



Political Activism and the Expansion of Rights for Transnational Migrant Workers:
South Korea and Japan in Comparative Perspective

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Introduction

Beginning in the 1980s, both Japan and South Korea began to experience a significant increase in global immigration. In Japan, the bulk of “new” immigration began in 1985, when an increasing number of immigrants—or more accurately, transnational (migrant) workers—began to flow into Japan’s small and medium-sized industries. By 1991, the total population of transnational workers had reached more than 500,000; by 2000, the number had increased to 950,000, approximately 850,000 of whom were low- or semi-skilled laborers (Tsuda and Cornelius 2004, p. 441). As a percentage of Japan’s total workforce of 53 million, transnational workers occupy a seemingly minor position; still, their importance to Japan’s economy should be underestimated. For transnational migrant workers have become an integral, even indispensable source of labor for Japan’s small- and medium-sized businesses—a point well reflected in the fact that Japan’s long-lasting recession of the 1990s did little to curb the demand for foreign labor. Moreover, demand for transnational workers in Japan will almost certainly grow stronger over the next several decades. The reason is clear enough: with a fertility rate of only 1.3 children per woman, Japan’s workforce is expected to shrink by as much as 13.8 percent by 2025 (indeed, according to UN projections, Japan’s total population could decline by an astounding 64 percent, from 127 million to only 43 million, over the next 100 years).

In South Korea, the timing and dynamics of transnational worker migration have been largely the same. Starting from a tiny base in 1987, the number of transnational migrant workers grew to about 250,000 in 1997, the large majority of whom were in the country “illegally” working in the so-called “3-D” (dirty, difficult and dangerous) industries. The financial crisis of late-1997 led to a rapid and dramatic exodus of foreign workers from South Korea, but by early 2002, the number had climbed back to an estimated 384,000—a record high—including at least 189,000 undocumented workers. In 2004, the total figure had increased to 422,000, although the estimated number of undocumented workers had decreased slightly to 186,000 (“Workers from six countries vie for Korean factory jobs,” *Korea Herald*, December 13, 2004). While these numbers are not terribly impressive by American or European standards (or even by the standards of other Asian countries, including Malaysia¹ and Singapore²), as in Japan, transnational workers fulfill an extremely important role in the South Korean economy. If anything, the shortage of “unskilled” and low-skilled workers was in even more severe in Korea; in 1991, for example, more than one in five jobs for unskilled production workers (20.13 percent) went unfilled. Almost immediately after the government opened the doors to low- and unskilled foreign workers, however, the vacancy rate fell by almost half to 10.9 percent. Moreover, by 1997, in many small factories, as well as on construction sites and on fishing ships,

¹ At one point in 1999, the number of migrant workers in Malaysia was about 1.7 million—700,000 documented workers and 1 million undocumented migrants. As a result of government “amnesty” program, which promised not to fine, imprison and/or “cane” (i.e., whip) those who did not leave voluntarily, however, about 300,000 illegal workers left between March 22, 2002 and July 31, 2002, with another 50,000 more expressing a readiness to leave. Almost immediately, though, the government reversed itself (largely as a result of pressure from domestic businesses) and, between August 14 and 23, 2002, approved applications to bring in an additional 500,000 foreign workers (*Bernama* [Malaysian National News Agency], September 17, 2002; retrieved from the Lexis-Nexis Academic database at <<https://web.lexis-nexis.com/universe>>.

² About 750,000 of the 4.1 million Singapore residents are foreign nationals (*Migration News*, December 2001; available at <http://migration.ucdavis.edu:80/mn/archive_mn/dec_200116mn.html>.

foreign or transnational workers made up more than 50 percent of all employees (all figures cited in Lim 1999).

In both countries, the proximate reason for the recent inflow of transnational workers is easy to see: both are undergoing a transformation due to unavoidable changes in the structure of their national economies and demographic profiles. Specialists refer to this phenomenon as the migration transition. For a long time, many observers believed that Japan and South Korea would be able to avoid this transition through sheer force of will. As supposedly tightly knit, extraordinarily homogenous societies, with long traditions of social and cultural insularity, it is certainly the case that neither the Japanese nor the Koreans, in general, looked forward to becoming “countries of immigration.” Indeed, just the opposite was true: immigration was viewed as an unalloyed threat to social harmony and national cohesion. As evidence, one need only consider the fact that both Japan and Korea attempted to avoid the supposedly socially disruptive effects of immigration by adopting unabashedly ethnically-based policies or strategies. In Japan, this was done by granting second (*nisei*) and third (*sansei*) generation *nikkeijin* (ethnic Japanese) from Latin American special status to return to and find work Japan. Specifically, the government revised the immigration law to allow *nikkeijin* a renewable stay of up to three years with unlimited access to local markets. (Yamanaka 2000, p. 123). The thinking behind this policy was clear, namely, the Japanese government hoped to attract “culturally familiar” immigrants as substitutes for what many Japanese perceived to be an alarming influx of non-Japanese—and therefore culturally alien—migrants from Asia and other parts of the world (*ibid.*). In Korea, the thinking was essentially the same, as the government (and businesses) initially targeted ethnic Koreans (*joseonjok*) from China. Significantly, in both cases, the assumptions behind these ethnically-based immigration policies proved to be misguided, and for much the same reasons. To put it simply, in both countries, the harsh realities of migrant work and the ideals of “ethnic brotherhood” simply did not mix (Lim 1999).

Similarities between Japan and South Korea can also be found in a number of other areas, the most salient of which, for the purposes of this paper, is migrant and immigrant *rights*. Given the historical insularity and often sharp societal antipathy towards “outsiders” in both countries, there has been an unexpectedly rapid—though far from complete and still very uneven—expansion of rights for transnational workers. From a theoretical perspective, moreover, the experiences of Japan and South Korea provide an interesting and potentially significant counterpoint to studies of rights expansion in other, more established “countries of immigration.” With this in mind, the main purposes of this paper are: (1) to delineate the process by which the rights of transnational migrant workers in Japan and South Korea have expanded; and (2) to identify the key forces that have led to this expansion. It is clear, I contend, that political activism—centered on the agency of transnational workers *and* a network of globally-oriented, but domestically-based non-governmental organizations (NGOs)—has been a key force.

Transnational Labor Migration to Japan and South Korea: An Overview

The primary reason behind the increase of transnational worker migration to Japan and South Korea, as I suggested above, is hardly novel. As with other industrializing countries, it is part-and-parcel of a larger economic and social process, in which rapid industrialization, more intense international competition, and greater wealth have inexorably increased the demand for labor in certain segments of the economy. The most salient part of this process, in both countries, has been the huge expansion of the economy. In Japan, this process began in the early 1950s, and accelerated in the 1960s and 1970s. By the late 1960s, in fact, Japan was already suffering from

the first pangs of a labor shortage. The need for large-scale immigration was avoided, however, because the country was able to increase labor productivity and bring formerly untapped sources of labor—e.g., women, the elderly and rural workers—into the labor force (cited in Tsuda and Cornelius 2004, p. 439). By the 1980s, however, when the Japanese economy went through another period of rapid growth, the “latent” domestic labor market had been all but tapped out. This made the decision to draw from the “global labor pool” an urgent and unavoidable necessity. Japan, as I noted above, also faced a serious demographic challenge, as the country’s low fertility rate meant that there were fewer young Japanese to enter the labor force.

In South Korea, the era of rapid industrialization began a decade later—in the early 1960s—and continued into the 1970s and 1980s. As in Japan, this rapid industrialization led to an increasingly tight labor market: between 1980 and 1995, the unemployment rate for the economy as a whole declined from 5.2 percent to a mere 2.0 percent, the latter figure of which was actually below what many economists consider the “natural” rate of unemployment. Significantly, for low- and “unskilled” workers, the labor market was even tighter. In 1991—to repeat a statistic from the introduction—the labor shortage rate for low-skilled and unskilled workers in the manufacturing sector was 10.4 percent and 20.1 percent respectively. To cope with this shortage, the Korean government also attempted to expand the domestic labor pool. At one point, for example, the government offered to exempt military draftees from regular army service providing that they signed up for five years of work in factories, on construction jobs, or as merchant seaman (Jameson 1991). Despite a huge pay differential—a private first class in the Korean army earned only \$10.83 a month (in 1991), while factory wages averaged \$820 a month—few draftees accepted the offer. Indeed, the labor shortage for low- and unskilled positions was hardly affected by this new government policy (as well as other policies designed to bring more women and young people into the “economically active” workforce).

The inability of the government to resolve the country’s labor shortage through an expansion of the domestic workforce reflected other socioeconomic changes that had been taking place in Korea. As Yoo and Uh (2001) point out, the most relevant of these changes were: (1) a decline in the labor market participation rate of men and women between the ages of 19 and 24; and (2) a rapid improvement in educational levels. In addition, South Korea, like Japan, also experienced a rise in the proportion of older workers in the labor force (between 1980 and 2000, the ratio of workers over age 55 to total employment increased from 10 percent to 17 percent)(*ibid.*). The first two changes, of course, are strongly related. That is, a general increase in educational levels—especially in post-secondary and higher education—invariably means that fewer young people will be available to join the workforce. In South Korea, the improvement in the educational level was not only dramatic, but fairly rapid: between 1985 and 1995, the percentage of college graduates among total workers increased from 10.3 percent to 18.8 percent, whereas the percentage of middle school graduates among total workers declined from just under 59 percent to 37.7 percent (*ibid.*). The significance of the improvement in South Korea’s educational level is even more apparent in comparison to other countries: in 1999, among all OECD countries, South Korea had the second highest proportion of 18 to 21 year olds enrolled in post-secondary institutions: 51.4 percent. (Greece was first at 54.1 percent.) Korea was also ranked high in the proportion of 22 to 25 year olds in post-secondary education: 26.2 percent, which was fourth behind only Finland (35.1 percent), Norway (28.0 percent), and Denmark (26.6 percent) (National Center for Education Statistics 2001).³

³ The original source of the statistics is the Organization for Economic Cooperation (OECD), *Education at a Glance*, various years.

Given these trends, the turn toward non-domestic sources of labor was largely unavoidable. Moreover, as Korea became a more educated and prosperous society, the ability of small- and medium-sized businesses in manufacturing, construction, fishing, and other “3-D” sectors to attract domestic workers became increasingly more difficult. Japan, not surprisingly, had the exact same experience—the large majority of Japanese workers simply would not consider taking a “3-D” job under any circumstances (in Japan, the term “3-K” is most often used; the three “k’s” refer to the Japanese words for dangerous, difficult and demanding: *kiken*, *kitanai*, and *kitsui* respectively).

Policies toward transnational workers in Japan

When it became clear that there would be no alternative to employing large number of foreign or transnational workers, Japanese and Koreans—both within and outside the government—were forced to develop strategies to deal with an essentially unwanted, but necessary phenomenon. For the Japanese, the solution was to create a tiered, and, as at least one scholar argues, “racialized” labor market in which some “foreign” workers are relatively privileged, while others are relegated to the lowest paying, most dangerous, and least protected jobs (Shipper 2002a).⁴ Most generally, and not surprisingly, the Japanese government’s policies were designed to institutionalize an unequal and highly exploitative system. Symbolic of this effort was the government’s official position that *no* “unskilled workers” would be admitted into Japan. Significantly, the official position has not changed since it was first articulated in the revised Immigration Control and Refugee Recognition Act of 1990 (hereafter, the 1990 Revised Immigration Law). In 2000, for example, the Japanese Ministry of Justice (MOJ) released a “new” basic immigration control plan that mainly reiterated the original position (Tsuda and Cornelius 2004, p. 450). Of course, this official position flew—and continues to fly—in the face of the objective demands of the economy for “unskilled” labor. Government officials were and are well aware of this, which is why they have, to a significant extent, turned a blind eye toward “illegal” worker immigration. Indeed, the number of “illegal” workers in Japan grew throughout the 1990s, from an estimated 159,828 in 1991 to more than 250,000 in 2000 (figures cited in Tsuda and Cornelius 2004, p. 443); since then, the number has remained fairly consistent.

The policy toward “unskilled” and undocumented workers, it is important to note, is also partly a reflection of divisions within the government itself. With very different missions and constituencies, different agencies are often at odds with one another over immigration policy. This has created an important degree of policy incoherence, which, according to Shipper (2002), means that “the existence of illegal foreign workers in Japan is largely the result of the residuals of Japan’s immigration or ‘entry-control’ policy” (pp. 58-9). The impact of policy incoherence on illegal immigration, I think, is debatable; but, it is clear the creation of a proportionately large and long-standing group of “illegal” workers has institutionalized these workers as an easily exploited and marginalized underclass within the Japanese labor market. “Turning a blind eye” toward illegal immigration, however, has not been the only way in which the Japanese government has attempted to institutionalize an unequal and highly exploitative labor system. Another important strategy was the creation of “side-door” mechanisms that enabled Japanese

⁴ Shipper (2002) notes that there are five basic categories of workers: (1) *Zainichi gaikokujin* (ethnic Koreans and Chinese born in Japan), (2) *Nikkeijin* (ethnic Japanese born and raised in other countries, primarily Brazil and Peru), (3) Legal Asian workers who are “similar” to Japanese, (4) Illegal East Asian workers, and (5) Illegal South Asian men. A sixth category is composed of Iranian men. Shipper asserts that these categories are a product of intentional government policy and are hierarchically arranged.

companies to bring transnational workers in a more or less legal fashion. The most significant of these side-door policies, as Tsuda and Cornelius (2004) explain it, “are the admission of the *nikkeijin* and the expansion of the ‘trainee’ program” (p. 453). The trainee program was originally established in 1982, when, in fact, it largely lived up to its name. In the original program, only companies with capital or trade relations with foreign counterparts and with more than 20 employees were allowed to benefit from this system. In 1990, however, the program was modified to allow virtually any company to “invite” trainees. Moreover, the government actively encouraged the rapid expansion of the program by setting up, in 1991, the Japan International Training Cooperation Organization (JITCO) to provide “support and services to companies and organizations ...that accept foreign trainees” (cited in Shipper 2002a, p. 57). As a result of these and other changes, the number of “trainees” grew dramatically. In 1987, the number was 17,081, but by 1997, the number of “trainees,” mostly from Asia, increased almost threefold to 49,594 (ibid.). In 2001, the number of workers were brought into Japan under the auspices of this program reached its peak at 59,064 (Ministry of Justice data, cited in Iguchi 2004).

The large majority of “trainees,” not surprisingly, receive little or no technical training. Most are simply hired as cheap, unskilled laborers and are employed in 3-D jobs. As “trainees,” moreover, they are not classified as workers entitled to standard wages and to the protections guaranteed under Japan’s labor laws. In short, the trainee system was designed to create another type of subordinated and marginalized class within the Japanese labor market, but one that was supposedly subject to tighter control and regulation by the government. In 1993, the trainee was revised with the introduction of the Technical *Intern* Training Program (TITP). The TITP represented a significant, although still limited improvement over the old program in that it allowed trainees to change their residence status to “technical interns” after a minimum of nine months, and after passing a “skills evaluation” examination. As interns, they would become official employees—legal workers—entitled to regular wages and full protection under Japanese labor laws. The number of trainees applying for technical internships has increased steadily, from 5,300 in 1996 to 12,400 in 1998 and then to 27,233 in 2003, according to JITCO.⁵ And while it is difficult to state precisely the cumulative number of such interns, one Japanese scholar estimates that the number is around 40,000 (Iguchi 2004).⁶

While the trainee program has been a very important side-door mechanism, the policy of encouraging *nikkeijin* to work in Japan has supplied the largest number of new workers. Most of the *nikkeijin* come from Brazil, but there are also significant numbers from other countries, including Peru, Bolivia, Argentina, China, the Philippines. In 2002, there were 233,897 *nikkeijin* working in Japan, which represented a slight decrease from the year before (the total number of *nikkeijin*, however, is much higher since many bring their spouses and children with them to Japan). Significantly, most *nikkeijin* work for small subcontractors in “unskilled” or low-skill production jobs, which belies the government’s official position that the policy toward the *nikkeijin* is designed as an opportunity for learning Japanese language and culture, for meeting Japanese relatives, for traveling, and for opportunities to explore their ethnic heritage (Tsuda and Corenlis 2004). It is clear, however, that few *nikkeijin* come to Japan for “cultural opportunities” or family reasons; according to one 1998 survey, for example, 80 percent of

⁵ Statistics are available on JITCO’s web site, available at <<http://www.jitco.or.jp/eng/>>.

⁶ The visa status of technical interns falls into the classification of “designated activities,” which includes “working holiday makers,” foreign students in internship programs, and maids employed by diplomats and foreign executives. According to Iguchi, however, the majority of foreign residents within this classification are technical trainees.

nikkeijin who returned to Japan did so in order to find work (cited in Shipper, p. 44). Compared to trainees/interns and illegal workers, the *nikkeijin* are relatively privileged. Their salaries are generally higher, there are no restrictions on the type of work they may do, and they have a legally protected right to stay in Japan indefinitely (giving them de facto permanent residence). Still, the *nikkeijin* have second-class status in the Japanese labor market. The great majority of *nikkeijin* workers, in fact, are relegated to “indirect employment” in the manufacturing sector, meaning they are employed by labor contractors and dispatched to production lines. With contract periods limited to three months or even shorter, *nikkeijin* workers have become a source of extremely flexible labor for many businesses (Kashiwazaki 2002).

Policies toward transnational workers in South Korea

In Korea, the details are slightly different, but the approach has been generally the same as in Japan. To cope with the “threat” of ethnic diversity, for instance, the Koreans encouraged the influx of ethnic Koreans from China, known in Korean as *joseonjok*. For Koreans, this strategy was only partly successful. It was successful in that it tapped into a steady, geographically close, and essentially unlimited source of workers willing to fill positions in labor-short areas of the Korean economy. In 1991, for example, more than 18,400 Korean-Chinese found work in South Korea (although almost all did so illegally). By 1996, the cumulative number of Korean-Chinese workers had risen to more than 40,000 and, except for 1998, has continued to increase. By mid-2002 the figure stood at slightly less than 80,000. Significantly, however, the percentage of Korean-Chinese among the total population of transnational migrant workers in Korea has fallen from a high of 40.6 percent in 1991 to only 25 percent in 2000.

The proportional decline of Korean-Chinese workers is due to a variety of factors. But, almost certainly, one of the more important is that the *joseonjok* did not fit seamlessly into the fabric of Korean society (as many Koreans assumed they would). Far from it. Indeed, the relationship between the *joseonjok* and their Korean “hosts” soured almost from the very beginning—despite the fact that the *joseonjok* were initially considered and actively portrayed (in Korea’s mass media) as long-lost “brethren.” It is in this regard that Korea’s strategy of encouraging the influx of ethnic Koreans from China was a failure. For the Korean-Chinese were expected to do the jobs that most South Koreans utterly disdained. Moreover, they were expected to do these jobs at a lower rate of pay; without basic labor rights; and without even minimal legal protection against abusive employers (who frequently slapped, kicked, punched, sexually assaulted, or verbally insulted migrant workers, whether “brethren” or not). In short, despite “blood ties” and an initial sense of cultural affinity, the harsh realities of migrant work in Korea simply did not mix with the ideals of brotherhood and assimilation. Thus, while the *joseonjok* continue to come to South Korea to work, today there is little sense left that they are appreciably different than workers from Nepal, Bangladesh, Indonesia, Vietnam, the Philippines and elsewhere (other than the fact that the *joseonjok*, as a group, tend to have more familiarity with the Korean language). Indeed, according to a recent survey of small factory owners in South Korea, the *joseonjok* are not even the most “favored” foreign workers; this dubious distinction, instead, belongs to workers from Indonesia (workers from China—who are not necessarily ethnic Koreans—and Vietnam were second and third respectively).⁷

⁷ The survey was conducted by the KFSB, which queried 1,286 small and medium-sized enterprises: 30.6 percent favored workers from Indonesia, 17.2 percent favored workers from China, and 13.7 percent favored workers from Vietnam. Cited in “Indonesians Most Favored Foreign Workers,” *Korea Times*, May 1, 2002.

As in Japan, the Korean government pursued a multi-prong, if not always coherent immigration strategy. Indeed, Korea's policy is in many respects a carbon-copy of Japan's. Thus, in conjunction with its effort to encourage the inflow of ethnic Koreans from China, the government also embraced an Industrial Technical Training Program, which allowed the government (and Korea's small- and medium-sized businesses) to circumvent the prohibition in Korea's Immigration and Emigration law against the employment of unskilled or low-skilled workers. (The law only permits "professional and technical workers," such as professors, researchers, or entertainers to work legally in Korea⁸). The Industrial Technical Trainee Program (ITTP), which was introduced in 1991, allowed the government to circumvent the country's existing immigration law by creating the same convenient and cynical fiction as existed in Japan: under this program, those who enter Korea to take up positions in labor-short areas are not defined as "workers," but as "trainees." The implications of this semantic difference were significant. For, while government-sanctioned *workers* would be entitled to basic labor protections, to market-based wage rates, and to the freedom to change jobs, "trainees" were not. Instead, under the ITTP, trainees were (originally) restricted to an assigned "training facility" and provided a government-mandated "stipend," which was far below the prevailing wage rate (compared to both native Korean workers and even undocumented workers doing the same job). Trainees, moreover, were not entitled to basic labor protections, and they were required to leave Korea immediately after completing their "training." The original aim of the ITTP was, therefore, exactly the same as Japan's trainee program, namely, to institutionalize and legitimize an unequal, "flexible," and highly exploitative employment system for foreign nationals—one which would remain separate from and clearly subordinate to the employment system for Korean citizens.

Since its introduction, the ITTP has gone through a number of important changes, a point I will take shortly. Before doing so, however, it is useful to underscore another important parallel between South Korea and Japan with regard to the government's immigration policy, namely, the importance of "illegal" labor. On this point, it is significant that the large majority of transnational migrant workers, including the *joseonjok* (as I noted above), have worked in Korea "illegally"—at one point in 1991, in fact, more than 90 percent of all transnational migrant workers in Korea were undocumented. More recently, the figure has ranged from 60 to 70 percent.⁹ This does not mean, however, that they were working in Korea against the wishes of the government, for the presence of undocumented workers in the country, as in Japan, has been essentially condoned and even encouraged by the Korean authorities since the very beginning of large-scale foreign worker migration. (In this regard, it would be fair—and probably far more

⁸The 1991 system was initially restricted to foreign nationals who were already employed in Korean-owned companies located overseas. Since almost all of these were large companies, however, the 1991 law creating the trainee system did not provide small- and medium-sized companies with the labor they required. For this reason, the law was amended in 1994 to allow SMEs to use "trainees." The KFSB was put in charge of this newly revised system, and given the authority to recruit foreign nationals from a number of approved countries (Park 1995, p. 373-4).

⁹ In March 2002, the Ministry of Justice/Bureau of Immigration implemented a "Voluntary Reporting Program" for undocumented foreign workers. Those who voluntarily reported—about 256,000 at the end of registration period—were given permission to stay and *work* in Korea for up to one year. Practically speaking, then, those workers who registered were no longer unauthorized or "illegal" (although, as the MOJ [2002] was careful to note, "In principle, the foreigner is [still] not allowed to work. But if he/she works in the workplace of the owner who issues a report on his/her establishment of the unauthorized foreigner, he/she can only work in the designated workplace prior to voluntary departure."

accurate—to say that undocumented or illegal foreign workers are, in fact, “tacitly approved” foreign workers.) The reason for this is clear, if not banal: “illegal” workers are easier to exploit and, in principle, easier to control than authorized workers. One official in the Ministry of Justice was quite blunt on this point; as he put it, “As far as we know, the United States also relaxes control on illegal Mexican workers during its orange harvesting season. Afterwards, it repatriates them on the reports of employers. *That could be cited as a model case for maximizing the nation’s interest*” (italics added).¹⁰ From this perspective, it is reasonable to conclude that the presence of so many “illegal” workers was a fully *intended* outcome of government policy.

The Rights of Transnational Migrant Workers in Japan and South Korea

Japan

In Japan, labor-related laws, such as the Labor Standards Law and the Employment Security Law, do not discriminate between foreign and native Japanese workers. This means that even “illegal” transnational workers, in principle, are entitled to the same basic protections, including the right to labor insurance and workman’s compensation, as any Japanese worker. In practice, however, the rights of transnational workers have been strongly, albeit not entirely, dependent on the needs and whims of employers. Terasawa (2000), for example, notes that in the early-1990s, when demand for transnational workers was particularly strong, Japanese firms would often withhold wages or force employees to “save” part of their salaries with the company as a way to prevent them from changing jobs, or even from leaving Japan in case of illness. During the more recent recessionary period, by contrast, employers routinely terminated contracts without cause (often in violation of established case law) and would make large deductions from the worker’s pay (usually ¥500,000) to cover “travel and miscellaneous expenses.” This proved, according to Terasawa, “disastrous for workers, as they make the investment to come to Japan with the intention to work at least two or three years” (p. 223). To stay in Japan for longer periods of time, therefore, (legal) transnational workers often have to sacrifice their rights. This is necessary because many need their employers’ help to extend their visas. Terasawa explains it this way: “If an employer violates the LSL [Labor Standards Law] or other regulations, the worker may file a complaint against the employer at the Labor Standards Inspection Office (LISO). However, most foreign workers ... do not go to the LISO because of their unstable status of residence” (p. 224). For the *nikkeijin*, the situation is not appreciably better. Although they generally earn much higher wages, most are forced to use brokers to secure a job in Japan. Brokers not only take a “dispatching fee” from the workers’ wages, but, because they are the direct employers of the dispatched *nikkeijin*, the brokers are responsible for reporting accidents to the LISO. Not surprisingly, many are unwilling to do so, which means that injured *nikkeijin* workers often end up leaving Japan with no accident compensation at all (Shipper 2002a, p. 49).

For trainees, the situation is different, but not necessarily better. Due to ambiguity of their work status, trainees were often forced to work long hours with no days off. Forced overtime is not uncommon (although technically prohibited by JITCO). Moreover, as I have already made clear, because trainees are not legally defined as workers, they are not entitled to wages, but instead receive a training allowance, which is far below the wages received by all transnational workers, even those in Japan illegally. In 1998, for example, 84 percent of trainees in Japan received less than ¥110,000 a month (in 2000, this was raised to ¥120,000), while illegal workers typically earned at least ¥220,000 a month, and sometimes much more. Trainees also do

¹⁰ Cited in “Justice Ministry Postpones Plan to Expel Illegal Foreign Workers,” *Korea Herald*, Jan. 8, 1998.

not have the right to form or join unions, nor are they technically covered by workers' compensation insurance. Lastly, because of a lack of adequate supervision and oversight, the trainee system is subject to a high degree of abuse by employers.

Arguably, the situation is worse for illegal workers, who suffer from unsafe and unsanitary working conditions, a lack of basic medical coverage, discriminatory treatment, and other "irregular" business practices. These same problems afflict all transnational worker in Japan to some degree, but are made worse by the acute vulnerability of "illegal" workers. Their vulnerable positions means they are more likely to be denied accident insurance, to be denied their wages, or to be arbitrarily dismissed from their jobs. This especially true during lean economic times. Japan's incoherent policy environment also contributes to these problems, since it creates a strong disincentive for companies to comply with certain laws and for illegal workers to exercise the rights they do have. This is most apparent with regard to accident insurance. All employers, for example, are required by the Ministry of Labor to provide accident insurance to their employees regardless of their legal status. At the same time, the Ministry of Justice, as part of the 1990 Revised Immigration Law, passed a employer sanctions law making it illegal for firms to knowingly hire illegal aliens. The penalties include fines of ¥2 million and up to three years in jail. As a result, many employers have either inserted Japanese names in employment contracts for illegal workers (Shipper 2002a, p. 51), or have otherwise refused to follow the correct procedures. This makes it difficult, if not impossible for many transnational workers to receive proper care. But, even will full compliance, transnational workers themselves are hesitant to make claims for coverage (under the Workers Accident Compensation Insurance Law, workers are entitled to coverage even if the employer fails to pay). The reason is simple: claims must be reported to the LISO, which, in turn, is obliged to notify the Immigration Office if it receives an application for compensation insurance by an illegal worker.

In terms of worker rights, therefore, the situation facing transnational workers in Japan remain far from ideal. A very large gap between principle and practice remains, which has been subject to only incremental and often grudging improvement over the past ten to fifteen years. Still, as Gurowitz (1999) points out, a number of significant changes have taken place. One of the first important changes occurred in 1991, when the Ministry of Health and Welfare (MOHW) ruled that foreigners with a visa status of one year or more could join the national health plan. This was later expanded to allow "over-stayers" (i.e., illegal workers) and short-term migrants to join. In addition, "whereas Japan used to require twenty-five years of affiliation with the national pension plan for eligibility, with foreign workers nevertheless required to pay the mandatory fees, in 1994 the law was amended to enable foreign workers to receive a lump-sum payment upon application within two months of departure from Japan." Gurowitz also notes that the situation in housing has also improved: in 1994, for example, the Osaka district court laid down a key decision, which required a landlord to pay damages to a Korean resident whom he had discriminated against on the basis of nationality (pp. 440-41). Other important changes can be found at the local rather than national level. In a study of four Japanese cities, Pak (2000) detailed how each has begun to treat foreigners like "local citizens," without regard to matters of legality or illegality. The most progressive city, perhaps, is Kawasaki, which has instituted a range of programs designed to incorporate foreign nationals into the "fabric of daily life." These programs include language classes, counseling, efforts to eliminate housing discrimination, assistance for unpaid medical expenses, and so on. Even more, the Kawasaki city government, as an experimental measure, established a panel of non-Japanese residents similar to those in some European countries designed to give foreigners a voice in local affairs.

South Korea

Despite a continuing gap between principle and practice in Japan, there is a general sense—particularly among activists and others familiar with both Japan and South Korea¹¹—that the rights of transnational workers in Japan are still significantly better than in South Korea, at least this was the perception for much of the 1990s and into the 21st century. Indeed, in the early 1990s, transnational migrant workers had few—and essentially no—protected rights in Korea. This was equally true for *joseonjok*, legally-sanctioned trainees and for “illegal” workers. The unprotected status of transnational migrants, on one level, left them extremely vulnerable to economic exploitation—including substandard pay, non-payment of wages, forced overtime, inadequate or non-existent compensation for industrial accidents or occupational illness, and extremely unsafe working conditions. On another level, they were also vulnerable to racial and ethnic discrimination, and to physical, sexual, and verbal assault (typically by their own employers and/or other Korean employees working in the same company). Transnational workers, moreover, had (and continue to have) extremely limited access to health care and social services. As I noted above, most of this was a largely intended outcome, particularly from the standpoint of those companies that hire industrial “trainees.”

The fact that ITTP, along with the criminalization of transnational labor, defined Korea’s migration/immigration policy for more than two decades, does not mean that nothing has changed. In fact, a great deal has changed, both in the day-to-day conditions faced by transnational migrant workers and in their legal status. On an everyday level, one of the most significant changes—from the standpoint of transnational migrants—has been a gradual, but meaningful increase in their rate of pay. In 2002, undocumented foreign workers received an average monthly wage of more 858,000 *won* (based on a 60 hour work week).¹² While still below the average monthly earnings of all wage and salary workers in Korea—which stood at 1.28 million *won* in March 2002 (KLI 2002)—858,000 *won* per month is comparable to the wage received by native Korean workers doing the same type of work for the same number of hours.¹³ Industrial trainees continue to receive less than their counterparts working “illegally,” but their basic wage or “allowance” has also increased significantly over the past several years. According to one recent survey, the industrial trainees receive an average of 823,000 *won* per month (based on a 69 hour work week) (“Migrant Workers in Korea Earn 7 Times”). In the early years of the trainee program, the basic allowance was less than 50 percent of the wage level for domestic workers, but, according to Yoo and Uh (2001), trainee wages had grown to about 80 percent of this level by 2000. It is also worth noting that, while industrial trainees are still not formally recognized as workers, since 1999 they have been covered by South Korea’s basic Minimum Wage Act (KFSB 2002). The increase in the price of labor, it is important to understand, is not strictly or even mostly a function of market forces, especially for industrial trainees. On this

¹¹ This was the position of most of the activists I interviewed in Japan, including Torii Ippei (Secretary General, Zentoitsu Workers Union), Yano Manami, (Vice-General Secretary, National Network in Solidarity with Migrant Workers), and Murayama Satoshi (Chief Secretary, Kanagawa City Union). Interviews by author, June 4-7, 2002.

¹² Estimates for the average monthly earnings of undocumented workers need to be viewed with caution. The figure cited in the text is from the “Migrant Workers in Korea Earn 7 Times What They Gain at Home,” *Korea Herald*, May 10, 2002. Sr. Josephina Cheong—who counsels transnational migrant workers on a daily basis for the Foreign Workers Labor Counseling Office (FWLCO)—cited a similar figure (interview by author, June 10, 2002)

¹³ Sr. Cheong pointed out that, while the basic monthly wage is similar, foreign workers generally do not receive yearly bonuses, which can amount to more than a full-month’s wages.

point, recall the primary rationale for the trainee program, which was (and still is) to institutionalize a non-market based employment system—i.e., one in which wages are intentionally depressed and the entry and mobility of workers tightly regulated. The increase in trainee wages, therefore, suggests that non-market—i.e., political—forces are at play.

Legally, the changes for transnational migrant workers have been just as important. The first significant legal development occurred in 1993, with a decision by the Seoul Superior Court (Case No. 93Ku 16774) establishing the right for undocumented foreign workers to receive compensation for industrial injury. A few years later in 1995, a special court was created to deal exclusively with the problems of foreign workers, such as wage issues and severance pay (*Korea Economic Daily*, January 20, 1995). Another important case was decided by the Seoul Supreme Court in 1997 (Case No. 97 Ta 18875). This decision affirmed the right of illegal aliens employed in Korea to receive severance pay.¹⁴ Meanwhile, a series of similar cases by lower courts eventually compelled the government to adopt a more general policy position.¹⁵ As result of all this, on October 14, 1998, the Ministry of Labor announced that all undocumented immigrant workers in Korea would be protected under the Labor Standards Act.¹⁶ According to a Ministry spokesperson, the Act was amended because “The relevant Supreme Court’s judicial precedents regard illegal foreign workers as workers to whom the Labor Standards Act applies ...Accordingly, when employers ...violate the Labor Standards Act against illegal foreign workers, the employers are subject to the same level of punishment as that against domestic workers” (Ministry of Labor Press Release, 14 October 1998). This decision, while undoubtedly significant, was still only a qualified victory since the Act applied to companies with five or more employees—yet, a large proportion of undocumented workers in Korea worked in companies with fewer than five workers. In July 2000, however, this limitation was partly overcome when the occupational accident law extended to cover workers in all companies regardless of size.

Decisions by the courts, of course, can be avoided by recalcitrant employers (and their supporters in the government). This has certainly been the case in Japan, and the situation was no different in South Korea, where employers continued to withhold pay, to deny responsibility for industrial accidents and injuries, to physically abuse their employees, and so on. Unlike the early 1990s, however, the bureaucratic system had moved to a more neutral positions with regard to the protection of transnational worker rights. This represented a marked contrast to the early 1990s, when the relevant agencies perceived their mission primarily in terms of protecting Korean society *from* foreign workers, or in terms of maximizing the exploitation of foreign workers to the benefit of Korean business. The shift in bureaucratic perceptions (and actions), of

¹⁴ In this case, South Korea’s Supreme Court upheld a lower court’s decision that ruled all foreign workers, *including those working illegally*, deserve severance benefits. More specifically, the court ruled that, even though a foreign worker (Mohamed Abdul Kalek from Bangladesh) clearly violated immigration-control laws, his employment contract was valid and he was, therefore, entitled to 3.67 million *won* in severance benefits from his former employer (“Illegal Foreign Workers Awarded Severance Pay,” *Korea Herald*, August 8, 1997).

¹⁵ In 1996, to cite one example, a Korean-Chinese woman, who had already returned to China, sued the Labor Welfare Corporation, arguing that it had no right to deny her compensation for an injury she suffered in 1994. According to a government directive, only foreign workers injured after March 1995 (when the law was changed), were to be eligible for compensation. A three-judge panel, however, ruled that the ministry guideline had no legal force, and, therefore, the plaintiff was fully entitled to compensation for her injuries (“Court Rules Invalid Gov’t Denial of Foreign Worker’s Right to Industrial Accident Compensation,” *Korea Times*, January 30, 1997).

¹⁶ The full text of the Labor Standards Act is available at <<http://www.globalmarch.org/virtuallibrary/ilonatlax/korea-standards.htm>>

course, is a matter of degree, and not a complete reversal. It is also very uneven—the Korean Ministry of Labor, like its Japanese counterpart, has proven to be a relatively strong and consistent advocate of rights for transnational migrant workers. But even the Ministry of Justice, the Bureau of Immigration (which is under the jurisdiction of the MOJ) and the Small and Medium Business Administration (SMBA) are clearly moving away from their clear-cut suspicion of if not outright hostility toward transnational workers. In early 2002, for example, the MOL, MOJ, and SMBA announced a proactive joint effort to begin “surveillance” of businesses that poorly treat foreign workers.¹⁷ Around the same time, the Ministry of Commerce, Industry and Energy announced its plans to create “working rules” (in collaboration with the private sector) that would guarantee the protection of “non-native laborers’ human rights” (“Government Reinforces Surveillance on Ill Treatment of Foreign Workers,” *Korea Herald*, March 25, 2002). To reinforce all this activity, the MOL also announced its intention to establish, by the end of 2002, counseling booths exclusively for foreign workers in all of its regional offices¹⁸—previously, the “counseling” of transnational migrant workers had been in the exclusive domain of Korea’s secular and religious NGO community.

The change in bureaucratic attitude toward transnational migrant workers is also reflected in a general unwillingness to crack down on still legally-prohibited, but politically-sensitive activities. In 2001, for example, a small group of undocumented foreign workers established a union for migrant workers—according to Korean law, neither industrial trainees nor undocumented workers are permitted to join labor unions. This union, which was established as a branch of the Seoul-Kyonggi-Inchon Region Equality Trade Union (SKIRETU)—a regional union affiliated with the progressive Korean Confederation of Trade Unions (KCTU)—has only a very small membership, estimated a fewer than 150. Still, neither the MOL nor the MOJ have been willing to act against the union. The Ministry of Labor, in fact, practically endorsed the union by stating that foreign workers are “entitled to organize themselves.” The MOJ, for its part, was more circumspect, but still indicated that it would not interfere with the operation of the union, unless the activities of the foreign workers made them “visible.”¹⁹

The most recent change is the creation of the “Work Permit System for Foreigners” (also know as a guest worker system), which debuted in August 2004. This system allows transnational migrants to work legally in South Korea for a period of four years, during which time they will be fully protected by Korean labor laws (i.e., the Labor Standards Act). The system also legally forbids discriminatory wage treatment, except where it is possible to “differentiate the wage level ... due to gaps in productivity.”²⁰ To many observers, the establishment of a work permit system represents a major victory for transnational workers. To

¹⁷ According to the plan announced by the SMBA, businesses violating the rights of foreign workers (e.g. by delaying payments or physically assaulting, confining or sexually harassing them) would be barred from receiving various forms of financial support, such as the operation stabilization funds from the government. The agency also said it would limit the distribution of industrial trainees and specialized industrial workers to companies that violate the rights of foreign workers (“Government reinforces surveillance on ill treatment of foreign workers,” *Korea Herald*, April 10, 2002).

¹⁸ According to the announcement by the MOL, the counseling booths will be opened by late 2002 (“Labor Ministry Reinforces Protection of Migrant Workers,” *Korea Herald*, May 21, 2002).

¹⁹ For details, see “Government Officials Accept Foreigners’ Union ‘Fait Accompli,’” *Korea Herald*, May 29, 2001; “Migrant Workers’ Labor Union Launched,” *Korea Herald*, May 28, 2001; and “Move to Form Labor Union for Illegal Foreign Workers Alerts Employers,” *Korea Herald*, May 11, 2001.

²⁰ Human Resource Development Service of Korea, “The Employment Permit System for Foreigners.” Available at < http://www.hrdkorea.or.kr:8080/www/english/english_sub_employment02.htm>.

others, however, it does not go far nearly enough. The four year limitation (which includes any time spent in Korea illegally), for example, is explicitly designed to prevent “permanent settlement” in South Korea, which especially hurts those workers who have already been in Korea for an extended period of time (some as long as twelve years). Moreover, only workers from countries that have signed a Memorandum of Understanding (MOU) with Korea are able to take advantage of the provisions of the system. (As of July 2004, only the Philippines, Mongolia, Thailand, Vietnam and Sri Lanka had signed an MOU, with Indonesia and China expected to complete an agreement before the end of the year.) (Work Permit System for Foreigners to Debut Next Month,” *Hanguk Ilbo*, July 7, 2004.) On the other hand, it is clear that advocates of the industrial trainee program preferred the old system, which limited wages and worker rights. In sum, the work permit system is an ambiguous development with regard to the changing status of transnational migrant workers. At best, it will leave many underlying issues unresolved for years to come.

Political Activism and the Expansion of Rights in South Korea and Japan

Whatever the case, the creation of the work permit system and all other changes in the status of transnational migrant workers in South Korea reflects a deeply politicized process—one in which the key agents of change were not necessarily the bureaucratic agencies that shape and enforce policy, nor the courts (although they have clearly played a central role in many aspects of the process thus far). Rather, the main source of change are, I argue, the transnational migrants themselves and a network of secular and religious non-governmental organizations in Korean society. It is, of course, not obvious that this is the case. Thus, in the remaining sections, I will endeavor to show how political activism—sometimes subtle and sometimes quite conspicuous—has served as the crucial source of rights expansion for transnational migrant/immigrant workers in Korea. In Japan, by contrast, non-governmental domestic actors have appeared to play a less important role. Yet, there is evidence that these actors, too, have been instrumental in the incremental expansion of rights for transnational workers (and longer term immigrants) in Japan. To begin this discussion, it would be useful to look first at South Korea, for it is in this country that the expansion of rights has been more dramatic. And, I believe, there are good reasons for this. The most salient, perhaps, stems from South Korea’s social and political context, which has not only given heightened legitimacy and social power to non-governmental actors, but has also imbued these actors with a strong “internationalist” vision centered on questions of human rights, social justice, equality and political inclusion.

The Context of Political and Social Change in South Korea

The role of political activism in South Korea cannot be properly understood without an appreciation of the context of political and social change in this country. A crucial aspect of this context is Korea’s authoritarian past, which lasted from 1961 to 1987. Although it is beyond the scope of this paper to cover this period in any depth or detail, it is important to note that during the years of dictatorship, the suppression of political participation and the “popular will” created a particular dynamic leading to the development of a fragmented, but strongly determined and effective “civil society.” South Korea’s civil society, as Kim Sukhyun (1996) explains it, is presently composed of three main actors: newcomers, “old radicals,” and converts. As a product of Korea’s authoritarian past, each of these main actors—while not always in agreement on basic principles and strategies—did share a common opposition to dictatorship and a common desire for democracy. The shared struggled *against* dictatorship and *for* democracy, not surprisingly,

was broadly-based. In other words, it was not just one segment of Korean society that was involved in this struggle, but multiple segments: radical students; churches and other religious groups; workers; and (perhaps most importantly) a politically liberal, but fairly broad segment of the middle class (e.g., white-collar workers, academics, lawyers, technicians, independent business people, and low-ranking public servants) (ibid.).

The sheer breadth of the pro-democracy struggle meant that, once the goal of a democratic society was realized, Korea's activist "civil society" would not immediately fade away. And, indeed, this has not been the case. In fact, the collapse of the authoritarian system led to a proliferation of civil groups—particularly those associated with the more moderate citizen's (*simin*) movement as opposed to more radical people's (*minjung*) movement: in the late 1980s, only a handful of civic organizations or NGOs existed, but by 2000, there were an estimated 70,000 civic groups in Korea (Narkarmi 2000). While the vast majority of these groups have scant political weight, the largest and most well-established organizations have proven to be quite effective in pushing for social, economic and political reform. One reason for this, argues the Rev. Kyung-Suk Soh (1994), General Secretary of the Citizen's Coalition for Economic Justice (CCEJ)—one of the largest civic organizations in Korea—stems from the ability of some Korean NGOs to transcend the class-based divisions that used to characterize South Korean society.²¹ Forging links between the middle and working class, in other words, has enabled certain NGOs to develop broad based consensus and legitimacy, which has translated into political power. It is useful to remember that this, too, is a legacy of Korea's authoritarian past.

Korea's authoritarian past also has been instrumental in shaping another significant aspect of the country's political and social context, namely, its receptiveness to international or transnational norms, specifically norms regarding human rights and worker rights. As Gurowitz (2000) correctly points out, we can neither assume that international or transnational norms have the same affect across countries, nor that they even have a positive impact on the treatment of both citizens and non-citizens. Instead, "[w]e need to look at concrete domestic contexts to understand how norms are mobilized or not, and are useful or not, in different countries and across different issue areas" (p. 877). In looking at the Korean context, it is clear that the pro-democracy/anti-authoritarian movement has had a profound impact. For, the movement itself often—and even necessarily—relied on international norms as a key source of political legitimacy. This was true, in large part, because the struggle against authoritarianism invariably elicited state repression in the name of anti-communism and "national security." The main actors in the struggle, therefore, had to establish an alternative ideological (or discursive) position—one that clearly insulated them from charges that they supported communism. This alternative position was one that concentrated on human rights, the situation of workers, and political democratization (Kim 1996). On this point, too, it is important to highlight the nexus between human rights and worker rights—in the Korean context, both are inextricably connected, since labor played a decisive role in paving the road to democracy (Moon 2000).

Finally, it is worth noting that the legacy of Korea's authoritarian past has been clearly reflected in the composition of South Korea's recent governments. Kim Dae Jung, South Korea's president from 1998 to 2003, is a former leader of the pro-democracy struggle and a leading

²¹ It is worth noting that the CCEJ is not only one of the largest NGOs in Korea, but also extremely influential. According to an annual survey conducted by the *Sisa Journal* (October 21, 1993), a well-regarded weekly periodical, the CCEJ was ranked as *the* most influential organization in South Korea. Significantly, the survey put the CCEJ above the Federation of Korean Industries (FKI), which is comprised of Korea's largest and most powerful business groups.

advocate of human rights. The Minister of Labor during Kim's presidency, Bang Yong Seok, was a labor union leader who played a key role in Korea's labor movement during the 1970s and 1980s. Kim's successor, Roh Moo Hyun, was a human rights lawyer defending pro-democracy and labor rights activists in the 1980s, and was one of the leaders of the June Democratization Struggles in 1987. Moreover, throughout the government, there is a keen sensitivity to the issue of human and labor rights—and to Korea's international image as a country that pays heed to these international/transnational norms.

Political Activism and the Expansion of Migrant Rights in Korea

The expansion of rights for transnational migrant workers in Korea, which began in 1993 (as I noted above), was clearly *preceded* by political activism and was unequivocally counter to the interests of small businesses (the KFSB in particular) and their allies in the government. The first manifestation of this activism, however, was not in the form of a public protest, sit-in, or another type of demonstration. Instead, it was based on the activities of the Archdiocese of Seoul and the Labor Pastoral Center (LPC). The LPC, which was established in 1979 to assist local Korean workers, has long relied on a particular political strategy, one focused on using *existing* legislation to protect and expand worker rights. For local Korean workers, this normally entailed an appeal to domestic law, but in the case of transnational workers, the LPC appealed to international labor standards and norms, and specifically to the standards articulated by the International Labor Organization (Korea became a member of the ILO in 1991). In appealing to international norms, the LPC made the case that even if foreign workers were in Korea illegally, the fact that they were employed made their work contracts legal.²² In other words, the LPC argued that international labor standards dictate that work contracts (whether implied or explicit) must be honored and protected by domestic authorities regardless of the worker's legal status (Interview by author with Fr. Trisolini, June 19, 2001). While it is not possible to link this strategy with a particular change in government policy, it most likely "... played an important role in the first court decision (Nov. 1993) establishing the legal right for foreign workers to receive compensation for industrial injuries" (personal communication with Fr. J. Trisolini [e-mail correspondence], October 14, 2002).

The legal strategy used by the LPC has been effective, in part, because Korean officials are (for reasons I discussed above) extremely sensitive to situations in which domestic laws or practices contradict international standards—especially those standards by which the government has agreed to abide. Significantly, but for slightly different reasons, the same strategy has worked in Japan. In Japan, the Zentoitsu Labor Union (ZWU) has used Article 3 of Japan's Basic Labor Law to promote and expand the rights of transnational workers. Article 3 states that an employer shall not engage in *discriminatory treatment* with regard to wages and working conditions by reason of nationality or social status. The use of this clause effectively gave foreign workers in Japan the same legal standing with regard to labor rights as native workers (interview by author with Torii Ippei, Secretary General of the ZWU, June 5, 2002). In both Japan and Korea, however, the appeal to existing laws or international standards is limited to the extent that employers and even bureaucratic agencies are able to subvert or ignore legal

²² This particular strategy should be credited to Professor Sohn Ch'ang-hee, a member of the Seoul Archdiocesan Labor Pastoral Commission and formerly professor of Labor Law at Hanyang University (now retired but teaching law part-time at Catholic University). According to Fr. J. Trisolini, Director of the LPC, Professor Sohn "always insisted in public talks that although migrant workers were undocumented, their labor contract was valid under international norms" (personal communication [e-mail correspondence], October 14, 2002)

strictures. This problem is exacerbated in Korea because “[t]here is no American style system of judicial precedent and a decision of the Supreme Court does not have the binding force of precedent in subsequent cases of a similar nature. It merely has a persuasive effect.”²³ This means that, by themselves, ruling by the courts do not guarantee the protection, much less expansion, of migrant/immigrant rights in Korea.

Thus, despite important legal decisions—such as the 1993 case establishing the right for foreign workers to receive compensation for industrial injury—many (if not the majority of) small factory owners simply ignored changes in the law. It is partly for this reason that the plethora of civil and religious organizations that assist transnational migrant workers in Korea—estimated at 150—devote the bulk of their efforts to “labor counseling”; that is, to helping foreign workers collect unpaid wages or severance pay; obtain medical assistance and financial compensation for work-related accidents; deal with housing and medical problems or with violence in the workplace; and so on. *The very existence of these organizations, in other words, reflects the practical limitations of court decisions designed to protect transnational workers.* For much of the 1990s, moreover, the government attitude and behavior encouraged small business owners to maintain a hard-line stance, even if, in so doing, they violated the law. The Ministry of Justice and Bureau of Immigration, for example, regularly deported foreign workers who attempted to assert their legal rights.

This ongoing resistance on the part of small business owners and segments of the Korean government inspired a second—and more common—form of political activism, namely, public demonstrations and protests. The first significant protest occurred in 1994, when a small group of workers from Nepal, Bangladesh, the Philippines and Ethiopia staged a sit-in at the headquarters of the CCEJ (the Citizen’s Coalition for Economic Justice). The workers who took part in this protest, it is worth noting, had all suffered serious industrial injuries—I interviewed one woman from Nepal who had lost all her fingers on one hand. Yet, despite the 1993 court decision, none of these workers were able to receive compensation from their employers. To make matters worse, their companies refused to return their passports, meaning that the workers could not even leave Korea (Interview by author with We Jung-Hee, Director, Buddhist Coalition for Economic Justice, June 21, 2001). Given their situation, the workers, in collaboration with members of the CCEJ, decided that their only recourse was to stage a (decidedly non-violent) sit-in—the CCEJ and workers, moreover, quite concisely decided to draw on the issue of human rights; one of the signs used by the workers simply stated, “We are human.”²⁴ The sit-in, which the CCEJ also helped to publicize through its network of contacts in the Korean media, lasted for twenty-nine days and ended when the Ministry of Labor agreed to “improve the human rights problem of foreign laborers.”²⁵ The success of the protest, however, were extremely limited—the only enduring change was the admission by government officials that a serious problem existed. Most of the concrete promises the government made, by contrast, were simply not kept. Despite this limited success, the sit-in encouraged, rather than discouraged, more public activism.

²³ Quoted from “Korean Legal System—the Judiciary,” *Korean Legal Resources on the Internet*. Retrieved from <<http://www.siu.edu/offices/lawlib/koreanlaw/>>.

²⁴ In my interview at the CCEJ, We Jung-Hee stated quite clearly that the appeal to the global discourse of human rights was a strategic decision; she knew that it would be one of the most effective strategies for the workers to use. *Ibid.*

²⁵ For additional details, see “The Abuse of Foreign Laborers’ Human Rights,” *Civil Society 1*, no. 1 (1994).

Indeed, less than a year later, in January 1995, a second, more public protest was staged, this time by a group of thirteen Nepalese “trainees” at the Myongdong Cathedral. During this very quiet protest—one in which the CCEJ also played an important role—the Nepalese workers made only a few public statements. In one joint statement, the workers said, “We may be from a poor country and that’s why we are working here in Seoul like slaves. But we have our basic human rights as well.”²⁶ For the most part, though, their point was made with a series of posters that contained statements (with photographs) such as: “I lost three fingers on my right hand working in a factory. What will I do for the future?” “Please don’t beat me” and “We are not slaves.”²⁷ This sit-in, too, ended when the government—along with KFSB—agreed to implement stronger measures to protect industrial trainees from beatings and sexual assault, and to provide compensation for work-related injuries (the 1993 court decision did not apply to industrial trainees). The government also agreed to allow the trainees to retain possession of their passports and to be paid directly. Again, though, the government’s promises proved to be largely empty (in addition, the thirteen trainees were all deported after the end of the sit-in).

Still, while this second protest also had limited results—in terms of leading to dramatic changes in government policy and practice—it did spark an upsurge of interest within the Korean NGO community. Hitherto, only the Archdiocese of Seoul and a few other organizations, most notably, the Association for Foreign Workers’ Human Rights (part of the Labor Human Rights Center),²⁸ were actively and significantly involved in assisting transnational migrant workers. Shortly after the 1995 sit-in, however, the number increased rapidly. As I noted above, most of these organizations were established to provide “labor counseling” and/or other forms of social assistance. Most, too, were and are church-based: the Christian Institute for the Study of Justice (<http://www.jpcc.org/eindex.html>), for instance, lists a total of 101 church-based organizations (86 Protestant, 12 Catholic, two Buddhist, and one Islamic) set up to assist foreign workers. A smaller number of organizations, however, are also sharply focused on the broader goal of rights expansion. The CCEJ (and its Buddhist counterpart, the BCEJ, or the Buddhist Coalition for Economic Justice) and the Archdiocese of Seoul/Labor Pastoral Center are two of the main actors in this regard. But they are not alone. Another extremely important organization is the Joint Committee for Migrant Workers in Korea (JCMK), which is a coalition of like-minded NGOs committed to the “improvement of working conditions and [to the] elevation of [the] political, economic, social status of migrant workers” (Interview with Kim Mi Sun, Director, Public and International Department, JCMK, June 14, 2002).

The JCMK was founded in 1995 in direct response to the sit-ins in 1994 and 1995—according to Ahn Seung-Guen (a former coordinator of the JCMK), the limited and short-lived success of the two sit-ins demonstrated the need for more coordinated efforts; accordingly, the JCMK was explicitly created to act as an umbrella organization (interview by author, June 22, 2001). The first major activity of the JCMK was to push for a new law specifically protecting foreign migrant workers. Actually, this effort was initiated almost two years earlier by a key member of the JCMK (listed above), the Labor Human Rights Center

²⁶ Quoted in “Cardinal Kim Apologizes to Foreign Workers in Seoul,” *Reuters World Service*, Jan. 10, 1995. Retrieved from Lexis-Nexis database.

²⁷ Based on personal observation and translation by the author.

²⁸ The director of the Association for Foreign Workers’ Human Rights, Pak Seok Woon, claims that his was the first organization devoted to the protection of foreign workers in South Korea. The organization was established in 1992, which is about the same time the LPC began to work closely with foreign workers. (Interview by author, June 22, 2001 in Seoul.)

(LHRC). The LHRC originally proposed a new law for foreign workers in 1995. According to the director of the LHRC, Seok Won Park, the substance of this new law was to include the following provisions: (1) abolition of the trainee system, which unjustly and disingenuously classifies full-fledged workers as “trainees”; (2) implementation of a work permit system, which would also extend domestic labor rights to all foreign migrant workers; (3) provision of social welfare benefits to foreign workers; and (4) a grant of full amnesty to all foreign migrant workers in Korea “illegally” (interview by author, June 22, 2001). The establishment of the JCMK (with its ten original members and current membership of 34), gave added strength and vigor to this effort; yet, it was not enough to win passage—or even serious consideration—of a new law. One reason for this was the still strong and active resistance by the Ministry of Justice and the KFSB against any changes in the treatment of transnational migrant workers; another reason, perhaps, was simply the indifference of other segments of the government—including the executive branch—to the problems faced by foreign workers in Korea.

Pressure and activism by the JCMK, however, were constant: from 1996 to 1999, the JCMK organized a series of demonstrations (including a hunger strike and a “driving demonstration”), signature campaigns, and public hearings pushing for a new law. In addition, other organizations, not affiliated with JCMK, independently pressed for the same or similar changes in government policy.²⁹ Then, in March 2000, the JCMK published a white paper entitled *The Report on Oppressed Human Rights of the Migrant Trainee Workers* (in Korean, *Weiguk-in sanop kisul yonsusaeng ingwon paekso*). The JCMK sent this report directly to the President Kim Dae Jung. Kim’s initial response to the report was extremely positive; indeed, shortly after receiving the report, Kim ordered both his own party (the Millennium Democratic Party or MDP) and the Ministry of Labor to study the foreign worker issue and develop recommendations (interview with Ahn, June 26, 2001). Shortly thereafter, the head of the MDP and the Minister of Labor announced that the government would, in fact, enact a new law to abolish the trainee system and legalize transnational migrant work in Korea—the government’s proposal was quite close to, although not exactly the same as, the proposal put forth by the JCMK. The new law was set to take effect in July 2000, but was later postponed until January 2001.³⁰

The postponement *almost* proved fatal, as the MDP announced in January 2001 that the new law would be shelved indefinitely (“MDP Shelves Introduction of Work Permit System,” *Korea Times*, January 11, 2001). It is not certain why the MDP suddenly shifted its position, but constant pressure by the KFSB no doubt played a role. Indeed, political activism by the KFSB has been an integral part of the entire process of migrant/immigrant rights expansion in Korea. I will take up this issue shortly; before I do, however, it is important to understand that the failure of the JCMK and other NGOs to abolish the trainee system, and to create a legal work-permit system for transnational migrant workers in South Korea, did not mean their activism has been irrelevant. Far from it. For, the unremitting pressure for sweeping change has clearly had an impact on governmental and social views of the foreign worker issue. At a minimum, this

²⁹ The Archdiocese of Seoul Labor Pastoral Commission, in particular, issued several formal statements on the need for—and, at one point, submitted a petition to the National Assembly demanding—a law to protect foreign migrant workers (Foreign Workers’ Labor Counseling Office (2002), “History and Mission Statement,” unpublished report). It is likely, too, that Cardinal Kim and the other Auxiliary Bishops of Seoul have spoken officially or off the record with government officials on the situation and rights of migrant workers (personal communication [e-mail correspondence] with Fr. Trisolini, October 14, 2002).

³⁰ For additional details, see “New Employment Scheme for Foreign Workers to be Introduced,” *Korea Economic Daily*, September 4, 2000.

pressure has successfully and unequivocally framed the problems faced by transnational migrant workers as a “human rights issue.” For this reason alone, the foreign worker issue is difficult to ignore within Korea—and, certainly, this has been the case. According to Lee Yong Kyu, a senior researcher at the Korea Labor Institute (and someone who is intimately familiar with governmental discussions on the foreign labor issue), “virtually everyone” in the government realizes that “something must and will be done” to reform the trainee system—even among those who generally support the interests of the KFSB. More significantly, perhaps, Dr. Lee readily acknowledges that the motivation for change within the Korean government is the belief that Korea must be a “modern country,” which means treating foreign workers as “human beings” (rather than as merely “cheap labor”) (Interview by author, June 11, 2002).

In the meantime, the trainee system—while still in place and still highly exploitative—has been revised on several occasions. I have already discussed the gradual, but nonetheless striking increase in the basic “allowance” for trainees. This increase is almost certainly due to the “activism” of the transnational migrant workers themselves (à la James Scott’s [1985] “everyday forms of peasant resistance”), namely, their propensity to simply walk away from low-paying trainee positions. Indeed, according to a report in the *Korea Herald* (October 2, 1997), upwards of 60 percent of foreign trainees—and probably much more—abandoned their positions in the early years of the program. It was only after the “allowance” was significantly increased that the desertion rate came down to acceptable levels (but never disappeared). Also, as I have already suggested, trainees have obtained some protections under the Labor Standards Act, the Minimum Wage Act, and the Industrial Accident Compensation Insurance Act; and, for those who complete their “training,” they are now eligible to become “post-training” workers, which would provide them the same rights as native workers (ironically, undocumented workers already have these rights—post-training workers, however, would not be subject to deportation).³¹ None of these reforms satisfy the transnational workers or the NGOs,³² but all represent an effort by the government (particularly the Ministry of Justice) and the KFSB to mollify and address the activism of their antagonists. From this perspective, one can argue that the piecemeal, *ad hoc* and essentially defensive approach adopted by the MOL and KFSB is a clear demonstration of the effects of unremitting political activism on the part of the NGO network and of the transnational migrant workers themselves.

The foregoing discussion, I should emphasize, also helps us see that the constant pressure for sweeping change has not occluded the day-to-day struggle for *incremental* change. Consider, for example, the legal decisions that have expanded the rights of foreign migrant workers to date. All of these decisions are based on the step-by-step and persistent efforts of Korean NGOs. I have already discussed the role of the LPC in this regard, but a range of other NGOs have also aided in the legal struggle. One of the most important of these is *Minbyun* (Lawyers for a Democratic Society). *Minbyun* was established in 1986 by 30 lawyers, most of whom had already been active in defending the rights of “prisoners of conscience” during the

³¹ This position was created by the “Working After Training Program for Foreigners” bill, which was introduced in April 1998. Under the provisions of this bill, trainees who pass a skills test after a two-year training period can continue to worker for one year as regular “workers.” In 2000 (the first year of eligibility), there were 2,068 post-training workers (Seol and Skrentny 2002).

³² In the most recent signature campaign organized by the JCMK (the “Campaign on Opposing Discrimination against Migrant Workers,” which began in May 2002 and was scheduled to coincide with the Korea/Japan World Cup tournament), the trainee system was portrayed by the organizers as “nothing more than the modern day slavery system” (“Signature Collecting Campaign on Opposing Discrimination against Migrant Workers,” May 7, 2002, public statement, photocopy).

democratization movement After the collapse of the authoritarian system, the organization began to focus primarily on defending and promoting human rights in Korea, and in assisting other NGOs working for social progress. And, while the organization's work with transnational migrant workers is limited, its staff of volunteer lawyers have handled at least 421 cases and assisted 972 individual workers since 1988. In addition, *Minbyun*, in collaboration with the JCMK and the Korean Confederation of Trade Unions (KCTU), helped to develop another proposal for a labor permit system in Korea.³³ The legal assistance provided by *Minbyun* should not be underestimated. Indeed, in a country that has only 4,200 lawyers *in total*,³⁴ *pro bono* legal assistance and representation is an extraordinarily valuable commodity. Nor is *Minbyun* the only attorney's organization that provides *pro bono* legal assistance to foreign workers—the Seoul Bar Association has been running a Legal Center for Migrant Workers since December 1994.³⁵ In addition to the legal assistance provided by these organizations, many practicing attorneys and law professors volunteer their services on an individual basis to the NGOs working with transnational migrant workers (various interviews by author).

As I suggested earlier, this ongoing legal assistance—combined with the advocacy and on-the-ground activism of the service-based NGOs—has helped ensure that rights extended by the courts (or via public policy) have been translated into concrete action. This remains important, for even today, companies continue to flaunt laws protecting transnational workers. But unlike the not-so-distant past, it is becoming more and more difficult for these companies to evade their legal obligations—particularly when confronted by knowledgeable NGOs.³⁶ Indeed, for the most recent two years, the LPC's Foreign Workers' Labor Counseling Office—the largest and busiest labor counseling center for foreign workers in Korea—even claims a 100 percent success rate in resolving complaints regarding industrial accident compensation.³⁷ Ten years earlier, by contrast, few industrial accident claims were granted. Just as important, undocumented workers who bring claims are no longer subject to automatic deportation, since their complaints are no longer forwarded to immigration authorities.

³³ The attorney preparing the draft proposal for *Minbyun* is Kim Jin. According to Ms. Kim, the proposal by *Minbyun* differs from the government proposal in several respects. Specifically, the *Minbyun* proposal would permit foreign workers to work in any company with certain restrictions; in addition, it would allow a longer stay: two years initially, followed by three one-year extensions, for a total 5 years. After 5 years, moreover, foreign workers would receive a special labor permit, which would enable them to work in any type of industry (no restrictions on type of industry). Interview by author, June 11, 2002.

³⁴ Of this number, about 350, or 8.8 percent of all lawyers in Korea, are members of *Minbyun*. Even more impressive is the fact that members of *Minbyun* are not only asked to provide *pro bono* legal assistance, but are also required to pay monthly membership dues of W100,000 (about \$80).

³⁵ "Seoul Bar Association Offers Free Legal Assistance to Foreign Workers," *Korea Herald*, April 22, 1997.

³⁶ Many transnational migrant workers, however, are still not aware of their legal rights or of the many NGOs set up to assist them. Surprisingly, the same is true for the representatives of several countries whose citizens are working in Korea. During my interview with Albert Yankey, the Minister-Counselor for the Embassy of the Republic of Ghana, for example, the Minister described his frustration in helping two Ghanaian citizens receive compensation for industrial injuries they had suffered—one of whom had been severely scalded by molten plastic and, as a result, had been left completely disabled. All of his efforts to gain compensation—in his capacity as a representative of the Ghanaian government—failed. Mr. Yankey, however, was not aware that the workers were legally entitled to compensation, nor was he aware of the NGOs available to assist him or the workers directly (interview by author, June 12, 2002 in Seoul).

³⁷ This figure is for the years 1999 and 2000, and was given to me by Benedict Choe, General Secretary of the LPC (interview by author, June 19, 2001). Among NGOs providing labor counseling, however, none claimed a similar success rate. Still, all felt that the situation had clearly and significantly improved over the years.

Political Activism and the Expansion of Migrant Rights in Japan

In Japan, the social and political context is very different than in South Korea. In particular, Japan's experience with authoritarianism, to most of the Japanese citizenry of the 1980s and 1990s, was a distant memory. And while Japan has had its share of strong and effective social movements—e.g., the anti-pollution movements of the 1960s~1970s—Japanese civil society has tended toward a far more passive, more parochial position. This is reflected, in part, in the unwillingness of major Japanese labor unions to support transnational workers. The Japanese Trade Union Confederation (Japan's largest union with about 8 million members), or *Rengo*, for example, continues to oppose the importation of unskilled workers, and, in a manner that mimics official policy, argues that the “reception of migrant workers should be limited to business fields requiring professional knowledge, technology and proficiency.”³⁸ By contrast, in South Korea, most unions, including the Korean Confederation of Trade Unions (KCTU) and even the more conservative Federation of Korean Trade Unions (FKTU), publicly support a strongly progressive policy toward transnational workers (both unions, for example, supported the establishment of the guest worker system).

At the same time, there is a strong “internationalist” undercurrent running throughout Japanese society. According to Gurowitz (1999), this has served as a basis for many of the incremental changes that have occurred. As she puts it, “International norms mobilized by pro-immigrant actors have been important in this transition. Lawyers, NGOs, and local governments have linked the issues of immigration and integration—issues about exclusivity and uniqueness in Japan—to Japan's role in the world and what type of image it wishes to convey internationally” (p. 442). One of the most notable and concrete examples how international norms have been effectively mobilized by pro-immigrant actors is the case of Ana Bortz, a Brazilian journalist who was expelled from a jewelry store by the store owner. The store owner had previously banned all foreign customers from his store because of his concern about rising crime committed by “foreigners.” Bortz took the store owner to court for racial discrimination, and used the United Nation's International Convention on the Elimination of All Forms of Racial Discrimination, which Japan ratified in 1995, to argue her case. Surprisingly, Bortz won, and was awarded \$12,500 in damages. In making his ruling, the judge stated that the international convention was effective as domestic law on racial discrimination against foreigners in the absence of any specific and unequivocal law in Japan (Tsuda and Cornelius 2004, p. 467). While this case does not address the issue of worker rights, it nonetheless illustrates an important strategy for social change within Japan.

Indeed, Tsuda and Cornelius assert that, given continuing resistance by the Japanese government, “it is clear that immigrants themselves must demand their social and political rights through collective mobilization or through the courts” (ibid., p. 466). Collective mobilization and court action, however, are difficult tasks for transnational workers to achieve on their own. In South Korea, as I described above, it was the linkage with a network of domestically-based NGOs—some extremely powerful—that proved to be a key factor in the successful expansion of immigrant/migrant rights. In Japan, the network is much smaller and far less influential. Gurowitz (1999) estimates that there are about thirty NGOs working specifically on migrant

³⁸ The full statement by Kusano Tadayoshi, General Secretary of Rengo, can be found on the union's web site. Available at <http://www.jtuc-rengo.org/updates/before2003/statement/2003/2003nov14.html>.

worker rights; most of these are very small, with limited reach and influence.³⁹ The handful of Japanese labor unions that actively support transnational workers, for instance, have few members and scant funds. The Kanagawa City Union (KCU) has only 900 members, 630 of whom are foreign nationals. The Zentoitsu Workers Union (ZWU) is larger, with about 2,000 non-Japanese members, but still occupies a slightly run-down office with only one or two full-time staff members. Despite these limitations, both organizations have effectively promoted and protected the rights of transnational workers. Much of this has been done through individual labor counseling, but both unions also engage in strikes, “day-long actions,” and other forms of political protest.

NGOs fulfill a similar role with regard to labor counseling, but have also played a more general—and admittedly difficult to quantify—role in improving the public discourse related to transnational workers. As one observer put it,

Japanese activists, who gain expertise through their direct experiences with illegal foreign workers, become a rich source of alternative information on foreign workers for the mass media. Japanese journalists recognize them as experts on illegal foreign workers also because these Japanese activists publish newsletters and write articles and books. With their influence on the mass media, these Japanese activists make the information on the actual conditions of illegal workers more critical and comprehensible to the newspaper-reading public. In this way, these foreigner support groups [i.e., NGOs] contribute to and shape public discourse within ...Japanese society (speech by Susan Orpett Long, in Shipper 2002b).

In sum, it is fairly clear that political activism in Japan has had a smaller impact than in South Korea. Still, its impact has not been far from trivial, and there are signs that pro-immigrant actors will play an increasingly larger role in the future. This is evidenced in the growing prominence and legitimacy of NGOs in Japan, and in the increasing sophistication of their political activism, which strategically brings together domestic law, international norms, and broader concerns of social justice and democracy. This is not a perfect recipe for success, but it is one that has empowered pro-immigrant actors to challenge state policy and to exploit the government’s sensitivity to international criticism (Gurowitz 1999, p. 443).

Conclusion

There should be little surprise that political activism has seemingly played out very differently in South Korea and Japan. After all, the political and social context in which the protection and expansion of migrant/immigrant rights is taking place is very different between the two countries. At the same time, the process in both cases underscores some potentially important similarities. *First*, in both cases, the domestic legal system and courts have played a crucial role. Numerous legal decisions helped pro-immigrant actors establish a firm basis of social power, which they used to undermine and challenge anti-immigrant forces, most notably, key agencies within the state and their allies in the private sector (i.e., the KFSB in South Korea and big business and major unions in Japan). *Second*, despite heavy reliance on the courts, the

³⁹ In addition, there is an umbrella organization quite similar to the Joint Committee for Foreign Migrants in Korea, called the National Network in Solidarity with Migrant Workers (NNSMW). According to Yano Minami, in 2002, the NNSMW has 82 member organizations, plus about 250 individual members (interview by author, June 5, 2002).

experiences of both South Korea and Japan suggest that legal change is never enough. Court decisions (and long-established domestic laws) are often ignored or circumvented by more powerful actors. This makes political activism a particularly important strategy, for without the constant, even unremitting social and political pressure brought to bear by transnational workers, NGOs, and other pro-immigrant actors in Japan and South Korea, there is little doubt that the many supportive legal decisions rendered by the courts would have become almost entirely moot. *Third*, both South Korea and Japan illustrate the increasing importance of international norms and, more specifically, the importance of strategically linking international norms with political activism. In South Korea, this strategy was adopted in a general fashion by linking political protests with the discourse on human rights and social justice. Transnational workers from Nepal used this strategy with particular effectiveness in turning themselves from abstract, yet seemingly omnipotent threats to the purity of Korean society into vulnerable, but noble human rights victims. In Japan, the strategy was generally more concrete, as NGOs, civil rights lawyers, and transnational workers explicitly appealed to established international conventions, treaties and norms to directly challenge domestic laws. A *fourth* key similarity is the importance of the linkage between transnational workers and domestically-based NGOs. In both South Korea and Japan, transnational workers exercised agency, but language barriers, economic and political marginalization, and legal vulnerability prevented them from achieving significant victories on their own. Understanding the challenges they faced, however, transnational workers played an instrumental role in forging links with sympathetic domestic actors—churches, civic organizations, labor unions, and the like. Domestic actors, in turn, recognized the difficulty of overcoming deep-seated societal hostility regarding “outsiders”; entrenched—but uneven—bureaucratic, political, and institutional biases; and powerful economic interests. Accordingly, they focused their efforts, sometimes inward and sometimes outward, toward the creation of linkages and networks with likeminded actors.

The relatively strong conclusion I make about the role of political activism in the expansion of migrant/immigrant rights in Japan and South Korea is not without qualification. Indeed, it is important to emphasize that the expansion of rights is, by no means, a smooth, linear process. In South Korea, recent events have proven this to be the case. Beginning in the fall of 2003, for example, the government (in anticipation of the newly developed work permit system) announced a crackdown on transnational migrant workers. The crackdown followed the implementation of an “amnesty” program (originally announced in late 2002), which encouraged non-documented foreign workers to register with the government. Those who registered (and who had been in Korea more than four years) were permitted to work in Korea legally until October 31, 2003, but once the deadline passed, the Ministry of Justice announced that those workers who did not leave voluntarily would be deported *and* fined up to 20 million *won* (or jailed for up to three years). In response, at least two migrant workers committed suicide (“Korean Dream’ Turns into a Nightmare,” *Korea Times*, November 14, 2003) and countless other went into hiding, a situation that would likely lead to a diminution of their hard won rights. Only a small proportion of transnational workers left voluntarily. Moreover, the announcement itself encouraged Korean firms hiring transnational workers to withhold pay and compensation for work-related accidents.

Significantly, though, the new crackdown on transnational migrant workers was met, not only with passive resistance (i.e., attempts to elude authorities), but by active resistance on the part of the workers themselves and Korean NGOs. A few days after the government’s announcement, for example, thousands of Korean-Chinese migrant workers staged a rally in

front of Korea's Constitutional Court in Seoul; other migrant workers engaged in sit-ins (the largest lasting from November 2003 to February 2004) and a hunger strike, the latter of which led to a surprise visit by President Roh ("Roh Makes Surprise Visit to Protesting Workers," *Korea Times*, December 1, 2003). Hundreds of religious leaders and human rights supporters also staged protests calling on the government to bring an immediate end to the deportation policy (Unions Protest Migrant Worker Policy," *Korea Times*, November 24, 2003). While the protests did not result in a fundamental change in the government's policy, they did, at least, compel the government to extend the period of voluntary departure to March 1, 2004, and allow those who left voluntarily to return after six months under the auspices of the new work permit system.

Recent events, in this regard, highlight the continuing importance of political activism. For, in both South Korea and Japan, the expansion of immigrant/migrant rights is an incremental, hard fought process with unremitting "backward" pressure. Every gain, in other words, is subject to an equal, if not larger loss. The work permit system is a case in point. While certainly an improvement over the industrial trainee program, at base, the new system is designed to limit the rights and power of transnational migrant workers. Thus, if the workers and their allies in South Korea's civil society simply accept the work permit system as is, it is likely that the new system will devolve into a variant of the old trainee program. However, if the workers and their allies continue to exert pressure for change, the work permit system may prove to be a base for even greater progress.

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