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SOUTH KOREA LABOR RIGHTS VIOLATIONS UNDER DEMOCRATIC RULE†

Richard Dicker††

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I. SUMMARY

Since the end of thirty years of military dictatorship and the election, nearly four years ago, of the country's first civilian president in three decades, the Republic of Korea is a more open country with a government that pledges respect for international human rights. Nevertheless, the government of South Korea has not lived up to its pledges. Key laws that suppressed human rights in the country during the decades of military rule have not been changed, and President Kim Young-sam has used them against political opponents and labor activists.

It is still legal in South Korea for the security forces to carry out arbitrary arrests and detention, and for the government to suppress free association, expression and assembly, for workers and other dissidents. Provisions of South Korea's labor laws, the Trade Union Law, the Labor Dispute Adjustment Act, and the Public Servants Act, suppress basic labor rights. These include the internationally guaranteed protection for freedom of association, freedom of expression and peaceful assembly, as well as the right to engage in collective bargaining and peaceful collective action. The U.N. Human Rights Committee has called on the Korean government to amend the National Security Law.¹ The country's repressive labor law provisions have been condemned by the International Labor Organization (ILO) and the United Nations' Committee on Economic, Social and Cultural Rights.² As South Korea applied to become a member of the Organization of Economic Cooperation and Development (OECD), the OECD member states' pressure on the Republic of Korea to bring its labor legislation into conformity with international standards constituted an important force toward reform.

This report focuses on labor rights violations in the Republic of Korea from May 1994 through November 1995. The latest developments in 1996 arising from the OECD's pressure on South Korea to change its labor laws are reflected in revisions to an early version of this report. Human Rights Watch/Asia con-

1. *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant*, U.N. Hum. Rts. Comm., U.N. Doc. CCPR/79Add.6 (1992).

2. *Consideration of Reports Submitted by States Parties under Articles 16 and 17 of the Covenant, Republic of Korea*, U.N. Econ., Soc., & Cul. Rts. Comm., U.N. Doc. E/C.12/1995/3 (1995).

ducted its investigation in June 1995 just prior to the country's important local and provincial elections held on June 27, 1995, when President Kim's government sought to quell labor activity through excessive force and persecution of widely supported labor leaders. The report discusses the legal regime used to justify continuing violations of labor rights and examines four case studies of labor disputes involving railway and subway workers, Hyundai Motor employees, Korea Telecom workers, and the Korean Teachers and Educational Workers Union.

After crushing the June 1994 railway workers' strikes using mass arrests, President Kim issued provocative statements in May 1995 to inflame an already tense situation, and then cracked down on auto and telecommunications workers just prior to the June 27 elections. In response to May's wildcat strike by Hyundai Motor workers, he sent in the police to conduct a raid in Ulsan; in June, he ordered the arrests of workers involved in collective bargaining with Korea Telecom. In addition, his government has continued to harass teacher activists associated with an "illegal" teachers' union. These violations took on greater urgency in the face of the scheduled launching on November 11, 1995 of a new national center of independent trade unions. The attempt to establish this autonomous union confederation, with between 400,000 and 500,000 members, was a decisive test of the South Korean government's respect for labor rights in the "new Korea."

II. RECOMMENDATIONS

A. TO THE GOVERNMENT OF THE REPUBLIC OF KOREA

- Human Rights Watch/Asia calls on the South Korean government to take prompt action to implement the recommendations of the International Labor Organization and repeal the Trade Union Law's prohibition on multiple unions. This provision denies workers the right to join the organization of their choice.
- Human Rights Watch/Asia calls on the South Korean government to implement the ILO's recommendation on "third party intervention," by repealing the relevant provisions of the Trade Union Law and the Labor Dispute Adjustment Act. We call on the Korean³ authorities to release those who have been imprisoned solely under charges of "third party intervention" for the peaceful expression of their views.

3. The references to the "Korean authorities" or the "Korean government" that follow in the text are to the government of the Republic of Korea.

- Human Rights Watch/Asia calls on the government of President Kim Young-sam to repeal or drastically revise the National Security Law in order to bring Korean legislation into conformity with international human rights standards, and immediately to cease using the National Security Law to restrict the rights of Korean citizens to fundamental freedoms of expression, association, and speech. All those arrested and convicted under the National Security Law solely for peacefully exercising these rights should be immediately and unconditionally released.
- Human Rights Watch/Asia calls on the South Korean government to respect freedom of association for public servants, including teachers, and to reinstate those teachers who have been dismissed solely because of their union membership and/or sympathies.
- Human Rights Watch/Asia urges the South Korean government to respect the peaceful exercise of basic human rights by workers and to implement guidelines for the use of police force in demonstrations. Those arrested and imprisoned through the misuse of the criminal justice system should be released.

B. TO THE UNITED STATES GOVERNMENT

- Human Rights Watch/Asia calls on the Clinton administration to raise respect for basic human rights and labor rights in all bilateral sessions with senior Korean officials.
- Human Rights Watch/Asia calls on the Clinton administration to maintain the suspension of Overseas Private Investment Corporation (OPIC) guarantees for U.S. corporations doing business in the Republic of Korea until the government of Korea brings its labor laws and practices into line with international standards.⁴

C. TO THE MEMBERS STATES OF THE ORGANIZATION OF ECONOMIC COOPERATION AND DEVELOPMENT

- Human Rights Watch/Asia urges the OECD to weigh carefully the labor laws and rights practices of the Republic of Korea

4. Under Section 239(I) of the Foreign Assistance Act the U.S. Congress made observance of internationally recognized rights, such as the rights of association, organization and collective bargaining, a condition for insurance and investment guarantees provided to U.S. companies investing abroad under the Overseas Private Investment Corporation (OPIC). In addition, OPIC is mandated by Congress to "take into account . . . all available information about observance of and respect for human rights and fundamental freedoms" in countries receiving OPIC assistance. OPIC guarantees were suspended for U.S. companies doing business in South Korea in 1991 on labor rights grounds.

when evaluating its application for admission. The OECD has the opportunity to emphasize an important principle—respect for international labor standards—and to press the Korean government to revise its abusive labor legislation as part of its admissions process. The OECD should insist that the Korean government comply with the recommendations of the International Labor Organization as part of the admissions effort. A rights-sensitive approach conforms with the OECD's Convention and broader purposes.

D. TO THE INTERNATIONAL LABOR ORGANIZATION

- Human Rights Watch/Asia urges the International Labor Organization, through its tripartite structure of workers, employers, and governments, to continue to press the South Korean government to comply with the ILO Governing Body's strong recommendations to revise Korea's abusive labor laws. We call on the ILO to raise the Republic of Korea's noncompliance with previous recommendations at the organization's 1996 Annual Meeting in Geneva.

III. BACKGROUND

A. POSITIVE CHANGES

When President Kim Young-sam took office in February 1993, he promised a "new Korea" that would be "a freer and more mature democratic society,"⁵ and in the early months of his administration genuine progress in improving respect for human rights took place. A presidential amnesty on March 9, 1993 led to the release of 144 people, at least eighty of whom were political prisoners. Two subsequent amnesties resulted in further releases, and by June 1994 the government had released a total of 226 political prisoners.⁶

In August 1995, to commemorate the fiftieth anniversary of liberation from Japanese rule, the Korean government granted amnesty to a total of 1,780 prisoners, including twenty-five political prisoners (approximately 465 political prisoners remain incarcerated).⁷ Those released included Kim Sun-myung, one of

5. President Kim Young-sam, *Together on the Road to a "New Korea,"* (Feb. 25, 1993).

6. A Human Rights Watch/Asia representative visited Seoul in March 1994 and interviewed Won Yong-bok, director of the Human Rights Division of the South Korean Ministry of Justice. He provided a detailed list of political prisoners who had been released since Kim took office. This was the first time the South Korean government has provided such a list, and it represented a step toward greater openness and transparency.

7. Letter from Minkahyup to Human Rights Watch/Asia (October 6, 1995). Minkahyup is an independent organization working for the release of prisoners of

the world's longest-serving political prisoners, who had spent forty-three years and ten months incarcerated.

In addition to prisoner releases, President Kim ushered in significant reforms of the country's electoral and finance laws that have succeeded in making the political system more transparent.⁸ As a result of these initiatives, senior military officers were purged for corrupt practices, while bank accounts—the source of much past corruption—were required to have actual individual names (not aliases) and campaign activities were subjected to closer scrutiny.⁹ The Korean public welcomed the changes; Kim's approval rating ran as high as 90% for the first few months of his tenure, strengthening his popular base. As the government failed to meet expectations of deeper reform, however, public opinion shifted. In addition, a series of industrial, construction and transportation accidents raised questions about the high social cost of Korea's rapid economic development. President Kim's popularity was reported to be at an all-time low in May 1995.¹⁰ As evidence of the country's increasingly vibrant and open political culture, in the hard-fought June 1995 election campaign for some 5,550 local and provincial offices, the ruling Democratic Liberal Party (DLP) suffered a clear setback. Opposition and independent candidates won all but five of the fifteen mayoralties and governorships at stake.¹¹ The opposition Democratic Party (DP) candidate won the Seoul mayoral contest depriving the DLP of the country's largest metropolitan administration. In part, the elections results were believed to express dissatisfaction with the incomplete nature of President Kim's reform program.¹²

Until the government of South Korea embarked on political reforms in June 1987, the official program to promote economic growth had, over twenty years, depended on maintaining tight restrictions on the labor movement.¹³ From the time of Gen. Park Chung-hee (1961-1979), Korea's military rulers regarded unions as inherently left-wing institutions; thus, the restrictions were also aimed at keeping workers from being exposed to

conscience, political prisoners and the abolition of torture. It is founded on the efforts of families of imprisoned dissidents, students, and laborers.

8. Chong-Sik Lee & Hyuk-Sang Sohn, *South Korea in 1993: The Year of Great Reform*, ASIAN SURVEY, Jan. 1994 at 1-9.

9. *Id.*

10. Agence France-Presse, May 30, 1995, available in LEXIS, News Library, Wires File, AGFRP Database.

11. Shim Jae-hoon, *Crumbling Authority: President Hit By Polls Loss and Store Collapse*, FAR E. ECON. REV., July 13, 1995, at 28.

12. *Id.*

13. *Retreat From Reform: Labor Rights & Freedom of Expression in South Korea*, Asia Watch, 1990 [hereinafter *Retreat From Reform*].

"communist" ideas, to protect national security. Some of the largest corporations in the country, such as the Hyundai conglomerate, allowed no unions at all, and the government openly intervened to break strikes throughout the 1960s, 1970s, and 1980s. In the clashes that ensued both sides used violence. While the use of force by police in controlling demonstrations may have been justified in some cases, the government used a range of techniques to curb the labor movement which violated fundamental human rights, including severe physical abuse of workers in detention and repeated and grossly excessive use of force to break up workers' rallies and strikes. Compared with the regimes of his predecessors, President Kim's government does represent some real improvement.

B. ECONOMIC GROWTH AND THE EFFORT TO STALL PROGRESS ON LABOR RIGHTS

As one of Asia's most economically successful countries, Korea's production has expanded dramatically in the last two decades, and Seoul is extremely eager to play a greater role on the world's economic stage. In 1994, gross domestic product (GDP) grew at a rate of 8.4%, and in the first quarter of 1995 it reached 9.9% growth. Korea is now the world's eleventh-ranking economic power and the thirteenth-largest trading nation, with total trade reaching \$198.4 billion in 1994.¹⁴ Korean companies are rapidly moving to establish manufacturing bases in China, Vietnam, Indonesia, and Central America.¹⁵ Korea is among the leading countries in several global industries, including auto, telecommunications, and aerospace.¹⁶ Based on its dazzling economic performance, in March 1995 the Republic of Korea applied for admission to the Organization for Economic Cooperation and Development (OECD), the club of industrialized democracies.

Linked with this rising international economic stature, Kim Young-sam has made the policy of "globalization" the centerpiece of his presidency. According to Kim, "globalization is the quickest way to build the republic into a first-rate nation in the coming century. The administration is now concentrating all its energies on this task."¹⁷ The impetus driving "globalization" is largely external. In order to meet the World Trade Organiza-

14. Shin Na & Michael Newman, *South Korea Trade & Investment*, FAR EAST. ECON. REV., June 22, 1995, at 56.

15. William J. Holstein & Laxmi Nakaarmi, *Korea*, BUS. WK., July 31, 1995, at 57.

16. *Id.* at 59.

17. Michael Newman, *South Korea Trade & Investment*, FAR EAST. ECON. REV., June 22, 1995, at 45.

tion's standards and join the OECD, Korea must open and liberalize its economy.¹⁸ While the specific meaning of "globalization" remains vague, the government's actions in the name of this policy have led to a dizzying speed-up in production and privatization. To enable Korean capital to expand abroad and remain competitive as the domestic market opens to goods produced in the international economy, President Kim's program has pressed for greater efficiency, and this has led to worsening labor conditions, including repression of independent unions, greater production quotas for workers, increased industrial accidents, broader implementation of "flex time" regimes that reduce overtime payments, and longer work days.¹⁹ Discerning the labor movement's unhappiness with these conditions, the government's numerous research institutes, some staffed by American-trained Ph.D.'s of "the Chicago school," have studied the experience of Margaret Thatcher and Ronald Reagan in breaking the power of the miners' union and air traffic controllers in their respective countries.²⁰ The government has justified suppressing independent labor activists by invoking the need to expand Korea's economy in today's international market. This has led, however, to an increase in labor unrest. In the first five months of 1995, the export losses resulting from production stoppages jumped 115-fold compared with the same period the year before: \$95 million in 1995, compared to \$814,000 in 1994. At the same time, the number of workers participating in strikes increased from 5,491 to 14,085. The main reason for the huge loss in exports and production was the labor dispute at Hyundai Motor, discussed below.²¹

C. REFORM STALLED

In the context of "globalization," the government's early commitment to some human rights reform has clearly ebbed; President Kim cites the need to maintain economic growth as the justification for suppressing labor rights. The limitations of President Kim's "new Korea" were all too vividly demonstrated in the streets of Seoul and Ulsan during May and June of 1995. Intensifying labor protests in the auto and telecommunications industries coincided with the first local and provincial elections since 1962, and with the stakes so high on the election outcome, the

18. *A Survey of South Korea*, THE ECONOMIST, June 1995.

19. KOREAN WORKER, (Yong Dong Po Indus. Mission, S. Korea), May 1995, at 7.

20. Interview in Seoul, S. Korea (June 20, 1995). For security reasons, the identities of interviewees contacted for this report are not revealed.

21. *Losses From Labor Disputes Jump 115-Fold This Year Over 1994*, KOREA TIMES, June 14, 1995.

government repressed the independent labor movement in the automobile and telecommunications industries. A wildcat strike at Hyundai Motor and subsequent police raid in May, the intense negotiations that followed, and the arrest of Korea Telecom union leaders in June dramatizes the dangerously incomplete transition to respect for human rights and the urgent need for further reform.

IV. THE LEGAL CONTEXT

The Republic of Korea joined the International Labor Organization (ILO) in 1991, despite the fact that several key Korean laws violate the fundamental principle of the right to freedom of association contained in the ILO Constitution. These include the Trade Union Law, the Labor Dispute Adjustment Act, the Public Servants Act, and the Private School Act. The ILO's Governing Body has repeatedly urged Seoul to reform the violative provisions.

A. THE PROHIBITION ON MULTIPLE TRADE UNIONS

The Trade Union Law provisions on the formation of unions are designed to prevent the establishment of a rival organization to the government-controlled unions or national trade union confederation. Thus, the Trade Union Law prohibits the formation of a union or union federation whose potential "membership is the same as an already existing trade union."²² This provision effectively outlaws any alternative to the company-sponsored unions or the union federations created during the military dictatorship. Thus, by law, Korean workers are limited to joining unions or union federations that are approved by the authorities. The statute denies a worker's right to join the union of his or her choosing and it results in a large sector of South Korea's labor movement lacking any legal status. These requirements contravene provisions of the Korean Constitution which guarantee the right to organize,²³ as well as ILO Convention No. 87.²⁴ In practice, worker-initiated trade union organizations have been blocked by employer manipulation of bogus management-created unions that exist only on paper. These unions, however, obtain legal recognition and their existence, by law, prevents the organization of any other unions regardless of worker support. Similarly at the industry level, though trade unions in the automobile and shipbuilding industries formed new federations after

22. Trade Union Law, art. 3(5), (1993) (S. Korea).

23. REPUBLIC OF KOREA CONSTITUTION, art. 33 (S. Korea).

24. ILO Convention No. 87 Concerning Freedom of Association and Protection of the Right to Organize, July 9, 1948, effective July 4, 1950, art. 2.

1987, they were unable to obtain legal recognition because of the existence of workers' federations associated with the officially recognized and government-supported Federation of Korean Trade Unions (FKTU).

ILO norms have been interpreted to mean that governments may not require prior authorization for union formation and that workers may "join whatever union they wish."²⁵ However, under the Trade Union Law, the establishment of a union is not final until a report has been filed with the local authorities or the Ministry of Labor and a certificate of report has been issued to the union officers. Security force inquiries into the accuracy of the required data have been used to delay or deny recognition of legitimate unions.²⁶ The principal criterion used by the authorities is that the purpose of the union must not be to "hamper the normal operation of an already existing trade union."²⁷

In fact, a sharp difference of views exists among workers about the union affiliation they prefer. The Trade Union Law's monopoly franchise for FKTU affiliates does not allow dissident workers to form a competing union or otherwise associate with an alternative organization they find preferable. This practice violates the ILO's protection for the right to organize and bargain collectively.²⁸

A government that recognizes a single union per industry as the bargaining agent for their workers is not necessarily in violation of an international labor standard, as long as mechanisms exist in the law that allow workers reasonable opportunities to decide in a democratic election: (1) who among them should be elected leaders of the recognized union, and (2) which association should be recognized by the government as the bargaining agent. If the law establishes a single union and then makes it impossible for workers to challenge the leadership of that union or its official status, the law infringes upon freedom of association and labor rights as recognized in international law.

The Trade Union Law, with its restriction on forming unions whose membership may overlap with the "membership . . . [of] an already existing trade union," prohibits a worker organizing another union at an enterprise where a union already exists and thus denies the exercise of his right of free association.

25. James M. West, *South Korea's Entry Into The International Labor Organization: Perspectives On Corporatist Labor Law During A Late Industrial Revolution*, 23 *STAN. J. INT'L L.* 511 n. 2 (1987).

26. *Id.*

27. Trade Union Law, art. 3(5)(1993)(S. Korea).

28. ILO Convention 98 Concerning the Application of the Principles of the Right to Organize and to Bargain Collectively, 1951, art. 2(2).

1. *The FKTU*

The Trade Union Law was first introduced in 1953 when Park Chung-hee's military government revised, favorably for the FKTU, the country's labor laws to prevent the establishment of the National Trade Union Council. In 1987, the provision on union formation was amended in response to a strong request from the FKTU to close the remaining loopholes to the emergence of autonomous labor organizations. Although democratic, independent trade unions have been increasing in number and influence since 1987,²⁹ the FKTU remains the sole lawful, national trade union federation. A newly established union has to formally apply for membership in an industrial federation under the FKTU.

The Trade Union Law restricts the establishment of new federative workers' associations as well as enterprise level unions, thus favoring the FKTU. Conferring such a monopoly on the leadership prevents workers from exercising their freedom of association. The structural protection for existing associations shields them from risk that the rank and file might desert a co-opted leadership. Legal restrictions on the establishment of alternative labor organizations help to entrench the incumbent leadership of the FKTU and national industrial federations.

The FKTU comprises twenty industrial federations and fifteen regional offices. Although it claims 1.2 million members, there are only 600,000 dues-paying members.³⁰ The National Convention, which convenes annually, is the supreme body within the FKTU. But most of the important matters are discussed and decided at the Representatives Conference of Industrial Federations.

2. *Independent Organizing and the KCTU*

Pressure from within the labor movement to form more representative unions was therefore strong. The trade unions organized after 1987 created the "democratic trade union camp," setting up regional councils in the major industrial areas. These

29. *Economic, Social and Cultural Rights in South Korea*, at 34, NGO (April 1995). The NGOs' Counter Report was submitted to the U.N. Committee on Economic, Social and Cultural Rights following the initial report submitted by the Republic of Korea under Articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights. The nongovernmental organizations that drafted the Counter Report included: The Korea Center for City and Environmental Research, The Korea Council of Trade Unions, The Korea Research Institute for Workers' Human Rights and Justice, Lawyers for a Democratic Society, People's Solidarity for Participatory Democracy, Research Institute for the Handicapped Rights in Korea, and the Center for Human Rights.

30. *Labor Situation of Korea*, Korea Lab. & Soc'y Inst. (1995), at 22.

regional councils founded the Korea Trade Union Congress (KTUC, or Chunnohyup) in January 1990. At its inaugural congress, the KTUC declared its intent to build a national center of independent, industry-wide trade unions. At that time the KTUC represented about 200,000 members from 700 company-affiliated unions.

In the non-manufacturing sectors as well, industry-wide federations or councils were established after 1987. Together these formed the Korean Congress of Independent Industrial Trade Union Federation (KCIIF) in May 1990. KCIIF affiliates include the federations of trade unions of employees in industries such as the press, hospitals, construction, clerical and financial sectors, printing, cargo transport, teaching, and foreign corporations. After the Korean Federation of Hospital Workers' Union gained legal status from a High Court and Supreme Court ruling that its organizational subject did not overlap with the existing trade union federation, other federations, formerly without legal standing, gained legal recognition. These included the Korean Federation of Professionals' and Technicians' Union and the Korean Federation of Construction Workers' Union.³¹ In addition to these industry-wide federations, the trade unions of the large conglomerates (the *chaebol*) like Hyundai, Daewoo, and Kia, formed group trade federations.

In 1993, these two new federations (KTUC and KCIIF), together with the conglomerate-wide unions, formed a larger confederation, the Korean Council of Trade Unions (KCTU, or Chunnodae). In November 1994, the KCTU decided to build a national trade union center and formed a preparatory committee to coordinate the launching of an organization that would rival the size and organizational structure of the FKTU. In 1995, the KCTU had 440,000 members and included 1,000 company-level unions. The new initiatives have also attracted support outside KCTU's formal affiliates. For example, in November 1994, the public service trade unions formed the Council of Public Service Trade Unions (Gongnodae) in order to secure basic trade union rights and oppose the government's wage control policy. Gongnodae's constituent unions come not only from the democratic trade union camp but also from FKTU affiliates and independent unions including the large and influential 53,000 member Korean Telecom Union of telecommunications workers. During 1995, the momentum of independent organization continued.

Nonetheless, the Trade Union Law renders most of these efforts illegal. Some of the human rights consequences of the law

31. *Id.*

on multiple trade unions are illustrated in the Korean Locomotive Council's June 1994 collective action. The Korean Locomotive Council, with a membership of 7,000, had functioned as a *de facto* union but was not recognized as a lawful trade union because of the existence of the FKTU-affiliated Korean Railway Trade Union. The Korean Locomotive Council's lack of legal recognition "allowed" the railway management to refuse to negotiate with the union leadership. Days before a strike deadline, riot police raided the railway workers' peaceful sit-in protest. Hundreds of Locomotive Council members were taken into custody and held for questioning. Twenty-nine activists were formally arrested for participating in an illegal strike action and "business interference."

Likewise, the KCTU's national center of democratic trade unions, which was launched on November 11, 1995, is, under the law, considered to be a competitor of the FKTU and is therefore an illegal organization. As a result, two co-presidents of the KCTU face criminal charges (*see* Korea Telecom section below). On May 8, 1995, the Supreme Public Prosecutor issued a "special order of arrest" for leaders of the KCTU alleging that the independent and unlawful labor federation was intending to link upcoming collective bargaining over wages with June 27 local and provincial elections.³²

In South Korea today, the independent trade union organizations are allowed to open offices, elect officials and distribute publications. They are not, however, permitted to function as trade union organizations to conduct collective bargaining or labor actions. Thus, while not prohibited as associations, workers are prevented from exercising their basic rights through these organizations. When these organizations function as a trade union group to mobilize support for workers engaged in collective bargaining or strike actions, their leaders are charged with "third party intervention." One independent trade union activist told Human Rights Watch/Asia:

Because Korea's Constitution guarantees freedom of association, they can exist as organizations, but because of the provisions of the Trade Union Law, they are non-trade union

32. *Background of Labor Repression by the Kim Young-sam Government*, Korean Council of Trade Unions (June 1995). In June 1994, the government had issued arrest warrants for the two co-presidents of the KCTU, Kwon Young-kil and Yang Kyu-heon on charges of violating the prohibition on "third party intervention." This charge was based on solidarity speeches the two had given in May and June 1994 before and during the railway and subway workers' strikes. The prosecutors claimed those speeches had caused the railway, subway and other workers to strike. *See* Korea Labor & Society Institute, *Labor Situation of Korea*, (Seoul: KLSI, 1995), at 37.

organizations. When they act as trade union organizations, they are suppressed.³³

As the ILO Governing Body noted at its March 1993 session, the Trade Union Law's prohibition on multiple unions denies workers the right to join the organization of their choosing. The ILO called on the Korean government to amend the Trade Union Law to enable workers to establish and join the organization of their choice without restriction.

B. DENIAL OF FREEDOM OF ASSOCIATION FOR PUBLIC SERVANTS

The denial of freedom of association to public servants, including school teachers, is another serious infringement of human rights. Public school teachers are classified as educational public servants and under the National Civil Service Act, they are prohibited from organizing, engaging in collective bargaining, and taking collective action.³⁴ The Private School Act extends this prohibition to private school teachers.³⁵

The government claims that public officials have a duty to be "servants of the entire people" as stated in Article 7 of the constitution. However, Article 7 merely expresses the principle that public officials should not act to benefit only a part of the people, a certain class or political faction, but should always perform their function for the benefit of the whole people. This constitutional mandate has no direct relevance to public officials' labor rights—their right to organize, bargain collectively, or act collectively.

The South Korean government contends that teachers' unions have no legal basis because teachers are public officials and cannot, in any case, be treated as ordinary workers. However, this position contradicts ILO standards. ILO Convention 151 specifically protects the right of public workers to organize.³⁶ It mandates that public employees' organizations "shall enjoy complete independence from public authorities."³⁷

33. Interview in Seoul, S. Korea (June 16, 1995). Leaders of the KCTU and the Korean Locomotive Council have been imprisoned, on charges of "third party intervention," for giving solidarity speeches to striking workers.

34. PUBLIC SERVANTS ACT, art. 66: "Prohibition of Collective Action: Civil Servants may not take collective action for labor movement purposes or other purposes outside of public duty." (Promulgated in 1963, amended in 1986).

35. PRIVATE SCHOOL ACT, art. 55: "The provisions concerning the duties of teachers of national and public schools shall apply *mutatis mutandis* to the duties of teachers of the private schools." (Promulgated in 1963).

36. ILO Convention 151, 1978, art. 5.

37. ILO Convention 151, 1978, art. 5(1).

At its March 1993 session, the Governing Body of the ILO concluded that workers, without distinction, should be able to form and join organizations of their own choosing to protect their interests.³⁸ It called on the South Korean government to take the necessary measures to enable public servants and private and public school teachers to exercise freely the right to organize.³⁹ Furthermore, in May 1995, the U.N. Committee on Economic, Social, and Cultural Rights recommended that the South Korean government "immediately amend its laws and regulations concerning the freedom to form trade unions and the right to strike. . . . In particular, measures should be taken to ensure that teachers, civil servants and others have the right to form trade unions and to take strike action."⁴⁰

C. THE PROHIBITION ON "THIRD PARTY INTERVENTION"

Two major Korean labor laws stipulate that "any person other than a worker who has actual employment relations with the employer or the concerned trade union . . . shall not engage in an act of interference" to influence the formation of a trade union⁴¹ or instigate a dispute.⁴² Such "interference" has come to be known as "third party intervention" and it can include anything from individual advocacy to organized, peaceful displays of solidarity. The ban on "third party intervention" has been used to grossly violate the right to free expression in the context of labor disputes.

The government bases the prohibition on the supposed need to protect the essential nature of a trade union as an autonomous workers' organization and to prevent radical external forces from influencing a union's activities. The ban has been used to justify criminal prosecution and imprisonment of union leaders for their speeches and statements supporting collective action by other unions.

In 1993, the ILO decided that the prohibition on "third party intervention" violated ILO Convention No. 87, as a "serious restriction on the free functioning of trade unions" and strongly recommended that the South Korean government repeal the offending provisions.⁴³ The South Korean government then

38. *Complaint Against the Government of Korea*, 294th report, case no. 1629, ILO Comm. on the Freedom of Ass'n (1995).

39. *Id.*

40. *Consideration of Reports Submitted by States Parties*, U.N. Econ., Soc., & Cul. Rts. Comm., U.N. Doc. E/C.12/1995/3 (1995).

41. Trade Union Law, art. 12(2) (1993) (S. Korea).

42. Labor Dispute Adjustment Act, art. 13(2) (S. Korea).

43. *Complaint Against the Government of Korea*, 294th report, case no. 1629, at 144 para. 400(d), ILO Comm. on the Freedom of Ass'n (1995).

announced that it was reviewing their repeal. As of October 1995, the government had not submitted a revised bill to the national assembly.

In an important decision, the United Nations Human Rights Committee considered a case brought by a Korean worker, Sohn Jong-kyu, convicted of "third party intervention"; Sohn had issued a statement supporting a shipyard strike and had been sentenced to eighteen months' imprisonment. In August 1995, the committee found that his imprisonment violated Article 19(2) of the Covenant on Civil and Political Rights, which guarantees freedom of expression.⁴⁴

D. "BUSINESS INTERFERENCE"

One of the most commonly used government strike-breaking techniques, in violation of international standards of freedom of association and freedom of assembly, is the practice of charging striking workers under a provision of the Criminal Code prohibiting "business interference."⁴⁵ The authorities have increasingly relied on this charge. As described below in the case studies, many of the workers at Hyundai and all sixty-four leaders of the Korea Telecom union were charged with violation of "business interference."

Under this provision, a person may be arrested for posing a "threat of force," rather than the actual use of force, while interfering in the business of another. The statute, as applied, violates Korea's obligations under international human rights standards and represents a misuse of the criminal law and process. In Human Rights Watch/Asia's view, for the law to be fairly applied, two criteria must be satisfied: (1) there must be real business going on to be interrupted, and 2) there must be a credible,

44. U.N. Hum. Rts. Comm., 54th Session, U.N. Doc. CCPR/C/54/D/518/1992 (1995). Sohn had been president of the Kumho Company Trade Union and a founding member of the Solidarity Forum of Large Company Trade Unions. When a strike occurred at a large shipyard, he contributed to a statement supporting the strike. Sohn was arrested and charged with violating the prohibition on "third party intervention." On August 9, 1992, the Seoul Criminal District Court found Sohn guilty and sentenced him to one-and-a-half years of imprisonment and three years of probation. His two appeals were dismissed on December 20, 1991 and April 14, 1992. He then took his case to the U.N. Human Rights Committee. On August 3, 1995 the Committee decided that Sohn, "by joining others in issuing a statement supporting the strike and criticizing the Government, was exercising his right to impart information and ideas within the meaning of Article 19, paragraph 2, of the Covenant" and that the South Korean government had violated the right of freedom of expression guaranteed by that provision.

45. THE REPUBLIC OF KOREA CRIM. CODE art. 314 provides that, "A person who interferes with the business of another . . . by threat of force, shall be punished by penal servitude for not more than five years or by a fine not exceeding twenty-five thousand Hwan [won] (US \$36)."

demonstrated threat of force. Satisfying a high threshold for both criteria is necessary, otherwise Korea runs a real risk of violating free expression obligations.

According to a noted authority on Korean labor law, the Korean authorities have applied "business interference" with no clear distinction between illegal activities and legitimate activities. Normally, interference with business activities is an obvious purpose of collective labor action. The charge has been used to prosecute strikers for aggressive strike activities. For example, in April and May 1990, ten striking workers at the Taehwa Dyeing Company in Taegu were arrested for beating drums outside the plant. All were charged with "business interference," but only one worker was charged with committing physical violence.⁴⁶

In the cases of the Korea Telecom unionists arrested in June 1995 (see below) the prosecution has argued that "business interference" was justified because the union was using aggressive tactics in pursuit of objectives beyond the scope of collective bargaining.⁴⁷ This represents overreaching by the prosecution to make "business interference" apply to conduct arbitrarily deemed appropriate.

According to another knowledgeable Korean labor lawyer, although the Korean authorities could use provisions of the Labor Dispute Adjustment Act, they do not regard a wildcat strike as a labor dispute but prefer using a Criminal Code offense against militant laborers.⁴⁸

V. CASE STUDIES

A. THE JUNE 1994 RAILWAY AND SUBWAY STRIKES

In June 1994, the Korean Locomotive Council (Chongihyup) attempted to initiate collective bargaining with the Korean National Railway (KNR) over working hours, overtime pay, and a weekly day off. Because its membership overlapped with employees in the already existing government-approved railway workers federation, under the labor law's prohibition on multiple trade unions, Chongihyup, in violation of the universally guaranteed right to free association, had no legal standing to function as a trade union organization.⁴⁹ Citing the Council's unlawful status, the government refused to recognize or negotiate with it. A massive police raid on peaceful railway worker protests, resulting in hundreds of arbitrary arrests, was the other half of the govern-

46. *Retreat From Reform*, *supra* note 13, Asia Watch, 1990, at 36.

47. Telephone Interview with James M. West (Oct. 26, 1995).

48. Telephone Interview (Oct. 23, 1995).

49. *The Railway and Subway Workers' Strikes*, KOREAN WORKER, (Yong Dong Po Indus. Mission, S. Korea), Dec. 1994, at 4.

ment's response—a clear violation of the right to free assembly and of a worker's right to form a union of his or her own choice. This action provoked a strike and massive dismissals, which in turn crushed Chongihyup.

1. Background

Chongihyup had been established on May 15, 1989, by the locomotive drivers and mechanics employed by the Korean National Railroad. The railway workers had been represented by the FKTU-affiliated and legally recognized 30,000-member Federation of Railroad Workers Union. The drivers and mechanics decided to form their own union, because they believed their interests were not being served by the official union, which they considered to be pro-government. In 1994, Chongihyup's membership had reached 7,000.

During 1993 and 1994 working conditions on the railways had deteriorated. Maintenance workers were forced to work a flex time system with twenty-four hours on, twenty-four hours off. They received neither a regular weekly day off nor overtime pay. Since the KNR did not acknowledge many hours as real work hours, on the grounds that they were "waiting hours," and the number of hours worked a day was averaged over the entire month, there were lower overtime payments than if the standard overtime provisions had been applied.⁵⁰

On May 24, 1994, 2,000 railway workers gathered to demonstrate in front of Yongsan railway station in Seoul to demand the abolition of flex time and the reinstatement of four dismissed workers. The government refused even to begin negotiations, finding that the group lacked legal standing. The authorities warned that if Chongihyup took collective action, they would respond with strong measures.⁵¹ On June 2, the workers organized a nonviolent protest meeting in downtown Seoul attended by 4,000 railway and subway workers. The next day, the government issued arrest warrants—on charges of "business interference"—for twenty Chongihyup members stemming from an event that occurred at the May 26 convention of the legally recognized union, where several Chongihyup members had thrown eggs at the union president.⁵²

On June 15, 300 to 400 workers began a sit-in at the KNR office building near Yongsan Train Station in Seoul at the same time railway workers staged similar protests at nineteen Korean National Railway offices around the country. These protests did

50. *Id.*

51. *Id.*

52. *Id.*

not interfere with train service. The union members called the sit-in to protest the government's refusal to negotiate, to demand the release of jailed Chongihyup members, and to demand the improvement of working conditions and wages. Chongihyup announced a decision to strike on June 27 if the government refused to negotiate.

2. *The Government's Crackdown*

Four days before the June 27 strike date, police arrested 250 workers in Seoul. Similar raids were carried out in Pusan, Masan, and Suncheon. Nearly 600 workers nationwide were detained for questioning.⁵³ These arrests took place with minimal resistance. The workers claimed that their actions had been consistent with state laws and regulations; they had neither refused work nor disrupted normal operations. Most were held for the legal limit of two days for questioning and then released. They were questioned about the organization and its structure. The police demanded that the arrested workers sign a promise to apologize for their actions. Many refused to do so, and those were the last ones released from custody.⁵⁴

The raid provoked a work stoppage on the country's railroads. The police sought arrest warrants for seven leaders of Chongihyup, including Vice Chairman Pak Sang-soo, on charges of abandonment of duty.⁵⁵ The FKTU and its affiliated railway union urged the workers not to strike and to "return to the workplace." The Korean National Railroad announced its intention to fire the engineers who did not report to work by 10:00 A.M. on June 25.⁵⁶

The Prime Minister called the railway strike illegal since it was staged by public officials who had no right to engage in collective action.⁵⁷ Korean National Railroad Administrator Choe

53. *Id.*

54. Interview in Seoul, S. Korea (June 20, 1995).

55. THE REPUBLIC OF KOREA CRIM. CODE art. 13 stipulates that "A public official who refuses to perform his duties or abandons his duties without justifiable cause shall be punished by penal servitude or imprisonment for not more than one year or suspension of qualification for not more than three years." Under Korean law, railway workers are classified as public officials. The government contended that the railway workers' "illegal" strikes constituted abandonment of duties.

56. CHUNGANG ILBO, F.B.I.S., June 24, 1994.

57. NATIONAL CIVIL SERVANTS ACT, art. 66 stipulates that no public official, except those engaged in manual labor, are authorized to take collective action. So railway workers, who are classified as engaging in physical labor, can take collective action. On the other hand, as noted above, the Labor Dispute Adjustment Act prohibits all public officials from taking collective action in labor disputes. According to an experienced Korean labor lawyer, the Korean Supreme Court ruled that in spite of the LDAA's prohibition, public officials who are actually engaged in labor were not prohibited from taking collective action in a labor dispute, and a strike by

Hun told the press that he was ready to use 100 novice railroad engineers and would fire 210.⁵⁸

On June 24, the day after the police raid on the railway workers, subway workers in Seoul went on strike. They were demanding a 14.5% pay increase instead of the 3% raise offered by the Seoul Metropolitan Subway Corporation (SMSC). In response, the SMSC sued forty-one active union members for damages allegedly caused by the strike and relieved twenty-four leading union officials of their duties.⁵⁹ Nevertheless, Pusan subway workers also went on strike on Saturday morning, June 25.⁶⁰

On June 26, a Sunday, the authorities took action against both railroad and subway workers. More than 5,000 police broke into Kyung Hee University around 5:00 A.M. that morning to disperse nearly 1,800 railway and subway workers and sympathizers and make arrests. Most of the students and union members had fled at 4:00 A.M., before the raid, but some resisted forcibly, hurling firebombs and wielding steel pipes for nearly twenty minutes before retreating. Approximately 800 of the students who left Kyung Hee University went to Dongduck Women's University, where sixty union members and twenty-three students were apprehended in a police raid at about 6:30 A.M. Police also raided a church in downtown Seoul to apprehend striking subway workers who had been staging a sit-in there. Arrest warrants were issued for Kim Yeon-hwan, head of the union at the SMSC, and Seo Sun-won, chairman of Chongihyop.

The KNR classified the strikers according to their participation in order to decide punishment for them. Some 500 employees, including 210 who had not returned to work after they were released by the police, were given a warning; the same penalty was handed out to the executives of the union headquarters and branch offices.⁶¹ But 108 strikers were fired, including twenty-eight members of Chongihyop and seventy engineers who abandoned their trains or removed engine parts when the strike started.⁶² By June 28, the country's railroad operations had returned to normal—the KNR reported that 98% of all striking locomotive and assistant engineers had returned to work.

railway workers is not illegal *per se*. But the Supreme Court also held that the railway workers' strike, which was initiated and led by Chongihyup, an organization that had no legal standing to function as a trade union, was illegal.

58. YONHAP, F.B.I.S., June 24, 1994. Yonhap is the official news agency of the South Korean government.

59. *Id.*

60. YONHAP, F.B.I.S., June 25, 1995.

61. CHOSON ILBO, F.B.I.S., June 27, 1995.

62. YONHAP, F.B.I.S., June 27, 1995.

The government's crackdown broke Chongihyup. According to a dismissed railway worker interviewed by Human Rights Watch/Asia,

The independent organization doesn't exist anymore. After the arrests the government forced the workers to retreat. The railways' management asked the members to withdraw from Chongihyup by threatening them with further mistreatment, including a transfer to other jobs.⁶³

The government's refusal to negotiate with the union, based on its claim that the organization was "illegal," violated Korea's international obligations to uphold freedom of association and contravened a worker's right to join a union of his choice. This abusive pretext provided the basis for the police action against the strikers and the railway's actions in disciplining the participants.

The subway workers continued their strike for several days. On June 30, the Catholic cardinal, the Anglican primate bishop, the President of the Korean Bar Association, and others all appealed to the striking workers to return to work.⁶⁴ That afternoon the union withdrew its strike, asking the workers to return by 9:00 P.M. the following day. The 127 workers who remained absent were severely disciplined by the SMSC. Union chair Kim Yeon-hwan and seventeen other union leaders, against whom warrants had already been issued, decided to carry on their sit-in regardless of the decision to end the strike, and they were arrested.⁶⁵

The government used the "third party intervention" provision of Korea's labor laws to prosecute union leaders, in violation of international standards protecting freedom of expression. Seo Sun-won, a railway worker and leader of Chongihyup, was charged with "third party intervention." The authorities claimed that he had attended a meeting of subway workers before their strike action in June 1994 and had stated, "Let's struggle together." The court convicted Seo and sentenced him to two years of imprisonment.⁶⁶ On appeal, his sentence was shortened to eighteen months.⁶⁷ Kim Yeon-hwan, President of the Seoul subway trade union, was originally charged with both "business interference" and "third party intervention" and originally sentenced to two years of imprisonment. On appeal, the original

63. Interview in Seoul, S. Korea (June 20, 1995).

64. YONHAP, F.B.I.S., June 30, 1995.

65. *Id.*

66. Judgment of Jan. 12, 1995 (Seo-Sun-won), Seoul Criminal District Court (S. Korea).

67. Decision on appeal in the case of Seo Sun-won, Seoul Criminal District Court, the Second Criminal Department.

decision was annulled, and his sentence was reduced to imprisonment for one year.

On June 28, 1994, arrest warrants on charges of "third party intervention" were issued for Kwon Young-kil and Yang Kyu-heon, two co-presidents of the Korean Council of Trade Unions (KCTU). Among other bases for the charges, authorities cited the two leaders' speeches at the "Resolution Rally for Railway and Subway Workers' Solidarity Struggle" on June 2, 1994 and statements at a press conference held in the press room of the Ministry of Labor the same day. The prosecutors claimed that these speeches by the KCTU co-presidents instigated strikes at the Korean National Railroad, the Seoul Metropolitan Subway Corporation, and the Pusan subway. They also cited speeches at the KCTU-sponsored "Resolution Rally for '94 Wage Hike Campaign and Reinstatement of Dismissed Unionists" held on May 1, 1994, as well as a comment at the KCTU National Council Meeting on May 20, 1994.⁶⁸

B. HYUNDAI MOTOR

In May 1995, deteriorating working conditions and increased production quotas took their toll at the Hyundai Motor plants in Ulsan: a dismissed union shop steward burned himself to death in protest against company policy, and the workers launched a wildcat strike to echo and support his protest. On the night of May 19, the work stoppage culminated in a police raid on an encampment of workers inside the factory gates. Although the workers offered only passive resistance, police officers pounded them with batons and heavy shields while taking them into custody. Human Rights Watch/Asia recognizes the need to use police force in certain circumstances, but in this case the initial use of force was excessive and unjustified. Furthermore, the raid at Hyundai Motor was followed up by arbitrary criminal charges—third party intervention—against union leaders, and the Hyundai strike was used to scapegoat and target independent workers' organizations.

1. Background

The Hyundai Group, founded in 1947, is Korea's largest producer of automobiles and ships and a number of other industrial items. Several of its subsidiaries, including Hyundai Engine, Hyundai Shipbuilding, Hyundai Motors and Hyundai Heavy Industries, are located in the port city of Ulsan, 175 miles southeast of Seoul. The Hyundai Group grew rapidly in the 1970s as a result

68. *Labor Situation in Korea*, Korea Lab. & Soc'y Inst. (1995), at 37.

of President Park Chung-hee's economic strategy favoring heavy industry. Hyundai workers were in the forefront of the labor movement when controls on union activities eased in 1987. Thus the events at Hyundai in May 1995 were viewed as significant for the labor movement as a whole. According to one independent labor activist:

The labor action at Hyundai Motor had far-ranging significance: it galvanized the labor movement at other large companies. The government and business community sees Hyundai Motor as an important test case because they want it to be a model of collaborationist union policy. The strike exposed the reality of the so-called "labor-management collaboration" and had a profound effect on the mood on the shop floor.⁶⁹

The Hyundai automotive operations, the country's largest auto manufacturer, produce some 4,700 passenger cars daily. In 1994 Hyundai produced 1.14 million cars, exporting 390,000.⁷⁰ Union activists interviewed by Human Rights Watch/Asia emphasized that there had been a dramatic deterioration in working conditions at Hyundai Motors in the last two years. They linked this to President Kim's "globalization" policy and to the 1993 elections of what they called a "collaborationist" union leadership.

There has been a campaign of labor intensification at Hyundai. Since 1993, and the election of a new union leadership, there has been a 30% increase in working hours and a doubling of the rate of industrial accidents. In 1992, there were 315 industrial accidents at Hyundai Motor. By contrast in 1994, there were 600 industrial accidents.⁷¹

In January 1995, Yang Bong-soo, a twenty-eight-year-old union shop steward with five years' seniority, helped lead a work stoppage on his production line to protest labor intensification at the Hyundai Motor No. 1 Plant. On February 20, Yang was dismissed along with a number of other activists. Nevertheless, Yang was legally authorized to continue serving as a shop steward, and at the end of April he attended a meeting on company premises with union and management personnel to discuss problems arising from the intensified production quotas and workloads. Plant security guards forcibly removed him from Hyundai property during that meeting; and the guards beat him, such that Yang required two weeks of medical treatment. Yang

69. Interview in Seoul, S. Korea (June 16, 1995).

70. *Hyundai Stops Production*, Associated Press, May 17, 1995, available in LEXIS, News Library, Wires File, [hereinafter *Hyundai Stops Production*].

71. Interview in Seoul, S. Korea (June 15, 1995).

then filed a lawsuit against two guards and a manager over the beating.

On May 12, Yang was prevented by company personnel from entering the plant to attend another union meeting.⁷² He is reported to have shouted, "Dismissed workers have the right to enter the plant and carry on union activities, so stop preventing us from entering," as he doused himself with paint thinner. He then shouted to the guards, "If you approach me, I will set myself on fire." Yang moved onto company property, and as five security guards closed in on him, he set himself aflame. With third degree burns over 75% of his body, he was taken to Tongsan Hospital in Taegu for treatment.⁷³

Twelve workers, including three former Hyundai Motor union presidents—Lee Sang-bum, Lee Hun-koo, and Yoon Sung-keun—formed a "Countermeasures Committee for Yang Bong-soo's Self-Immolation" to continue the struggle on his behalf. The group, which was launched without the approval of the existing Hyundai Motor union leadership, issued several demands: that the company pay Yang's medical expenses, that Hyundai reinstate dismissed workers, and that the officials involved in the May 12 incident be punished.⁷⁴

On May 13, workers at Car Plant No. 2 began a protest work stoppage. Nearly 1,000 night-shift workers halted the assembly line at 4:15 A.M. Then, 1,200 morning- and afternoon-shift employees refused to go to work, and nearly 1,500 workers staged a rally at the company's administration hall at noon that day to demand that all the workers dismissed for labor actions be reinstated and that those Hyundai officials responsible for Yang Bong-soo's attempted suicide be punished.⁷⁵

On Monday, May 15, a work stoppage closed down assembly lines No. 1 and No. 2. The following day workers shut down lines No. 3 and No. 4 to protest Yang's dismissal and ask for his immediate reinstatement as well as an apology. The stoppage virtually eliminated the company's entire daily production quota. It was not, however, supported by the elected Hyundai Motor union leadership. That leadership, accused by the Countermeasures Committee of being pro-management, charged that the militant workers were instigated by outsiders.

Other units of the Federation of Hyundai Group Trade Unions, an organization of unions at the various Hyundai units and a pillar of the democratic trade unions forces, began to mobilize

72. Interview in Seoul, S. Korea (June 16, 1995).

73. KOREA HERALD, June 13, 1995.

74. Interview in Seoul, S. Korea, (June 16, 1995).

75. YONHAP, F.B.I.S., May 15, 1995.

support for the Hyundai Motor workers.⁷⁶ For example, Yoon Jae-koon, president of the Federation, spoke openly in support of the automobile workers. On May 16, management filed a complaint with the police against the twelve members of the Countermeasures Committee accusing them of agitation and interference in production. Police issued summonses and began collecting evidence for criminal charges.⁷⁷ On May 17, Hyundai Motor Co. announced that it was suspending production and closing down the automobile plants in a lock-out. Hundreds of union activists remained inside the gates nevertheless.

For the first time in nearly two years, Hyundai's auto production stopped. The company feared heavy losses at a time when Korea's auto industry was enjoying a lift as a result of a strong Japanese yen.⁷⁸ Hyundai officials claimed that the strike was costing the company nearly \$50 million a day, estimating that since the beginning of the labor action, a week earlier, Hyundai's production schedule had been set back some 16,000 units.⁷⁹ It was a particularly tense moment nationally, as well, with manufacturers facing tense labor negotiations over a government-imposed wage guideline at the same time the country was preparing for the first local and provincial elections in thirty years.

On May 17, some 5,000 workers rallied on the grounds of Hyundai Motor in defiance of a veiled warning by the government that it would deploy riot police to quell "illegal" acts.⁸⁰ Labor Affairs Minister Lee Hyung-koo strongly hinted that the government would use police force to break the strike and detain the twelve militant union leaders, including three former Hyundai Motor union leaders.⁸¹ The labor minister also warned the other components of the Federation of Hyundai Group Trade Unions against joining the striking automotive workers.

On May 18, the police obtained arrest warrants—on the charge of "business interference"—and detained the twelve leaders of the Countermeasures Committee, who were convicted in the ensuing months for their role in the May protests. Five received one-year sentences. These include: Lee Sang-bum (a former union president), Lee Hun-koo (a former union president), Yoon Sung-keun (a former union president), Kim Kwang-sik (shop steward, Plant 1, Rigging Department), and Lee Jae-in

76. YONHAP, F.B.I.S., May 16, 1995.

77. *Hyundai Stops Production*, *supra* note 71.

78. *Id.*

79. *Id.*

80. *Strike-Hit Hyundai Motors Closes Down, Police Raid Hinted*, Agence France-Presse, May 17, 1995, available in LEXIS, News Library, Wires File, AGFRP Database.

81. *Id.*

(Plant 2, Rigging Department 2). Six others, convicted on “business interference” charges, received three-year suspended sentences. These include: Lee Duck-kee (deputy shop steward, Plant 3), Moon Yong-moon (Plant 4), Baek Yong-ho (Plant 2, Frame Department 2), Son Tae-hyun (shop steward, Plant 1), Kim Hwa-sik (deputy shop steward, Plant 2), and Kim Kee-nam (Plant 2).

On May 26, the authorities issued a warrant for the arrest of the chair of the Federation of Hyundai Group Trade Unions, Yoon Jae-keon, for violating the prohibition on “third party intervention.” The charges were based on two speeches Yoon had made on May 13 and May 17 outside the Hyundai Motors plant gate supporting the striking autoworkers. In addition, the prosecutor’s office levelled “third party intervention” charges against Lee Yong-jin, general secretary of the Federation of Hyundai Group Trade Unions, and Lee Seung-pil, head of the Masan Regional Council of Trade Unions. These two leaders also made public statements supporting the Hyundai Motor workers at the May 17 solidarity rally. The legal charges blatantly violated Korea’s international obligations to respect freedom of expression.

The government’s motivation for pressing these charges was revealed in a statement by Economy and Finance Minister Hong Jae-hyung just hours after the pre-dawn raid of May 19. He told reporters, “The government will crack down hard on any illegal labor disputes and will not hesitate in using police force. We must not miss the current economic boom because of illegal labor disputes.”⁸² Later that same day, the government issued a warning, read by Deputy Prime Minister Hong Jae-hyung, that labor disputes could seriously hurt the country’s booming economy.⁸³ The Prosecutor General’s Office followed with an announcement that it would launch an investigation of two militant union groups it accused of plotting “to topple” moderate union leaders—the Federation of the Hyundai Group Trade Unions and the KCTU-affiliated groups preparing the launching of the national democratic trade union center.⁸⁴ The government’s rhetoric suggested that the groundwork was being laid for future attacks on independent union organizations. Meanwhile the authorities called in 4,000 riot troops to Ulsan from other cities.

82. Agence France-Presse, May 19, 1995, available in LEXIS, News Library, Wires File, AGFRP Database.

83. *South Korea Hyundai Plant Raided*, Associated Press, May 19, 1995, available in LEXIS, News Library, Wires File.

84. *Riot Police Storm Strike-Hit Hyundai Motors, Turn Eyes on Korea Telecom*, Agence France-Presse, May 19, 1995, available in LEXIS, News Library, Wires File, AGFRP Database.

2. *The Police Raid*

At 4:00 A.M. on May 19, over 1,000 riot police raided the Hyundai Motor plant. The police had massed at a nearby crossroads and entered through the front and Myongchon gates. The workers, who had erected tents for shelter inside the main gate of the plant, put up only passive resistance to the police. Several hundred riot police searched the plant for the twelve members of the Countermeasures Committee. In all, 279 striking workers were taken into custody. Lee Sang-bum, a member of the Countermeasures Committee and a former union president, was arrested for "business interference."

One Hyundai Motor unionist who worked closely with Yang Bong-soo and was interviewed by Human Rights Watch/Asia gave the following account:

The police had arrest warrants for the twelve leaders [the members of the Countermeasures Committee]. In the tents were members of the Countermeasures Committee. The workers tried to protect the leaders by making a human chain. They began shouting, "No violence, no violence." The police knew the leadership was in the tents behind the human fence so as many as four riot police grabbed one worker at a time to take apart the human chain. The workers guarding the leaders were arrested. Five members of the Countermeasures Committee were arrested on charges of "business interference" that morning. Two workers resisted arrest, and the police used a lot of violence against them, punching them. The riot police destroyed the tents and trampled on them to arrest the workers. It took thirty minutes to carry out the arrests.⁸⁵

The arrested workers were placed in special riot police buses with iron bars on the windows. The workers were put on benches and told to put their heads on their knees. When they resisted, they were beaten with batons. The military police were young, and they kicked the workers, who were generally much older, with their military boots while using humiliating language. The workers were taken for interrogation to police stations in Ulsan.

While there was no worker-initiated violence at the automobile plant, there was a violent protest as 200 workers fought with police outside of Hyundai Precision Industries (HPI) next door to Hyundai Motor. According to one Hyundai worker interviewed by Human Rights Watch/Asia, some of the workers who had been at the tent encampment had eluded the police raid and jumped across the wall from the auto plant to the adjacent HPI plant. They began to hurl bricks at the police, who responded with tear gas. The relatively small group of workers retreated to

85. Interview in Taegu, S. Korea (June 18, 1995).

a nearby market. It was early morning, and there were many old people at the market. The police used tear gas, which affected the older people at the market, and arrested nearly twenty workers, beating them with heavy shields. The detained workers were then loaded on police buses.

Workers on the bus were ordered not to talk, and when they resisted in any way, they were hit. Once inside the police station, they were ordered to sit on the ground and face downward. The police held them for the maximum twenty-four hours allowable without charges.

According to another worker at the scene:

The workers who were arrested for participating in stone throwing were taken to Ulsan Eastern station. The police knew I was among the workers who had thrown stones and I was beaten in retaliation. It is not uncommon for the police to put an arrested person who resists in a darkened room and beat him harshly with batons and boots. This happened to one man I know, Suh Yong-taek.⁸⁶

In response to the arrests, the Federation of Hyundai Group Trade Unions held protest rallies at five other Hyundai facilities during the lunch hour on May 19.⁸⁷ The leadership of the Hyundai Motor union issued a statement expressing regret over the raid and demanded that the police remaining inside the plant be withdrawn immediately.

Riot police remained on alert in Ulsan to thwart possible worker protests, but on May 23, 1,500 officers withdrew from the areas around the Hyundai Motor facilities,⁸⁸ and workers began to return to the assembly lines. Also on May 23, the Federation of Hyundai Group Trade Unions, the organization of the unions at the Hyundai conglomerate which had actively supported the automobile workers' strike, retracted its previous instructions to members to boycott overtime work. The workers' anger persisted, however. On May 30, some 2,500 riot police were deployed around Hyundai Heavy Industries (HHI) in response to a strike threat at that shipbuilding facility.⁸⁹ Police searched ships entering and leaving the HHI docks and shipyards, while a police helicopter flew overhead in an effort to arrest two union leaders, Yoo Jae-keun (chair of the Federation of Hyundai Group Trade Unions) and HHI Union Secretary-General Lee

86. Interview in Taegu, S. Korea (June 17, 1995).

87. *Riot Police Storm*, *supra* note 85.

88. *Hyundai Motor Opens After Week-Long Strike*, Agence France-Presse, May 23, 1995, available in LEXIS, News Library, Wires File, AGFRP Database.

89. *South Korean Police Set to Raid Shipyard*, Agence France-Presse, May 30, 1995, available in LEXIS, News Library, Wires File, AGFRP Database [hereinafter *South Korean Police Set to Raid*].

Yong-jin, wanted on "third party intervention" charges. The charges were based on the speeches these union leaders had given at the May 17 solidarity rally for the striking automobile workers. Police teams were stationed at intersections throughout Ulsan and carried out house-to-house searches for the two. At the docks, a group of 150 union activists locked the entrances and stayed overnight in an effort to prevent police entry. Nine other Hyundai subsidiaries in Ulsan decided to boycott overtime work despite the leadership's instructions.⁹⁰ Then, after they lost track of the union leaders who had gone into hiding, police suspended plans to raid HHI.⁹¹

This was the situation when Yang Bong-soo died of complications from his self-immolation at Tongsan Hospital in Taegu early in the morning of June 13.⁹² Police deployed 2,000 officers around the hospital morgue where Yang's body was being held. Hyundai management held an emergency meeting to discuss Yang's death and dispatched officials to the hospital to discuss funeral arrangements with his family.

Thousands of Hyundai Motor union members held a memorial rally near the auto plant in commemoration of Yang Bong-soo on June 14. The Federation of Hyundai Group Trade Unions declared a week-long memorial period for Yang and held a rally in Ulsan on Monday, June 19.⁹³ In a union election three months later, the autoworkers ousted the Hyundai Motors union leadership, which had been criticized by the Countermeasures Committee and its supporters as being "collaborationist."

C. KOREA TELECOM

Korea Telecom (KT) is the government-run monopoly at the center of the country's telecommunications network. KT handles domestic and foreign telephone calls and other aspects of Korea's telecommunications. In May 1995, as negotiations over a wage ceiling and company privatization plans began to intensify, the authorities coupled inflammatory rhetoric with arbitrary arrests to undermine protection for freedom of assembly and the right to engage in collective bargaining. Hours after the pre-dawn police raid on the Hyundai plant on May 19, President Kim Young-sam warned that his government would take "stringent measures" against any striking union members at KT. According

90. *Id.*

91. Agence France-Presse, May 31, 1995, available in LEXIS, News Library, Wires File, AGFRP Database.

92. *Tension Mounts at Hyundai Motor After Ex-Unionist Dies*, KOREA TIMES, June 14, 1995.

93. *Death of Ex-Unionist of Hyundai Motor May Rekindle Labor Dispute*, KOREA HERALD, June 15, 1995.

to the president, any intention to strike KT was tantamount to an intent to "overthrow the government."⁹⁴ The same day, Communications Minister Kyong Sam-hyon told a Seoul press conference that "lawbreakers" at Korea Telecom would "certainly be punished" and that a strike would wreak havoc with the country's communications network.⁹⁵ In this highly charged situation, provisions of Korean criminal law were used to authorize arbitrary arrests and detention in violation of basic labor rights.

1. Background

On April 25, 1995, the Ministry of Information and Communications and the management of KT accused sixty-four union officers, including eleven members of the union's bargaining committee, of "business interference." According to a spokesman for the union, the charges against the leaders of the Korea Telecom union grew out of two 1994 incidents: (1) the occupation of the office of the Minister of Information and Telecommunications and (2) obstruction of business at a KT Board of Directors meeting.

In the first incident, on July 27 and July 28, 1994, twenty to thirty workers occupied the offices of the Minister of Information and Telecommunications located in the Korea Telecom building. They left when the Minister promised to consider the changes they had requested. The second incident was the culmination of an intense argument between workers and management. When the company's Board of Directors met on December 15, 1994 to discuss the sale of a large number of stocks, the union argued that at least some of the money should be set aside for the workers. There were two bargaining sessions on this, and just before the planned third session, the Board of Directors scheduled its own meeting. The union asked for a postponement because of the special collective bargaining already in process, but the company and the ministry refused. The workers protested first by holding a silent sit-in protest outside the room. The company moved the meeting to a secret location. The workers discovered the location and tried to enter the meeting. When they were denied access, they entered anyway, protested verbally and pulled out some ceiling tile. Tension remained high for a few hours. The police were not called because, while the atmosphere was tense, there was no threat of physical violence. On December 19, 1994

94. Agence France-Presse, May 15, 1995, available in LEXIS, News Library, Wires File, AGFRP Database.

95. *Hyundai Motors Strike Subside, Government Sabre-Rattling at Korea Telecom*, Agence France-Presse, May 20, 1995, available in LEXIS, News Library, Wires File, AGFRP Database.

Korea Telecom President Cho Baek-je announced that the company would allocate funds for the KT workers. There was no threat at that time of the legal reprisals that would follow in April 1995.

Starting in early May 1995, KT union leaders called for collective bargaining to end a government-imposed wage ceiling, to review the opening of the telecommunications service market to foreign companies and to privatize the company.⁹⁶ According to a KT union spokesperson:

The issue of privatization lurked in the background of the negotiations. The union's position is not absolutely against privatization, but we want to investigate and air the issues. The government is against open discussion, and our raising the question angered the authorities.⁹⁷

Revealing the government's larger purpose, on May 8 the Supreme Public Prosecutor's office issued a Special Order for the arrest of leaders of the Korean Council of Trade Unions (KCTU). The KCTU was preparing to launch a new autonomous national trade union center on November 11, 1995. The wanted unionists included the two co-presidents, Kwon Young-kil and Yang Kyu-heon. The arrest order stated that the KCTU leadership was intending to link negotiations over wages—including the Korea Telecom bargaining—with the June 27 election. At 11:00 A.M. on May 16, just hours before another scheduled round of collective bargaining, KT management held a press conference at the Ministry of Information and Telecommunications to announce that it was disciplining sixty-four union officers for engaging in "illegal activities and preparing a strike." The union condemned the disciplinary action against its officers, including the union's negotiators, while negotiations were underway. The company promptly refused to meet with those union representatives against whom disciplinary action had been taken, thus breaking off negotiations. In response, the union issued a call for protest rallies on May 17. The same day, KT President Cho Baek-je issued a statement saying he was firing union activists "to prevent a strike." At 7:00 P.M., 7,000 union members rallied at KT headquarters demanding that the punishments be withdrawn and that the suppression of the union be ended.

On May 18, the prosecutor's office issued arrest warrants on charges of "business interference" for the union leaders against whom the Ministry of Information and Communications had taken disciplinary action.⁹⁸ Citing the warrants, Korea Telecom

96. *Korea Telecommunications Workers' Struggle*, KOREAN WORKER (Yong Dong Po Indus. Mission, S. Korea), May 1995, at 9.

97. Interview in Seoul, S. Korea, (June 20, 1995).

98. YONHAP, F.B.I.S., May 18, 1995.

management again refused to meet with the union's leadership. The next day the union threatened to strike unless the company rescinded its plans to punish the leaders.

On May 19—the same day riot police stormed the workers' tent city inside the gates of the Hyundai Motor Plant—President Kim Young-sam issued his statement characterizing the strike threat at Korea Telecom as tantamount to a struggle “to overthrow the state.” Such language, ignoring universally recognized guarantees of freedom of association and expression, inflamed an already tense situation. In response, the workers began a work slowdown and the union stated that it would launch a strike if the police moved against its members. The Supreme Prosecutor's Office moved to arrest fifteen Korea Telecom union leaders, including chair Yu Duk-sang, for their “illegal labor activities” and pushed ahead with prosecutions.

According to one independent labor activist interviewed by Human Rights Watch/Asia:

On May 19 President Kim made his notorious statement that the KT workers were planning violent and illegal activities leading to strikes and the overthrow of the government. Because the President put it in these terms, all government forces were mobilized for a harsh crackdown.⁹⁹

On May 20, the union called for a ten-day cooling-off period to promote good faith negotiations and avoid a disruption of telecommunications. The union urged the government and management to refrain from any disciplinary steps or legal actions and promised the union would not unilaterally take any collective action.¹⁰⁰ A union spokesperson later told Human Rights Watch/Asia that the government was hoping to create a backlash against the independent labor movement that would favor the ruling party in the June 27 elections. In May 1995, President Kim's approval rating was reported to have hit an all-time low since his February 1993 inauguration and there was speculation that he was seeking to project a strong image to appeal to conservative voters.¹⁰¹ The Telecom spokesperson also told Human Rights Watch/Asia that the government was attempting to destroy or cripple an important component of the KCTU before the November founding of the national center of independent trade unions.¹⁰²

The Minister of Information and Telecommunication promptly rejected the union's proposal and began to take emer-

99. Interview in Seoul, S. Korea (June 20, 1995).

100. *Korea Telecom Retreats From Moves Towards Strike*, KOREA TIMES, F.B.I.S., May 22, 1995.

101. *South Korean Police Set to Raid*, *supra* note 90.

102. Interview in Seoul, S. Korea (June 20, 1995).

agency measures to handle a possible strike, including the use of military personnel. The Senior Presidential Economic Secretary, Han Yi-hon, stated that the KT union had initiated a dispute on subjects not proper for collective bargaining but for ulterior political purposes.¹⁰³ This was one of several government efforts to portray the KT union's actions as politically motivated—or, as one unionist described it, to use “red scare” tactics to create an anti-union backlash. A week later, South Korea's Prime Minister, Lee Hong-koo, publicly stated that the government was adopting a tough response to the threat of collective action at Korea Telecom to prevent labor disputes from spreading. He went on to announce that the Korea Telecom workers appeared “to have links with the outlawed trade unions.” Reinforcing this theme, an unnamed presidential aide, suggesting North Korean instigation, said, “It's no coincidence that this is occurring at an organization vital to our national defense.”¹⁰⁴

2. Sanctuary at Religious Centers

Two days after President Kim's statement, a massive crack-down began. Starting late in the night of May 21 and continuing into the early morning hours of May 22, some 20,000 police officers were mobilized to hunt down and arrest the KT union leaders before the June 27 elections.¹⁰⁵ Police squads raided the homes of union officials and apprehended five of them. Three were arrested, and two were booked and then released.¹⁰⁶

Later on Monday, May 22, the government issued arrest warrants for the other KT union officials, including President Yoo Duk-sang, and closed down the union's offices.¹⁰⁷ The authorities intensified their efforts to apprehend other KCTU officials, Kwon Yong-mok (chair of the Executive Committee) and Heo Young-koo (chair of the KCTU Executive Committee). In an effort to publicize their demands, six KT union officers, including the disputes director, the education director and the women's director, established an emergency office in a room of the human rights committee of Myongdong Cathedral, a highly respected religious center in downtown Seoul that the police had never forcibly entered, even during military rule. The next day, 3,000 union members gathered outside the cathedral to support the leaders meeting inside.

103. YONHAP, F.B.I.S., May 20, 1995.

104. John Burton, *South Korea Clamps Down on Union: Riot Police Surround Sanctuaries of Dissident Telecom Workers' Leaders*, FIN. TIMES, May 31, 1995, at 5.

105. YONHAP, FBIS, May 23, 1995.

106. Korean Worker (Yong Dong Po Indus. Mission, S. Korea), May 1995.

107. Agence France-Presse, May 22, 1995, available in LEXIS, News Library, Wires File, AGFRP Database.

At this point, the government's anti-union drive crossed over into confrontation with the political opposition. At dawn on May 23, forty riot police stormed the headquarters of the opposition Democratic Party, where members of the "Special Committee for Restoration of Arrested, Dismissed and Wanted Unionists to the Status Quo" were holding a peaceful sit-in to protest the crackdown on labor. Chang Young-kil (chair of the Special Committee), Kim Je-yeon (general secretary of the Korea Telecom union), Park Jung-soo (a dismissed Daewoo Precision worker), and Heo Tae-koo (a dismissed Poongsan worker) were apprehended and arrested. Meanwhile, hundreds of riot police maintained a tight blockade around Myongdong Cathedral in downtown Seoul, where KT union leaders had sought refuge to continue their union work.¹⁰⁸

Simultaneously, the government ordered riot police to take up positions at the KT union offices and prevent worker access to them. Management fired eleven union officers, including Yoo Duk-sang, and summoned sixty-four union officials to appear before a company disciplinary board.¹⁰⁹ On May 28, hundreds of riot police sealed off Chogye Temple, another revered religious institution in downtown Seoul where seven KT union leaders were on hunger strike. At the same time, the police tightened their blockade around Myongdong Cathedral.¹¹⁰ On May 29, Prosecutor General Kim To-on told the press he would "pursue Korea Telecom union leaders to the end" and bring them to justice for "taking the national telecommunication network hostage and staging illegal collective actions for political purposes."¹¹¹ He added that the demands posed by the union were all related to the government's economic policies and as such were not appropriate for labor-management discussion.¹¹² An Kang-min, Director of the Public Security Department of the Prosecutor General's office, said that "if the situation lingers on, we would find it unavoidable to use police under legal procedures."¹¹³ Late on May 30, the police presented arrest warrants to religious officials at the cathedral and the temple, triggering angry protests from both religious communities. In a statement, Myongdong

108. Agence France-Presse, May 23, 1995, available in LEXIS, News Library, Wires File, AGFRP Database.

109. *Background of Labor Repression by the Kim Young-sam Government*, Korea Council of Trade Unions, (June 1995).

110. Agence France-Presse, May 28, 1995, available in LEXIS, News Library, Wires File, AGFRP Database.

111. Agence France-Presse, May 30, 1995, available in LEXIS, News Library, Wires File, AGFRP Database.

112. YONHAP, F.B.I.S., May 31, 1995.

113. Agence France-Presse, May 31, 1995, available in LEXIS, News Library, Wires File, AGFRP Database.

Cathedral officials said "Myongdong Cathedral has been playing a moral role as a sanctuary, even during the past military dictatorship. We feel sad to see this role being marred by the civilian government."¹¹⁴ A group of Catholic priests also issued a statement, warning of all-out resistance by the Catholic church and joint action with the Buddhist community if their sanctuaries were invaded. They stated that the Korea Telecom workers had not carried out their strike threat and urged the government to delay executing the arrest warrants, and open talks with the union. On May 29, a group of 223 professors at thirty-seven universities across the country issued an appeal to the government to stop suppressing "legitimate unionism."¹¹⁵

That same day, Prime Minister Lee Hong-koo stressed that the labor dispute at KT had to be resolved within a week to prevent labor problems from spreading. He said:

"Should the dispute continue beyond this week, it will be linked with progressive labor organizations and make the situation more complicated. Accordingly it should be resolved within the week. . . . Once the dispute comes to have links with outlawed trade unions, it will quickly spread across the country. This should be prevented from happening."¹¹⁶

Implying that the places of worship would be raided, Vice Information and Communications Minister Yi Kye-chol said, "There is no need whatsoever for the civilian government to protect the interests of a specific organization. This should be well publicized to the citizens."¹¹⁷ Agreeing with the Prime Minister, Yi stated further, "The situation will subside if and when core union leaders are detained. In the event the dispute is prolonged, chances are high it will be linked with illegal trade organizations and expanded."¹¹⁸ In a related move, KT President Cho Baek-je called upon the heads of the two places of worship to persuade union leaders to end their sit-in and surrender themselves.¹¹⁹

Early on June 6, the riot police stormed Myongdong Cathedral and Chogye Temple. Yonhap Television news showed plain-clothes police dragging thirteen men out of tents and makeshift shelters constructed at the two religious centers. Among those the police seized at Myongdong were Chang Hyun-il (head of the dispute department), Park Soo-ho (bargaining director), and Chung Yong-chil (a union branch secretary). Yang Han-woong (KT union adviser), Kim Jong-keun (head of the union organiz-

114. *Id.*

115. *Id.*

116. YONHAP, F.B.I.S., May 30, 1995.

117. *Id.*

118. *Id.*

119. YONHAP, F.B.I.S., May 31, 1995.

ing department), Kim Se-ok (union international director), and Park Choong-bum (union wage director) were among those arrested at Chogye Temple. They were charged with "business interference" and "violence."¹²⁰

According to one activist, the union made a major concession in an effort to meet the company's terms by not insisting on the old negotiating team. Just before the police raids on Myongdong Cathedral and Chogye Buddhist Temple, the Korea Telecom union had decided to exclude the union leaders who were facing charges before the corporate disciplinary board. The union had accepted the company's claim and wanted to resume negotiations.¹²¹

On June 7, the authorities resorted to the use of excessive force again. Following a pro-union street demonstration that had proceeded peacefully, riot police charged a human barricade of priests and lay followers into Myongdong Cathedral to rout dozens of students who had taken refuge there. Church officials quoted eyewitnesses as saying that, inside the cathedral, police badly beat students in front of a statue of the Virgin Mary as appalled priests and nuns looked on.¹²² This was the second police invasion of the cathedral in two days.

To prevent KT labor unrest from spreading, on June 7, the government also sent riot police to block a meeting of 300 Korean Telecom union chapter leaders from around the country in the National Council of Christian Churches Building in downtown Seoul. The arriving trade unionists were confronted by some 400 police in addition to officials from Korea Telecom who, violating the workers' right of free assembly, prevented the KT unionists from entering the building. Police arrested and questioned thirty-two union leaders.

The same day, the government moved to toughen Korea Telecom management's stance even further. President Kim Young-sam fired Cho Baek-jae as head of KT, and appointed a retired four-star general, Lee Jun, as his successor.¹²³ After firing Cho, Kim Young-sam made clear the signal he wanted to send by General Lee's appointment. The President told the press, "The way this incident is handled will demonstrate the government's determination that no illegalities will go unpunished."¹²⁴ The ap-

120. Interview with Korea Telecom spokesperson in Seoul, S. Korea (June 20, 1995).

121. *Id.*

122. Agence France-Presse, June 8, 1995, available in LEXIS, News Library, Wires File, AGFRP Database.

123. UPI, June 7, 1995, available in LEXIS, News Library, Wires File.

124. Associated Press, June 7, 1995, available in LEXIS, News Library, Wires File.

pointment had wider political motives as well. The selection of Lee Jun was seen as part of President Kim's effort to woo conservatives, as his base of political support was shifting rightward among factions in the ruling party. Cho had come under increasing fire from the ruling party for failing to contain the dispute at Korea Telecom, which was becoming a political liability for the government as the June 27 elections neared. The elections were increasingly seen as a mid-term referendum on President Kim and his policies.¹²⁵

On June 9, twenty-seven senior Catholic Church leaders issued a statement demanding that the government apologize for sending police into Myongdong Cathedral. The statement read, "We will ask the government to sincerely apologize to the church and the nation and promise that such an incident will not recur. . . . We urge a prompt government response and will watch whether the government complies or not."¹²⁶

Following the raids on the Cathedral and Chogye temple and mounting denunciations by religious leaders, there were growing indications that the government's tactics had lost its popular support and the union, which had not initiated any strike action, began to gain sympathy among the public for its flexibility. There were several demonstrations in downtown Seoul protesting the government's raid on the religious centers. For example, on June 13, 25,000 people gathered in the capital to demand that President Kim apologize, dismiss the arrest charges and promote a climate for negotiations.¹²⁷ Religious leaders met with government officials and tried to mediate the dispute.

Reflecting the negative public reaction, Prime Minister Lee Hong-koo issued a statement to the press on June 16, belatedly expressing the government's regrets over the June 6 police raids at Myongdong Cathedral and Chogye Buddhist Temple. The statement said:

I express deep regrets over inconveniences and sufferings inflicted upon the church and the temple which have special status and historic meaning in our society. I deeply understand the fact that the religious circles are expressing deep worries and sufferings over the matter.¹²⁸

The statement went on, however, to reiterate the government's position that churches and temples should not be considered "safe areas for illegal struggle" or "extraterritorial areas."

125. *Id.*

126. *Catholics Protest Police Action*, UPI, June 9, 1995, available in LEXIS, News Library, Wires File.

127. *Id.*

128. *Lee Regrets Police Action But Disavows "Sanctuary,"* KOREA TIMES, June 17, 1995.

D. THE DENIAL OF FREEDOM OF ASSOCIATION FOR TEACHERS

Public school teachers in South Korea are regarded as part of the civil service, and private school teachers are treated as if they were civil servants. As such, they are denied, under Korean law, the right to choose their own union and associate freely. Under Korean law, teachers are classified as educational public servants and under the Public Servants Act, they are prohibited from organizing, engaging in collective bargaining, and taking collective action.¹²⁹ The Private School Act extends this prohibition to private school teachers.¹³⁰ The government contends that teachers' unions have no legal basis because teachers cannot be treated as workers. Accordingly, teachers have been dismissed—1,500 in 1989—and arrested for activities in support of an independent union known as the Korean Teachers and Educational Workers' Union (Chunkyojo).

1. *The Prohibition of Chunkyojo*

Chunkyojo was launched on May 28, 1989 despite a legal ban on collective action by public sector employees and the arrest and dismissal of one hundred union organizers less than two weeks earlier. Before Chunkyojo was formed, the only organization representing the interests of teachers was the government-sponsored Korean Federation of Education Association (KFEA), which included administrators as well as teachers and functioned more like a professional association than a union.¹³¹

Chunkyojo, without lawful status to represent teachers, nonetheless claims to have fifteen provincial offices, 157 municipal branches, and 3,000 school branches serving 15,000 members, with 30,000 additional dues-paying supporters.¹³² The organization engages in various activities to improve the educational system, to obtain better treatment for teachers, to eliminate "ideologically motivated education," and to increase the education budget. Members meet regularly to discuss school curricula and to organize other activities on subjects ranging from environmental protection to reunification with the North.

According to a Chunkyojo spokesperson:

The government says that under the circumstances that Korea is a divided country, it cannot allow a teachers' union. It reinforces that with reference to Confucian ideology that a teacher is not a worker. We can only function as a professional associ-

129. PUBLIC SERVANTS ACT, art. 66 (1963, amended in 1986) (S. Korea).

130. PRIVATE SCHOOL ACT, art. 55 (1963) (S. Korea).

131. *Retreat From Reform*, *supra* note 13, at 63.

132. *Id.*

ation, discussing professional issues, but not as a union. The government can prohibit our having a union, but they cannot prohibit our managing an office.¹³³

The Public Servants Act and the Private School Act were cited to justify massive dismissals when Chunkyojo was founded in 1989. For their union membership, 1,487 teachers were fired. An additional 200, almost all private school teachers, were subsequently dismissed due to their union sympathies. There followed a long struggle to reinstate the dismissed teachers. After 1989 many dismissed teachers brought lawsuits to gain reinstatement. Most of these cases were rejected, but the courts did order some teachers reinstated when the judges found that their activities had caused no harm to the "social order or education."¹³⁴ In December 1989, a district court in Kochang ordered the reinstatement of two private school teachers on these grounds.¹³⁵ However, the Ministry of Education refused to obey the court's judgment and the two were not reinstated until a petition drive and sympathetic public opinion compelled Kim Young-sam's administration to re-instate over 1,300 dismissed teachers.¹³⁶

Teachers who were still employed formed an organization, the Council for Reinstating Teachers, and they began a signature campaign for reinstatement. Dismissed teachers, teachers still employed, and non-teachers as well took signature boards into the streets, collecting more than 1,000,000 signatures by the end of 1992. This was the largest petition drive in the country's history.¹³⁷ Some members of the Council for Reinstating Teachers were themselves dismissed, under the Public Servants Act, as a result of the campaign. Other teachers were arrested and charged with various offenses. The authorities claimed that there was no public support for teacher unionizing, but the success of the signature drive suggested that there was a great deal of popular support for the union.

However, the terms of reinstatement for those dismissed in 1989 required those teachers to sign a form stating that they had withdrawn from the Korean Teachers and Educational Workers' Union. The government-issued form stated, "It [was] a clear violation of the law when teachers formed the trade union. It [was] against the national sentiments and our conventional views on education that teachers pretend[ed] to be workers and forwarded their demands through trade union activities." The statement continued: "The Government came to the conclusion that only

133. Interview with Chunkyojo spokesperson in Seoul, S. Korea (June 15, 1992).

134. *Retreat From Reform*, *supra* note 13, at 65.

135. *Id.*

136. Interview in Seoul, S. Korea (June 15, 1995).

137. *Id.*

those who declare publicly their withdrawal for Chunkyojo should be reinstated."¹³⁸

On December 18, 1993, the Minister of Education issued a statement declaring that: "Those who ran for election [for the position] of regional or branch chairman or are involved in Chunkyojo meetings and rallies at the schools or [work at Chunkyojo office] will be excluded immediately from the list for reinstatement." The statement added that the act of "demanding legal recognition of the teachers' trade union, collective action in the name of teachers' rights or interference with the justified school management by school masters will be subject to serious disciplinary actions."¹³⁹

In a "personal statement" drafted by the Ministry of Education that was addressed to the chairmen of the Provincial School Authority, teachers were required to promise not to support union activities. The statement read, "I shall not join in any Chunkyojo activities. Upon returning to school, I shall direct all of my enthusiasm and efforts toward teaching students."¹⁴⁰ Teachers were excluded from reinstatement if they refused to sign the declaration. In addition, the government declined to reinstate over forty applicants who wrote that they withdrew from Chunkyojo but believed the union should be legalized.

The union accepted the conditions and Chung Hae-sook, President of Chunkyojo, issued a statement saying, "The governmental will to reform is not strong enough to settle the reinstatement problem without conditions. Chunkyojo will accept the reinstatement condition so that the dismissed teachers can return to school to carry out true education."¹⁴¹

2. *Continued Denial of Free Expression for Teachers*

Of similar concern is the continued harassment of teachers actively expressing their views on educational reform, a clear violation of their right of free expression. On May 10, 1995, activist teachers in Seoul unveiled the "One Hundred Teachers' Declaration for Genuine Educational Reform" and presented it in summary form to the government's Educational Reform Committee,

138. Education Minister Oh Buyng-moon, Special Statement Concerning the Reinstatement of Dismissed Teachers Related to Chunkyojo (KTU) (July 24, 1993) (Document is on file at Human Rights Watch/Asia.).

139. Ministry of Education, Statement Concerning the Involvement in the Activities of Chunkyojo by the Teachers Who Applied for Reinstatement (Dec. 18, 1993) (Document is on file at Human Rights Watch/Asia.).

140. Personal Statement To the Provincial School Authority Chairman (July 1994) (Document is on file at Human Rights Watch/Asia.).

141. *Korean Teachers and Educational Workers' Union*, (Chunkyojo, Seoul, S. Korea) 1995, at 5.

which is directly responsible to President Kim Young-sam's office. Subsequently, the Seoul Education Board took punitive action against five of these teachers, including three representatives who had lobbied the Educational Reform Committee.

The Seoul Education Board has demanded that these teachers confess their involvement with the declaration or undergo further investigation. After acknowledging that the teachers had not violated any law by submitting the declaration, the Seoul Education Board then accused the teachers of "undertaking collective action" and pressing for "the legalization of the illegal Korean Teachers and Educational Workers' Union."¹⁴² The board demanded that the teachers repeal their declaration and sign promises that they would never again undertake such actions. It also took serious disciplinary action against five teachers in the form of salary reductions, suspensions, and dismissals.

Chunkyojo has attempted to register its newspaper, *Chunkyojo Shinmoon*, with the Ministry of Information and Telecommunications so as to publish it "officially," but the ministry rejected the application on the grounds that it was a platform for activities of an illegal organization. Despite this, 80,000 copies are published "unofficially" every ten days.

According to a teacher interviewed by Human Rights Watch/Asia:

The government continues to repress teachers who participate in activities like the sixth commemoration of the founding of our union on May 28, 1995. The teachers who spoke at the rally were warned by their local school boards that they would be punished. Teachers who press for educational reform receive written warnings from the education authorities. In Taegu this spring, 300 teachers received written warnings.¹⁴³

VI. THE REPUBLIC OF KOREA'S APPLICATION FOR ADMISSION TO THE OECD

In March 1995, the Republic of Korea applied for membership in the Organization of Economic Cooperation and Development (OECD). Korea is the first Newly Industrialized Country (NIC) in East Asia to apply for membership, and this was the OECD's initial opportunity to consider regional labor laws and practices as part of its admission process. The way the OECD handled Korea's admission would define how carefully the organization adheres to its own human rights provisions in considering this and future applications.

142. *Urgent Appeal for International Solidarity Action*, (Chunkyojo, Seoul, S. Korea) June 11, 1995.

143. Interview with teacher in Seoul, S. Korea (June 15, 1995).

1. *The OECD's Definitive Role*

Human Rights Watch/Asia urged the OECD to weigh Korea's labor laws and its labor rights practices carefully when evaluating its application for admission. A rights-sensitive approach is entirely consistent with the OECD's broader purpose. The organization, while obviously focused on economic issues, is rooted in a set of underlying principles expressed in its convention which emphasizes the importance of the "preservation of individual liberty."¹⁴⁴ The organization's commitment to human rights was underscored in its 1990 Ministerial Council Communiqué, which enumerated the "common features" of OECD countries, including "respect for human rights." The 1992 Ministerial Council Communiqué emphasized that respect for human rights is intrinsically linked to economic development. In reviewing Korea's application, the OECD has the opportunity to emphasize an important principle—respect for international labor standards—and press the Korean government to revise its abusive labor legislation as an integral part of the process of admission.

As part of the admission process, the organization's Trade Union Advisory Committee (TUAC) held a two-day seminar in mid-September to discuss Korea's labor laws and worker rights violations. Eager for admission to the OECD, the government for the first time had agreed to meet not only with representatives of the officially permitted unions and OECD member states but with delegates of the country's independent—but not legally recognized—labor federations. At the last minute, however, the labor minister withdrew from participation in the meeting. His withdrawal signaled Seoul's intention to avoid confronting OECD labor rights concerns. It also posed an important challenge to the OECD itself.

The Korean government's decision to boycott the OECD seminar followed a series of maneuvers aimed at thwarting OECD scrutiny of its record. Seoul had pressed to keep the representatives of the independent trade union federations from participating at all. After several months of negotiation, a compromise was reached that permitted their participation without mention of their "non-lawful" status. In the end, the government chose to send only unofficial "observers."

According to seminar participants, the discussion, focusing on provisions of Korean labor law that have been criticized by the International Labor Organization and United Nations, was productive.¹⁴⁵ There was a consensus between the government-

144. Convention of the Organization for Economic Co-operation and Development, Dec. 14, 1960, Preamble, 12 U.S.T. 1728.

145. Telephone Interview with seminar participants (Sept. 17, 1995).

supported unions and the independent federations that the prohibition on "third party intervention"—authorizing arrest for merely expressing support of striking workers—should be abolished. On the other hand, while many questions arose about the country's labor laws, the government's absence made it impossible for participants to determine official attitudes or even get answers to questions.

After the completion of the seminar, the Secretary-General of the OECD-TUAC publicly stated that the country's labor laws needed to be amended to allow for free and independent trade unions in accordance with OECD values. According to the Secretary-General, respect for the basic rights of free association and the right to collective bargaining were urgently needed.¹⁴⁶

2. *Continued Pressure by the OECD on Korea's Labor Laws*

In the months following the TUAC seminar in Seoul, Korea's labor laws emerged as a major obstacle to the government's effort to join the OECD.¹⁴⁷ Some OECD members were threatening to block Korea's admission to the organization.¹⁴⁸

In a pre-emptive move, on April 9, 1996, Choi Seung-hoo, Vice Minister of Labor Affairs, met with the OECD's Employment, Labor and Social Affairs Committee (ELSAC) to announce his government's new plan to revise its labor laws. This abrupt policy change was directly linked to the country's bid to join the OECD.¹⁴⁹ According to Park Hwa-jin, an official of the ministry's Labor Policy Bureau, "Such a change is partly due to the government's reasoning that current labor laws, sometimes inviting the ILO's criticism for limiting trade union activity, may overshadow bidding effort for the OECD."¹⁵⁰

In April 1996, Donald Johnston, then OECD Secretary-General designate, visited Seoul to discuss the terms of Seoul's entry to the organization and express its concern about labor law reform. During that visit Christian Schricke, OECD Legal Counsel, linked labor rights standards to South Korea's admission to the organization. He stated that while the OECD did not require specific labor standards for admission, "it is relevant for members of the OECD to note that there are certain basic values

146. *Korean Labor Laws Must be Revised to Allow Free Unions: Sec.-Gen. Of OECD*, KOREA TIMES, Sept. 15, 1995.

147. *South Korea's Kim Pledges Reform to End Labor Strife*, Reuter, Apr. 24, 1996, available in LEXIS, News Library, Wires File.

148. John Burton, *S Korea May Ease Labor Laws to Gain OECD Admission, Seoul to Reform Trade Union Laws*, FIN. TIMES, Apr. 25, 1996. at 4.

149. Jun Kwan-woo, *Debate on Labor-Law Revision Looming Large*, KOREA HERALD, Apr. 25, 1996.

150. *Id.*

shared by all member nations with respect to human rights. And labor rights are part of human rights."¹⁵¹

According to Schricke, the OECD was expecting an announcement by President Kim Young-sam heralding significant developments in Korea's labor laws. Schricke stated, "They (the OECD members) will be looking very closely at the developments in the very near future."¹⁵² Schricke pointed to the prohibition on third party intervention and the ban on multiple trade unions as the major points of controversy.

On April 24, at a conference of labor and management representatives at the Presidential House, Kim Young-sam announced the establishment of a presidential commission on labor affairs mandated to overhaul the restrictive labor law provisions that had drawn international criticism.¹⁵³

The President indicated that his government would accommodate some key demands of the independent labor movement for freer union activity. He stated, "Excessively restrictive laws of the past must be readjusted resiliently and flexibly. The laws must be rewritten so that they conform to international standards and practices."¹⁵⁴ President Kim Young-sam's commitment was echoed by Park Seh-il, the Senior Presidential Secretary on Social and Welfare affairs. Referring to the commission, Park said, "The regulation will be revised so that it can match international standards."¹⁵⁵

Government officials identified the existence of more than one union at a work place, the ban on third party intervention and labor union participation in political activities as the objectives of labor law reform. Officials acknowledged that the planned overhaul would not only help establish peaceful labor-management negotiations but also facilitate the country's admission to the OECD in the face of considerable pressure from organization members.

The presence of members of the Federation of Hyundai Group Trade Unions at the Presidential House conference was an unprecedented step. KCTU, which was still an outlawed union under the Korean government, gave a mixed response to Kim Young-sam's announcement.¹⁵⁶ "The reform measures are a

151. John Burton, *Seoul to Reform Trade Union Laws*, FIN. TIMES, Apr. 25, 1996, at 4.

152. *Id.*

153. Chon Shi-yong, *President Kim to Set Up Panel to Revise Labor Laws*, KOREA HERALD, Apr. 25, 1996.

154. *Id.*

155. *Id.*

156. *South Korea's Kim Pledges Reform to End Labor Strife*, Apr. 24, 1996, available in LEXIS, News Library, Wires File.

belated but definite step forward," a council spokesman said. He continued, "Workers arrested under the wrong system must be released soon."¹⁵⁷ In an official statement, the KCTU described the move as the "outcome of the labor law reform struggles waged doggedly by the Korean democratic trade union movement and the efforts of the international community since 1987."¹⁵⁸ The statement continued, "given the establishment of the KCTU, the government feels the inevitability of shift of industrial relations and wants to take the initiative in reforming the labor laws."¹⁵⁹

The KCTU warned that the government's reform might be limited to the restrictions on basic trade union rights that had received international attention. Moreover, it saw a government attempt to exchange a limited liberalization for the introduction of a "worker dispatch system" and an abolition of menstrual and annual leave protection. The "worker dispatch system" would allow companies to hire workers provided by manpower supply agencies, a practice that is strictly banned under existing labor law. This practice has been strongly opposed by labor unions.¹⁶⁰

Moreover, the KCTU warned that the government might reprise the delay tactics it had used so effectively with the ILO: promise labor reforms as a ploy to defuse criticism without any subsequent substantive action.¹⁶¹

At an emergency meeting of the Korea Employers Association (KEA), the heads of major Korean business entities declared their opposition to changes in the law on third party intervention and multiple unions. Lee Dong-chan, KEA chair, called "on the government to reconsider the removal of such clauses in the laws, as it would imperil industrial peace."¹⁶² According to Lee Yong-bom, a KCTU spokesperson, the KEA's move was intended to ease the way for introduction of the "worker dispatch system" to help offset the cost of trade union liberalization.¹⁶³

In early May, the government officially launched the Presidential Commission. It appointed thirty members to the advisory body which was chaired by Hyun Soong-jong, a former prime

157. *Id.*

158. KCTU FAX NEWS, *Korean Repressive Labor Laws and Membership of OECD*, (Korean Confederation of Trade Unions, Seoul, South Korea), Apr. 25, 1996.

159. *Id.*

160. *Presidential Committee Will Be Formed Next Month for Revision of Labor Laws*, KOREA TIMES, Apr. 17, 1996.

161. *Id.*

162. *Id.*

163. *Id.*

minister. The body included ten leading social figures, five unionists, ten academics and five management officials.¹⁶⁴ However, the reform commission discussions bogged down and on October 7, the KCTU announced its withdrawal from the talks. The KCTU contended that the Presidential Commission was aimed at "just trying to worsen the working conditions through the reforms."¹⁶⁵ In response the Commission urged the KCTU to return to the talks and warned that it would push for a final package without it.

VII. EPILOGUE

On October 11, after a month's delay prompted by concern over the lack of labor law reform, the OECD Council agreed to invite Korea to join the organization. On October 14, the Director of the OECD's Employment, Labor and Social Affairs Committee (ELSAC) went to Seoul for a two-day visit. According to Choi Seung-boo, Vice Minister of Labor Affairs, "The ELSAC official told the vice minister that the OECD expects South Korea to be committed to working out a labor-related reform package by this year."¹⁶⁶ Choi stated that, "The OECD official said that ELSAC will monitor the nation's labor-reform drive, especially the revision of labor related laws, and also will hold a monthly meeting to follow it."¹⁶⁷

In a statement on Korea's accession to the OECD, TUAC noted the Korean government's "solemn commitment to the OECD to reform its existing laws and regulations on industrial relations, to bring them into line with internationally accepted standards, including those governing basic human rights such as freedom of association and collective bargaining."¹⁶⁸ TUAC called on the Korean government to present legislation to the current session of the National Assembly "to bring key elements of its labor law . . . into line with ILO standards on Freedom of Association."¹⁶⁹

John Evans, TUAC General Secretary, reacted to the decision to admit Korea into the organization by urging the government to move quickly to address its labor law flaws. He declared that TUAC would play an active role with the OECD to "closely

164. Kim Yong-bom, *New Presidential Commission For Labor Reform Faces Stumbling Block From Beginning*, KOREA TIMES, 1996.

165. *OECD Official Calls for Labor Reforms by this Year*, KOREA HERALD, Oct. 17, 1996.

166. *Id.*

167. *Id.*

168. TUAC, "TUAC Statement on Korean Accession to the OECD," Paris, Oct. 11, 1996.

169. *Id.*

monitor developments" in Korea. He said, "TUAC also expects that, pending the adoption of labor legislation in line with ILO standards, those trade unionists currently in prison or with charges pending under the old repressive legislation will be released immediately."¹⁷⁰

While Korea's accession to the OECD came without requiring labor law reform as part of the price of admission, the process did establish a monitoring mechanism within the OECD to press for freedom of association and further liberalization. Given the Republic of Korea's past practices in avoiding labor law reform, close monitoring and continued pressure will be needed to ensure any meaningful change. Beyond Korea's admission, this development establishes an important relationship between labor rights and OECD membership.

170. *Id.*