers, decreased wage differentials by implementing the "total amount wage system," and even enacted the Gender-Equal Employment Act to prohibit discrimination against female workers in recruitment, employment, wages, promotion, and retirement. However, as of 1991, 51.6 per cent of all wage earners are not eligible for protection under the Labor Standards Act since they work at workplaces with fewer than five regular employees. Also, 56.1 per cent of all wage earners are not protected under the Minimum Wage Law since their workplaces have fewer than ten regular employees. Contrary to the government's assertions, work hours per week remain extremely long, and the minimum wage provided by the Law falls short of the minimum living costs. Finally, the total wage amount system, instead of effectively solving the targeted problems, has led to even more problems. Thus, the government's Report provides an overly inaccurate portrait of the recent improvements in working conditions.

Section 2. Wages

The percentage of rises in wages

The government stated that "the labor productivity index (based on regular employees) and the value-added productivity index (based on ordinary prices) increased by 13.9 and 17.4 per cent, respectively, so that wage increases exceeded increases in productivity" (Government Report para. 48). As the labor productivity index measures only the material labor productivity, the government should actually compare the rise in wages to real wages, or to the rise in labor productivity plus the rise in consumer prices. Instead, the government simply compared the labor productivity index to the value-added productivity index so that it would appear as though the rise in wages was

quite significant. In the first half of 1992, the real wages were only 85 per cent of the 1985 level, while the labor productivity was 121 per cent of the 1985 levels, which indicates that rises in wages have considerably fallen behind rises in productivity. The only two years for which rises in wages exceeded rises in productivity were 1985 and 1989.

[Table] Absolute wages, real wages, and labor productivity

(unit: number; percentage)

year	Absolute wages		consumer prices		real wages		labor productivity		productivity-prices	
	unit	increase	unit	increase	unit	increase	unit	increase	unit	increase
1985	100.0	10.3	100.0	2.4	100.0	7.7	100.0	7.0	100.0	9.4
1986	106.4	6.4	102.7	2.7	103.6	3.6	116.3	16.3	119.4	19.0
1987	118.7	11.6	105.8	3.0	112.2	8.3	132.3	13.8	140.0	16.8
1988	140.4	18.3	113.4	7.1	123.8	10.4	130.9	12.4	148.4	19.5
1989	175.0	24.6	119.9	5.7	146.0	17.9	144.5	10.4	173.2	16.1
1990	213.4	21.9	130.2	8.6	163.9	12.3	167.7	16.1	218.3	24.7
1991	252.8	18.5	142.3	9.3	177.7	8.4	195.1	16.3	277.6	25.6
1992*	276.3	18.0	149.7	7.0	184.6	10.1	221.1	17.9	330.9	24.9

* first half of 1992

Source: Ministry of Labor, "Report on Monthly Labor Survey"; Office of Statistics' "Annual Report on Prices"; Korea Productivity Council, "Productivity Review" (Aug. 1992).

Wage determination

The government's Report states that "wage determinations are a function of wage-fixing factors and wage-adjusting factors. Wage fixing factors primarily include the level of the cost of living, reflecting the increase in prices, and the solvency of any enterprise depending upon labor productivity. Wage-adjusting factors result from economic and social conditions, such as the national economic situation, and the labor supply and demand" (Government Report para. 46). The wage increases proposed by labor are based on considerations of living costs and consumer prices. Supposing that the Preparatory Committee for the Korean Council of Trade Unions (KCTU) proposed a 14.8 per cent wage increase for 1995, it would still only represent only 85 per cent of living costs. The government, however, disregards living costs when determining wages and indiscriminately enforces its guidelines of 3 to 5 per cent increases. The following chart illustrates the results of a survey by the KCTU on minimum living costs, number of persons per household, and the number of employed individuals per household.

[Table] Minimum living costs for workers in urban areas (Dec. 10)

Year	Number of persons per household					
	1-person (m.)	1-person (f.)	2-person	3-person	4-person	5-person
1990	337,739	332,190	529,042	670,251	875,464	1,141,781
1991	425,836	426,722	683,814	862,100	1,113,862	1,459,105
1992	483,898	485,015	760,753	969,485	1,256,060	1,663,733
1993	530,977	529,713	834,632	1,058,737	1,376,327	1,846,397

Source: KCTU, "The Minimum Living Costs for Workers in Urban Areas, By Year"

[Table] The number of persons and employed person per household

classification/year	(unit: number of persons)						
	1986	1987	1988	1989	1990	1991	1992(2/4)
# of persons	4.11	4.04	4.01	3.98	3.97	3.96	3.89
# of employed persons	1.36	1.40	1.41	1.42	1.43	1.47	1.44

Source: The Office of Statistics, "Annual Report on Statistics" (1992)

Wage increase control policies based on the total amount wage system and negotiations between the federation of Korean trade unions and the Korea employers' federation

The Korean government instituted wage guidelines (single digit percentage increases per year) to suppress wage increases. In 1992, it instituted the "total amount wage system" in the name of decreasing wage differentials by limiting wage increases in large industries to more than 5 per cent, and in low-wage small and medium-sized industries to no more than the percentage of increase in productivity. Concerning the Ministry of Labor's directions for wage negotiations in 1992, it stated that it would devolve responsibility for implementing the total amount wage system for government-invested or subsidized industries to the Economic Planning Agency, for provincial public utilities to the Ministry of Home Affairs, for financial or banking industries to the Ministry of Finance, and for each public-related industry to the related governmental agency or ministry. Also, the government provides preferential treatment to private industries which observe the wage increase guideline of increases under 5 per cent in the form of financial and administrative benefits and interim exemptions from tax probes. For private industries which exceed the 5 per cent guideline, financial institutions are ordered to conduct greater credit investigations into the industries' finances, and individual companies are disadvantaged when bidding for public contracts. The total amount wage system clearly violates workers' right to autonomous collective bargaining and is merely one line in the government's overall restrictive policy of labor control. The system invites disputes between labor and management in individual industries. A form of expedient policy, the system leads to wider gaps between the wage increases agreed upon and the actual wage increases. In all, the system has succeeded only in complicating and disrupting the wage negotiation system.

The scope of the total amount wage system, which induces consultation between the Federation of Korean Trade Unions (FKTU) and the Korea Employers' Federation (KEF), is being applied to all workplaces. However, while the FKTU receives 7 billion won a year in governmental subsidies and enjoys legal status, from which other labor federations including the Korean Council of Trade Unions are excluded, the negotiations it undertakes with the KEF disregards the collective will of FKTU members. Thus, many workers sharply criticize such practices, and many member trade unions have withdrawn from the Federation. In effect, as it receives growing opposition to its negotiations with the KEF from individuals enterprises, the FKTU has failed in its role as representative of Korean workers' interests.

Wage differentials between large and small or medium-sized enterprises

The government's Report states that "wage differentials based on the size of the enterprise are gradually widening because of the superior bargaining strength of trade unions" (Government

Report para. 49). This, however, is only a superficial analysis. A closer look would reveal problems in the industrial structure due to the government's policy towards small and medium-sized enterprises. The current economic policy which has increased the subcontracting of smaller companies' services by the conglomerates considerably decreases the solvency and security of the smaller businesses. Such policies have actually increased since the inauguration of President Kim Young Sam. In 1994, trade unions of Hyundai Heavy Industries and Daewoo Shipbuilding made demands of their conglomerates to fulfill their social duties of helping to solve the problems facing smaller companies. And in 1995, the Preparatory Committee for the KCTU presented their demands for social reforms to improve the uneven structure and unequal conditions arising from the increased use of subcontracting.

Section 3. The Minimum Wage Act

The government's Report seems to evaluate very highly the successes of the Minimum Wage Act. However, many problems concerning the Minimum Wage Council which determines the minimum wage have been raised, for example, its undemocratic processes. While the Council is composed of members representing workers, employers, and the public interest, members who represent the so-called public interest are no more than mere spokespersons for capitalistic interests. Also, the participation of workers in selecting members is restricted.

The current Minimum Wage Act is not applicable to all workers, but only to those in workplaces with ten or more regular workers. Moreover, the government is scaling back the scope and enforcement of the Law. As a result, many workers in small businesses with fewer than ten regular workers continue to receive very low wages. Thus, in order to fulfill the original intent of the Law, the scope of its application must be expanded to include workers in small businesses.

The Minimum Wage Council deliberates and decides the next years' minimum wage and submits its proposal to the Minister of Labor. The submitted amount, however, falls short of the minimum living costs. Currently, the monthly minimum wage of 264,420 won (1,170 won per hour) does not even enable workers to eke out a feeble existence. Moreover, the rate of increase of the minimum wage continues to decrease every year, and it only increased by 7.8 per cent in 1994. In 1988, the minimum wage ranged from 111,000 to 117,000 won a month. In 1989, it was raised to 144,000 won (an average increased of 26.7 per cent); in 1990, to 165,600 (15 per cent increase); in 1991, to 192,700 won (18.8 per cent increase); in 1992, to 209,500 won (12.8 per cent increase). After prolonged economic stagnation, in 1993, the wage was increased only 8.6 per cent to 227,130 won, and the rate of wage increases has continued to decrease.

Section 4. Working Hours

For Korean workers, the number of work hours per week decreased from 54 hours in 1987 to 48.7 hours in 1992. Despite this reduction, Korea still holds the record for the nation with the longest hours per week in the world.

[Table] Comparison of Weekly Working Hours to Other Nations

		(Manufacturing sector, unit: hour)					
Country		1987	1988	1989	1990	1991	1992
South Korea	a	54.0	52.6	50.7	49.8	49.3	48.7
Japan	a	41.3	41.8	41.4	40.8	40.0	38.8
Taiwan	a	48.1	47.5	46.9	46.5	46.5	46.5
Hong Kong	a	44.5	45.9	44.8	44.0	45.2	43.0
Singapore	a	49.2	47.4	48.6	48.5	48.7	48.7
US	b	41.0	41.1	41.0	40.8	40.7	41.0
Canada	b	38.8	38.8	38.6	38.2	37.8	38.3
Germany	b	40.1	40.0	39.9	39.5	39.2	38.9
UK	a	42.2	42.4	42.2	41.6	42.9	43.2
France	a	38.6	38.7	38.7	38.7	38.7	38.7
Sweden	a	38.4	38.5	38.5	38.5	38.4	38.5
Finland	a	32.1	32.1	31.8	31.3	29.6	
Australia	a	37.3	37.9	37.7	38.1	37.6	37.9
South Africa	b	46.8	47.3	46.9	45.9	45.0	

Source: ILO, Yearbook of Labour Statistics, 1993

The source for Taiwan: Taiwan Statistics Office, Dec. 1992

Note : a= hours actually worked

b= hours paid for

Section 5. Labor Inspection

According to a statement released by the government in 1995, out of a total of 2,757 staff members in the Ministry of Labor, 581 persons (20.4 per cent) are labor inspectors who are in charge of general labor administrative duties such as the guidance of wage negotiations, prevention of labor disputes, examination of employment regulations, legal measures for violations of labor legislation. However, the number of competent inspectors with at least five years experience who can perform their duties properly is no more than 201 persons (38.9 per cent of all inspectors). The remaining, of whom 12.0 per cent (67 persons) had less than one-year experience, 26.1 per cent (147 persons) had between one to three years of experience and 23.0 per cent (129 persons) had between three to five years of experience, are not capable of performing their duties effectively. As of 1993, the number of cases a labor inspector should handle per year was 10,825. Most of these cases included settlements of reported cases, guidance for liquidation of backwages, and settlements of labor disputes. A labor inspector should handle as many as 261 cases, indicating that the supervisor is tied up to formal administrative tasks. Also, due to their frequent transfers, labor inspectors are very lacking in specialty. Also, labor inspectors are distrusted both by employers and by workers. Workers criticize that the inspectors handle the cases in favor of employers and conclude the legal process of their cases without gaining relief for infringements such as unpaid or delayed wages. Meanwhile, the employers have often rejected the inspectors' services, claiming that they were being subjected to legal adjudication despite the fact that workers' complaints were already solved. Accepting employers' requests to do so, the government

states that it will exempt companies with good working conditions from regular inspection and will minimize unnecessary intervention to increase the self-regulation of labor management. However, in the case of too much autonomy in labor management, special measures will be necessary because the interests of workers who are in a relatively weak position in relation to their employers may go unprotected.

Section 6. Working Conditions of Female Workers

Problems with the Gender-Equal Employment Act

The Korean government, in pace with the worldwide trend of legislating the prohibition of gender discrimination in employment, introduced the Gender-Equal Employment Act (GEEA) in 1987 to promote gender equality of opportunity and treatment, institution of child-care leave, and prevention of disadvantages for female in cases of marriage and pregnancy. However, the gender discrimination at the hands of the labor market still continues due to the ineffectiveness of the legal system to prevent the continuance of unreasonable customs. Despite the legislation's progressive intent, the GEEA stipulates even lighter penalties (fines of not more than 250 million won) than those in the existing equal treatment provisions in the Labor Standards Act (fines of not more than 500 million won), so that the Act is suspected of serving more a propagandistic or decorative purpose. In addition, the Act itself is not without problems. In cases of disputes, for example, labor management authorities or the Employment Problems Mediation Committee merely makes recommendations or suggestions, but cannot intervene with actual authority to settle the disputes.

Violations of the Gender-Equal Employment Act

Even though the GEEA has been enacted, a considerable number of female workers are excluded from the Act's coverage. Also, a wide range of discrimination against female workers exist in the areas of recruitment and employment, wages, retirement age, promotion, job placement and assignment, education and training. On December 13, 1993, the Ministry of Labor conducted a nationwide survey for 1,415 companies employing 300 or more employees, which are the targets of special labor management. The survey results show that 37.9 per cent (537 companies) violated one or more articles of the GEEA. Of these, companies with discriminatory practices in terms of wages are the most common, at 21.8 per cent (309 companies), followed by companies lacking childcare leave. at 15.5 per cent (220), discrimination in recruitment and employment, at 9.9 per cent (140), discrimination in education, assignment and promotion, at 8.4 per cent (119), and discrimination in terms of retirement age and dismissals, at 2.0 per cent (28). To examine violations of the law by the type of industry, wage discrimination in the manufacturing sector comprise 64.5 per cent of violations of the law, the most serious among all industries, though the overall average in all industries combined is also high, at 57.5 per cent. This shows that wage discrimination is the most typical type of gender discrimination. This represents the reality that the principle of equal pay for equal work is not applied, and also that as female workers are concentrated in low wage occupations, gender-biased job division is projected onto the wage gap. In addition, while gender equality can be addressed by "forcible" means, such as legislation, wage discrimination can easily be converted to other types of job discrimination. For example, though the treatment of female workers already employed is getting better, the new employment of female workers is still greatly limited.

Regarding the retirement ages in the three governmental divisions of administration, legislature, and judiciary, the Ministry of Labor surveyed observance of the GEEA and found that all three governmental divisions were all violating the Act. In particular, the Secretariat of the National Assembly has such gender discriminatory regulations as the retirement age of female operators and typists being set at 43 years of age, and that of female office secretaries and welfare assistants set at around 26 years of age. Even if employment regulations do not specify the retirement ages, early retirement is forced, for instance, by means of unfair transfers to other offices, using a woman's pregnancy or other reasons as excuses.

Gender discrimination in employment opportunities

Notwithstanding the existence of the law prohibiting gender discrimination in employment, discrimination continues to exist in the ways companies specify gender preferences in employment opportunity notices, as well as in the ways companies recruit their employees for particular jobs based on their gender. To this end, the current GEEA, which only carries superficial definitions and guidelines, is largely responsible. Most notably, in April 1994, Korean women's organizations accused 44 large companies of violating the GEEA. The companies had prerequisites for physical appearance and body size in the recruitment of female workers, such as being taller than 160 centimeters and a maximum weight requirement of less than 50 kilograms. As the large companies attach conditions on height, weight, and appearance for women and not for men, the negative effects on women's right to equality and dignity are clear. For example, female high school students are increasingly undergoing cosmetic surgery or body-shaping efforts to bring their appearances in line with the industries' demands to find jobs. However, in December 1994, the prosecutor rendered not-guilty verdicts to 32 companies on the grounds that the employment prerequisites were forms of discrimination confined to among women, and such inequalities could not be judged as such because there were no men against whom standards for gender discrimination could be measured. In response to this decision, many women's organizations have already published protest statements, and now are seeking legal measures to address the discriminatory practices and to reform the GEEA.

An questionable aspect of the government's policies was that it established obstacles to women's employment opportunities. In Korea, which has a compulsory draft system, the public official Employment Examination System gives preference to individuals who have fulfilled their military service, that is, to men. Before the problems in this system were raised as social issues, the government provided that, for grade 7 and 9 public official examinations, 5 extra percentage points are added to the scores of applicants who completed more than two years of military service, and 2.5 extra percentage points to those who completed fewer than two years of military service. Considering that even a few extra points can determine employment as the competition becomes keener day by day, the system has effectively posed as an obstacle limiting women's employment opportunities. In June 1994, 2,000 professors and students of Ehwa Women's University petitioned to raise this preferential system as a larger social issue. As a result, the governmental Administration Reform Committee, after much debate, decided to lower the number of points added. For grade 7 public official examinations, 3 percentage points will be added to the scores of applicants who completed more than two years of military service and 1.5 percentage points to those who completed fewer than two years. For grade 9 public officials, the added points were 4 points and 2 points, respectively. However, since the reductions were quite small and moreover, since the system itself is fundamentally based on gender discrimination, the problem still remains.

Discrimination in wages, promotion, and retirement ages

The low wages of female workers are an outstanding characteristic of the Korean labor market. In fact, the policy of low wages for women was used strategically to accomplish the economic growth of Korea. Still, female workers suffer from wages which are lower than their male counterparts as well as from extremely long work hours. The current GEEA prohibits any wage discrimination by providing for equal pay for work of equal value. However, as of 1993, the average monthly wages of female workers were 632,655 won, which was merely 55.7 per cent of male workers' wages. Wage discriminatory policies are sometimes conducted openly and simply, but in most cases, they are combined with discrimination concerning placement, assignment, and promotion.

Some examples of other forms of discrimination against female workers are as follows: to assign key jobs to male workers and simple assistant jobs to female workers against their will, though their levels of education and ability are equal; to discriminate on the basis of gender regardless of quality and quantity of work when operating employees' welfare systems such as housing mortgage fund, payment of livelihood protection or welfare allowances; to set disadvantageous prerequisites and procedures for female workers' promotions such as longer number of years worked or special examinations.

For example, when female workers and women's organisations succeeded in removing the so-called Female Bank Clerk System which had been one of the biggest problems in the banking industry, the banks introduced a New Personnel Management System to maintain gender discrimination. While adopting an externally unified paygrade system, it actually gave female workers a paygrade 2 or 4 points lower than for men. The Bank of Korea, the Shinhan Bank, and the Korea Appraisal Board, introduced the so-called New Personnel Management System in place of the Female Bank Clerk System and divided jobs into "integrated" and "general" jobs, with the intention of assigning men to integrated jobs and women to general jobs, which have different wage promotion conditions.

Maternity protection

The Labor Standards Act guarantees a total of 60 days maternity leave before and after the delivery. Actually, however, only a minority of the whole female workers population is guaranteed maternity leave. According to a survey of female workers employed in enterprises with five or more regular workers, only 43.3 per cent of the obligated workplaces actually instituted maternity leave. Also, given that the percentage of female workers employed in enterprises with four or fewer employees is 69 per cent, it is easy to see that the number of female who are able to benefit from the maternity leave system is very small. In addition, even those who are guaranteed maternity leave are often not offered the full length of the maternity leave against their will due to the discriminatory notions which still prevail at the workplaces. Moreover, the current length of maternity leave is not sufficient to allow for proper recovery after delivery and for childcare. In 1993 and 1994, using the above as justification, some female teachers colluded with obstetricians to present false medical certificates with the intention of lengthening their maternity leave or to link the maternity leave to their vacation time.

Under the GEEA, a one-year childcare leave without pay is guaranteed, but those who are covered by this childcare leave provision only account for 16.1 per cent of all female workers, namely those employed at enterprises employing five or more regular workers. This illustrates the fact that industries provide maternity protection without concerns for gender equality. In addition,

the government and public bodies have failed to devise any institutional alternatives to ensure that married female workers can work without having to worry about pregnancy or childcare, as the majority of female workers are currently forced to resign or are otherwise disadvantaged in terms of their job performance and promotion opportunities due to their pregnancy.

Attempt to abolish paid menstruation leave

The government announced in January 1994 it would review the abolishment of paid menstruation leave and prohibition of women's work during nightshifts and overtime work, because some provisions of the current Labor Standards Act provide too high a level of protection to female workers so as to restrict their employment. The government argues that Korea is the only nation which has paid menstruation leave, and such over-protection makes companies more reluctant to employ women. However, a nation-wide survey of female teachers in 1993 revealed that 99.8 per cent of female teachers were not using the menstruation leave. Similarly, a survey on the use of menstruation leave among wage earners employed by enterprises with five or more employees which are covered by the Labor Standards Act revealed that 62.0 per cent did not benefit from the menstruation leave at all while 10.2 per cent received menstruation allowance instead of using the leave. Replacing paid menstruation leave with an allowance would be an operational practice to supplement the low wages of female workers.

Employment insecurity of female workers arising from the government's labor market policy

The current government is promoting the stabilization and flexibility of the labor market under the slogan of industrial restructuring and enhancement of competitiveness. As a result, the working conditions and job security of all female workers who exist as the industrial reserve labor force is further threatened. The government, with the intention of surviving international economic competition and reducing production costs, is propelling the promulgation of the Labor Dispatch Act which will legalize the labor dispatch system which is presently illegal. However, in most cases, the widespread use of the labor contract system is presently providing labor with conditions similar to those of regular workers, with one-year contract terms and formal extensions of the contracts every year. Also, the use of such contracted labor is concentrated mainly in assistant jobs to maintain the low wage level of those jobs and to reduce training and welfare costs by replacing regular labor with contracted labor. In light of these considerations, the legalization of the labor contracting system will be abused to threaten job security and deteriorate the working conditions of mainly female workers of whom a high percentage are engaged in simple office work or manual labor. Actually, the contract labor system breaks the stability of employment, as seen from the statistics that contracted female workers receive 68.8 per cent of the wages of regular female workers and are excluded from their welfare benefits. Although the government decided to postpone presenting the Act to the National Assembly, the use of contracted labor is only expected to be promoted continuously in the light of the policy focus of the current government which enhances industrial and national competitiveness under the slogan of globalization.

Section 7. The Working Conditions of Foreign Workers

Until the mid-1980s, foreign workers who were engaged in physical labor were hard to find

in Korea, as the government was eager to send its surplus labor force overseas. Starting in the late 1980s, however, the number of foreign workers in Korea suddenly increased dramatically due to the labor shortage, especially in the construction and mining industries. The unfamiliar presence of foreign faces in the workplace caused many social problems.

Under Korean immigration law, foreign workers are barred in principle. Some special industrial sectors are exempted from this provision, and companies which are unable to find enough Korean workers are allowed to employ foreign workers. In these cases, the number of foreign workers should be kept to the minimum, and the government strictly prohibits the employment of foreign workers without its permission.

There are three types of foreign workers in Korea: those who have legitimate workers visas issued by the Korean government, those who have entered as industrial technical trainees, and those who work illegally and without the permission of the government. Of the three types of workers, the technical trainees and illegal foreign workers face human rights violations or job discrimination.

Problems facing illegal workers

As of December 31, 1994, there are only 5,265 legally recognized foreign workers in Korea, who compose a small minority of the entire foreign workers' population. Most are from the U.S., Japan, and Western European nations. They usually work under contracts which guarantee favorable wages, decent working conditions, and other benefits. In fact, their working conditions are better than the working conditions of average Koreans, and they rarely face human rights violations or job discrimination.

At a severely disadvantageous position, however, are the illegal foreign workers. There are an estimated 50,000 to 60,000 such workers. Typically, they arrive in Korea with fifteen-day tourist visa or three-month visitor visas, and overstay their visas periods. According to several studies, most of these workers are from Asian countries, such as the Philippines, Bangladesh, Nepal, Pakistan, Iran, and Sri Lanka. A large number of them are ethnic Koreans from China, whose parents or grandparents had emigrated to China in the first half of this century. Recently, Korea has seen the advent of workers from African countries, such as Nigeria, Ethiopia, and Algeria. The average age is 29 to 30 years, and 61 to 74 per cent are male. Foreign workers are scattered at 11,000 companies throughout Korea, most of which are small-scale manufacturing companies hiring 23 to 88 Korean workers and 3.8 to 8.3 illegal foreign workers. They are engaged in manual labor at such typical low-wage industries as textiles, clothing, leather, chemicals, plastic, and electronic parts assembly.

Problems in the industrial technical trainee system

The industrial technical trainees system was started on November 1, 1991 for the short-term training of foreigners. In reality, however, the system has been abused as an expedient method of importing labor to meet our labor shortage demands. These foreigners are "technical trainees" only in name, as they do exactly the same kind of work as regular workers. In spite of this, since the system is operated as a "training system," the trainees are not afforded the rights as "workers." Thus, the possibility of the trainee's human rights being abused is quite high. As of 1993, the number of technical trainees in Korea was estimated at 10,000, though as of December 31, 1994, the government's statistics note the higher figure of 18,816 trainees. Taking into account the approximately 11,200 trainees who are scheduled to enter Korea in 1995, there will be roughly

30,000 trainees altogether.

Trainees are issued one-year training visas, but they are allowed to extend their stay two more years, for a maximum of three years. The 20,000 trainees who entered Korea in 1994 were introduced by twenty-three "manpower recruiting agencies" in eleven countries, including China, the Philippines, Vietnam, Bangladesh, Sri Lanka, Myanmar, and other South and Southeast Asian countries. They are currently working at small and medium-sized textile, rubber, plastic, and metal-processing factories scattered throughout the country. According to the government, the average monthly allowance for trainees is a low 252,000 won (roughly US \$320). The trainees, however, are also liable for paying excessive fees to their manpower agencies or employment brokers, and any other fees for unofficial transactions. Due to the heavy burden of paying such fees, coupled with their low allowances, there are many cases of trainees "escaping" from their factories to find higher-paying work as illegal workers. At the end of 1994, a total of 3018 trainees, or 16 per cent of the 18,816 trainees, escaped from their factories, and in the future, these figures are only expected to rise.

[Table] Industrial technical trainees who entered Korea in 1994, by country

Country	China	Philippines	Vietnam	Bangladesh	Myanmar	Nepal
Number of companies	1,594	700	514	404	192	202
Number of trainees	8,000	3,000	2,400	1,600	1,000	800
Wages	260 \$	260 \$	240 \$	200 \$	230 \$	210 \$

Country	Indonesia	Sri Lanka	Pakistan	Thailand	Iran	Total
Number of companies	144	185	158	53	75	4,221
Number of trainees	800	1,000	800	300	300	20,000
Wages	250 \$	210 \$	230 \$			

Wage discrimination against foreign workers

The average wages of illegal foreign workers in 1991-1992 ranged from 310,000 to 330,000 won a month. By 1994, the average wages increased to 480,000 to 500,000 won (excluding ethnic Koreans from China who earned relatively higher wages). These wages represent approximately 40 to 55 per cent of the average wages of Korean workers in the manufacturing sector and 75 to 85 per cent of the Korean workers with comparable jobs in comparable workplaces. According to the government's figures before the returns were enacted in February 1995, technical trainees receive 252,000 won, which falls short of the Korean monthly minimum wage of 264,420 won, set by the Ministry of Labor for the period beginning September 1, 1994 and ending August 31, 1995.

[Table] Increases in Wages

	1992	1992 (Feb)	1993 (Nov)	Current
Monthly wages	310,000 ~ 330,000	340,000 ~ 350,000	400,000 ~ 410,000	480,000 ~ 500,000

Discrimination in working conditions

According to several studies, many illegal foreign workers have experienced numerous delays

in payment of their wages. The average amount of delayed or unpaid wages was 500,000 won, or wages for 50.8 days of work. Also, most illegal foreign workers work for ten or more hours every day, sixty hours a week, greatly exceeding the standard eight-hour workday and forty-five-hour workweek set by the Korean government. Moreover, though they often work overtime, the night shift, or on their days off, they rarely receive the appropriate allowances for their overtime work.

Insufficiencies concerning the government's labor inspection practices

The present Korean labor laws prohibit discrimination against all workers on the basis of their national origin and provide for the criminal prosecution of employers who abuse their workers' human rights. Furthermore, the laws stipulate the enforcement of labor inspection by the Ministry of Labor in order to assist workers in the exercise of their rights. The Ministry of Labor, however, consistently refuses to apply Korean labor laws to foreign workers and has not effectively enforced labor inspections concerning unpaid wages for completed work and other problems. Thus, all administrative and institutional channels through which foreign workers can receive assistance concerning unpaid wages or other violations of their rights are blocked. Even in the case of foreign technical trainees, the Ministry of Labor considers these employers as "trainees" and not as "workers" in the legal sense, thereby justifying their refusal to apply Korean labor laws to them. In short, the government has not effectively enforced labor inspection practices to protect workers' rights.

Discrimination in social security services

Despite language barriers and lack of technical skills, foreign workers are immediately sent to their job sites without proper training. As their workplaces are mostly small-scale manufacturing companies with outdated machinery, foreign workers frequently become the victims of industrial accidents arising from the lack of proper safety precautions. While the legal workers in Korea are eligible for the industrial accident compensation insurance administered by the government, until recently, illegal workers were refused such protection. Thus, many foreign workers who had suffered industrial accidents joined with Koreans aware of these injustices to protest and form favorable public opinion concerning their problems. In March 1994, the Ministry of Labor decided to apply the industrial accident compensation insurance equally to foreign workers as Korean workers. Due to many factors, however, such as the foreign workers' lack of awareness of the policy changes and fear concerning their illegal status, and the lack of cooperation of the administrative authorities and company owners, the new policy is not being implemented effectively. Also, in the case of technical trainees, until recently, they were not eligible for the Industrial Accident Compensation Insurance, a form of social security insurance. Rather, their employers are supposed to provide private accident insurance for the trainees, which provides less coverage than the government administered insurance. This is another area in which they face discrimination.

Though all Korean workers are covered by health insurance, a form of social security, illegal foreign workers and technical trainees are not covered by any form of medical insurance. Recently, the government announced that public medical insurance coverage would be extended to legal trainees, but only time can tell whether or not the government's intentions are sincere.

Discrimination of the three basic rights of labor

Though the three basic rights of labor -- the right to organize, the right to collective action, the right to collective bargaining -- are enshrined in the Korean constitution and labor laws, the

government has maintained its stance of refusing to allow illegal foreign workers and technical trainees the exercise of such rights. Therefore, these individuals are prohibited from joining trade unions, and it is impossible for them to participate in collective actions and collective bargaining.

Seizure of passports and forced labor

Many employers seize the passports of illegal foreign workers, refusing to give the passports back to them. Employers engage in this practice in order to prevent workers from moving to other companies, and workers are effectively bound to their workplaces. Also, technical trainees are prohibited from voluntarily transferring to other worksites. Not only is it stipulated by law that they have to be deported if they attempt to transfer to other worksites, but also, their passports are held by their employers to prevent their free movement. Prevention of their free movement and the employers' maintenance of their passports can be viewed as abusive practices used to accommodate forced labor.

Exploitation by intermediaries

According to Korea labor laws, wages must be given directly to workers. In the cases of many illegal foreign workers, however, part of their wages are not given to them directly, but are misappropriated by the Korean branches of their manpower agencies which tell the workers that their wages will be remitted to their relatives in their home countries. In the case of many technical trainees, 20 per cent of their wages is handed illegally to their manpower agencies as deposit or security money, while the remaining 80 per cent is also withheld from the workers, ostensibly for the purpose of remitting to the trainees' relatives. The embezzlement of trainees' wages is a frequent occurrence. Meanwhile, the Korea Small Business Federation, which oversees the technical trainee system, profits tremendously. In 1994, it received five billion won in brokerage fees and 7.5 billion won in interest from the security deposits given by the affiliated companies. Likewise, the intermediary manpower agencies gain enormous profit as well.

Other cases of human rights violations

There are frequent occurrences of physical or sexual assault on workers by employers, as well as other human rights violations which could fall under criminal jurisdiction. There are currently no avenues for recourse available to foreign workers. For example, the police, prosecutor, and other investigative agencies do not properly investigate or manage cases involving crimes committed against foreign workers. In addition, foreign workers suffer from various other problems such as poor working conditions resulting in a high rate of industrial accidents and occupational diseases, poor housing conditions in which they live in cramped quarters with other workers, poor eating conditions in which the food is either insufficient or unsuitable to their palates. The Korean government, however, has not conducted fact-finding investigations of the living conditions of foreign workers. It would be no exaggeration to state that the government has completely ignored the plights of foreign workers in Korea.

The immigration system

All foreign workers who have overstayed their visas and all technical trainees who escaped from their original factories and are now working as illegal workers face deportation if caught by the authorities. In such cases, the employers are subject to criminal prosecution for having hired

illegal workers, and the workers face very large fines ranging from a minimum of 500,000 to 5,000,000 won, which poses continuous problems. Korea seems to be the only nation which imposes fines of illegal workers exiting the country, and this unjust system needs to be abolished entirely. Once apprehended, illegal workers are detained in the Foreigners' Protection Facilities in Whikyongdong, Seoul. Foreign workers can be detained there for a period of ten days, which can be extended for another ten days. The conditions in these facilities are never made public. According to workers who were deported after having been detained there, the detainees must unconditionally obey the orders of the facilities' employees or face verbal and physical abuse. Also, if a worker who has been detained does not have an airplane ticket or passport, then leaving Korea is impossible.

Recent changes in the government's policies

As the problems concerning foreign workers became larger social problems, the Ministry of Labor released a statement entitled "The Current Situation of Foreign Workers and How to Address Their Problems" on February 13, 1995. Their statement presented policy reforms, such as stopping their expedient policy of importing foreign labor, as well as the systematization of the employment and supervision of foreign workers. The contents of the statement is as follows: the protection of technical trainees under the Labor Standards Law, Minimum Wages Law, Industrial Safety and Health Law, Industrial Accident Compensation Insurance Law, and Medical Insurance Law; the timely and direct payment of wages to trainees in cash; application of other provision concerning working hours, holidays, leave, overtime, and working on days off or the nightshift, as well as the appropriate allowances for such work; forbidding violence against trainees and forced labor; guaranteeing minimum wages for trainees (1,170 won per hour; 9,360 won per day; 264,420 won per month for working 8 hours a day or 44 hours a week); annual medical check-ups and prevention of industrial accident and occupational diseases; coverage of trainees under the Industrial Accident Compensation Insurance Law and Medical Insurance Law administered by the government; the trainees' right to maintain possession of their own passports; trainees' right to go in and out of their factories when not actually working; strengthening administrative supervision of the processes in which workers are recruited and enter Korea as well as their control over illegal workers, including trainees who escaped from their workplaces. Furthermore, the Ministry of Labor announced that it would introduce the "work permit" system by the end of 1995 in an effort to systematize and regularize their policies concerning foreign workers.

Despite the Ministry of Labor's announcement of their policy reforms, it is difficult to expect that the government will enact the more fundamental reforms which are necessary to address the problems facing foreign workers. Though the Ministry of Labor's reforms represent some progress in protecting foreign worker's rights, they still fail to grant them the same rights as other Korean workers. We fear that instead of providing fundamental solutions to their problems, the Ministry of Labor's reforms are only mere formalities enacted to avoid public disapproval. Also, due to the strong opposition to these reforms by other governmental officials and employers, it remains unclear whether or not the Ministry of Labor's reforms will actually become the official policies of the Korean government. Finally, since the Ministry of Labor plans on strengthening its control over illegal workers, including trainees who have escaped, there is a distinct possibility that the human rights violations against foreign workers will actually become more severe than before.

Section 8. Industrial Safety and Health

Problems in the government statistics for industrial accidents

The ILO Recommendation No. 31 advises Member States to establish a central department to collect and compile statistics relating to industrial accidents. In South Korea, the Department of Industrial Safety of the Ministry of Labor produces statistics on industrial accidents. However, the Department only deals with the number of cases that need medical treatment lasting longer than four days and to which compensation is given according to the Industrial Accident Compensation Insurance Act. Since the number of enterprises which are not covered by the Act is quite large, the statistics produced by the Department of Industrial Safety cannot be said to reflect accurately the actual situation. In addition, the government's statistics omit accident cases which are treated at the worksite, cases covered by medical insurance, and cases which fail to be recognized as industrial accidents due to the lack of sufficient proof that they are job-related. In short, the actual situation of industrial accidents is far more serious than the official data would indicate.

In particular, cases treated as work-site injuries without being compensated by the Industrial Accident Compensation Insurance Act occur continuously, a practice which is helpful in concealing the higher rate of accidents which occur with the tacit permission of the Ministry of Labor. The "Zero Accident Campaign," which started in 1979 and expanded to a national campaign in July 1992, has also contributed to the concealment of the real situation. The campaign has stressed the need for safety education, as it asserted that more than 70 per cent of accidents were caused by workers' carelessness. Moreover, safety education was linked to various reward systems in order to mobilize workers' support of the campaign. This has been a superficial attempt to control the rate of accidents, rather than an actual attempt to improve the conditions at the workplace.

The high accident rate

The overall rate of industrial accidents for all industries in South Korea has decreased on the whole, from 5.91 per cent in 1965 to 1.30 percent as at 1993.

[Table] Characteristics of Industrial Accidents

(Unit: number of persons, x)

	source workers	injuries	accident rate	severity	death rate
1965	161,050	9,470	5.91		
1970	779,053	37,752	4.85		
1975	1,836,209	80,570	4.39	3.29	
1985	4,495,185	141,809	3.15	2.68	3.82
1987	5,356,546	142,596	2.66	2.90	3.29
1989	6,687,821	134,127	2.01	2.19	2.58
1990	7,542,752	132,893	1.76	2.30	2.90
1992	7,058,704	107,435	1.52	2.89	3.44
1993	6,942,527	90,288	1.30	2.73	3.18

* 1) accident rate= (number of the injuries/workers) x 100

2) severity= (number of working days lost/working days) x 1,000

3) death rate= (fatal injuries/workers) x 10,000

Source: Analysis of Industrial Accidents, 1994, the Ministry of Labor

When compared to other countries, Korea's rate of industrial accidents is still very high relative to the level of economic development.

[Table] Comparison of rate of industrial accidents

	South Korea	Japan	Thailand	Singapore
rate of accidents	1.76(17.6)	0.57(5.7)	0.7(7.0)	0.93(9.3)
year	1990	1988	1987	1986

Source: Changes in Industrial Accidents and Severe Accidents, 1991, the Korea Workers' Safety and Health Research Association

Escalating degree of accidents

Even though the industrial accidents has been slowly decreasing, the number of industrial deaths has increased from 1,273 in 1980 to 2,210 in 1993, while the economic loss also increased from 312.5 billion won in 1980 to 4.657 trillion won in 1993. In addition, the death rate for industrial accidents increased from 1.12 per cent in 1980 to 2.44 per cent in 1993. In short, the degree of severity and incidence of industrial accidents has escalated. According to the recent ILO Yearbook of Labor Statistics, the rate of death per worker in Korea is 0.034 per cent, higher than that of South Africa and 34 times higher than that of Japan (0.001 per cent).

[Table] Status of industrial deaths

year	total	no. of injuries	no. of fatal injuries	death rate
1970	37,375	639		1.6975
1975	80,570	1,006		1.23
1980	113,375	1,273		1.1285
1985	141,805	1,718		1.2190
1990	132,893	2,236		1.6892
1992	107,435	2,429		2.2693
1993	90,288	2,210		2.44

Source: Changes in Industrial Accidents and Serious Accidents, 1991, the Korea Workers' Safety and Health Research Association, and the Ministry of Labor

Rate of accidents by industry, enterprise size, and length of service

Looking into the tendencies of industrial accidents by industry, the rate of accidents in the mining industry is decreasing though it still remains at a high absolute level. However, the severity of accidents is rapidly increasing, from 25.9 per cent in 1975 to 62.54 per cent in 1992. Similarly, accidents in the manufacturing sector are decreasing, but the severity has been steadily increasing since 1980. The severity of accidents in the construction sector has also been increasing since 1990.

Table Tendencies of accident rate and severity by industry

	(Unit: %)											
	overall		mining		manufacturing construction		electricity		gas		transportation	
	rate:severity	rate:severity	rate:severity	rate:severity	rate:severity	rate:severity	rate:severity	rate:severity	rate:severity	rate:severity	rate:severity	rate:severity
1975	4.39	3.29	13.41	25.90	4.18	2.10	3.85	3.57	2.13	3.47	5.99	4.94
1980	3.02	2.58	10.99	23.50	2.96	1.95	2.42	2.36	1.38	2.71	4.52	4.06
1985	3.15	2.68	11.97	24.58	3.15	2.92	3.14	3.21	0.75	2.45	3.16	2.98
1990	1.76	2.30	11.55	55.79	1.87	2.00	1.54	1.85	0.61	1.18	1.98	2.71
1992	1.52	2.89	8.99	62.54	1.48	2.48	1.89	3.29	0.38	1.28	1.71	3.13

Source: Analysis of Industrial Accidents, the Ministry of Labor

The actual incidence of industrial accidents by enterprise size shows that the smaller the size of enterprise, the higher the rate of industrial accidents. In 1993, the rate of accidents in enterprises employing ten or fewer employees is the highest, with a rate of 3.32 per cent. In particular, the accident rate in small-sized enterprises is high in the manufacturing and construction sectors, with 4.73 per cent in manufacturing enterprises with fewer than ten employees. While the number of workers employed at enterprises with fewer than ten employees is only 4.8 per cent of all employees, the percentage of injuries among them is far greater, at 12.3 per cent. Also, the number of employees at enterprises employing fewer than 50 persons is 28.1 per cent, while the rate of accidents is 43.5 per cent. In conclusion, the rate of accidents at small and medium-sized companies is clearly a serious problem.

Industrial accidents are concentrated among workers with less than six months of service length. In 1993, for example, the majority of injuries, 51.9 per cent, occurred among those whose service length had not yet reached six months. Adding the 9.9 per cent of injuries among those whose service length is between six months and one year, the total percentage of injuries among those whose service length was less than one year reached 62.8 per cent.

Industrial Accident compensation insurance act

The Industrial Accident Compensation Insurance Act (IACIA) excludes some categories of businesses from its scope of application. Workers covered by the Act amount to approximately 75 per cent of all regular workers.

[Table] Rate of IACIA coverage of regular workers by year

year	(unit: 1,000 workers: number of workers and percentage)	
	regular workers	workers covered by the IACIA
1981	5,374	3,456,746(64.3)
1982	5,583	3,465,746(62.1)
1983	6,009	3,941,152(65.6)
1984	6,337	4,384,589(69.2)
1985	6,714	4,495,185(66.9)
1986	6,976	4,749,342(68.1)
1987	7,662	5,356,546(69.9)
1988	8,114	5,743,970(70.8)
1989	8,635	6,687,821(77.1)
1990		7,563,655

Source: Changes in Industrial Accidents and Severe Accidents, 1991, Korea Workers' Safety and Health Research Association

Determination of premium rates for industrial insurance in Korea adopts a system of differential rates proportional to past years' accident rates and the classification of industries and individual enterprises into several grades. Therefore, Korea's government-administered Industrial Accident Compensation Insurance is very similar to private insurance in this respect. The government should appoint industrial accident experts to oversee the government's compensation system.

Workers' right to participation in occupational safety and health

According to ILO Convention No. 155 article 19, "a worker is to report to his or her immediate supervisor any situation which presents an imminent and serious danger to his or her life or health, and the employer cannot require workers to return to a work situation where there is continuing imminent and serious danger to life or health." Although Article 26 of the Occupational Safety and Health Act of South Korea amended in 1994 recognizes the workers' right to stop working when there is imminent danger, there are no protective measures to ensure that the workers are not disadvantaged later for stopping their work and escape of the dangerous situation. In addition, the Act does not stipulate the necessary conditions for resuming operation. The ILO Recommendations Nos. 171, 164, among others, stipulate the active participation of workers' representatives in occupational safety and health activities at the workplace. Article 19 of the Occupational Safety and Health Act of South Korea includes a provision to form committees for occupational safety and health at the workplace. However, according to a survey entitled, "Analysis of Collective Agreements," conducted by the Korea Trade Union Congress (Chonnohyup), only 78.36 per cent of the 217 required enterprises have such a committee. Of these 78 established committees, 21 exist more as broad labor management councils instead of working specifically to improve safety conditions. In all, workers' participation in safety and health matters is quite limited.

Section 9. Recommendations

First, as the Federation of Korean Trade Union (FKTU) cannot effectively represent the labor community, decisions concerning wage increase rates through the so-called "social accord" between the FKTU and Korea Employers' Federation are contrary to the collective will of workers. Therefore, the government should recognize that the wage increase negotiations are a basic workers' right to subsistence and ensure that the wage increases be negotiated autonomously by employers and workers.

Second, currently, enterprises employing fewer than ten persons are not protected by the Minimum Wage Act. Therefore, the government should amend the Presidential Decree to include the small enterprises employing fewer than ten persons in the application scope of the Minimum Wage Act in order to achieve the original intent of the Act. Considering that the current minimum wage falls far short of the actual minimum living costs, the government also should increase the minimum wage to enable workers to maintain a minimum level of living standards.

Third, labor inspectors are distrusted by both employers and workers. Workers have asserted that labor inspectors handle cases in favor of employers and conclude the legal process without solving their appeals, while employers are also dissatisfied as they claim that they are

faced with legal action despite their workers' problems being solved. Therefore, the government should improve the functions of inspectors' job and undertake measures to increase specialization.

Fourth, in order for female workers to enjoy equal working conditions as male workers, consideration should be given for them to engage in labor activities without being discriminated when married, pregnant, and taking care of their children. Therefore, the government should implement a comprehensive pregnancy and childcare leave system and sufficient childcare facilities for female workers.

Fifth, because many foreign workers are either illegal or technical trainees, they are ineligible for protection under Korea's labor laws. Accordingly, they are suffering from severe discrimination in the areas of social welfare, protection of their three basic rights of labor, forced labor, and exploitation by brokers or other intermediary companies. Though the government announced its reforms of the technical trainee program, the government's sincere intentions in instituting these reforms cannot be entirely trusted. Thus, the government should take measures to enact fundamental reforms of the provisions concerning foreign workers so that they are provided the same level of legal protection as Korean workers.

Sixth, the rate of industrial accidents in Korea is very high compared to international standards, and, in particular, the rate of accidents in small enterprises employing fewer than ten employees is an alarmingly high 3.32 per cent. Therefore, the government should take the appropriate measures for industrial safety control at these small enterprises.

Seventh, the size of state subsidies to the industrial accidents insurance fund is no more than 1 per cent of the total income of the insurance fund and covers no more than 15 per cent of the administrative and operational expenditures. Therefore, the government, with the understanding that it should assume ultimate responsibility for social insurance, should establish a long-term program of subsidy expansion to the social insurance system. For the short-term, it should improve the current system and take more responsibility for the management and operational expenditures of the fund.

Eighth, acknowledging that the current system of leaving the concerned industries to bear the burden of long-term injuries and diseases such as silicosis is unreasonable from the viewpoint of social solidarity, the government should seek the appropriate measures, such as establishing a special fund for which all industries can bear joint responsibility in order to share the common burdens. Also, the requirements and conditions for receiving insurance benefit payments must be loosened to grant recognition as an industrial accident any accidents arising during the commute to and from work. Also the government should, considering that the current method of calculating the level of insurance benefits in direct proportion to the recipient's level of average income is very disadvantageous to low income workers, amend its method of calculating the level of insurance benefits and a supplementary welfare system is necessary to guarantee their actual livelihood.

Article 8. The Three Labor Rights

Section 1. Overview

The Korean Constitution proclaims the protection of the basic trade union rights, i.e., the workers' rights to organize, collective bargaining, and collective action. Although some legal provisions restricting basic trade union rights have been partially revised since the massive labor upheavals in 1987, the Constitution and labor laws still contain articles which fundamentally restrict basic trade union rights. For this reason, Korean workers are not allowed to form trade unions at their own choosing, and most acts of labor disputes are considered as violations of the labor laws, resulting in the frequent dismissals or imprisonment.

The process of labor law revisions shows very well how the legal provisions which infringe upon basic trade union rights had been inserted in the Trade Union Act and Labor Dispute Adjustment Act, which are the basic laws for the violation of basic trade union rights. Former President Park Chung-hee's administration, which seized power through the May 16 Military Coup, implemented economic growth policy through the introduction of foreign investment and the rearing of export-oriented industry, and to support these policies, forced low wages and long working hours onto workers. The 1963 Revisions of the Trade Union Act and Labor Dispute Adjustment Act were intended to block the labor movement initiated by the workers suffering from deplorable working conditions. The rewritten labor laws, therefore, gave priority to restricting, rather than guaranteeing, the basic trade union rights. Since then, the labor laws have repeatedly been revised to restrict and suppress basic trade union rights by illegitimate bodies which were set up during the 1972 Yushin dictatorship and the May 18 Military Coup.

Concerning the guarantee of basic trade union rights, the government's Report, citing various reasons, stresses the inevitability of the restrictions of the basic labor rights. The government's argument, however, sounds a far different tone than does the principle of the universal guarantee of basic trade union rights. Relating to the guarantee of basic trade union rights, the International Labor Organisation (ILO) has repeatedly recommended the Korean government to repeal or reform the legal provisions which seriously restrict the basic trade union rights. This is clear evidence that the government's logic for restriction of basic trade union rights is not persuasive. Therefore, instead of adhering to the absurd argument of the "inevitability" of the various legal provisions restricting basic trade union rights, the government should change the focus of its economic policy which is based on the infringement of workers' rights, and further show progress in the reforms of restrictive labor laws.

Section 2. Restrictions on the Right to Organize a Trade Union

Present situation

As participation in a trade union is a subject of activity to improve working conditions and

workers' status, workers' right to form or join a trade union should unconditionally be guaranteed. As the government acknowledges, however, public servants and teachers are prohibited from establishing trade unions, and the establishment of a multiple trade union in addition to any other existing union is prohibited by law. As a result, a great number of teachers have been dismissed or disciplined for their involvement in the process of establishing trade unions. Also, a number of trade unions and their federations which attempted to overcome the "yellow unionism" of the existing trade unions are regarded as illegal organizations and harshly repressed.

Prohibition of multiple trade unions: union monopoly

Article 3, clause 5 of the Trade Union Act, which prohibits the establishment of multiple unions, is a fundamental infringement on workers' right to organise at their own free will, a right which is enshrined in Korea's Constitution article 33 and the ILO Convention No. 87, article 2. The government states in paragraph 101 of its Report that the law was designed to protect existing trade unions which have a weak support base and to support them in their primary functions of striving to improve working conditions. However, the purpose of the law is none other than to ensure the monopolistic position of existing yellow trade unions by preventing the establishment of democratic trade unions that have been increasing their influence since the massive labor upheaval in 1987. This restrictive provision was first introduced in 1963 when Park Chung-hee's military government revised labor laws to prevent the establishment of the National Trade Union Council, pitting it against the Federation of Korean Trade Unions, a mouthpiece for conveying the government's imperatives, and later in 1987, it was amended in a more strict fashion in response to a strong request from the present FKTU which, no different from the former FKTU, is not independent from the government.

Under the provision, the formation of a trade union itself is thoroughly banned if the organizational subject is overlapping. As a result, the trade unions newly established after 1987, the company-based unions that withdrew from the FKTU, and their industrial federations formed new federations which were forced to exist outside the law as they could not acquire legal recognition as union federations. After the Korean Federation of Hospital Workers' Union acquired legality in 1993 by the decision of Supreme Court ruling that its organizational subject did not overlap with the existing trade union federation called the United Federation, other federations formerly outlawed followed suit in gaining legality, such as the Korean Federation of Professional and Technicians' Unions and the Korean Federation of Construction Workers' Unions. The law, however, still prohibits the lawful existence of new federations which have overlapping organizational subject with existing FKTU federations, except for the United Federation, as well as all new confederation other than the FKTU. Similarly, at the company level, there have been so many actual cases in which worker-initiated trade unions which were independent from the employer were blocked by employer's tactics of manipulating "bogus unions" which exist only on the official documents. Also at the industry level, while trade unions in the automobile industry are forming a federation and shipbuilding trade unions formed a federation, they cannot gain lawful status as union federations unless the existing Federation of Korean Metalworkers' Trade Unions under the FKTU is dissolved. In 1994, riot police troops raided a strike called by the Korean Locomotive Drivers' Council and dozens of workers were imprisoned for participating in the illegal strike. Though the Korean Locomotive Drivers' Council is not recognised as a lawful trade union insofar as the existing Korean Railway Trade Union under FKTU exists, it still has about a membership of about 7,000 and functions as a *de facto* trade union. Similarly, the Korean Council

of Trade Unions that was launched in November 1994 as a national center of democratic trade unions with a total membership of 420,000 workers from about 1,000 company-based unions is outlawed for the reason that it overlaps with the existing FKTU.

Prohibition of public servants' trade unions

As stated in the government's Report, public servants are prohibited from forming or joining trade unions in accordance with article 33, clause 2 of the Korean Constitution, article 8 of the Trade Union Act, article 66 of the National Public Officials Act, and article 58 of the Local Government Employees Act. The government argues in paragraph 94 of its Report that the public officials' right to association, collective bargaining, and collective action should be restricted because they have a duty to "be servants of the entire people" as stated in article 7 of the Constitution. However, article 7 merely expresses a principle of public officials' duty that public officials should not act for the benefit of only a part of the people, a certain class or political fraction, but always perform their duties for the benefit of the whole people. It does not have direct relevance to public officials' labor relations, as it were, their rights to organise, bargain, and act collectively. Over-extending the concept in the Constitution to restrict public officials' basic labor rights, therefore, not only exceeds the original intent of the Constitution, but also distorts its meaning and original intent as well.

Consequently, the argument that the very positions of public officials logically and naturally induces the restriction of their basic labor rights is groundless. Regarding restrictions on public officials' basic labor rights, restrictions should not be based on their position as public officials but rather, they should be based on the specific duties they perform. Therefore, the provision restricting the basic labor rights should be amended so that it guarantees the basic labor rights of ordinary public officials, provided that the rights of individuals in the armed forces, law enforcement officials, and firefighters be regulated by a separate law, in conformity with article 9 of ILO Convention 87 and the ILO's recommendations to the Korean Government.

Prohibition of teachers' trade unions

The government's Report states in paragraphs 96 to 99 that teachers' unions cannot be legally recognized, because teachers are not only in the position of public officials but also cannot be treated as ordinary workers. Furthermore, the Report criticizes the Korean Teachers and Educational Workers' Union (Chunkyojo) formed in 1989 as an organization engaging in radical political activities rather than improving teachers' working conditions. However, there is no reason for which teachers should be treated differently from other ordinary public officials or should be denied their worker status, and therefore, teachers should be able to form or join the organization of their own choice so as to protect their interests. Nevertheless, in 1989, the government dismissed about 1,500 teachers for having joined Chunkyojo and arrested 149 teachers in relation with activities of Chunkyojo. Faced with the continuous resistance of the repression of Chunkyojo both in Korea and abroad, the government realized its mistake and finally reinstated most of the dismissed Chunkyojo teachers in May 1993. However, the dismissed teachers could only return to school on the condition of their disaffiliation from the KTEU, and the KTEU has yet to be legally recognized as a lawful trade union.

Section 3. Trade Union Activities

Overview

Having been suppressed by the government's intense control, Korean trade unions and federations have not been entirely immune from yellow unionism. In the meantime, many trade unions have been newly established, which struggle to overcome the existing unions' subordination to governmental concerns. After the 1987 labor struggles as a turning point, these various unions formed a united force of democratic trade unions. In response to this, the government has repressed democratic trade unions under various legal charges, hindered the unification for their forces, and attempted to ignore their actual existence as can be inferred from the government's Report, which states the preposterous idea that the democratic trade union movement is gradually losing its influence. Against the government's wishes, however, the democratic trade union movement has already grown to compete with the government-recognized body, the FKTU, and is becoming a leading force in pioneering the Korean trade union movement for trade union independence. Therefore, the government should stop its policy of repression of the democratic trade union organizations and open the way for their legalization.

Organizational situation of trade unions

Before 1987, the number of "enterprise unions," or company-based unions which are separate units of a complete union structure, which have the ability to function by themselves as trade unions, numbered 2,675, with a total membership of 1,036,000, and an organizational rate of 12.3 per cent. After 1987, however, the number of new trade unions which began to organize increased so rapidly that, according to the government's Report, the number of enterprise unions by the year of 1992 increased to 7,526 with a total union membership of 1,735,000, and an organizational rate of 15.1 per cent. According to the government's Report, these trade unions all belong to the FKTU and one of its affiliated 21 industrial federations, and the radical labor movement forces which agitate the workers and aggravate industrial unrest are increasingly losing their influence. However, the majority of trade unions established after 1987 were discontent with the FKTU's yellow unionism, and therefore not affiliated with the FKTU. Furthermore, many existing trade unions withdrew from the FKTU to join the democratic trade union camp. According to the FKTU's 1992 Activity Report, the FKTU itself admits that 1,665 unions with memberships totalling 687,652 workers withdrew from the FKTU, while estimating that 1,048 unions with memberships totally 420,409 workers chose to joining the pre-cursor to the Korean Council of Trade Unions (KCTU) which was formed in June 1992. Different from the government's Report, which stated that KCTU affiliates are gradually losing their power, a preparatory body called the Korean Council of Trade Unions was formed in November 1994 to form a second consolidated national center of labor power outside the FKTU. Moreover, the influential power of the democratic trade union movement is expected to increase, as the large scale unions which left the FKTU for its yellow unionism are most likely to affiliate themselves with the KCTU.

International solidarity activity

Though the government's Report makes no mention of the international solidarity activities of the democratic trade union camp, the democratic trade unions are affiliated with the International Trade Secretariats (ITS), and its members attend a variety of international conferences such as

those held by the ILO and the ITS. In 1992, members of the present KCTU lodged a complaint to the ILO against the Korean government concerning its violation of the freedom of association, and the ILO Governing Body issued recommendations to the Korean government to recognize multiple trade unionism, to guarantee teachers' and public officials' right to organize, and to repeal the prohibition of third-party intervention.

Prohibition of political activity

Under article 12 of the Trade Union Act, Korean trade unions are completely prohibited from undertaking political activity. The government's Report argues that, should trade unions be allowed to engage in political activity, their basic purpose of improving and maintaining working conditions would be neglected. On the contrary, in light of the history of the labor movement, the improvement and maintenance of working conditions and workers' status can only be accomplished when workers' political activities are active. Consequently, the freedom of political activity of trade unions should be guaranteed. Labor problems are not only social and economic matters, but also political problems which have to be solved through the fundamental democratic reform of society. State policies concerning the economy, taxation, and welfare which are directly relevant to workers' lives are decided in the processes of policy planning, legislation by the National Assembly, and administrative implementation.

Administrative authority's interference

The Trade Union Act has a number of provisions that empower the administrative authorities to intervene unjustly in a trade union's autonomous operations, the typical provisions of which are: authority to order modification of a union's constitution (article 16); authority to order modification of a union resolution and disposition (article 21); authority to nominate a convocator of a union's extraordinary congress (article 26(3) and (4)); authority to investigate into a union's internal affairs (article 30); and authority to order the modification or nullification of collective agreements (article 34(3)). These provisions are in direct contradiction to the union's right to autonomous operations enshrined in article 3 of ILO Convention 87 which states, "workers' and employers' organizations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programmes. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof." Actually, the government has effectively curtailed trade union's autonomous decision-making. In the first half of 1993, for example, the government conducted 393 investigations into unions' internal affairs in their efforts to put pressure on the democratic unions to withdraw from the Korea Trade Union Congress (Chonnohyup). In early 1994, the government threatened the exercise of its investigation power, targeting trade unions undergoing wage increase negotiations and collective agreements in order to compel them to follow the government's restrictive wage increase policy.

Section 4. The Right to Strike and Participate in Labor Disputes

Overview

Despite the fact that the right to strike is guaranteed by the Constitution, the actual

exercise of workers' right to strike is extremely restricted. In this regard, the government admits that the exercise of the right to strike is restricted by as many as 11 provisions. However, most of the restrictive provisions lack any reasonable grounds, and the scope of the restrictions are overbroad. In addition, though not mentioned in the government's Report, public officials are deprived of the right to strike according to article 12(2) of the Labor Dispute Adjustment Act. In cases of so-called public utility enterprises, which includes public transportation, banking and finance, petroleum refining, broadcasting, communications, etc., workers cannot strike if the government refers the labor dispute over to compulsory arbitration. As noted before, acts of labor disputes are restricted by a number of provisions so that Korean workers cannot lawfully exercise their right to strike. In effect, union leaders should be prepared for dismissal and criminal prosecution when undertaking acts of labor dispute.

Prohibition of third-party intervention

Article 12(2) of the Trade Union Act and article 13(2) of the Labor Dispute Adjustment Act stipulate that any person other than a worker who has actual employment relations with the employer or the concerned trade union, or other persons having legitimate authority under law shall not engage in an act of interference for the purpose of manipulating, instigating, obstructing, or any other act to influence the concerned parties in an establishment or dissolution of a trade union, joining or disjoining a trade union, or in collective bargaining with the employer, or in a dispute.

The government bases this prohibition on its supposed protection of the essential nature of a trade union as a worker's autonomous organization by preventing radical external forces from intervening in the activities of the trade union. However, these stipulations, which were introduced for the purpose of blocking the democratic trade union movement in the 1980s by the National Security Legislation Council established by former President Chun Doo-hwan, who seized power by a military coup in 1980, not only infringes on unions' right to autonomous operation, but also violates their freedom of expression and labor activity guaranteed by the Constitution. The stipulation prohibiting third-party intervention contradicts the principle of legality (*nulla poena sine lege*). It would be difficult to find a labor law provision of this repressive nature in other nations. The provision has resulted in the criminal prosecution and imprisonment of a number of union leaders on the grounds of their support for activities of other trade unions. In 1993, the ILO determined this provision's incompatibility with article 3 of ILO Convention no.87 and recommended the Korean government to repeal the provision, after which the Korean government announced that it was reviewing the provision's repeal. Nonetheless, union leaders of the Korean Locomotive Drivers' Council and the Korean Council of Railway Workers' Unions who led the railway and subway strikes in 1994 were prosecuted and imprisoned or are still on law enforcement officials' wanted list on charges of violating the provisions prohibiting third-party intervention.

Ban on strikes of public officials and workers in the defense industry

Under article 12(2) of the Labor Dispute Adjustment Act, public officials and the workers employed in the defense industry are prohibited from undertaking acts of labor dispute, irregardless of the specific nature of their duties actually performed. With respect to this, the government's Report states that this prohibition is for the sake of the national security of the Republic of Korea, which constantly faces threats to its security. As the right to strike is one of the fundamental rights of workers and their organizations, and at the same time one of the essential means through which they can promote and defend their occupational interests, this right should be fully

guaranteed except for those who act as agents of the public authority or those engaged in services whose interruption would endanger the life, personal safety, or health of the whole or part of the population. The right to strike cannot be denied merely on the basis of the workers' status as public officials and workers engaged in the defense industry.

Compulsory arbitration for public enterprises and emergency adjustment

Under the terms of article 30(3) of the Labor Dispute Adjustment Act, the Labor Relations Commission may refer a dispute in public enterprises to arbitration upon request of the administrative authority or ex officio. Under the terms of article 40(1) of the same Act, the Minister of Labor may render a decision for an emergency adjustment in case an act of dispute is related to the public interest, or is of a large scale, or of a specific character, if such an act of dispute carries with it the danger of impairing the national economy or endangering the daily life of the general public. Once referred to compulsory arbitration or once a decision in emergency adjustment is rendered, a strike is banned for a certain period, effectively rendering all acts of dispute at public enterprises impossible. Moreover, article 4 of the Labor Dispute Adjustment Act stipulates a broad and superficial category of public utility services, including the public transportation industry, water, electricity and gas supply, petroleum refining, public hygiene and medicine, banking and finance, broadcasting, and communications. Consequently, whether or not an act of dispute is allowed remains at the sole discretion of the administrative authority and the Labor Relations Commission, so that the nominal right to collective action is virtually useless. Recently, in 1993, the government invoked an emergency adjustment for the strike at Hyundai Motors to exert pressure on the trade union to accept the employer's offer on collective agreement.

Section 5. The Dismissal and Arrest of Trade Unionists

From 1987 to 1992, the number of workers dismissed in association with labor disputes reached 5,200 persons, while arrests numbered 1,800. Even after the so-called current civilian government took office, hundreds of workers have been arrested or placed on the wanted list. In particular, as a result of the strikes of trade unions with the Hyundai Group in 1993 and the strikes of railway and subway workers in 1994, most of the key leaders of the democratic trade union camp are still imprisoned or wanted by the police on the charge of third-party intervention. Concerning the government's repression, many international labor-related organizations such as the ICFTU, ITS, and trade unions in other countries made protests but failed to change the Korean government's outright violations of the right to strike.

Section 6. Recommendations

First, the government should ratify ILO Conventions Nos. 87, 98 and 151, which can be said to be the basic and representative Conventions, as soon as possible.

Second, the government should repeal the legal provisions which unjustly infringe upon the three basic labor rights to association, collective bargaining and collective action, and notably, the

prohibition of multiple unions, prohibition of public official's and teachers' right to form or join trade unions, prohibition of trade union's political activities, prohibition of acts of labor dispute by public officials and workers in the defense industry, and compulsory arbitration for public enterprises.

Third, even after the current civilian government took office, the repression of workers' exercise of their right to strike continues. The government should cease this repression immediately, and specifically, it should examine the current situation of workers imprisoned or wanted for participation in union activities after the launching of the civilian government and take the appropriate measures, such as granting amnesty to all related individuals.

Fourth, the government, including the judiciary, should clarify its position on the increasing number cases in which employers bring lawsuits against union officers or the trade unions themselves for compensation for damages resulting from their participation in illegal strikes.

Article 9. Social Security

Section 1. Overview

"The right to pursue happiness" and "the right to sustain a humane life" are enshrined in the Constitution of the Republic of Korea in articles 10 and 34, respectively. Thus, the rights provided in the Constitution are to be guaranteed to individual citizens as inherent rights of a person rather than something to be determined by the budgetary situation of the government. Furthermore, the government has a duty to provide social and economic conditions to enable a person to maintain a humane and cultural life above a minimum standard.

Looking at the present social security system of South Korea, however, one may easily find that: 1) the system has been made available to certain strategic groups in a selective and instrumental manner, excluding groups who are in need the most, and, therefore, it violates "the principle of universal applicability to the whole social constituency," 2) the level of benefits does not adhere to "the principle of providing assistance to enable a full family life," 3) the system does not approach either "the maximum possible provision" or "the minimum possible provision" of security due to the weak foundation of social security, and 4) "the state responsibility" is unfulfilled as the national expenditure on social security remains extremely low, while the state's strict control over the management and administration of the social security systems and the resulting inefficiency and undemocratic practices fail to promote the sufficient "participation" of social constituencies.

The government's irresponsibility is apparent in the Report. In short, the Report lacks even minimal sincerity and concreteness. It merely lists cursory descriptions of various forms of social security and thus impedes one's understanding of what and how much benefits individuals in need actually receive from the security systems and how this compares with international norms and standards. In particular, the Report lacks information on and deliberation of the social groups most urgently in need of assistance, the level of benefits they receive, and the service delivery system that serves to reduce administrative cost and leakages. Moreover, the Report falls short of its proper function, to yield an objective assessment on Korea's present social security system. This raises doubt concerning the meaning of the Report's submission, as it does not provide descriptions of major criteria or on "the comprehensiveness of each security system, the appropriateness of benefit, and the democratic participation in the service delivery system."

Section 2. Livelihood Assistance Service

Low Level of Support

In Korea, there is a form of social assistance called the Livelihood Assistance System, in

which the level of support is set at "the level at which a person can maintain a minimum standard of a healthy and cultural life" as stated in article 5 of the Livelihood Assistance Act.

The most important services provided by this Law today are livelihood aid, medical aid, and education aid to both home and institutional care recipients. These services, however, do not provide realistic support to livelihood as the provided level of support for an average four-person family living in a major city is only approximately 40 per cent of the minimum living costs as of 1994. With this level of support, one cannot maintain either "a healthy and cultural life of minimum standard" or a level of mere subsistence. Therefore, as a first step towards a society guaranteeing the welfare of its citizens, it is urgent to raise the level of social assistance support to the level of minimum living costs.

[Table] Monthly support for livelihood and minimum living cost

(Unit: Thousand Won)

\ year	1990	1991	1992	1993	1994
living cost for four-person home care family (A)	156	172	196	224	260
living cost for four-person institutional care family (B)	192	208	220	228	260
minimum living cost for four-person urban family (C)*	452.5	492.2	547.6	594.7	649.6
A/C	34%	35%	36%	38%	40%
B/C	42%	42%	40%	38%	40%

* estimates based on the 1988 minimum living cost

Source : *White Paper on Health and Social Affairs*, Ministry of Health and Social Affairs, 1994 (in Korean); *Research on the Reform of the Livelihood Assistance System*, Korea Institute for Health and Social Affairs, 1990 (in Korean).

Problems in Selecting Recipients

Selection of recipients for livelihood assistance has been quite limited and administratively expedient.

[Table] Selection criteria of livelihood assistance recipients

Unit: Thousand Won

		1991	1992	1993	1994
monthly income per person	home care (A)	55	80	130	160
	instit. care(B)	65	100	140	170
minimum living cost for one-person urban family (C)*		178.7	197.9	214.2	233.1
A/C		30.8%	40.4%	60.7%	68.6%
B/C		36.4%	50.5%	65.4%	72.9%

* estimates based on the 1988 minimum living cost

Source : *White Paper on Health and Social Affairs*, Ministry of Health and Social Affairs, 1994 (in Korean); *Research on the Reform of the Livelihood Assistance System*, Korea Institute for Health and Social Affairs, 1990 (in Korean).

As shown in the table above, the ratio of recipient's monthly income to the minimum living cost rose gradually from 30.8 per cent in 1991 to 68.6 per cent in 1994. However, as there are still many poor families with incomes less than the minimum living costs, but who are not selected as home care recipients, this ratio, as the criterion for selection of recipients, should be adjusted upward to reach the minimum living costs.

The number of livelihood assistance recipients shows a decreasing trend in the 1990s. For example, the number of recipients in 1994 was 1,902,000, a 19 per cent decrease since 1989. This decline should be interpreted not as a result of a decrease in the number of the poor, but as a result of the high criteria for selecting recipients.

Section 3. National Pension System

Low Level of Allowance

Along with livelihood assistance, the national pension system is another major social security program that provides national minimum standards of living. The problem is, however, that according to the present method of computing the level of support, no one will receive even the minimum level of life-subsisting pension starting in the year 2008, when the full benefits for the national pension will begin. An average income earner will receive a full old-age pension when he or she retires after having subscribed to the national pension system for more than twenty years. Then, the pension will amount to only 33.9 per cent of his or her average income, which differs significantly from the levels in major advanced countries.

[Table] Comparison of income replacement rate to period of subscription

Unit: %

	20 yrs.	25 yrs.	30 yrs.	35 yrs.	40 yrs.
Korea	33.9	41.0	47.6		
Japan	40.0	50.0	60.0	70.0	75.0
W. Germany	40.5	50.6	60.8	70.9	81.0
U.K.	38.2	47.7	57.3	66.8	76.4

Source : *Benefit Structure Analysis of Korean National Pension System*, Gang Chan-suk, MA thesis, Seoul Univ., 1988; *Basic Scheme of National Pension System and Its Social and Economic Impact*, Min Jae-sung et. al., Korea Development Institute, 1986.

Presently, it is highly probable that the low level of benefits due to the low income replacement rate may result in pension benefits lower than the minimum living cost. According to the minimum living costs calculated by the Korea Institute for Health and Social Affairs, 84.8 per cent of pensioners who have contributed for twenty years will receive old age pensions less than the minimum living costs. Moreover, almost all recipients of survivors pension and invalidity pension with twenty-year contribution periods, will certainly receive less than the minimum living costs. Thus, the level of pension benefits should be raised to meet the minimum standard of living in the pensioner's old age.

[Table] Ratio of pensioners to receive benefits lower than minimum living cost*
(members of job-based pension)

(Unit: %)

old-age pension**			survivor's pension**			invalidity pension**								
						1st grade			2nd grade			3rd grade		
20***	30	40	20	30	40	20	30	40	20	30	40	20	30	40
84.8	35.5	19.9	99.5	97.3	90.5	97.8	89.4	65.0	99.3	95.1	86.6	100	98.8	95.1

* estimates based on 1988 minimum living cost. For more information, refer to *Research on the Reform of the Livelihood Assistance System*, Korea Institute for Health and Social Affairs, 1990.

** Old-age pension is based on a two-person family; survivor's pension, on a widow with two children; and disability pension, on a four-person family.

*** years of contribution

Source: *Research on Appropriateness of the Level of Allowance of the National Pension System*, Lee Ki-young, MA thesis, Yonsei Univ., 1989; *Present Situation of Korea's Social Insurance and Policy Objectives*, Korea Council of Trade Unions, 1994.

Lax Management of the Pension Fund

The funds for the national pension system is gathered in equal parts from the employer, the employee, and the converted retirement fund, while the government pays only for administrative and managerial costs. The converted retirement fund is actually a kind of post paid wage, that has been given to employees even before the start of the national pension system. Therefore, in Korea's pension system, the burden of financial contribution lies heavily on the employee, as the employee in fact pays two-thirds, and the employer, one-third for the pension fund.

The more serious problem, however, is the fact that the pension fund is being managed in a very undemocratic way, as pensioners are essentially excluded from presenting opinions on fund management. According to the National Pension Act, the National Pension Fund Steering Committee, of which four of the thirteen members are pensioners, makes decisions on fund management. The Committee, however, has failed to convene during the past few years, and made decisions by collecting written opinions from its members. Moreover, a new governmental body called the Public Finance Administration and Fund Steering Committee was set up in 1993 to assume actual decision-making authority of the former Committee. This resulted in the fundamental exclusion of pensioners from the decision-making process and full governmental control over the fund. As of the end of 1993, 40.4 per cent of the net national pension fund of 7.6 trillion won, or US\$ 9.5 billion, is deposited in public sector enterprises, and another 54.4 per cent is deposited in the private sector. Due to the low average interest rate in the public sector of 11 percent, 3 percent lower than in the financial sector, there has been tremendous financial loss in the fund's value. Moreover, under a new law passed in 1993, the deposit in the financial sector must also be transferred to the public sector. The National Pension Management Corporation estimates that with all pension funds deposited in the public sector, the government will incur debts of 19.5 trillion won, or US\$ 24.4 billion, by the year 2000, well above the amount the government is able to repay. In order that this debt not become a burden to taxpayers, the management of the pension fund should correspond to the consensus of pensioners and taxpayers. This is impossible without revising the National Pension Act and the Public Finance Administration and Fund Steering Act.

The Need to Establish Non-contributory Old-Aged Pension

As the national pension scheme fully started in 1988, the first benefit will be paid only in 2008. Thus, persons of old age presently do not receive any public assistance for their subsistence. Exceptions are the some 3.8 per cent of the aged who receive Civil Servants Pension, Private School Teachers Pension, or Military Personnel Pension. According to the Pension Schemes for Employees in Specific Occupations. In addition, as the national pension scheme stipulates compulsory membership of employees working in companies with five or more full-time employees, as of 1993, 34.1 per cent of the total work force working in smaller companies and an unknown number of temporary and part-time workers live without any public assistance to prepare for their old age. In this regard, the need to establish non-contributory old-age pension or to expand old-age allowance is raised. In particular, since most of the persons presently aged 65 or older sacrificed much to contribute to Korea's economic growth for decades, the present reality of their lack of social security cannot be morally justified.

Section 4. Medical Insurance System

Restrictions on the Benefit Period

Presently, the medical insurance only permits 180 days of medical benefits per year including treatment days, except for those older than 65, who receive 210 days. Consequently, patients with chronic illnesses, such as hypertension and diabetes, who comprise 10 and 5 per cent of the population, respectively, are to receive medical care in a limited period. The ILO Convention 130, Medical Care and Sickness Benefits Convention (1969) stipulates that "medical allowance is to be provided as long as its cause exists," thus recommending the abolishment of restrictions on the benefit period.

Problems in Raising Financial Resources

There are three types of medical insurance in Korea: workplace medical insurance, public and educational employees' medical insurance, and local medical insurance. The state liability is little and only accounts for 50 per cent of the funds for the local medical insurance. The low liability of the state is a major cause for high financial burdens on the patient.

[Table] Trend of increase in outpatient's financial burden

year	1990	1991	1992	1993*
ratio of patient's expense	44.08%	47.04%	47.44%	46.79%

* as of the end of June 1993.

Source: a document of the Medical Security Reform Committee, Ministry of Health and Social Affairs, 1994; quoted from "Present Situation of Korea's Social Insurance and Policy Objectives", p. 85, Korea Council of Trade Unions, 1994.

Need to Provide Allowance for the Sick and Injured

In Korea, in cases of occupational diseases, employees are to receive holiday allowances according to the Industrial Accident Compensation Insurance Act and the Labor Standards Act. These Acts, however, do not stipulate wage payments for non-working days due to diseases unrelated to work, which are only dictated by the company regulations. Thus, large enterprises with good financial status may provide its employees who suffer from non-work-related diseases with holiday allowances for their loss in income. This is usually not the case in small and medium enterprises.

Allowances for the sick and wounded are cash allowances given to an insured individual when he or she needs to leave work to get medical care. This is for the purpose of safeguarding against income loss during that period. Thus, for an ill person, the sick and wounded allowance is, along with medical care, the most basic and essential social security. This benefit is included in the medical insurance systems in 102 countries around the world, for it is recognized as the most essential principle in medical insurance. Nevertheless, there is no such system in South Korea, which ranks among the top 15 nations in its economic status as of 1994. A provision for sick and wounded allowance should be made statutory as soon as possible.

Section 5. Industrial Accident Compensation Insurance

(For more details, please refer to the section entitled "Labour Standards" in this Count Report.)

Restrictions on Selecting Recipients

In the case of industrial accident compensation insurance, as for other social insurance, the statutory recipients are limited to those working in enterprises that hiring five or more full-time employees. This insurance excludes employees in financial and insurance sectors, wholesale and retail business, and certain service sectors because of their special characteristics. Thus, as of 1992, only 37.3 per cent of the total number of employees are eligible for this insurance. In particular, the ineligibility of workers in small enterprises for insurance is highly problematic, since it is here that workers are most prone to industrial disasters. As shown in the table below, the rate of industrial disasters increases as the size of the full-time workforce decreases. One reasons for this is that the smaller a company is, the more difficult it is to provide occupational safety facilities due to financial instability. Therefore, employees in small enterprises work with almost no protection against accidents.

[Table] Rate of industrial accidents by size of enterprise (in 1993)

(Unit: %)

size of company	below 10	10-15	16-29	30-49	50-99	100-199	200-299	300-399	above 1000
accident rate*	3.32	2.08	1.84	1.45	1.35	1.26	1.20	1.13	0.66

* rate of industrial disasters: (number of injured persons / number of employees) * 100

Source : *Analysis of Industrial Disasters*, Ministry of Labor, 1994, quoted from "Present Situation of Korea's Social Insurance and Policy Objectives," p.116, Korea Council of Trade Unions, 1994.

Low State Liability

Again, the state liability is as low as less than 1 percent of the total income of the insurance fund while the liability of the insured is 96.5 percent as of 1992. Moreover, the government pays only 14.8 per cent of the total administrative and managerial costs. The state liability should also be increased for the industrial accident compensation insurance.

Section 6. Employment Insurance System

Low Level of Unemployment Allowance

The government will initiate Employment Insurance on July 1, 1995. This insurance is divided into Unemployment Benefits, Employment Security, and Vocational Training. Under the unemployment benefit system, an unemployed person can receive about 50 per cent of his or her normal wages after a fourteen-day waiting period for a period of 30 to 210 days depending on the length of contribution. These regulations fall below the ILO standards which state that 50 per cent of the total wages be paid to the unemployed after a seven day waiting period for a period longer than 182 days.

Moreover, the unemployment benefit does not amount to providing the worker the means to support his or her family. For example, when a male worker with a wife and two children loses his job, he receives only 60 percent of the minimum living costs as the unemployment benefit. Thus, it is necessary to adjust the method of computation so that the level of the unemployment benefits reaches the minimum living costs.

[Table] Comparison of estimated unemployment benefit and minimum living cost

(Unit: Thousand Won)

	1990	1991	1992	1993
average monthly total wage	642.3	754.6	869.3	978.0
average monthly normal wage*	513.8	600.0	682.2	762.3
estimated unemployment benefit(A)*	256.9	300.0	341.1	381.2
minimum living cost for four-person family in large city (B)**	452.5	492.2	547.6	594.7
A/B	56.8%	61.0%	62.3%	64.1%

* Normal wage is calculated as the sum of regular and overtime payment.

** estimates based on 1988 minimum living costs

Source: Yearbook of Labor Statistics, Ministry of Labor, 1994: A Research of the Reform of Livelihood Assistance System, Korean Institute for Health and Social Affairs, 1990 (in Korean).

In general, when the unemployment benefits are too low, it not only causes various difficulties in livelihood, but also obstructs effective job seeking activities. In other words, the unemployed can be pressured to seek jobs inappropriate for their skills and experiences due to the financial difficulties. This leads to inefficiency in the nationwide labor market dictated by supply and demand. Therefore, unemployment benefits should be high enough so that a worker can seek