

Asia Pacific Labour Law Review

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Workers' Rights for the New Century

Asia Monitor Resource Centre

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Asia Monitor Resource Centre Ltd.

AMRC is an independent non-governmental organisation
that focuses on Asian and Pacific labour concerns.

The Center provides information, research, publishing, training, labour networking
and related services to trade unions, pro-labour groups, and other development NGOs.
AMRC's main goal is to support democratic and independent labour movements in Asia and the Pacific.
In order to achieve this goal, AMRC upholds the principles
of workers' empowerment and gender consciousness, and follows a participatory framework.

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Kim's presidency was an era of reform, with more than 2,000 rules and laws from the era of military rule abolished or reformed. 1997 saw the first election of an opposition leader, Kim Dae-jung who retained the presidency as of November 2002.

The basic right of workers to freedom of assembly are guaranteed by Article 21 (paragraph 1) of the Constitution of the Republic of Korea, which stipulates that 'all citizens shall enjoy freedom of speech and the press, and freedom of assembly and association'. However, for the most part, workers' rights are enshrined in a number of law and Acts, the most important being the Labour Standards Act of 1997, the Trade Union and Labour Relations Adjustment Act of 1997 (amended in 1998), and the Minimum Wage Act of 1986 (amended 1993). Other laws are also discussed below, but these three form the core of Korean labour laws.

Labour laws can be classified under three headings; individual labour laws, collective labour laws, and employment policy and administration laws. Major laws will be discussed below in greater detail.

Individual labour laws include the:

Labour Standards Act – sets standards for the conditions of employment in conformity with the Constitution.

Minimum Wage Act – guarantees workers a certain minimal level of wages.

Equal Employment Act – secures equal opportunity and treatment for workers in accordance with the ideal of equality contained in the Constitution.

Industrial Safety and Health Act – maintains and promotes the safety and health of workers by preventing industrial accidents through establishing standards on occupational safety and health, and clarifying where the responsibility lies. It provides a basic statutory framework for the regulation of health and safety in the workplace.

Industrial Accident Compensation Insurance Act – grants rapid and fair compensation for occupational accidents by way of an industrial accident compensation insurance programme.

Wage Claim Guarantee Act – secures the wage claims of workers when employers cannot pay due to bankruptcy.

Collective labour laws

Trade Union and Labour Relations Adjustment Act – mainly deals with the principles of collective bargaining, labour disputes and their resolution, and unfair labour practices

Act Concerning the Promotion of Worker Participation and Cooperation – promotes the common interests of labour and management through mutual participation and cooperation. It enforces the mandatory formation of labour management councils in companies meeting certain criteria and functions

Employment policy and administration laws

Basic Employment Policy Act – develops and improves employees' abilities through conducting vocational training

Employment Security Act – attains employment security for workers, and stipulates the role of government and employment service agencies in employment security and promotion

Employment Insurance Act – grants necessary benefits to unemployed workers, and to promote their job-seeking activities

Act Relating to Protection etc., for Dispatched Workers – improves the working conditions of dispatched workers and to enhance the flexibility of company personnel management

Employment Promotion Act for the Elderly – includes provisions for developing appropriate employment for the elderly, giving them priority in employment, and encouraging firms to hire them for at least 3 percent of job openings

Act Relating to Employment Promotion etc., for the Disabled – stipulates that establishments employing 300 persons or more are required to fill at least 2 percent of all positions with disabled persons. Violators are subject to a levy, while a subsidy is paid to employers who hire more than their obligatory quota of the disabled

Basic Vocational Training Act – develops and improves workers' abilities, through conducting vocational training for them

As with many other countries, the gap between the theory of labour laws (that is, laws on paper) and the ac-



Women working in an assembly line of lipstick tubes. Credit: J Maillard. Copyright: ILO)

tual practice of those laws in real situations in Korea is significant. One of the most important of the law listed above is that coverage is in almost all cases dependent on the number of workers in an enterprise. Appendix 2 lists the applicability of various laws in relation to firm size.

General background

Flexibilisation and liberalisation

Since the early 1990s, the government has been trying to increase labour market flexibility in compliance with the demands and pressure from management of foreign and domestic capitalists. The IMF economic crisis beginning at the end of 1997 created a favourable atmosphere for the acceleration of anti-labour policy reforms.

Perhaps the most obvious aspect of this in the post-financial crisis era has been the dramatic growth in non-standard employment. According to some estimates, as many as two-thirds of Korean workers are now employed as part-time, short-term, or temporary workers, or as ‘temporary-agency’ and dispatch workers. Whilst the growth in numbers of these sorts of workers is understood, for instance, in the OECD countries as a response to higher participation rates of women and youth in the labour market, or by a shift to new forms of work in the ‘knowledge economy’, these theories do not seem to fully explain South Korea’s large shift to non-standard employment. The most likely cause for this is in fact the

influence of labour laws. Four factors related to labour standards and compensation practices seem to have offered employers convenient loopholes.

First, regular workers – those not employed as part-time or temporary workers – receive a large portion of their wages in the form of bonuses, which employers are not generally required to pay to temporary or daily workers. Second, many workplace conditions set down by labour law apply mainly to regular workers. For instance, severance pay for workers with one year or more service can expect relatively generous payouts upon losing their jobs. Workers with less than a year’s service receive no such payment. Third, even though the Tripartite Commission Agreement in 1998 made it easier for employers to shed workers, dismissing regular workers is still relatively cumbersome. This is not the case with non-standard employees for whom reduced protection under the law is not an option. Finally, the employment and insurance system requires that all regular workers – and some temporary workers too – receive payroll contributions for retirement. However, such payments are not required for part-time or daily workers.

Combined with the loosening of restrictions on temporary agencies, these aspects of labour law and compensations/retirement payments have enabled employers to shed regular workers for the financial benefits of hiring temporary, part-time, and daily workers. That such workers are not protected and do not enjoy the same benefits provides employers with strong incentives to employ larger numbers of already marginalised and vulnerable workers.

Even though legislation was passed to offer minimal protection to dispatch workers in 1998, the conditions for many working under this form of contract can be poor and they are open to abuse. This case is perhaps worse for workers under sub-contractual relationship or working on commission (such as golf caddies, private tutors, insurance salespersons, and express couriers). The trouble with regard to labour law for these workers lies in how they are defined. Unions and pro-worker groups want legal protection for workers extended to

this group, but employers have fought hard to prevent the expansion of the legal definition of 'worker'. Employers perceive sub-contractors as independent contractors who are not 'economically subordinate' in the ways that regular workers are. At present they are defined as 'quasi-workers' and do not enjoy the full protection afforded to regular workers.

Other revisions to labour laws in 1998 resulted in major deregulation of worker protective legislation and legalised casualisation of the workforce. Lay off procedures were deregulated to allow managers more freedom to dismiss workers for 'managerial reasons'. Private employment agencies providing casual labour were legalised. And amendments made it easier for management to impose more flexible working times (such as counting hours on a monthly rather than weekly basis). This dramatically reduced the need for employers to pay overtime rates. In the public sector major limitations were put on the right to strike.

In response to insistent pressures from union forces and non-governmental organisations (NGOs), the government enacted a Basic Life Protection Law in 1998, making it possible for all the poor to receive a monthly cash payment. Social safety net spending increased 500 percent during the 1997-98 crisis, to 10 trillion won (US\$7 billion). But this is a temporary fix, not supported by any long-term legal or institutional reforms. In August 1999, the government said it would implement neo-liberal 'work-fare' (not welfare) schemes.

The government formed a Tripartite Committee to act as a presidential advisory board for socio-economic policy-makers. The committee was established at the end of 1997 and legalised in April 1999. Representatives of government, management, unions, and civil society were invited to participate and discuss major economic, social, and labour policies. The Korean Confederation of Trade Unions (KCTU) suspended participation and in February 1999 withdrew from the Committee, which was increasingly criticised and distrusted by workers and independent unions. The 1998 experience clearly showed that concessions by labour would be promptly implemented while concessions from government or from management remained as paper promises, never effectively implemented.

The major problem facing atypical or non-standard workers is that the law differentiates between them and

affords different rights to each group. In short, atypical workers are not treated equally under the law, providing employers with a convenient and easily exploitable loophole through which they can avoid meeting their responsibilities and obligations. That the law fails to provide equality between workers doing the same work but whom it defines as different is a significant setback for fair and equal rights.

The major themes of government labour policy are labour market flexibility, productive welfare, and pseudo-corporatist social consensus. Responding to this reactionary agenda will be a major challenge for Korean workers and unions in the years to come.

Globalisation

The Korean government takes a very positive stance towards globalisation and plays an active role in globalisation initiatives including Asia Pacific Economic Co-operation (APEC), Asia Europe Meeting (ASEM), multilateral and bilateral free trade agreements, and in international institutions like the Organisation of Economic Co-operation and Development (OECD), the World Trade Organisation (WTO), the International Monetary Fund (IMF), and the World Bank.

Domestic reforms are implemented promptly only if this is in line with criteria determined by international organisations. Since the economic crisis, the Korean government has accepted almost all of the conditions imposed by the IMF bailout, (in sharp contrast to the resistance of the Malaysian government).

Labour movement

Under authoritarian military regimes, basic labour rights were treated as unnecessary luxuries, incompatible with economic growth. But the great workers' uprising from July to September 1987 completely changed the labour organising environment. Over the next three years, thousands of new, democratic unions began to organise. Union membership doubled between 1980 and 1989.

Because of this mass struggle, and the dedicated work of many labour activists at the workplace, local and national level, a one-sided labour policy is no longer possible in Korea. Workers can organise themselves to fight against unfair and unlawful treatment and are aware of their rights to demand collective bargaining.

There are two main union centres. The officially recognised, loyal Federation of Korean Trade Unions (FKTU) has 22 industrial federations and about 4,300 affiliated enterprise unions, which have a total membership of about 900,000 members. The independent and democratic KCTU, which has 20 industrial federations and 1,305 affiliated enterprise unions, with a total membership of about 550,000 members. The dynamic and radical unions are mainly affiliated to KCTU.

The upturn in labour militancy in 1998 contrasts with the steady downward trend during the 1990s. The number of strikes declined sharply: from 3,700 in 1987 to 88 in 1995. In 1997 there were 78 strikes, involving 44,000 workers, and half a million working days were lost. 1998 saw an increase to 129 strikes, involving 146,000 workers, and one and a half million working days lost. This upward trend has continued during 1999 and 2000, but declined in 2001. In 1999, there were 198 strikes involving 92,000 workers and the loss of 1.366 million workdays. 2000 saw this increase further, with 250 strikes involving 178,000 workers and the loss of 1.893 million workdays. In 2001, the number of strikes dropped to 234 with only 88,500 workers withdrawing their labour for 1.083 million days. Union membership has since declined by 25 percent. The rate of unionisation has declined from 20 percent in 1989 to 12 percent in 1998.

Unions have little opportunity to participate or play a relevant role in national development programmes. The KCTU is excluded in legal and real terms, and the FKTU has no real influence in any of the committees or commissions to which it sends dozens of representatives. Civil servants regularly withhold information from union delegates to these committees.

In sharp contrast, employers' organisations play a substantial role as partners of government, through a wide range of committees and co-ordination meetings between employers and top government officials. The Federation of Korean Industries and the Korean Chamber of Commerce have day-to-day communication with government officials through a range of channels.

Korean unions and NGOs try to influence important economic and social development programmes mainly through exerting pressure from outside. They organise conferences for critical discussion, try to change public opinion, and build mass mobilisations.

At the end of 2001, 45 unionists were held in jail. This brings to 241 the number of unionists jailed during the year, or five workers jailed per week (a 10-year record surpassed only in 1992 by President Roh Tae Woo's detainment of 275 workers). 2001 saw 50 workers imprisoned in the course of mass retrenchment at Daewoo Motors; 53 from Hyosung, Taekwang, and Kohap synthetic fibre textile manufacturers in the course of structural adjustment and 11 from the banking sector as a result of financial sector restructuring. Half of the imprisonments resulted as workers protested mass retrenchments in the Government's neo-liberal structural adjustment drive.

Thirty-four atypical or non-standard workers – the least protected – were also imprisoned. They were mainly contract workers from Korea Telecom, employees of in-house subcontract companies working for the air conditioner manufacturer Career, and individual contract drivers of ready-mix concrete delivery trucks. The upsurge in the imprisonment of non-standard workers reflects the gross aggravation of workers rights and welfare in the continuing drive for labour market flexibility. Irregular workers have mainly fought for union recognition and against the extreme discrimination they suffer.

During the round of collective agreement and wage negotiations to November 2002, a total of 20 unionists were jailed, 37 issued with warrants of arrest, 361 subjected to legal action by management, 190 dismissed, and 1,048 referred to disciplinary proceedings.

It is clear that the suppression of trade union activities has become an inseparable part of industrial relations in Korea.

Major labour legislation

Labour Standards Act

Consisting of 12 chapters and 116 articles, the Labour Standards Act (LSA) covers labour contracts, wages, holidays and paid leave, women and minors, safety and health, accident compensation, rules of employment, labour inspectors, and penal provisions. It sets, as stated in Article 2, 'the lowest standards' in all areas pertinent to the workplace, which it goes on to say should not 'reduce the conditions of employment under the pretext of compliance with this Act'. That is, they are minimum standards and should in no way be understood as maxi-

imum standards. However, as stipulated by Article 10 (Scope of Application), paragraph 1, the LSA applies only to those ‘businesses or workplaces in which more than five workers are ordinarily employed’. Article 2 also exempts ‘any business or workplace which employs only relatives living together’ and workers ‘hired for domestic works’. However, as indicated in Table 1, Article 10 (paragraph b) also makes provisions for workplaces that ordinarily employ less than four workers by stipulating that ‘some of the provisions of this Act may be applicable as prescribed by the Presidential Decree’.

The Presidential Decree referred to here is the Enforcement Decree of the Labour Standards Act, and in particular Presidential Decree No. 15682, issued on 24 February 1998. This decree applies to a business or workplace that ordinarily employs fewer than four workers, and states the LSA Articles that apply. Many of the LSA rules and regulations now apply for workers in smaller enterprises, but there are significant exemptions. The following key articles or paragraphs do not apply to workers in premises employing less than four workers:

Article 13 states that an ‘employer shall keep workers informed of the main points of this Act’.

Article 23 states that the term of a labour contract shall not exceed one year.

Article 26 (paragraph 2) states that if a worker is to ‘claim indemnity for damages in accordance with paragraph (1), he may do so with the Labour Relations Commission.

Article 30 (paragraph 1) makes it illegal for an employer to ‘dismiss, lay off, suspend, transfer a worker, or reduce wages, or take other punitive measures against a worker without justifiable reason’.

Article 31 is a long and complicated section, but in essence it sets restrictions on dismissal for managerial reasons. That is, if an employer desires to dismiss workers for managerial reasons, there should be ‘urgent managerial reasons’. A key section says, ‘an employer shall make every effort to avoid dismissal of workers and shall select workers to be dismissed by establishing rational and fair standards of dismissal. In such cases, there shall be no discrimination on the grounds of gender’.

An employer shall give a notice 60 days prior to dismissal day to a trade union that is formed by the consent

of the majority of all workers in the business or workplace concerned.

Article 33 applies to the right for a worker to apply for remedy for unfair dismissal.

Article 34 applies to severance pay.

Article 45 applies to pay to workers for suspension of business.

Articles 49-45 apply to working hours and recess, and include key provisions such as the right to a 44-hour week, an eight-hour day, and the flexible working hour system.

Articles 55-60, also pertinent to working hours and recess, including extended work, night work and holiday work, monthly leave with pay, and annual paid leave.

Article 69 states that an ‘employer shall not have a female with less than one year after childbirth, work overtime exceeding two hours per day, six hours per week, and 150 hours per year, even if provided for in a collective agreement.

Article 71 says the ‘employer shall allow a female worker one day’s menstruation leave with pay per month’.

Article 73 allows a ‘female worker who has an infant under twelve months shall be allowed to take more than 30 minutes of each nursing period twice a day’

Articles 94-103, pertaining to rules of employment, and in particular Article 99 on the observance of collective agreements.

In total, the Presidential Decree exempts employers of four workers or less from more than 30 percent of the LSA. This means that nearly one third of Korea’s centre-piece legislation designed to protect workers does not apply to more than one third of Korean employees. In 2000, the year for which the most recent statistics are available, 34.19 percent of Korean workers were employed in enterprises employing one to four persons. There are 4.651 million workers in such enterprises, which account for 85.3 percent of all workplaces in Korea.

It should also be noted that the LSA, and most other labour laws, do not apply to migrant workers.

Trade Union and Labour Relations Adjustment Act

Basic provisions in many areas, including the formation and management of unions, rules for collective bargain-

ing, lists of unfair labour practices, procedures for government mediation efforts, and rules on labour disputes.

The Act has been widely criticised for its repressive restrictions on collective action rights. Of particular concern are the following articles:

Article 1 – ‘Industrial action shall not violate legislation and public order in terms of purposes, methods, and processes’. In effect, this means that other laws may take precedence over labour laws and used to hamper union activity. For instance, the president of the KCTU, Dan Byung-ho, was charged under civil laws when mass demonstrations of workers were deemed to have violated traffic laws.

Article 4, paragraph 2 – stipulates that ‘workers who are engaged in major defence corporates which are subject to the Special Act on Defence Industry, those who are involved in electricity, water, or a business which produces mainly defence goods shall not be allowed to take industrial action’.

During 2000-2002, Dan Byung-ho was charged with a number of offences with relation to industrial action, including obstruction of business, violation of the Act, and laws on assembly and demonstration. All of these charges are examples of either the Act constraining union action, or other laws that enable the authorities when it suits them to constrain union activities.

The Act was recently amended to allow unions to carry out political activities. Multiple unions at company level will be legally allowed from 2002. However, Article 4, paragraph e states that organisations will not be regarded as trade unions where ‘the aims of the organisation are mainly directed at political movements’.

Minimum Wage Act

The Ministry of Labour sets a minimum wage level annually after reviewing suggestions from the Minimum Wage Review Commission composed of representatives from employers, unions, government, and some civilian specialists. This law does not cover establishments with less than 10 employees. In fact, only two percent of the workforce receives the minimum wage by right.

Minimum wage rates have been widely criticised as inadequate. The legal minimum is 30 percent of the average basic wage (which is about 70 percent of

take-home wages). As of 26 July 2002, the Government has set a new rate of general minimum wage covering all industrial sectors effective from 1 September 2002 to 30 August 2003. The key points are as follow:

- hourly-based: 2,275 won (US\$1.88);
- daily-based (eight hours a day): 18,200 won (US\$15.01);
- monthly-based (226 hours a month): 514,150 won (US\$424.25);
- a youth rate, which is 90 percent of the hourly minimum wage (2,048 won, or US\$1.69), may apply to workers aged under 18 during their first six months in a new job.

Since 2001, wage growth rates have continued to be lower by three to four percentage points than the comparable figure for the previous year. For the eleven months ending in November 2001, monthly wages averaged 1,711,000 won (US\$1,412) in establishments with five employees or more. This represents an increase of 5.2 percent compared to the same month of the previous year.

Trade union rights

Until 1987, Korean labour law only allowed unions organised at the company level with membership restricted to those employed on a regular basis by the company. This had a number of serious consequences:

- an unemployed worker cannot be a union member;
- a worker who is fired by a company loses his or her union membership;
- casual and part-time workers cannot join the union;
- workers in a sub-contracting company cannot join the union of the company they are indirectly working for.

Any union that breaks these restrictions, or organises beyond the individual company level is denied legal status by the Ministry of Labour. All such unions are considered non-existent or repressed as illegal organisations.

Management use this legislation to block union organisation. For example, Samsung Group, one of the largest chaebols, has an active non-union policy. The company encourages the creation of ‘ghost unions’, organised secretly by a small group of workers, under management control. Once this union is registered by

the Ministry of Labour, it is almost impossible for a second, genuine, independent workers' union to be legally recognised.

Some legislation directly banning non-enterprise unions was abolished in late 1987, after the great wave of workers' struggles. But there are still several pieces of legislation that effectively ban such unions. For example, the Labour Standards Act still defines workers as 'those who are currently employed by a specific company'. The Trade Union and Labour Relations Adjustment Act limits union membership to those who are employed.

This argument is used to refuse the registration of KCTU, which has over 550,000 members, but includes fired workers among its highest leadership, (although the confederation is not recognised, all KCTU's individual member unions are now legally recognised and registered).

White-collar civil servants in central and local government are not allowed to join trade unions. This ban does not apply to all manual workers.

Collective bargaining, collective assembly, and the right to strike are generally allowed under present labour laws. But there are some restrictions and limits that make collective actions difficult. For example, the teachers' union was legalised in 1999 but denied the right of collective action or strike. Strikes are tightly restricted for workers in defence or defence-related industries and in the public sector.

Labour grievance process

The Act Concerning the Promotion of Worker Participation and Co-operation requires each company to form a labour-management council to deal with labour grievances. If reconciliation here is unsuccessful, workers or unions can bring the case to local or national Labour Relations Commissions. If reconciliation cannot be reached even at this stage, then the Court will make final arbitration.

Limited provisions for labour grievance are better than nothing. But in reality many workers find it very difficult to get access to legal advice. There is very little free public legal service, and the cost of private legal ser-

vices is very high. Organised workers can get free legal services through their union, but non-organised workers and the unemployed cannot. KCTU unions and NGOs are trying to provide free legal services for these people with the help of voluntary lawyers from the Association of Lawyers for a Democratic Society. This 300-member body (representing eight percent of the country's lawyers) has a long history of active engagement in human rights' protection.

International labour standards

Korea joined the International Labour Organisation (ILO) in 1991, and has since ratified nine of the 183 conventions (Conventions 73, 81, and 122 in 1992; 142 in 1993; 150 and 160 in 1997; 111 in 1998; and 138 in 1999). Only 111 and 138 are core labour conventions.

The KCTU and some international trade union organisations (including the International Metal Federation) have repeatedly complained to the ILO Committee on Freedom of Association about the Korean government's violations of ILO Convention No. 87 (Freedom of Association).

In 1998 the KMWF (Korean Metal Workers' Federation) filed several complaints, citing violent police intervention against peacefully organised strikes, large-scale arrest of strikers, detention, imprisonment and issue of arrest warrants against workers and union leaders, and the persistent denial of workers' right to strike. Complaints were also raised about the operation of unfair laws that allowed employers to neglect collective bargaining, and retaliate against unions and individual union leaders by suing for financial compensation after a strike. The union pointed to legislation that still allows undue interference in unions' internal finances and unfair dismissal of workers. The Government has repeatedly ignored central labour court rulings on job reinstatement. All of these events severely violate workers' freedom of association and create an atmosphere of intimidation and punishment against workers who exercise their rights as enacted in ILO Conventions 87 and 98. Teachers were denied the right to organise unions, and the government still refuses to recognise independent trade union organisations like the KCTU.

The government has still not made an official statement of its position on this Convention. It refuses to recognise the KCTU as a union and as a legal partner in this dialogue.

Officially and institutionally there are no adequate means of monitoring or implementing international labour standards in Korea. This is mainly because the government still does not recognise independent trade union organisations.

The KCTU and some progressives NGOs have urged the government and employers to introduce international labour standards into Korean industrial-labour relations. Since 1987 they have organised an annual mass rally on 10 November calling for revision of labour laws. National Workers' Day commemorates textile worker Jun Tae-il who set himself alight in 1970 holding a book of Korean Labour Law and shouting, "Observe the law! Protect the workers!"

When Korea joined the ILO in 1991, independent union organisations and labour activists' organisations formed the Joint Committee for Ratification of ILO Basic Conventions and Labour Law Reform. Their aim was to urge the government to revise labour laws so that they comply with international labour standards as outlined in the ILO's eight core labour rights conventions. (This collaboration was part of the process that led to the formation of the KCTU in 1995).

Unionists and labour advocates are still waiting for the government to admit independent union participation in preparing official reports for the ILO and to build a joint commission with unions and employers' organisations to monitor implementation of ILO conventions and prepare the ratification of other international labour standards.

Asian economic crisis

The Asian economic crisis brought major changes and setbacks for labour rights. Job stability has been seriously weakened due to increasing bankruptcies, restructuring, and rationalisation in both public and private sectors. Wages and working conditions have seriously worsened, and unions have become weaker, at least temporarily, because members no longer trust them.

Unemployment reached unprecedented levels in 1998 (KCTU estimates 17 percent). Unemployment and job instability have threatened all workers, but particularly those in marginal and informal sectors: construction, small enterprises, small service sector businesses, women workers, youth workers, and workers in subcontracting enterprises.

The unionisation rate is extremely low in these marginal sectors. In fact about 90 percent of the newly unemployed in 1998 have never been union members.

The labour market structure for the employed has also seriously worsened. The number of full-time workers has fallen from 7.43 million (59 percent) in 1995 to 5.99 million (48 percent) in June 1999. The young, older workers, and women have been pushed from full-time to part-time work.

Workers and unions are under pressure to accept differential wage systems based on merit ratings, thus enforcing competition among workers. Under the threat of job instability, many unions accepted wage and benefit reductions, longer working time, and more productivity. In other words, they exchanged work intensification for meaningless promises of job stability from management.

Facing the terrible threat of mass unemployment, every trade union tried to seek ways to protect its membership. Solidarity and alliances were seriously weakened in 1998, and union leaders found it difficult to organise a strong united front against government and management. Internal conflicts between hard-liners and moderates created a kind of zig-zag unionism. There was low participation in the hard-liners' general strike strategy, and widespread criticism of the moderates' negotiation strategy (notably the proposal to rejoin the Tripartite Commission).

This process exposed the internal weaknesses of the KCTU and the Korean democratic labour movement as a whole. The debate continues as to how to overcome these obstacles. One suggestion is to transform the KCTU from a conglomerate of many enterprise unions into a real confederation of strong industrial unions. Another suggestion is to accelerate the formation of the Democratic Labour Party.

Data/facts

People: As of November 2001, the working age population is 36.48 million, and the labour force (over 15 years old) is 22.18m. Women's economic participation rate is 47 percent, unchanged in the last ten years.

Work: The average working week is 45.9 hours, including 4.6 hours overtime. In the manufacturing sector the average week is 46.1 hours. Normal hours are shorter (40.6) but overtime is higher (5.5 hours.)

The official unemployment rate in peaked in 1998 at 6.8 percent, a sharp increase on the 2-2.5 percent rates of the 1990s. However, it has fallen steadily to 6.3 percent in 1999, 4.1 percent in 2000, and stood at 3.7 percent at the end of 2001. This means there are 21,362,000 employed persons, and 819,000 unemployed.

Female unemployment was 5.6 percent, compared to 1990s averages of 1.7-1.9 percent. According to the Policy Bureau of the KCTU the real unemployment rate in 1998 reached 15.8 percent.

Wages: Wages increased rapidly after the explosion of labour organising in 1987, with annual increases of 5-10 percent in real terms. But the economic crisis in 1997 meant wages only grew 0.7 percent in real terms. In 1998 real wages fell 9.1 percent. The average wage in 1998 was 1,472,000 won (men 1.6 million, women 1.0 million). Manufacturing sector wages were lower: 1.3 million won (men 1.5 million, women 0.8 million). This has risen, as stated above, to around 1.7 million won. It should be noted that there are significant differences in enterprises of different sizes, with workers in enterprises employing 10 employees or more enjoying four percent higher wage increases than those in firms employing less than 10 employees.

Spending: The average family has 3.6 members, and 1.5 income-earners. The average family income is 2.1m won. Main areas of expenditure are housing (30 percent) and food (17 percent). Other areas of spending include education (seven percent) and health care (three percent). The average family only saves 0.4 percent of income, compared to 2.6 percent in 1997.

Migrant workers

Before the crisis Korea had about 250,000 documented and undocumented migrant workers. The number has now reduced to about 150,000. The IMF economic crisis hit hardest in marginal sectors, where most migrant workers are concentrated. Many of those who lost their jobs had no other option than to leave the country.

Traditionally, the great majority of overseas migrant workers in Korea have been undocumented or illegal over-stayers. Immigration laws specify a one million won (US\$825.00) fine for every year of illegal overstay, before deportation procedures can begin. But mass protests by migrant workers and their friends forced the government to suspend these harsh over-stay penalties, and introduce two 'amnesty' (free departure) periods in late 1998.

Most labour protection legislation does not apply to foreign workers. They suffer from lack of medical care, social insurance, and protection for unfair treatment or illegal appropriation from employers and job brokers. NGOs have been trying to find ways to support them - recently some NGOs formed an alternative medical network, with the help of volunteer doctors and pharmacists.

Women workers

Although some improvements have been made in the last ten years, gender inequality still prevails in all areas of labour rights. Many people still consider women workers inferior or supplementary to male colleagues.

Inequalities in hiring practices still prevail, especially in the private sector. Employers advertise vacancies for 'men only', set quotas for men and women, give different employment status (full-time to men, part-time to women), and set extra physical conditions for women (such as dress codes and height limits). None of this is permitted by law, but it is common practice because there are only small penalties for violations.

The wage gap between men and women has been narrowing for the last 20 years. Women's average wages were 41 percent of men's in 1980, 48 percent in 1985, 54 percent in 1990, 60 percent in 1995, and 64 percent in 1998. But there are real structural barriers to wage equality. Low paid jobs in unskilled manufacturing in-

dustries, petty commodity production and informal services tend to be considered ‘feminine’ work.

Women workers have suffered more than men in the IMF economic crisis. Management frequently prefers to reduce employment for women workers, presumed to be only the secondary source of family income.

Official statistics suggest that women have a lower unemployment rate than men. This is not true. Many unemployed women workers are simply reclassified statistically as ‘economically inactive’. This explains why 214,000 women ‘disappeared’ from the official labour force between 1997 and 1998.

However, there have been recent changes that offer some hope. A package of Maternity Protection Laws that includes three revised laws – the Labour Standard Act, the Sexual Equality Employment Act, and the Employment Insurance Act – took effect in November 2001. The modified laws allow woman workers 90 days of paid maternity leave, up from the current 60 days.

Free export zones

There are two Free Export Zones (FEZ) in Korea, at Masan (20,000 workers) and Iri (10,000 workers). Approximately 70 percent of FEZ employees are women. The FEZs have experienced a boom in demand recently, due to the devaluation of the currency (won). Workers have not faced problems of job stability. But management continues to prefer low-paid casual or temporary workers rather than full-timers. And FEZs are still based on simple, manual jobs, rather than more sophisticated - and potentially better paid - labour processes.

Special restrictions on labour rights in the FEZs were removed in 1987, and all national labour legislation now applies, although – as mentioned above – the Government is considering new laws for FEZs.

The struggle for labour rights

Korean unions and NGOs are presently focusing their efforts in the following areas:

Persuading government and management to move from mass lay-offs to other forms of restructuring with equal sharing of suffering. Urging the government to introduce work-sharing policies, by reducing the legal working week from 44 hours to 40 hours.

Pushing the government to revise labour laws to give unlimited basic rights such as free association (especially for civil servants and the unemployed), right to strike, and unions’ legal and monetary immunity from labour disputes.

Enlarging and strengthening social welfare systems.

KCTU unions are trying to change their union organisational system from Japanese style enterprise unions to industrial unions, and organise collective bargaining agreements at the national and industrial level to negotiate issues concerning employment and working conditions of the entire workforce in each sector: full-timers or part-timers, in large companies or small ones.

The struggle against privatisation.

Appendix 1

Chronology of significant events, 2000 - 2002

25 April 2000

More than 100 fully armed riot-police raid the office of the Daewoo Motors Workers Union in Pupyung near Seoul. They arrest the 20 trade union leaders and activists who made the union office their temporary home for the duration of the continuing campaign to shape the outcome of restructuring Daewoo.

29 April 2000

At the May Day Rally scuffles and confrontation break out in the course of the march following the mass meeting attended by more than 20,000 workers.

May 2000

The Korean Confederation of Trade Unions calls for a general strike in late May in which a number of KCTU affiliated unions took part.

12 November 2000

There is confrontation with the authorities at the National Workers Rally following a mass meeting attended by more than 20,000 workers.

December 2000

The Korea Telecom Workers Union votes to go on strike.

31 March 2001

At the People's Rally, the Daewoo campaign moves into top gear and becomes a nation-wide campaign. Workers throughout the country came to support the struggle of Daewoo workers, and join forces with other social movement organisations to protest the Government's neo-liberal policies and accompanying violence. Once again, there is confrontation with authorities during the course of the march following a mass meeting attended by more than 10,000 people.

May 2001

The May Day rally is marred by violence as authorities try to contain a crowd of more than 10,000 people.

12 June 2001

The KCTU organises a mass meeting of its members as a part of a general campaign, which involves strikes

and mass demonstrations by a number of unions. The campaign is aimed at the Government's neo-liberal structural adjustment policies.

23 May 2002

The Korean Health and Medical Workers Union calls out its members in hospitals for simultaneous strikes. At issue were deadlocked negotiations with management. The outcome of taking action costs the union 3.4 billion won (US\$2.8 million) and its union dues amounting to 7.7 billion won (US\$6.3 million) are frozen by court order at the request of the Catholic Medical Centre, which operates three St. Mary's Hospitals in greater Seoul.

11 September 2002

Catholic hospital management approve the entry to hospitals of 3,000 riot police to drag out striking workers. They remove 200 fleeing female workers and seven union leaders are later charged and imprisoned.

25 September 2002

Striking members of the Korean Health and Medical Workers Union begin a hunger strike in protest against the Catholic-run hospitals refusal to meet union demands for fair conditions.

16 October 2002

5,000 hospital workers in some 150 hospitals throughout the country take to the streets to express solidarity with Korean Health and Medical Workers Union workers. Members of the union working in Catholic hospitals have been on strike for 147 days.

22 November 2002

The Korean Confederation of Trade Unions (KCTU) and the Federation of Korean Trade Unions (FKTU) denounce a Government bill to designate special economic zones, in which foreign businesses would be exempted from a range of local restrictions, including laws on compulsory paid leave for workers and employment of the elderly and physically handicapped. The Government vows to push ahead.

Appendix 2

Firm size and applicable labour laws

Act	Firm size	Remarks
Labour Standards Act (LSA)	Above five workers	- Selected provisions of the LSA have been applied to firms with less than 4 workers since 1 January 1999
Industrial Safety and Health Act	General	All workplaces
	Appointment of personnel in charge of safety and health management	Above 100 workers
	Appointment of a safety and health supervisor	Above 50 workers
	Industrial safety and health committee	Above 100 workers
Minimum Wage Act	Above 10 workers	
Equal Employment Act	Above 5 workers	
Industrial Accident Compensation Insurance Act	Above 5 workers	- Selected types of businesses are excluded (i.e. Finance and Insurance) - Applied to construction projects of which cost is above 0.4 million won
Act Concerning the Promotion of Workers Participation and Cooperation	Above 30 workers	- Labour-Management Council is established regardless of the existence of trade unions in businesses or workplaces where the management has the right to determine working conditions. - A person to handle grievances is placed in firms with more than 30 workers.
Trade Union and Labour Relations Adjustment Act Employment Security Act	All workplaces	
Act Relating to Employment Promotion, etc., for the Disabled	Above 300 workers	- For firms with less than 300 workers, bounty will be granted if they hire more than a certain number of disabled workers.
Employee Welfare Fund Act	Workplaces which want to establish the fund	
The aged Employment Promotion Act	Above 300 workers	- Employers should make efforts to hire aged workers more than three percent of the total workers. - Employment Insurance grants bounty to firms that hire aged workers more than a certain level.
Employment Insurance Act	Above five workers (It has been applied to all workplaces regardless of the number of employees since 1 October 1998)	- The application to construction will be determined by the cost posted by the Minister of Labour, not by the size of firm: in 1988, above 3.4 million won.