

Yun, Aelim

**Working Paper**

## Curbing precarious informal employment: A case study of precarious workers in the South Korean construction industry

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# Curbing precarious employment in the South Korean construction industry

Aelim Yun

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# CURBING PRECARIOUS INFORMAL EMPLOYMENT: A CASE STUDY OF PRECARIOUS WORKERS IN THE SOUTH KOREAN CONSTRUCTION INDUSTRY

Aelim Yun

This case study is part of the Global Labour University research project on the role of trade unions in curbing precarious informal employment. The project was implemented in 2014 and included 10 case studies from nine countries. The project's integrative report "From 'precarious informal employment' to 'protected employment': The 'positive transitioning effect' of trade unions", which is co-authored by Melisa R. Serrano and Edlira Xhafa, can be found at: [http://www.global-labour-university.org/fileadmin/GLU\\_Working\\_Papers/GLU\\_WP\\_No.42.pdf](http://www.global-labour-university.org/fileadmin/GLU_Working_Papers/GLU_WP_No.42.pdf)

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## ABSTRACT

The construction industry in Korea is characterized by a complex pyramid structure comprised of one main construction company (“main contractor”) and several layers of subcontractors. The prevailing form of employment relationship is informal and indirect employment via intermediaries or foremen. Construction workers are hired only for the period of a certain construction project. The number of economically dependent construction workers also rapidly increased since the late 1990s.

This case study focuses on the strategies of the Korean trade unions in their fight for precarious workers’ rights.

Since 2000, the Korean Federation of Construction Industry Trade Unions (KFCITU) has carried out an organizing campaign in construction sites. The campaign included the signing of a collective agreement between the local unions and site managers of the main contractors. Union organizers carried out propagation activities at construction sites, and took advantage of the OSH regulations to talk main contractors into collective bargaining.

The KFCITU has also organized workers in construction equipment trade. For example, tower crane operators formed an affiliated union, and went on a general strike for 28 days in 2001, and as a result, concluded a collective agreement with the cooperative of tower crane operation companies. Thereafter, the union attained, for the very first time at construction sites, Sundays off work in 2003, an eight-hour workday in 2007, and a 40-hour workweek in 2009, through collective bargaining.

It is also noteworthy that the unionization of “owner-operators”, who are usually regarded as self-employed, has increased. The unionization of concrete mixer truck drivers in 2000 was followed by dump truck drivers in 2004, and later on by excavator operators in 2007.

The unionization of precarious workers was built up on a common discontent with their working conditions, the social network across a workplace level, the voluntary fight by the rank-and-file, and the effective support from the existing trade unions. It is the organizing strategy based on labour market interests and the pursuit of multi-employer bargaining beyond an enterprise. The union has also tried to make user-enterprises acknowledge the position of an ‘employer’ who is responsible for workers’ rights. The distinctive feature of this case exists in the union’s strategy for reversing the risk-and-insecurity transfer chain for all workers, irrespective of employment status.



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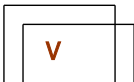
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# 1. AN OVERVIEW OF THE MAGNITUDE AND TRENDS OF INFORMALITY AND PRECARIETY IN THE KOREAN LABOUR MARKET

## 1.1 Definition and size of precarious employment

In South Korea, the problem of precarious work emerged following the economic crisis of 1997. As the social concern over precarious workers increased since the late 1990s, debates around the definition and the extent of precarious employment have also intensified. Each year since 2001, the National Statistics Office has conducted a survey (i.e. Supplement Survey of Economically Active Population Survey) on the size and conditions of atypical employment, focusing on length of service, term of contract, and type of work. However, different researchers have produced different results based on the same original data primarily because there is no common definition of precarious employment. Table 1 below shows a result of Supplement Survey of EAPS in 2014.

**Table 1: The number and share of workers by employment status and type (Number: '000s)**

|                           |                     |          | Economically Active Population Survey |                     |
|---------------------------|---------------------|----------|---------------------------------------|---------------------|
|                           |                     |          | Status in employment                  |                     |
|                           |                     |          | Permanent                             | Temporary and daily |
| Supplement Survey of EAPS | Types of employment | Typical  | ④<br>10,254 (54.6%)                   | ①<br>2,598 (13.8%)  |
|                           |                     | Atypical | ③<br>1,911 (10.2%)                    | ②<br>4,013 (21.4%)  |

Source: Kim (2014)

According to the Guidelines of the EAPS:

- ‘Permanent employees’ are defined as ‘workers with employment contracts of one year or longer’ and/or ‘workers with an open-ended employment contract who are entitled to fringe benefits, such as legal severance pay and bonuses’;
- ‘Temporary employees’ are defined as ‘workers with employment contracts for longer than one month but shorter than one year’ and/or ‘workers who are hired for a period necessary to complete a project’; and
- ‘Daily workers’ are defined as ‘workers with employment contracts for less than one month’ and/or ‘workers who are hired as day-labourer.’

In Table 1, ‘atypical workers’ are defined as ‘workers who are not expected to be employed constantly or those with fixed-term contracts’ (temporary workers), or

‘workers with shorter contractual working time than normal employees’ (part-time workers), or ‘workers with different forms of service from typical employment’ (on-call, independent, agency, subcontracted and home workers), according to the Guidelines of the Supplement Survey of EAPS.

While the National Statistics Office classifies temporary workers and fixed-term workers as ‘atypical workers’, the Korea Labour & Society Institute refers to permanent temporary workers, temporary workers and fixed-term workers as ‘precarious workers.’ There are debates about how the nature of work of permanent temporary workers is understood in terms of precarity. While this group of workers have an open-ended contract, they are not entitled to fringe benefits such as severance pay scheme<sup>1</sup> and bonuses.<sup>2</sup>

Another issue is related to the dependent self-employed workers. As they have been formally classified as self-employed, they are highly likely to be left out of the Supplement Survey of EAPS.

Table 2 is the result of analysis by Yoosun Kim (Korea Labour & Society Institute).<sup>3</sup> He reported that precarious workers accounted for 45.4% of total wage workers in August 2014.

**Table 2: Size and types of precarious workers**

|                    |                                 | 2014   |       |
|--------------------|---------------------------------|--------|-------|
|                    |                                 | Number | Share |
|                    |                                 | '000s  | %     |
| Wage workers       |                                 | 18,776 | 100.0 |
| Regular workers    |                                 | 10,254 | 54.6  |
| Precarious workers |                                 | 8,522  | 45.4  |
| Limit of term      | <b>Contingent workers</b>       | 8,225  | 43.8  |
|                    | (1) Permanent temporary workers | 4,817  | 25.7  |
|                    | (2) Temporary workers           | 3,408  | 18.2  |
|                    | (3) Fixed-term workers          | 2,749  | 14.6  |
| Working hours      | (4) Part-time workers           | 2,032  | 10.8  |
| Form of service    | (5) On-call/daily workers       | 805    | 4.3   |
|                    | (6) Independent workers         | 524    | 2.8   |
|                    | (7) Temporary agency workers    | 195    | 1.0   |
|                    | (8) Subcontracted workers       | 604    | 3.2   |
|                    | (9) Home workers                | 58     | 0.3   |

Source: Kim (2014)

<sup>1</sup> Under the Korean Labour Laws, all workers who are employed for more than one year, except domestic workers, are entitled to legal severance pay scheme.

<sup>2</sup> According to a research, this group mainly works at small enterprise in manufacturing, wholesale/retail, hotels/restaurants or private service sector (Kwon, 2013). Considering their nature of precarity in the labour market, this group is referred to ‘disadvantaged workers’ (Kwon, 2013; Lee & Yoo, 2008).

<sup>3</sup> Kim (2014) “Size and the employment conditions of precarious workers - an analysis of Supplement Survey of Economically Active Population (08.2014)”, *Korea Labour & Society Institute Issue Paper*, No. 2014-22.

In Table 2, 'precarious worker' mainly refers to the following categories:

- Permanent temporary worker: a temporary worker whose period of employment is unspecified, but who is not entitled to fringe benefits of permanent employees and/or seasonal worker, etc.;
- Temporary worker: a worker with a fixed-term employment contract or one who is not expected to be hired for long;
- Part-time worker: a worker whose contractual work hours per week are shorter than those of a full-time worker engaged in the same kind of work at the workplace concerned;
- On-call/daily worker: a worker who is hired only for a few days or a few weeks while her service is needed;
- Independent worker: a worker who provides her service for certain clients and is paid piece rates;
- Temporary agency worker: a worker who provides her labour for a user-employer and who is paid by a temporary employment agency;
- Subcontracted worker: a worker who works for a user-enterprise and who is paid by a subcontractor;
- Home worker: a worker who works usually at home for a user-enterprise.

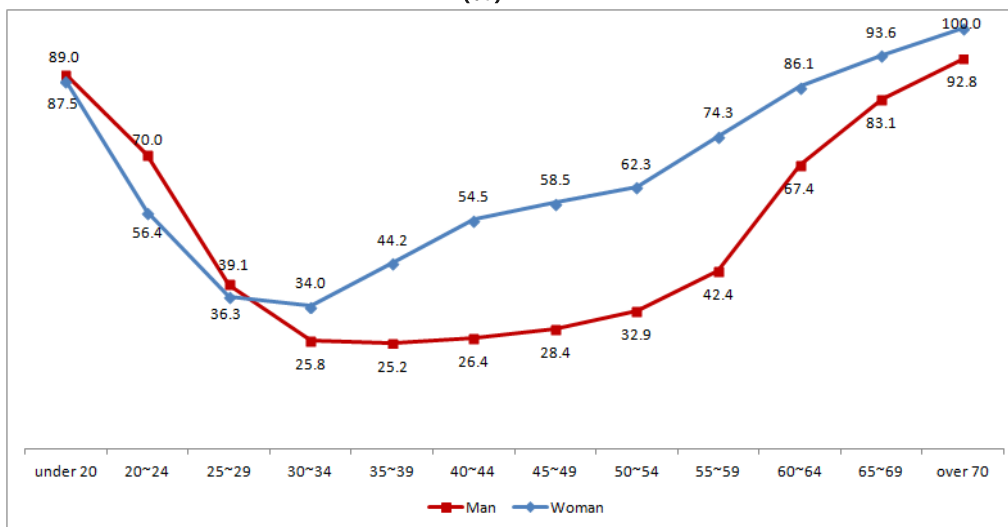
## 1.2 Distribution of precarious employment

The proportion of precarious work is higher particularly in domestic work (98.9%), hotels/restaurants (85.6%), Business Facilities Maintenance (79.2%) and Agriculture/Forest/Fishery industry (77.2%). Nevertheless, three among five precarious workers (57.9%) are found in five industries, namely, wholesale/retail (1,211,000), hotels/restaurants (1,116,000), manufacturing (883,000), Business Facilities Maintenance (871,000), and construction (852,000) (Kim, 2014).

Another significant implication of precarious work exists with respect to the feminization of this type of work. Women account for 53.6% of precarious workers, and 56.1% of all female workers are precarious workers (Kim, 2014).

As Figure 1 shows, the proportion of precarious workers is high among females of all ages, and significantly higher than males in their late twenties and older. It seems that the proportion of female precarious workers in their thirties decreases and many female workers get out of labour market due to the burden of childcare.

**Figure 1: The share of precarious workers by gender and age (%)**



Source: Kim (2014)

### 1.3 Trends in and factors influencing the growth of precarious employment

Since the widespread labour protests in 1987, a new and independent trade union movement with rank-and-file militancy has developed in Korea,<sup>4</sup> which challenged the government-controlled industrial relations system. Meanwhile, faced with mass resistance to low wages, employers of big enterprises began to pay relatively good wages to regular employees while increasing automation and labour flexibilization through the use of precarious employment.

The economic crisis of 1997 was a turning point. There occurred a significant change in the composition of the labour market. After the economic crisis, employers have minimized the use of regular employees and replaced permanent jobs with precarious work through redundancy, restructuring, outsourcing, and so on. Since then, new jobs have been created albeit mostly in precarious work, and precarious workers have become the core workforce.

It is also noteworthy that the government itself has played a major role in growing precarious employment. Since the economic crisis of 1997, it has driven the public sector to reduce personnel and to contract out their services.<sup>5</sup>

<sup>4</sup> After the military coup in 1961, the military dictatorship repressed the labour movement and dominated trade unions via a government-controlled confederation (Federation of Korean Trade Unions). In 1987, the military dictator announced a call for a direct election of the president under the pressure of mass anti-government demonstrations. In this political democratization, workers' resistance to inhumane working conditions also erupted. For example, the number of trade unions was almost doubled, and the total number of workers who participated in labour actions was estimated to be 1.2 million, equivalent to approximately one-third of the regular employees in enterprises with ten or more workers (Koo, 2000).

<sup>5</sup> The share of precarious work in public service sector, including education and health, has increased from 37.6% in 2003, when the first survey on precarious work in public service sector was conducted, to 40.1% in 2007 (Korean Public Service Workers Union, 2008).

Specifically, the government has forced restructuring through budget mechanisms, that is, by imposing financial penalties when public organizations fail to implement required restructuring. As a result, hundreds of thousands of public employees have been retrenched, and precarious forms of employment such as fixed-term contracts and contract labour have been introduced, which, in turn, have made budget cuts possible. At the same time, the government promoted the deregulation of financial markets and corporate activities, and pursued labour market flexibilization. In particular, it took the lead in introducing legislation to legalise redundancy and temporary agency work in 1998, and fixed-term employment contracts in 2006 (Yun, 2007).

Figure 2 shows that about half of the total wage workers were precarious workers since 2000. In particular, the number of part-time workers and workers on triangular employment arrangements<sup>6</sup> has doubled.

#### **1.4 Working conditions and social protection coverage of precarious workers**

The average working hours of precarious workers are not much shorter than that of regular workers. The former works 40.0 hours per week and the latter is 42.7 hours per week in 2014. On the other hand, the wage gap between regular and precarious workers is large. In 2014, the average hourly wage of precarious workers is 53.2% of that of regular workers, and the average monthly wage is merely 49.9% of that of regular workers in 2014 (Kim, 2014). The Korean wage scheme is characterized by the payment of many fringe benefits such as regular bonuses on top of the basic wage, and most precarious workers are excluded from these benefits.

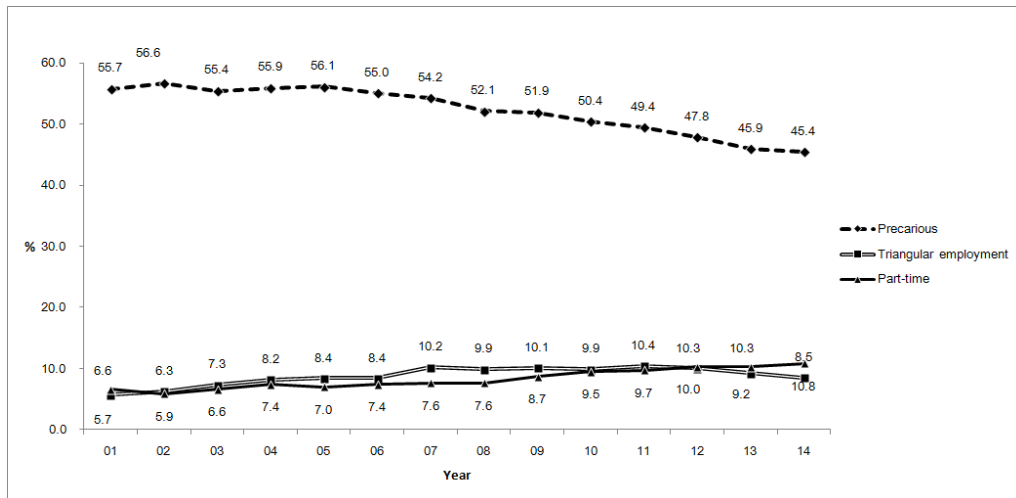
Less than 30% of precarious workers enjoy legal benefits such as severance pay, overtime pay and paid leave (Kim, 2014). Although overtime pay should be applied to all workers, regardless of the employment type, the actual coverage of precarious workers is low. Only 19% of precarious workers are provided with overtime pay (Kim, 2014).

About 30% of precarious workers are covered by social insurance (Kim, 2014). In particular, independent workers are often regarded as 'self-employed', and are therefore legally excluded from the social insurance system, although their *de facto* status is that they are workers who would otherwise be entitled to this insurance.

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<sup>6</sup> 'Triangular employment workers' refer to temporary agency workers, subcontracted workers and on-call/daily workers.

**Figure 2: The share of precarious, part-time and triangular employment workers, 2001-2014**



Source: Kim (2014)

\* Precarious: the total sum of ①, ②, ③, ④, ⑤, ⑥, ⑦ and ⑧ in Table 2.

Triangular employment: the sum of ⑥ and ⑦ in Table 2.

### 1.5 Unionization rate and collective bargaining coverage of precarious workers

Trade union membership has been declining after peaking at 19.8% in 1989. In 2014, union density was 12.5%. Trade union membership is particularly low (2.1%) among precarious workers (Kim, 2014). Enterprise-level industrial relations are still dominant and collective bargaining is limited to trade union members. According to the Organisation for Economic Co-operation and Development (OECD, 2004), the coverage of collective agreements in Korea is merely 10% of wage workers. This makes the country ranked the lowest among the OECD countries in terms of bargaining coverage.<sup>7</sup> Thus, low trade union density results in the low coverage of collective agreements, and the large majority of precarious workers are excluded from trade unions' protection.

<sup>7</sup> OECD (2004) *Employment Outlook 2004*. Paris: OECD Publishing.

## 2. THE LEGAL AND REGULATORY FRAMEWORK DEALING WITH PRECARIOUS EMPLOYMENT

### 2.1 Fixed-term employment contract

In the case of an employment contract with an unlimited term, the employer must have a justifiable reason for dismissal under Article 23 of the Labour Standard Act (LSA). In contrast, workers with a fixed-term employment contract have no protection or legal remedy in cases where employers refuse to renew a contract, which in practice amounts to a dismissal.

According to Supreme Court precedents, by way of exception, if the fixed term has become a mere formality due to repeated renewals of the contract, the refusal of an employer to renew the contract without a justifiable reason is invalid as a dismissal under Article 23 of the LSA.<sup>8</sup> However, it was left to the ruling of the courts on a case-by-case basis as to how many contract renewals amount to an 'exceptional' case. Moreover, courts in a few rare cases have decided that the refusal of an employer to renew a contract is a dismissal. These few rare cases did not alter the fact that, ultimately, employers avoid regulation on dismissals when they terminate a contract or refuse to renew one.

Often, after having joined a union, fixed-term workers are refused a renewal of their contract. To make matters worse, the courts have decided that such a refusal to renew does not amount to an 'act of anti-union discrimination', which is prohibited under the Trade Union and Labour Relations Adjustment Act (TULRAA).<sup>9</sup>

As social debates around precarious employment have intensified since 2000, the Korean Confederation of Trade Unions (KCTU) has demanded legislation that limits the use of fixed-term employment to cases wherein there are justifiable reasons, such as temporary replacement of regular employees by reason of childbirth, childcare, injury, disease, etc. Additionally, the KCTU has called for protective measures that convert fixed term to permanent employment in cases where employers use fixed term without justifiable reasons or for more than one year.

In contrast, the Act on Protections of Fixed-term and Part-time Workers (APFPW) in 2006, in which the Government took lead, allows the free use of fixed-term employment for up to two years without any reasons, and created broad exceptions where fixed-term contracts over two years would be allowed (Article 4, Paragraph 1). Under this law, most enterprises will resort to using fixed-term workers continuously, and fixed-term employment will be the selective entry point to regular employment. The government argued that this law would introduce some protective measures, such as converting fixed-term contracts to contracts of unlimited duration for those workers who have worked for more than

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<sup>8</sup> Supreme Court Decision (1994) 1.11, 93-da-17843.

<sup>9</sup> Seoul Administration Court Decision (2002) 7.30, 2001-gu-46392.

two years (Article 4, Paragraph 2). In reality, however, it is clear that employers do not hire fixed-term workers for more than two years, and instead terminate contracts before the two-year deadline, or switch to another precarious worker.<sup>10</sup> This reverse effect has already been shown in employers' practices since 2000 under the Act on Protection of Temporary Agency Workers (APTAW), to be discussed later.

This Act applies to all business or workplaces ordinarily employing not less than five workers, and to all State and local government agencies regardless of the number of workers.

## 2.2 Part-time employment contract

Under the LSA, a 'part-time worker' is a worker whose contractual working hours per week are shorter than those of a full-time worker engaged in the same kind of work at the workplace concerned (Article 2, Paragraph 1, Section 8). It should be noted that whether a worker is a part-time worker or not is decided not by actual working hours but by contractual working hours. For example, a worker whose contractual working hours are shorter than those of a full-time worker falls under the classification of a part-time worker even though her actual working hours, including overtime work, are not shorter than those of a full-time worker.

The terms and conditions of employment of part-time workers shall be determined on the basis of relative ratio computed in comparison to those working hours of full-time workers engaged in the same kind of work at the pertinent workplace (Article 18, Paragraph 1). Provisions related to paid holiday and annual paid leave are not applicable to workers whose contractual working hours per week on an average of four weeks are less than 15 hours (Article 18, Paragraph 3). A person whose contractual monthly working hours are less than 60 hours, or a person whose contractual weekly working hours are less than 15 hours, is not eligible for employment insurance, national health insurance or national pension scheme.

## 2.3 Triangular employment relationships

Before the enactment of the Act on Protections for Temporary Agency Workers (APTAW) in 1998, triangular employment relationships were prohibited in principle. The only exception was in cases where trade unions provided user-enterprises their members. However, since 1998, in the aftermath of the Asian financial crisis, temporary agency work has been legitimized under certain conditions by the APTAW.

Temporary agency work is allowed in 32 different job categories, including work requiring expert knowledge, technology and experience, for a maximum of two years. Otherwise, temporary agency work is allowed only where a temporary

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<sup>10</sup> According to the results of a survey conducted by the Ministry of Employment and Labour, about 20% of fixed-term workers were converted to workers with an open-ended employment contract, and about 60% of fixed-term workers were refused renewal of contracts in 2014 (Ministry of Employment and Labour, 2014).



need for workers arises due to pregnancy, disease or injury of employees, for a maximum of six months. Additionally, no temporary work agency business shall be conducted for jobs such as work performed at a construction site (Article 5). Any person who intends to engage in temporary work agency business shall obtain permission from the Minister of Employment and Labor (Article 7).

Under the APTAW, a temporary employment agency is party to the employment contract with a worker, and takes legal responsibility for workers' entitlements such as wages and social insurances. At the same time, the APTAW states that a user-enterprise takes legal responsibility for workers' rights, such as working hours, holidays, and occupational health and safety.

However, it should be noted that in practice, most temporary employment agencies are merely intermediaries and are unable to take legal responsibility for workers' rights. For example, the wage of the worker is, in practice, decided by the contract between a temporary employment agency and a user-enterprise. If a user-enterprise demands that a certain worker of a temporary employment agency be replaced, the worker has no choice but to lose that job. According to information provided by the Ministry of Employment and Labour, approximately 80% of employment contracts with temporary employment agencies are only for the period that the worker works for a user-enterprise. The APTAW has no regulation on this type of temporary employment contract between a temporary employment agency and a worker.

Under the APTAW, a user-enterprise shall directly employ a temporary agency worker, where the worker has worked longer than two years or where the user-enterprise uses the temporary agency worker in violation of provisions of APTAW (Article 6-2). However, APTAW does not have any equivalent provision in the case where a user-enterprise switches one temporary agency worker for another worker before the two-year deadline. These protections can have a reverse effect. To avoid their legal responsibility, most user-enterprises replace a temporary agency worker with another worker every two years. In other words, temporary agency workers suffer from periodical job insecurity.

Additionally, under the guise of 'subcontracting', illegal temporary agency work is prevalent in all industries. Contracting-out and in-company subcontracting are expanding rapidly, along with the practice of splitting businesses and outsourcing. In relation to 'in-company subcontracting', the main contractor argues that he/she contracted out specific tasks to subcontractors, and there is no relationship between the contractor and employees of subcontractors. In practice, however, employees of subcontractors work for the contractor in his/her work site, under the control of the contractor. With in-company subcontracting, the main contractors use the excuse that they are not the user-employers under the APTAW, and thus do not hold themselves responsible for workers who in fact are working for them. If a user-enterprise uses illegal triangular employment relationships, deciding who is responsible for workers' rights is a more significant issue.

Therefore, the debate in Korea has centered on the question of who is responsible for a worker's rights if a temporary agency worker has been provided illegally. For example, the APTAW has rarely been applied to in-company subcontracting on the grounds that such work is not temporary agency work but is, rather, genuine subcontracting. The issue of whether or not the practice of in-company subcontracting amounts to an illegal use of temporary agency work is thus one of the major bones of contention between employers and the unions, and subcontracted workers and trade unions often demand that subcontracted workers be hired as direct employees of a user-enterprise under the APTAW.

Since the real power in terms of finances and labour management lies with the user-enterprise, the working conditions of workers in a triangular employment relationship cannot be resolved unless user-enterprises enter into collective bargaining. Even though unions and temporary employment agencies reach collective agreements about wages and union activity, these in effect cannot be implemented without a user-enterprise's consent. That is the reason unions of workers in a triangular employment relationship have demanded to collectively bargain with user-enterprises despite the legal impediments. Nevertheless, even if these workers form a trade union, user-enterprises refuse to bargain collectively on the basis that they are not the formal employer under the employment contract.

When workers on a triangular employment relationship form a trade union, in a majority of cases, the user-enterprise and the provider (temporary employment agency, etc.) will terminate their contract. The process of changing a provider or a temporary employment agency involves the dismissal of the entire workforce followed by the arbitrary re-employment of some or most workers, with the enforcement of extremely poor working conditions as the basis of re-employment.

## 2.4 Independent workers

Article 2 Section 1 of the LSA states that the 'employee' under this law is a person who provides labour for the purpose of wages in an industrial setting, regardless of profession. Similarly, Article 2 Section 1 of the TULRAA states: 'An "employee" under this law is a person who lives on an income such as wage or salary, regardless of the profession.'

If there is no employment contract or subordinate relationship, judicial precedents deny a worker the status of an 'employee' under the TULRAA, thus interpreting the concept of an 'employee' as being the same under the LSA and the TULRAA.

Judicial precedents have consistently maintained the view that 'the subordinate relation is determined by actual labour relations, such as the existence of a relation of command and supervision, wages as a price for labour, the nature and content of labour between the employer and provider of labour regardless of the form of the labour supply contract, be it employment, contractual, delegation or

anonymous, as long as there exists a user-subordinate relation between two parties.<sup>11</sup>

In determining whether one is an employee under the labour laws, the legal precedents have developed the following indicators:

- the employer decides what work will be performed;
- the employee is subject to personnel regulations;
- the employer supervises concretely and individually the performance of work;
- the employer specifies the time and place in which work is done;
- the employee themselves may employ a third party to substitute the labour;
- the possession of fixtures, raw material or work tools;
- the nature of wages as the price for labour, the existence of a basic wage or fixed wage, or the collection of labour income tax through withholding income;
- the employee provides labour continuously and works exclusively for the employer;
- the recognition of employee status under other laws such as the Social Welfare Act; and
- the socio-economic situation of both parties.<sup>12</sup>

The abovementioned criteria have been criticized for limiting the definition of employees in cases where the status of workers was in question.

Firstly, the Supreme Court emphasizes too many traditional factors such as the power to instruct or order the performance of work and subordination. Factors based on substantially different perspectives, such as the business nature of labour suppliers, are given relatively less weight.

Secondly, when considering the power to instruct or order work, these factors are interpreted in a classical/traditional sense. That is, the Supreme Court interprets the existence of this power as indicating the submission to direct and specific labour directions. However, since these are largely unnecessary in professional jobs and the forms of employment have diversified, directions on the performance of work are becoming indirect or general ones.

Thirdly, even though there might exist actual facts of subordination, the courts often deny a worker's employee status on the basis of the contractual intention of parties. In practice, however, the terms and conditions of these contracts are not

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<sup>11</sup> Supreme Court Decision (1993) 5.25, 90-nu-1731.

<sup>12</sup> Supreme Court Decision (1994) 12.9, 94-da-22859; Supreme Court Decision (2006) 12.7, 2004-da-29736.

negotiated but are pre-determined and mandatory at the insistence of the user enterprise.

To sum up, since the judicial precedents adhere to outdated and narrow concepts about the employment relationship, and thus limit basic labour rights as applying only within the traditional scope of employment, workers in disguised employment relationships are deprived of these rights.

Although workers work for a single 'employer' or enterprise and work under the command and supervision of that 'employer', when they officially enter into a contractual arrangement other than an employment contract, they are not legally recognized as workers and thus are not guaranteed basic labour rights.

It should also be noted that most of these workers need to be categorized as 'bogus self-employed' workers, which is different from the 'economically dependent worker' or 'pseudo-workers' in the context of European countries. With bogus self-employment, enterprises try to avoid their legal responsibilities by forcing employees to become independent subcontractors and self-employed.

Even if these types of workers form a trade union and register this union with the Ministry of Employment and Labour, nothing can be done if the employer refuses to recognize the union on the basis that 'the union needs a ruling from the Supreme Court.' This was what happened with the concrete mixer truck drivers who formed the Korean Construction Transport Workers Union. Although the union was recognized by the Ministry of Employment and Labour, the remicon (ready-mix concrete) companies refused to bargain with them since the Supreme Court ruled that the drivers were not "employees" as defined by labour laws.<sup>13</sup>

No labour or social security law protections, except the Industrial Accident Compensation Insurance Act (IACIA), are provided for independent workers. Since July 2008, the amended IACIA has provided some protections to six job categories of independent workers, including private home tutors, insurance salespersons, golf caddies and concrete mixer truck drivers (Article 125). However, this approach shows a partial provision of social insurance protections to the independent workers on the assumption that both groups are the self-employed. While an "employer" shall pay the total insurance premium for an "employee", an independent worker shall bear half the insurance premium by themselves. Additionally, if an independent worker does not want to be subject to the IACIA, she may file a request for exclusion from the application of the IACIA. It is reported that many employers forced independent workers to do so, and thus, the actual coverage of the IACIA regarding independent workers is merely 10% in 2013.<sup>14</sup>

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<sup>13</sup> Supreme Court Decision (2006) 5.11, 2005-da-20910.

<sup>14</sup> Data from the Ministry of Employment and Labour.

### 3. CHARACTERISTICS OF PRECARIOUS WORK IN THE CONSTRUCTION INDUSTRY

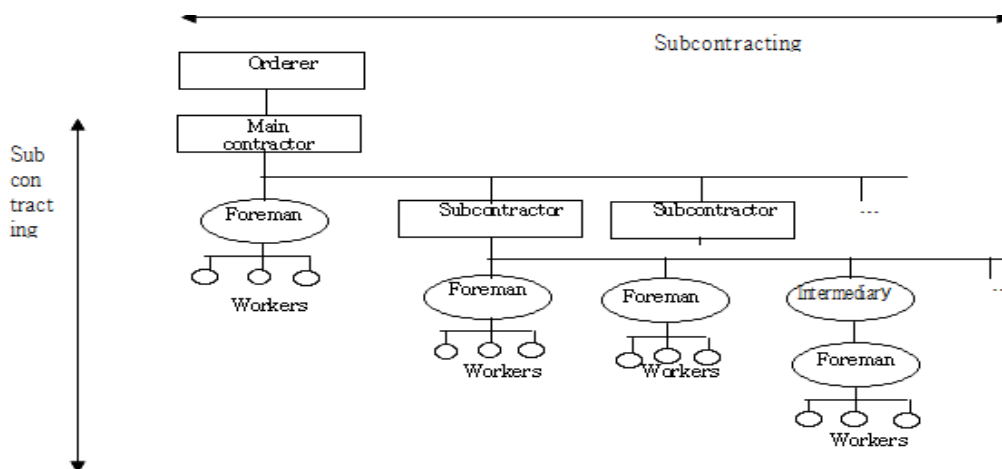
#### 3.1 Types of job and characteristics of employment relationship

The construction industry in Korea is characterized by a complex pyramid structure that is comprised, at any one site, of one main construction company (“main contractor”) and several layers of subcontractors.

Under the Framework Act on the Construction Industry (FACI), subcontracting is permitted only in cases where a main contractor subcontracts some tasks to specialized subcontractors. Nevertheless, the predominant practice is multi-layer subcontracting, and construction firms directly employ a few technicians and skilled workers, and use the bulk of workers through subcontractors or intermediaries, seeking a reduction in costs. Figure 3 below illustrates this multi-layered industrial and employment structure in construction.

A survey of building sites in 2006 found as many as five tiers of subcontracting in the chain, and over three tiers of subcontracting accounts for 70% (Sim and Hur, 2007). Evidence for this practice is also found in the fact that the share of labour force employed by small firms with fewer than fifty workers is 61.1% in 2012.<sup>15</sup>

**Figure 3: Industrial & employment structure in construction**



Source: Author’s elaboration

The cost-cut pressure under the multi-layered subcontracting has had various effects on the employment relationship in construction. First of all, the prevailing form of employment relationship is informal and indirect employment via intermediaries or foremen. The labour intermediary or foreman is often a skilled craftsman who operates as an independent manager-cum-worker. He/She receives a contract from a subcontractor or a sub-subcontractor, and does the

<sup>15</sup> National Statistics Office (2012) Construction Industry Report. Seoul: NSO.

construction work by recruiting temporary workers through personal network. A recent survey revealed that over 70% of construction site workers got a job through foremen (Sim et al., 2013). Although foremen recruit and manage workers and distribute the remuneration, they in fact cannot bear employer liability. Construction site workers work under the control of both the main contractor and the subcontractors who are provided workers through intermediaries or foremen. Under such circumstances, it is difficult to identify who is responsible for the employment and working conditions of construction site workers.

About 90% of construction site workers are employed on temporary and short term contracts as of 2008 (Ministry of Labour, 2008). While a contractor or subcontractor directly hires workers, and takes liabilities for employment conditions including off-duty allowance in countries like Germany,<sup>16</sup> Korean construction workers are hired only for the period of a certain construction project,<sup>17</sup> and they suffer from repeated unemployment.

The most significant changes in the employment relationship are a massive shedding of labour, particularly amongst construction equipment operators, by construction firms seeking cost-cuts, and an increase in the number of independent workers and the level of dependent self-employment since the late 1990s. For example, over 90% of concrete mixer truck drivers and dump truck drivers provide their labour as “independent contractors” without an employment contract (Korean Construction Workers Union, 2007).

Since these drivers have their own trucks and shoulder the expenses of the operation of the vehicles, they are regarded as self-employed. In reality, however, they are subordinate to the control of particular subcontractors or construction firms,<sup>18</sup> and they drive trucks by themselves without employing others. These independent workers also get jobs through intermediaries or subcontractors under multi-layered subcontracting, as explained earlier.

### 3.2 Employment-related trends

In 2014, the number of wage workers in construction industry was 1.36 million, which accounted for 7.2% of total workers. Of this, precarious workers in the industry accounted for 62.7%, which was higher in comparison to the proportion of precarious workers of total workers in all industries, which was 45.4% (Kim, 2014).

Furthermore, big construction companies have used subcontracting and independent workers as the easiest way to cut down costs and to evade the engagement of trade unions (Yun, 2009). Since the late 1990s, for instance,

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<sup>16</sup> According to German labour law, for example, workers in the construction industry are protected from dismissal and provided with Winter Allowance from November 1<sup>st</sup> to March 31<sup>st</sup>.

<sup>17</sup> According to the survey conducted by Construction & Economy Research Institute of Korea in 2013, the average period that construction site workers were hired for was 162 days.

<sup>18</sup> Concrete mixer truck drivers, for example, are under exclusive contract with a firm, and the firm specifies the time and place in which the work is done. The firm also supervises the performance of work and imposes various duties on drivers.

construction firms have forced their employees to become ‘independent contractors’. These strategies were meant to shift cost and obligations downwards from big companies to smaller ones and again to independent workers, and resulted in an increase of independent workers and dependent self-employment.

Nationally, 27 types totaling 414,658 construction equipment and machinery are registered in 2013. Among these, four equipment types, including excavators and dump trucks, account for 86%. (See Table 3.) Considering that almost all equipment for businesses are operated by owner-operators without employing others, the number of independent workers in the construction industry was estimated at 225,000 or greater in 2013.

**Table 3: Major registered construction equipment and machinery as of 2013**

|                      | Number  | Share  | Business | Private | Official |
|----------------------|---------|--------|----------|---------|----------|
| Total equipment      | 414,658 | 100.0% | 225,552  | 186,240 | 2,866    |
| Forklift             | 147,798 | 35.6%  | 26,095   | 120,978 | 725      |
| Excavator            | 130,449 | 31.5%  | 92,084   | 37,351  | 1,014    |
| Dump truck           | 54,436  | 13.1%  | 47,138   | 6,923   | 375      |
| Concrete mixer truck | 22,146  | 5.3%   | 20,014   | 2,132   | -        |

Source: Korea Construction Equipment Association

### 3.3 Demographic characteristics

As a result of insecure and informal employment and exclusion from labour and social protection, construction workers are usually exposed to low income, excessive hours of work, and a high rate of occupational accidents. This has had a bad effect on the industrial development as well, and formed a negative image for attracting young workers. In 2012, the proportion of workers over 40 years old in the construction industry was quite high (81%) in comparison with that of total workers, which was 61% in all industries (National Statistics Office, EAPS).

As young Korean workers evade employment in the construction industry, on top of the ageing phenomenon, migrant workers in the industry have rapidly increased in number in the last decade. According to a result of the Foreign Workers Employment Survey conducted by the NSO, the number of migrant workers in the construction industry was 64,000, which accounted for 8.4% among all workers in 2013. Among migrant workers, the majority is Korean Chinese (73%). In particular, since the Visit and Employment System entered the construction industry in 2007, the number of Korean Chinese workers rapidly increased in construction sites.<sup>19</sup> On the other hand, according to the results of a

<sup>19</sup> Under the Visit and Employment System, overseas Koreans from 11 nationalities, including Chinese, are allowed to be employed with an H-2 Visa in Korea up to five years.

survey conducted by the Construction and Economy Research Institute of Korea, the actual number of migrant workers at construction sites was estimated at 250,000 in 2013. Among them, the number of undocumented migrant workers was estimated at 190,000.<sup>20</sup>

### 3.4 Employment and working conditions

#### Working hours

In 2013, the average working hours of construction site workers was 9.2 hours per day, and one in four workers worked for over 10 hours per day. Although the legal standard is eight hours per day and 40 hours per week, and overtime work to be rewarded with overtime pay under the LSA, only 29.9% of construction workers said that the legal standard working hours were applied to their worksites, and only 47.5% said that they received overtime pay.<sup>21</sup>

According to the Korean Construction Workers Union (KCWU), construction equipment operators work even longer, with 59.6% of them working for 10 hours per day, and 13.6% working for over 12 hours.<sup>22</sup>

While working hours in high season are longer than those of all industries, the annual work days are shorter. The average annual work days of construction workers in 2011 were 213, compared to 259 for workers in all industries (Sim et al., 2012). Given that construction workers are normally paid by hour, it means that they suffer from low and insecure wages as well as long working hours.

#### Wages

As explained above, short and insecure work days and day-base wage or piece-rate system contribute to a proliferation of low wages in the construction industry. The amount of average annual wage of construction site workers was KRW20,449,137 (US\$18,852), which was lower than that of workers in all industries (KRW29,137,000 = US\$26,861) in 2011.<sup>23</sup>

Construction equipment operators also suffer from low wages due to the multi-layered subcontracting system and piece rate arrangement. According to the KCWU, 66% of operators said that they got a job in three or more chains, and this caused a sizable wage-cut, in 2008 (Korean Construction Workers Union, 2009). As independent workers are normally paid by piece and they are not protected by the LSA, they tend to work longer in order to make up for the low wages. In the survey of 2013, over 60% of operators said the amount of annual income was less than KRW20 million, which was similar to that of construction site workers.<sup>24</sup> Moreover, their incomes are more insecure, since they have to take on all the

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<sup>20</sup> Kyubeom Sim, 2014. A programme for effective managing of migrant workers at construction sites, Issue & Focus Paper 2014-19, Construction & Economy Research Institute of Korea.

<sup>21</sup> Construction & Economy Research Institute of Korea, 2013 The real condition of manpower demand and supply in construction industry.

<sup>22</sup> Korean Construction Workers Union, 2009. The actual conditions of wages in construction industry.

<sup>23</sup> Construction & Economy Research Institute of Korea, 2011 A programme for fair wages in construction industry.

<sup>24</sup> Korean Construction Workers Union, 2013, The actual conditions of construction equipment operators.



costs related to vehicle, and these costs are incurred during their unemployment as well.

On top of low wages, another serious problem is the practice of wage arrears. If a subcontractor or an intermediary does not get payment from an upper-tier contractor or simply runs away, workers have a serious problem in securing remuneration for their work. Until recently, the labour administration has regarded only the subcontractor or the intermediary who directly recruited workers as an employer who is responsible for payment.

The results of a survey by the KCWU reveals that 68.8% of construction site workers had experienced wage arrears and workers were paid within 32 days on average after they provided labour in 2010. According to a government announcement, the share of overdue wages and workers, who reported wage arrears in the construction industry and in all industries, was 13.7% and 16.4%, respectively, in 2011.<sup>25</sup> Considering the share of workers in the construction industry was 7.3% of all industries, this showed a proliferation of wage arrears in construction industry.

#### *Health and safety*

The multi-layered subcontracting system and pressure for cost-cuts and reduction of construction period also endanger health and safety in construction industry. The total number of injured workers in all industries was 91,824 and those in construction industry was 23,600 in 2013. The number of the dead was 1,929 and those in construction industry was 516 in 2013 (Ministry of Employment and Labour). Considering the share of workers in construction industry was around 7% in all industries, this means construction workers are exposed to occupational accidents and diseases quite a lot.

#### Social security

In terms of legislation itself, construction workers too can be covered by social security laws, but they are not protected in effect. As Table 4 shows, many construction workers are excluded by social security insurances, for reasons of employment types or the scale of construction work.

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<sup>25</sup> Ministry of Employment and Labour et al. (2011) A plan for protection of wages for construction workers (August 26<sup>th</sup>).

**Table 4: The scope of exclusion from social security acts (2014 present)**

|   | Scope of exclusion from application   |
|---|---|
| - Employment Insurance Act<br>- Industrial Accident<br>- Compensation Insurance Act | - Construction work of which total construction amount is less than KRW20 million<br>- Construction works for constructing a building the total floor area of which is not more than 100 square meters etc. |
| - National Health Insurance Act<br>- National Pension Act                           | - Employee who is employed for shorter than 1 month<br>- Part-time employee whose contractual working hours are less than 60 hours a month  |

Labour regulations, which are designed for standard workers, are also difficult to apply to construction workers. For instance, an employee shall pay a contribution of more than 180 days for 18 months prior to the date of unemployment in order to get unemployment benefits. This is a high threshold for most construction workers who are employed temporarily and informally. As already mentioned, a majority of them do not have an employment contract proving that they actually work on a certain construction site. Additionally, under the Employment Insurance Act (EIA), a basic unit for enforcement is every single workplace. This means workers shall be reported to the social security authorities each time they are employed in each workplace. For workers who are employed for a few weeks or months in a construction site, and then often move to another one, this is a difficult procedure to conform to. As a result, merely 48.9% of construction workers were actually covered by the EIA, while 58.6% of workers in all industries are covered, in 2010 (Korean Contingent Workers' Center, 2010).

**Table 5: Workers coverage of social security insurance and legal benefits (2010), in %**

|                       | National pension | Health insurance | Employment Insurance | Severance pay | Overtime pay | Paid leave |
|-----------------------|------------------|------------------|----------------------|---------------|--------------|------------|
| All industries        | 65.0             | 67.0             | 58.6                 | 63.1          | 44.4         | 58.7       |
| Construction industry | 44.9             | 46.0             | 48.9                 | 42.7          | 26.2         | 37.8       |

Source: Korean Contingent Workers' Center

Furthermore, most of construction machinery operators are regarded as self-employed workers who exist outside of labour protection. They are not protected by labour laws, and they are covered by social security system only if they make a full contribution by themselves as self-employed. While the amended Industrial Accident Compensation Insurance Act has been applied to concrete mixer truck drivers since 2008, only 29% of drivers are in effect covered as of 2013, due to reasons earlier explained (Ministry of Employment and Labour, 2014).

## 4. ORGANIZATION AND REPRESENTATION

### 4.1 Type of organization

Activists who experienced the 1987 labour protests realized unionism to be the only alternative in order to fundamentally change the poor working conditions of construction workers. So, these activists dedicated themselves to building a trade union, and in 1988, the Seoul Regional Construction Day Laborers Union was established, the first precarious workers' union in Korea. Later, construction day laborers' unions were organized in eight other cities, leading to the formation of a national organization, the National Association of Construction Day Laborers Unions, in 1992.

Unionists carried out continuous education and propagation activities at construction sites, and when workers faced problems such as accidents or overdue wages, it became normal for them to visit the union and ask for assistance. Nevertheless, majority of union members were unable to maintain their membership because, when one construction project finished, workers had to migrate to other cities to look for new work. Furthermore, union activists became increasingly concerned that their union was becoming a 'broker', in that it was focusing on solving imminent problems such as overdue wages or accidents while more fundamental issues were being side-lined. Nothing much changed during the next decade—around 30,000 workers had acceded at one time or another to the union, but only a very small minority actually remained.

While majority of unions at that time were enterprise-level organizations, construction day labourers unions took a form of local-wide union, because they attempted to organize workers who frequently moved from one site to another. Furthermore, they tried to build a nation-wide organization that was based on locals and trades, as many construction workers already had a social network based on their own trade to get a job.

As a result, in 1999, the National Association of Construction Day Laborers Unions and the and the Korean Federation of Construction Trade Unions (KFCTU)<sup>26</sup> integrated into a larger federation—the Korean Federation of Construction Industry Trade Unions (KFCITU).

Since 2000, construction machinery operators such as tower crane operators, concrete mixer truck drivers and dump truck drivers have been unionized and affiliated to the KFCITU. Those unions took the form of a nation-wide trade union in the beginning, as they needed to confront the government in the first place for better employment conditions.

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<sup>26</sup> The Korean Federation of Construction Trade Unions was formed in 1989, based on enterprise-level unions of construction firms. The construction industry was one of the most damaged industries during the economic crisis of 1997. Faced with redundancy and restructuring, the Korean Federation of Construction Trade Unions, which mainly represented white collars, engineers and managers, and the National Association of Construction Day Laborers Unions discussed integrating both organizations, and this came to fruition in 1999.

## 4.2 Strategies used in organizing

This case study focuses on the strategies of the KFCITU (and of the Korean Construction Workers Union, KCWU after 2007) in its fight for precarious workers' rights. The study was mainly conducted through analysis of union documents and secondary literature. The research was supplemented by participant observation. The author has attended annual representative conferences of the KCWU since 2008 as one of solidarity guests from the Korean Committee of Precarious Workers Unions.

### Organizing construction site workers via collective bargaining with main contractors

Since 2000, the KFCITU has carried out an organizing campaign in construction sites. Part of the campaign included the signing of a collective agreement between the local unions, company managers, and supervisors of the construction companies (main contractors) at the construction site.

The KFCITU noted that a collective agreement with a main contractor was much more effective than one with subcontractors or intermediaries for the following reason: First, main contractors were responsible for ensuring law-observance at construction sites. Second, main contractors might exert influence over the employment practices of the subcontractors and intermediaries, and urge them to tell the workers to either not join or quit the union. Third, local unions could have access to construction sites with the permission of main contractors.

Nevertheless, collective bargaining with main contractors was very difficult to obtain, because the main contractors could easily refuse to do so on the grounds that they were not legal employers of construction site workers. The KFCITU has educated union activists to conduct the organizing campaign with financial support from the IFBWW (predecessor of the Building and Wood Workers' International, BWI). These union organizers carried out propagation activities at construction sites, and took advantage of the OSH regulations to talk main contractors into collective bargaining.<sup>27</sup>

Under the collective agreement between the main construction company and the local branch of the KFCITU since 2000, main contractors agreed to abide by labour laws and ensure respect for the rights of all workers at construction sites, regardless of whether they worked directly for them or for subcontractors. Without union presence, non-compliance of regulations had been prevalent at construction sites. In addition, main contractors agreed to the following:

- ensure and allow union activities at the construction site. These activities included gaining access to the construction site, educating union members about labour laws and other government benefits, electing site

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<sup>27</sup> The Occupational Safety and Health Act stipulates that a principal contractor shall take measures to prevent industrial accidents in cases where his/her own employees and subcontractors' workers are working at a same place. For example, a principal shall take measures regarding the organization and operation of a council on safety and health, and shall conduct safety and health inspections at his/her work site regularly or occasionally, together with his/her employees, his/her subcontractors, and their employees (Article 29).

delegates and worker representatives, promoting union activities and recruiting new members, and putting an end to corrupt practices by construction companies;

- meet OSH guidelines and regulations, establish OSH committees, educate workers about OSH issues, and provide necessary safety equipment to workers;
- contribute to the national employment insurance programme and pension plan; and
- provide sanitary and clean washing facilities, bathrooms and cafeterias.<sup>28</sup>

As a result of the campaign, collective agreements were reached with many main contractors. Union presence at the construction site increased as well and union membership went up by more than 5,000 members since the early 2000s.

#### Organizing campaign for tower crane operators

In the beginning of 2000s, union activists of the KFCITU started to discuss various organizing strategies, as mentioned earlier, and some proposed that the union should organize workers in construction equipment trade. Construction sites in Korea are mostly housing (constructions of apartment buildings), building and large steel structures, which make it impossible to work without tower cranes. The nature of the construction industry was such that a strike in one equipment trade can paralyze the entire construction site. Thus, organizing by trade could induce general strikes in the entire construction industry, which could, in turn, lead to more effectiveness in gaining legal and institutional reforms.

When main contractors lease tower cranes, usually the operators too are dispatched by rental companies. Although the operators are employees of rental companies, they get paid only when they are on duty. After the economic crisis of 1997, their working conditions and wages had greatly deteriorated. Furthermore, tower crane operation became a dangerous profession with a lot of accidents, requiring workers to put their lives at stake.

Tower crane operators are trained under an apprentice system, and so in many regions, workers were already participating in various groups such as hobby clubs, affinity groups, employment assistance associations etc., which could work as communication networks. Union activists toured the country and energetically organized various meetings using existing networks and acquaintances to meet tower crane operators. Through these meetings, activists told workers why unions are necessary and what alternatives there are to solve problems in the tower crane industry.

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<sup>28</sup> Under the collective agreement of the *Gyeonggi Seobu* local branch of the KFCITU in 2007, for example, main contractors should allow union officials to enter into construction sites and ensure union activities; meet OSH regulations and provide education on safety and health for workers in cooperation with the union; and abide by agreed working hours.

Union activists set up hobby clubs and affinity groups to socialize with tower crane operators, and convened meetings and workshops for local activists to make them network with one another, and to help workers realize the need to build a unified national organization. These local groups were then able to broaden their base while the union continued education programs for workers.

After consolidating the basic structure of a national organization in 2000 (Korean Towercrane Workers Union), the union started overt activities. The union realized that pressure would have to be exerted upon corporations and the government through a nation-wide united general strike in order to fulfil the workers' demands. It also decided that low wages and poor working conditions of workers would need to be improved not through site-based or company-based bargaining but rather through centralized bargaining.

The union went on a general strike for 28 days in 2001, and as a result, concluded a collective agreement with the Korean Towercrane Cooperative, with over 140 member companies participating. Thereafter, the union attained, for the very first time at construction sites, Sundays off work by undertaking a nation-wide general strike in 2003. Through another general strike in 2007, the union achieved an eight-hour workday—also the first to do so among trades at construction sites. In 2009, the union made yet another historic achievement by winning a 40-hour workweek through collective bargaining. At present, around 70% of tower crane operators have joined the union. Furthermore, after the union was formed, death rates from industrial accidents plummeted while wages and working conditions greatly improved.<sup>29</sup>

#### Organizing owner-operators

Although union density is still low, over the last ten years precarious workers' unionization and struggle have reversed the trend in construction industry. It is noteworthy that the unionization of owner-operators, who are usually regarded as self-employed, has increased.

The unionization of owner-operators is characterized by the interrelated process of their voluntary fights and support from the KFCITU. The most important motive has arisen from poor incomes due to multi-layered subcontracting and cost increase. In addition, they existed outside of labour protections because they are formally self-employed, although they are dependent on a particular firm, without employing others.

The concrete mixer truck drivers' union (Korean Construction Transport Workers Union) took off in August 2000. Although they are owner-operators, they normally belong to a particular remicon (ready-mix concrete) company. The drivers initiated a strike on 10th April 2001 for 163 days until 19th September. In the beginning, their major demands were a raise in freight fees, Sundays off, fair apportionment of vehicle, and recognition of union. Later, however, recognition of union emerged as a hot issue, since remicon companies refused to collectively

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<sup>29</sup> The amount of monthly wage, for example, increased from KRW2,150,000 in 2004 to KRW2,390,000 in 2006.

bargain and terminated a contract with unionized drivers, on the grounds that owner-operators were self-employed. During the first month of their strike in May 2001, the workers drove all their vehicles to Yeoido Park, which is a large park in the business area of Seoul, and held a sit-in for a month, demanding recognition of union and labour rights. Through these struggles, the union obtained enterprise-level collective agreements with some remicon companies, although the issue on recognition of labour rights were unsolved.

The unionization of concrete mixer truck drivers in 2000 was followed by dump truck drivers in 2004, and later on by excavator operators in 2007. Dump truck drivers are also owner-operators and normally get a job via intermediaries or subcontractors. Dump truck drivers had also suffered from cost increase, poor working conditions, and unreasonable regulations.<sup>30</sup> Some truck drivers were impressed by the unionization of concrete mixer truck drivers and road freight truck drivers, whose working conditions were similar to their own,<sup>31</sup> and consulted the Seoul Regional Council of the Korean Confederation of Trade Union (KCTU) and the KFCITU in 2004. After several months of consultation and education, the dump truck drivers formed a special unit—called the ‘Dump Truck Drivers’ Solidarity’ (*Dumpyundai*)—under the Korean Construction Transport Workers Union in September 2004.

Once a good number of owner-operators were organized in some regions, the *Dumpyundai* went on a strike and delivered their demands to the government in May 2005, which drew public attention to their working conditions and demands. In particular, unions put forward legislative measures such as better regulations on multi-layered subcontracting and overloading as the top agenda. This strategy was intended to create favourable circumstances for unionization through legislative changes, and later on to enforce those regulations, starting with public construction projects. Also, the union convinced private contractors to sign collective agreements on the basis of achievements in public construction projects. For example, the union achieved Sundays off and a reduction in working hours by making local authorities supervise contractors at public construction projects, and demanded that contractors at private projects also follow this practice.

Owing to continuous struggles, about 19,000 owner-operators were organized in the Korean Construction Transport Workers Union, which was affiliated to the KFCITU.

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<sup>30</sup> The Road Traffic Act, for instance, fined not a shipper but a truck driver for overloading. As owner-operators could not refuse to overload when contractors instructed them to do so, many dump truck drivers were frequently fined for overloading.

<sup>31</sup> Truck drivers in road freight transport industry were mostly owner-operators who suffered from poor working conditions and multi-layered subcontracting system in the industry. They formed a special unit—the ‘Independent Drivers’ Solidarity’ (*Hwamulyundai*)—under the Korean Cargo Transport Workers Federation (KCTWF) in October 2002, and went on a successful general strike in May 2003. See Yun, Aelim (2014) Organizing workers beyond an employment relationship. In: Bhowmik, S. (ed.) *The State of Labour*. Routledge.

### **4.3 Processes and structures of representation and decision-making**

In March 2007, the KFCITU affiliates decided to form one industry-level union—the Korean Construction Workers Union (KCWU). KCWU represents construction workers, including precarious and independent workers.

In 2016, the KCWU had about 24,000 members, merging the Korean Towercrane Workers Union, Korean Construction Transport Workers Union, local construction trade unions, electricity workers unions and others. More than 80% of union members are construction machinery operators such as dump truck drivers and excavator operators. Although the four trade unions had different histories and cultures, they all suffered from similar problems stemming from the multi-layered subcontracting system. Thus, they agreed to establish one industry-level union to change the industry and improve their working conditions.

The KCWU has 16 regional branches and four internal committees: (i) Construction & Civil Engineering Committee; (ii) Towercrane Committee; (iii) Electricity Committee; and (iv) Construction Equipment & Machinery Committee. The internal committees, which were based on individual trades, tend to be occupation-centric. On the other hand, construction machinery operators have taken the lead in union policy as the majority of union members (about 18,000) belong to the Construction Equipment & Machinery Committee. The KCWU has one president who is directly elected by all union members, and four vice-presidents who are directly elected by the members of each internal committee. The KCWU also has one female vice-president to proportionally represent women. The KCWU has attempted to develop regional centres so that various groups of construction workers could communicate with one another, and so that four committees could conduct joint activities such as education, organizing campaign and collective bargaining with local authorities.

Among the locals, for example, dump truck drivers join organizing campaigns for excavator operators, and engage in collective bargaining with local authorities together with construction site workers, demanding for a municipal ordinance to secure wages. Local authorities often are major clients at public construction projects, and can impose specific conditions of contract on contractors and subcontractors. Furthermore, the KCWU has organized a general strike and rally that all union members travel to Seoul every year to participate in and to demand legislation to secure construction workers' rights.

### **4.4 Existence of alliance with other groups**

Some regional branches of the KCWU have attempted to build a coalition with social movement organizations and migrant workers' communities in order to organize migrant workers. In July 2010, for example, about 140 Vietnamese migrant workers voluntarily staged a walkout for four days, protesting against inhumane working conditions and nasty meals. Ten Vietnamese workers who led the walkout were arrested on a charge of the obstruction of business in March



and April 2011. Their friends asked migrant rights groups to help them, and the KFCITU heard about them. In May 2011, the KFCITU and social movement groups formed the emergency measure committee, and conducted various activities such as legal support for the arrested, a protest rally against the prosecution and the Immigration Office, and filing petitions signed by 71 unions, including the BWI. Eventually, the Vietnamese workers were acquitted and released in June 2011, and joined the union.

As the majority of union members are independent workers, the KCWU has actively engaged in fights for independent workers' rights. Various independent workers' unions, including the KCWU, the *Hwamulyundai*, Korean Home Tutors Union and care workers' unions, which were affiliated with the KCTU, formed a committee (Independent Workers Committee) in the KCTU, and they have conducted a common campaign for legislation to secure labour rights for independent workers since 2002. The Committee, along with the KCTU, demanded that protection of labour laws and the Industrial Accident Compensation Insurance Act should apply to independent workers without discrimination. In particular, the KCWU and the *Hwamulyundai*, both of which represent owner-operators, staged a joint rally, demanding labour rights in 2012.

The KFCITU and the KCWU later played an active role in forming a committee of precarious workers' unions (Korean Committee of Precarious Workers Unions, KCPWU) under the KCTU. Key leaders of the KFCITU and the KCWU took the position of president of the KCPWU several times. Around 30 precarious workers unions that are affiliates of the KCTU have joined the KCPWU, and have done joint campaigns for legislation to secure labour rights of precarious workers since 2003.

#### **4.5 Factors that facilitated and factors that constrained the organizing initiative**

##### Factors that facilitated organizing

Despite poor resources, the KFCITU has organized construction machinery operators on a large scale since 2000. Factors that facilitated the organizing are as follows:

Firstly, the union focused on organizing groups that had the power to paralyze the entire construction site. Organizing tower crane operators was a case in point. This provided the union with the kind of leverage that enabled them to speak up in work sites.

Secondly, the union made a great appeal to the unorganized as well as union members, by fighting for common demands that could be applied to all workers. For example, during the first general strike of the *Dumpyundai*, the union was able to widely mobilize unorganized drivers to also take part, since they felt the demands of the union, such as better regulation on multi-layered subcontracting and overloading, as their own. After the first strike, membership of the *Dumpyundai* rapidly increased, and this happened again and again later on. Furthermore, the

successful organizing of one trade spread to another trade along a work process. Unionized dump truck drivers talked to excavator operators into joining the union, and the organizing of mixer truck drivers had a positive effect on the organizing of concrete pump car drivers.

Third, the union continuously attempted to improve poor working conditions such as long working hours and delayed wages. In the past, these irrational practices were considered “natural” in construction industry. The union disclosed that statutory labour protection was not securely in place for construction workers, and showed that increasing union presence led to better working conditions and compliance of regulation. The wide-ranging campaign gave workers the self-confidence to fight for a change and facilitated the organizing.

#### Factors that constrained organizing

Since September 2003, the police and prosecuting authorities have begun a series of unjust investigations specifically targeting the organizing efforts of the KFCITU local unions. The police and prosecutors accused these trade union officials of: (i) using force and coercing construction site managers of main contractors to sign collective agreements; (ii) threatening to report occupational safety and health violations if the main contractor did not sign these agreements; and (iii) extorting payments as a result of these collective agreements. Up to 2006, thirteen union organizers have been arrested and fined or jailed.

The KFCITU has conducted various protest activities against these unjust investigations and complained to the ILO about violations of freedom of association. Following a complaint by the KFCITU and international trade union bodies, the ILO Freedom of Association Committee requested the Korean government to recognize that the relevant construction industry trade union should also be able to request negotiations with the employer of its choice, including a main contractor, on a voluntary basis. Especially in cases such as this one, it would be impossible to negotiate with each and every one of the subcontractors. Also it noted that the arrest of trade unionists may create an atmosphere of intimidation and fear prejudicial to the normal development of trade union activities, and this intimidating effect is likely to be even stronger in the case of precarious, and therefore particularly vulnerable, workers who had just recently exercised their right to organize and bargain collectively.<sup>32</sup>

Another conflict recently happened as to whether the independent workers can join trade unions or not. In January 2009, the government ordered the KCWU to expel independent workers, including concrete mixer truck and dump truck drivers, from the union membership on the grounds that they are not “employees” under the TULRAA, and notified it would cancel the registration of the unions if they did not follow the order.<sup>33</sup>

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<sup>32</sup> Case no. 1865, Freedom of Association Committee, Report No. 340, 2006, paras. 775 and 778.

<sup>33</sup> Under Korean labour laws, all trade unions are required to get registration from the Ministry of Labour, but a chapter of existing trade union does not need to.

Following a complaint by the KFCITU and international trade union bodies, the ILO Freedom of Association Committee requested the Korean government to take the necessary measures to: (i) ensure that organizations established or joined by owner-operators have the right to join federations and confederations of their own choosing, subject to the rules of the organizations concerned and without any previous authorization; and (ii) withdraw the recommendation made to the KCWU to exclude owner drivers from their membership, and refrain from any measures against these federations.<sup>34</sup>

So far, the government has not followed any of the recommendations of the ILO. The Republic of Korea has not ratified the ILO Convention No.87 and No.98.

## 5. INITIAL SUCCESSFUL OUTCOMES

Although the union density in the construction industry remains low at 3%, the KCWU has been in practice recognized as a representative union in construction industry. The membership has increased from a few thousands in 1999 to 24,000 in 2014. Furthermore, the union has improved its collective bargaining power to improve working conditions, which was deemed almost impossible in the past, considering the labour market situation in construction industry. For example, the Daegu/Kyungbuk regional branch has been concluding local-wide multi-employer agreements with 17 construction firms since 2012 through a general strike of carpenters.<sup>35</sup>

The KCWU has struggled to reduce working hours and ensure workers the basic standards such as an eight-hour workday and Sundays off work. For this, unions made use of the unionization of construction equipment operators. For example, tower crane operators and dump truck drivers began to sign collective agreements, including standard working hours, on the basis that they organize the majority of their trades. When they stop their work according to the standard working hours, another construction work cannot help but stop as well since each construction work is related with another. The reduction of working hours thereby spread to another trade. On the other hand, this fight has had a strong influence on non-union workers. There have been many business associations among owner-operators, and they also demand a reduction of working hours. In this way, the standard working hours became a norm in the industry.

Also, the KCWU has struggled to eradicate wage arrears and delayed wages in the industry. For example, the union has demanded that local authorities take measures to secure wages in the construction projects awarded by public organs. As a result, municipal ordinances have been enacted in three provinces and five cities up until 2011. According to municipal ordinances, local authorities should supervise contractors in public procurement to pay workers in a timely manner, and should secure wages in cases wherein contractors do not pay workers. In

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<sup>34</sup> Case No. 2602, Committee on Freedom of Association, Report No. 363, 2012 etc.

<sup>35</sup> According to the collective agreement, construction firms that employ carpenters shall apply the same working conditions to union members, wherever they do construction work in Daegu/Kyungbuk region.

particular, these ordinances secure the wages of owner-operators as well as construction site workers. Furthermore, since 2013, a new institution that made construction firms guarantee to pay construction machinery operators overdue wages was nationally introduced. This institution was one of the KCWU's demands, and it makes it possible to ensure that construction machinery operators would receive their wages in cases wherein subcontractors or intermediaries do not pay them on time.

The union's continuous efforts to change the illegal practice in construction sites have drawn the government's attention to the multi-layered subcontracting system. Therefore, the government holds regular consultations with trade unions and deals with important issues such as enforcement of regulations on illegal subcontracting and wage arrears.

## 6. THE MIX OF STRATEGIES AND MEASURES THAT ARRESTED THE SPREAD OF PRECARIOUS EMPLOYMENT AND ACCORDED PROTECTION TO THE PRECARIOUS WORKERS

### 6.1 The role of collective bargaining

Traditionally, in Korean industrial relations, collective bargaining dealt with union members' issues, and collective agreements were applied only to union members. In contrast, the KCWU has attempted to create favorable circumstances for organizing workers and building standard working conditions in construction sites through collective bargaining.

As already illustrated, the collective agreements of construction site workers focus on gaining access to workplaces. Union organizers have attempted to meet unorganized workers and to educate them on their rights under labour and social security laws and OSH regulations. The union has played a key role in ensuring compliance with the regulations. This is particularly important, considering that construction workers are mostly informal and precarious workers.

As owner-operators have been excluded from labour and social security laws, the role of collective agreements is even more important. The union has attempted to apply the same protections to independent workers through collective agreements. Furthermore, working conditions improved by collective agreements has become a norm in the industry. An eight-hour workday and secure wages have been applied to all workers, regardless of employment status, thanks to the continuous struggle of the union.

## 6.2 Legislative and policy initiatives beyond the labour law

### Regulating multi-layered subcontracting system

According to the FACL, subcontracting is permitted only in cases where a main contractor subcontracts some tasks to specialized contractors (Article 29). However, labour-only contractors may be allowed to take part in the construction work on the condition that they are supervised by the upper contractor with license. This proviso was introduced in 1996 for the purpose of legalizing the use of foremen, but it has in effect played a role in legitimizing illegal multi-layered subcontracting. In particular, this was often used for contractors and subcontractors to evade the employer's responsibility by hiding behind intermediaries or foremen.

Since the KFCITU has demanded on the abolition of this for the past 10 years, these provisions were repealed in 2007, and the contractor or the subcontractor may not use intermediaries or foremen as a nominal employer.

In addition, the revised Labour Standards Act (LSA) in 2007 stipulates that if a subcontractor other than a constructor prescribed in the FACL fails to pay wages to a worker he/she has used, the direct upper-tier contractor shall take responsibility for paying the wages of the worker of the subcontractor, jointly with the subcontractor (newly inserted Article 44-2). Also, according to the revised LSA, if a main contractor subcontracts the construction work, resulting in two or more tiers of contractors, the worker may demand the main contractor to directly pay an amount equivalent to the wages the subcontractor should have paid to him or her (newly inserted Article 44-3 paragraph 2). Through this revision, it becomes clear in legal terms that a main contractor or a subcontractor prescribed in the FACL must take responsibility for paying the wages to the worker hired by a labour contractor or a foreman.

### Filling in the gap in the social security system

In terms of insecurity of employment and income, construction workers are most in need of a social security system, but there exists a big gap between their employment conditions and the social security system, which is based on the standard form of employment.

Unions' continuous efforts have led to social security laws establishing the responsibility of a main contractor on behalf of construction workers who were hired by a subcontractor or an intermediary. In case the construction business is conducted involving several tiers of contracts, the law regards a main contractor as an employer who should pay for employment insurance and industrial accident compensation insurance funds (Act on the Collection, etc. of Premiums for Employment Insurance and Industrial Accident Compensation Insurance, Article 9 paragraph 1).

Furthermore, an electronic card which a construction worker could use to report to the social insurance authorities was introduced as a pilot project in 2004, starting from construction work of more than KRW20 billion in the metropolitan

area. Previously, a worker should turn in a paper regarding his/her employment status to the social security authorities each time he/she is hired in each workplace. With this electronic card, construction workers can electronically report their employment status to authorities by accessing a card reader installed in a construction site.

Construction workers had also been effectively excluded from a severance pay scheme. Under Korean labour law, an employee who works for more than one year is entitled to get severance pay. As most construction workers are employed for some weeks or months at a certain construction site, they cannot meet the requirements for the minimum period of service. Therefore, a specifically tailored severance pay scheme has operated for construction workers since 1998. The construction worker holds a welfare card to which the employer attaches a mutual aid stamp according to the number of days worked. A benefit association later grants a severance pay to the worker on the basis of the number of stamps. Even if a worker did not work for shorter than one year at a certain construction site, he/she can receive this benefit on the basis of length of service in the industry when retiring from construction. At present, this scheme is compulsorily applied to government projects of more than KRW300 million and construction work of more than KRW10 billion.<sup>36</sup> In case the work is done through several subcontracts, the main contractor shall subscribe to the mutual benefit scheme for workers who are employed by subcontractors and intermediaries. The effect of this scheme is still limited, except in very large projects, and the benefits are fewer than those of the severance pay scheme set in labour laws. The KCWU has demanded that the benefits be improved and an electrical card system be introduced to report all employment in construction sites.

### **6.3 Building alliances and coalitions**

The KCWU has tried to build alliances with various social movement groups, in order to obtain public awareness about employment and working conditions of construction workers, as well as support for their struggles. Nevertheless, it is more noteworthy that the union has attempted to mobilize unorganized workers inside and outside the construction industry. The major demands of the KCTU concerned not only union members but also all workers. This made it possible for the KCTU to obtain representation in the industry as well as in the public domain, despite low union density. Also, it helped the union lead in changing legislation and improving compliance to labour regulations.

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<sup>36</sup> Presidential Decree of the Act on the Employment Improvement, etc. of Construction Workers, Article 6.

## 7. CONCLUSION

The use of labour subcontracting and non-standard forms of employment has become common practices in many developed and developing countries. This results not from underdevelopment of industry but cost-cutting pressure coming from intensified competition. More and more enterprises have attempted to offload costs and risk onto subcontractors and workers, and multi-layered subcontracting has spread in industries other than construction sector.

It is noteworthy that trade unions have challenged these practices for the protection of workers, and have taken the initiative for the betterment of industrial structures and employment conditions. Despite the low union density and various impediments to organizing precarious workers and bargaining collectively with user-enterprises, trade unions have made progress in representing precarious workers and in increasing union presence at construction sites. This is an encouraging case for trade unions that face the loss of membership and representation.

In particular, the unionization of independent workers was built up on a common discontent with their working conditions, the social network across an enterprise level, the voluntary fight by the rank-and-file, and the effective support from the existing trade unions. It is the organizing strategy based on labour market interests and the pursuit of multi-employer bargaining beyond an enterprise that is found in other countries too (Heery et al. 2004).

The distinctive feature of the KCWU case exists in the union's strategy for reversing the risk-and-insecurity transfer chain. Main contractors have shifted their costs and risks to individual workers by using them as informal and self-employed workers. The KCWU could succeed in organizing independent drivers as the union represented their widespread discontent with this risk-and-insecurity transfer chain. At the same time, the union has tried to make user-enterprises acknowledge the position of an 'employer' who is responsible for workers' rights. This could make companies, which acted behind multi-layered sub-contracting and economically dependent work, visible as employers.

The case of the unionization of independent drivers shows us a possible way to organize economically dependent workers who have individualistic traits and often pursue economic achievement as 'self-employed'. Existing trade unions have played an important role in organizing them as the collective subject and representing their interests. The process of organizing economically dependent workers has also been a process of building their demands and self-awareness in line with a more general orientation of the labour movement. Economically dependent workers have been joining this process not only as trade union members but also as the active subject of fundamental rights. In this context, the organizing process could be a base for building and enlarging the working class.

While unions' initiatives have led the government to improve enforcement and implementation of labour regulations, progress is being hampered by the narrow

and outdated interpretation of the employment relationship. Additionally, the government still has a negative perception about collective labour rights and participatory enforcement approaches. The government has tried to deal with organized workers as an “association of trade” rather than a labor union.

The unionized precarious workers also could demand just an improvement of their own economic conditions, narrowly entrenched by the occupational interests. Or they could proceed to the more fundamental question, that is, how to reverse the risk-and-insecurity transfer. In this respect, the demand for collective labour rights should be broadened to encompass political and social initiatives for the universal rights of the working class who are becoming more and more excluded from labour protection today.



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