

to ensure that any modification of the system of industrial relations is subject to in-depth consultations with the social partners and, in this specific case, to examine the questions raised in order to promote effectively the development of free and voluntary negotiations.

- (f) *On the subject of the contracting of cooperatives in 2005 to carry out tasks in contravention of the collective agreement, the Committee requests the Government to keep it informed of the final outcome of the judicial proceedings under way. The Committee brings to the Government's attention the principles contained in paragraphs 261 and 262 of the Digest of decisions and principles of the Freedom of Association Committee concerning cooperatives.*

CASE NO. 2602

INTERIM REPORT

**Complaint against the Government of the Republic of Korea
presented by**

- the Korean Metalworkers' Federation (KMWF)
- the Korean Confederation of Trade Unions (KCTU) and
- the International Metalworkers' Federation (IMF)

Allegations: The complainants allege that "illegal dispatch" workers, i.e. precarious workers in disguised employment relationships, in Hyundai Motors' Corporation (HMC) Ulsan, Asan and Jeonju plants, Hynix/Magnachip, Kiryung Electronics and KM&I, are effectively denied legal protection under the Trade Union and Labour Relations Adjustment Act (TULRAA) and are left unprotected vis-à-vis:

(1) recurring acts of anti-union discrimination, notably dismissals, aimed at thwarting their efforts to establish a union; (2) the consistent refusal of the employer to bargain as a result of which none of the unions representing those workers have succeeded in negotiating a collective bargaining agreement; (3) dismissals, imprisonment and compensation suits claiming exorbitant sums, for "obstruction of business" in case of industrial action; (4) physical assaults, court injunctions and imprisonment for "obstruction of business" aimed at preventing dismissed trade union leaders from re-entering the premises of the company to stage rallies or exercise representation functions

627. The complaint is contained in a communication from the Korean Metal Workers' Federation (KMWF), the Korean Confederation of Trade Unions (KCTU) and the International Metalworkers' Federation (IMF) dated 10 October 2007.
628. The Government replied in a communication dated 21 February 2008.
629. The Republic of Korea has not ratified either the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), or the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainants' allegations

630. In a communication dated 10 October 2007, the KMWF, the KCTU and the IMF allege that the Government has broadened the application of criminal "obstruction of business" provisions so as to victimize irregular workers (the complainant's use of the term "irregular workers" should be understood to mean contract labourers) trying to achieve bargaining with principal employers and forestall future union activity for the whole category of "illegal dispatch" workers in contravention of Conventions Nos 87 and 98. The complainants add that their complaint is based on irregular worker cases from 2004 to the present that occurred at Hyundai Motors' Corporation (HMC) Ulsan, Asan and Jeonju plants, at Hynix/Magnachip, at Kiryung Electronics, and at KM&I, which are all companies that have been illegally using "labour dispatch" disguised as subcontracting.
631. According to the complainants, "illegal dispatch" is a form of false subcontracting under which irregular workers work inside the principal employer's facilities alongside the regular employees of the principal employer, using the expendable materials, tools and machinery belonging to the principal employer, under the instructions of, and subordination to the principal employer, to produce products sold by the principal employer; however, they are paid less than 50–60 per cent the wages of regular employees. They add that subcontracting functions to disguise what is really an employment relationship. They refer to the example of one worker at the climate control section of Kiryung Electronics nominally employed by a subcontractor despite the fact that he had been performing for ten years the same tasks at the same section of the same factory under the supervision of the same individual, a regular worker of the company. They also indicate that subcontractors nominally employing the subcontracted workers periodically change but the workers stay the same; they refer to the example of the above worker in Kiryung Electronics who had been nominally employed by seven different subcontractors while he kept performing the same work for the same company; whenever the nominal employer was changed, the worker did not have to file any forms or sign anything but was automatically transferred to the new subcontractor. Furthermore, they indicate that HMC Asan restructured its subcontractors in May 2002 and May 2003 in such a way as to evenly distribute the irregular workers (in the final assembly, chassis and engine lines) nominally employed by the subcontractors (about 80 irregular workers per subcontractor); according to the complainant, such a tight control over subcontractor workforce and subcontracted workers' job assignments is not possible in a bona fide commercial supply contract relationship between two autonomous enterprises. In Hynix/Magnachip, while the formal contract signed with the subcontractors specified that payments would be calculated by subcontracted production volume, in the "Breakdown of payments to subcontractors" bills, calculations were based on a per head count of the subcontracted workers and their wage costs, suggesting that the subcontractor was not a distinct enterprise as alleged, but merely a contracted middleman manager passing along wages to the irregular workers. For HMC, the principal employer actually sends a directive for wage rates (wages of subcontracted workers) down to all the subcontractors, and subcontractors pay the irregular workers accordingly; thus, HMC exercises detailed and explicit authority in deciding subcontracted workers' wage levels. At the KM&I Kunsan Plant, only seven workers out of a total of 220

are regular, permanent workers and all the rest are organized into four false subcontractors. The complainants attach a detailed table detailing the principal employer's control over irregular workers' hours of work, supervision at work, assignment of tasks, etc., in the enterprises concerned by this complaint.

- 632.** According to the complainants, as a result of the above, even the Ministry of Labour ruled that the subcontracting firms were actually "illegal dispatch" disguised as subcontracting in the HMC Asan, Ulsan and Jeonju plants, Hynix/Magnachip and Kiryung Electronics (22 September 2004 ruling on eight subcontracting firms in the HMC Asan plant; 16 December 2004 ruling on 101 subcontracting firms operating in the HMC Ulsan plant and 12 subcontracting firms operating in the HMC Jeonju plant; 25 July 2005 ruling on subcontractors inside Hynix/Magnachip; 5 August 2005 ruling on subcontractor in Kiryung Electronics). The complainants explain that the Act on the Protection of Dispatch Workers made this form of irregular employment legal for 26 occupational categories but the workers in this complaint do not fall under any of the 26 categories. Thus, under section 6(3) of the Act on the Protection of Dispatch Workers, they should have been regularized as soon as it was found that they had been illegally employed for over two years as dispatch labour. However, the Public Prosecutor has been trying to overturn the Labour Ministry's ruling and characterize the false subcontracting as a general commercial supply relationship between two autonomous and distinct enterprises.
- 633.** The complainants add that, in the absence of regularization, the Trade Union and Labour Relations Adjustment Act (TULRAA) protections concerning union formation, bargaining and collective action are not, in reality, applied to "illegal dispatch" workers who attempt to unionize because these workers see the principal employer as the party to labour relations and bargaining whereas the TULRAA does not recognize principal employers as a party to labour relations when it comes to subcontracted workers. Thus, almost all their union activities can be labelled "illegal" (directed at the principal employer, an "unrelated" party) and allow for the full brunt of criminal penalties connected to application of the "obstruction of business" clause. The complainants consider that, through its tacit support for the principal employers, the Government has allowed them to evade collective bargaining with the "illegal dispatch" workers and has given them free rein to mobilize all resources so as to victimize irregular worker union members on a daily basis.
- 634.** According to the complainants, this tacit support is the reason why the usual reaction of the employer to the establishment of trade unions representing "illegal dispatch" workers in the metal sector consists in dismissals of the trade union leaders and members and refusal to negotiate under false pretexts. The complainants give examples of pressure on subcontracted workers to leave the union pursuant to its establishment in Hynix/Magnachip (after union establishment in October 2004, all unionized irregular workers were dismissed through the non-renewal of their contracts with the subcontractors as well as the termination of the contract between Hynix/Magnachip and the subcontractor on 31 December 2004; those workers who did not join had their contracts renewed and those who withdrew from the union were rehired) and Kiryung Electronics (after the union's establishment on 5 July 2005, forms of resignation from the union were distributed to staff on 7 July and subsequent one-on-one interviews were carried out with those workers who remained members, so as to obtain their withdrawal from the union; subsequent termination of employment of union members on 31 July 2005; afterwards, whenever contract renewal time came up, the employer terminated union members' employment). They add that, in HMC, the principal employer includes a clause in the supply contract that, if a labour problem emerges at the false subcontractor, the supply contract will be terminated.
- 635.** Furthermore, the complainants refer to the consistent refusal of the principal employer to negotiate on the ground that it is not the workers' direct employer and is therefore not

obligated to bargain with the union. According to the complainants, in addition to the principal employer, the subcontractors, who sometimes amount to hundreds (101 in the HMC Ulsan plant), also refuse to negotiate arguing that they do not have effective decision-making capacity over terms and conditions of employment in the plant. The complainants comment that it is not reasonable for the financially-strapped union of low-paid, insecure workers with no full-time paid union officials in HMC Ulsan to chase after so many false subcontracting firms for conclusion of yearly wage agreements; indeed, in its three years of existence it has yet to conclude even one collective bargaining agreement. The complainants add that, on other occasions, for example in HMC Asan, faced with the prospect of legal collective action as a result of their refusals, the subcontractors changed their tactics, arguing that they constitute autonomous enterprises, thereby refusing to negotiate as a group, and insisting in meeting the trade union committee on the same day at different locations (office space leased especially for this purpose outside the factory even though the subcontractors do not really work out of these offices). After undermining the possibility of bargaining, the subcontractors would unilaterally announce wage hikes without having consulted with the union. Another problem facing unions is that subcontractors are often changed while the subcontracted workforce remains the same; however, because this invalidates agreements concluded with, and talks with, the former subcontractor, the “illegal dispatch” workers’ unions need to be able to have stable bargaining relations with the principal employer.

- 636.** The complainants add that, faced with the employer’s refusal to bargain, the trade unions of “illegal dispatch” workers have no option but to stage industrial action against the principal employer, claiming recognition for collective bargaining purposes from the party they consider as their real employer under a disguised employment relationship. Moreover, such action can only take place at the principal employer’s factory. However, because their action is seen as directed at an “unrelated party” it is branded as illegal, giving rise to the dismissal of trade union leaders and members. They refer among other things to the dismissal of three workers at HMC Asan plant in February and July 2005 (Shin, Myeong-Kyun; Choi, Dae-Yeob, Son, Jin), six workers in HMC Ulsan in September 2005, four workers in HMC Jeonju in September 2005 (Kim, Hyo-Chan; Kim, Dae-Vto; Oh, Hyeon-ho; Seo, Inho), 200 workers in Kiryung Electronics in 2006 and 180 workers in Hynix/Magnachip in December 2004 and the application of section 314 of the Criminal Code on “obstruction of business” (see below). Moreover, they refer to a lengthy lockout in KM&I, in response to a partial, two-hour strike, effectively putting the “illegal dispatch” workers in a position similar to dismissal.
- 637.** The complainants allege that “obstruction of business” provisions are systematically applied to victimize and intimidate “illegal dispatch” workers who resort to strikes. Thus, workers are punished under “obstruction of business” provisions (section 314 of the Criminal Code) without having carried out any violent acts, simply for having exercised a right to which they claim entitlement as regular workers. The relevant sanctions include imprisonment, provisional seizure of assets and “compensation claims” for exorbitant amounts, in retaliation for the attempt to stage industrial action. The complainants refer in particular to the imprisonment of Kaon, Sujeong; Oh, Ji Hwan and Kim, Jun-Gyu from HMC Asan (13 July 2006); Choi, Byeong-Seung from HMC Ulsan (14 August 2006), Park, Jeong-Hun; Jo, Dae-ik, and Jeong, Gyeong-Jin from HMC HYSCO (3 November 2005), as well as compensation suits filed by the principal employer (in 2006 only, in HMC Jeonju, courts provisionally seized 1 million won of assets each for Mm, Tae-Wfen, and Kim, Dong-Seob; 5.4 billion won levied against 40 persons in Kiryung Electronics while the company withdrew compensation suits against union members who submitted resignation notices; 500 million won compensation claimed against 37 union members in KM&I).

- 638.** According to the complainants, once compensation suits have been filed against certain union members, they are used by the main employer as a threat to obtain the withdrawal of unfair dismissal suits filed by other union members (under threat of suing them for exorbitant amounts) or to obtain their withdrawal from the union. Thus, the complainants allege that, at Hynix/Magnachip, numerous testimonies by irregular workers describe the following process: management files a compensation claim against targeted individual union members, and then visits other dismissed union members with the message that, if they do not withdraw from the union, they will be not only unemployed but sued for “vast” sums of compensation money. At Kiryung Electronics, the principal employer has filed compensation claims against individual union members totalling 115.2 billion won; in the process, the employer told the workers that if they signed a “resignation” form withdrawing their claim of unfair dismissal, the compensation suit against them would be withdrawn. Many workers signed such “resignations” giving up their unfair dismissal suit under duress (thereby decreasing the overall total of the money claimed by the employer). After that, the principal employer filed further compensation claims against the dismissed workers who had not signed resignations. At HMC, the principal employer lodged compensation claims for production losses against individual irregular workers who refused overtime work, even though forcing people to work overtime is a form of forced labour. The management threatened the irregular workers in the Press-5 department at the Ulsan plant with 540 million won of compensation damages for refusing to work the non-obligatory “holiday work” shift (16 January 2005). The idea appears to be intimidation of union members who exercise normal workers’ rights.
- 639.** As a consequence, according to the complainants, even the most poorly paid, insecure workers in the most vulnerable positions are systematically subject to the full force of criminal “obstruction of business”, imprisonment, provisional seizure of assets, and “compensation claims”, simply because they tried to promote bargaining with the principal employer. Paradoxically, it is the low-wage insecure workers who end up paying compensation money to top five conglomerates like HMC with factories all over the world, for production losses relating to strikes as well as other costs (wages of security guards hired to physically prevent the dismissed union activists seeking reinstatement from ever setting foot in the plant again). The complainants attach two tables with allegations of discriminatory victimization for union activity in 2005 and 2006. The tables are reproduced in the appendix.
- 640.** Finally, according to the complainants, once the core union activists are dismissed in retaliation for staging industrial action, the principal employer seeks court injunctions to prevent their entry into the factory to meet fellow union members, hold rallies or exercise union representation activities. Suspecting the possibility of “obstruction of business”, the courts readily grant such injunctions, on the basis of an expanded interpretation of “obstruction of business” provisions, even in a case where the Regional Labour Relations Commission had ordered the reinstatement of a trade union leader in HMC Asan.
- 641.** Thus, on grounds of violating court injunctions prohibiting entry into the HMC Asan plant, Kwon, Sujeong (former union president and founding member), Oh, Ji Hwan (former general secretary of the union), and Kim, Jun-Gyu (former union auditor) were convicted and sentenced for criminal “obstruction of business” to imprisonment for eight months, six months, and six months, respectively. They began serving their sentences on 13 July 2006. Similarly, the HMC Ulsan Irregular Workers’ Union general secretary Choi, Byeong-seung, was arrested on 14 August 2006 and imprisoned.
- 642.** The complainants allege that once the courts issue injunctions prohibiting rallies and entry into the premises, the principal employer hires extra security forces who physically assault dismissed workers trying to enter the factory (the security guards see the dismissed workers as completely unrelated persons obstructing business) and this aggravates the

situation, inevitably leading to clashes. The complainants refer in this framework to acts of violence during rallies and sit-ins in HMC Ulsan and Asan and Kiryung Electronics, including physical assaults, abduction of An Ghi-ho, President of the Ulsan Irregular Workers' Union by security guards on 13 February 2005 and Kwon Soo-jeon, newly-elected President of the HMC subcontracted workers' union in HMC Asan, on 7 September 2005 (in the process breaking the ribs of a union member who tried to stop the vehicle with his body) to remove them from the factory premises. Kwon Soo-jeon was subsequently abandoned in an isolated area far away from HMC from where she had to make her way back, whereas An Ghi-ho was taken to the police station; the latter proceeded to arrest him without making any inquiries as to the circumstances of his abduction, even though it is illegal in the Republic of Korea to abduct and lock up a person. The complainants also allege an incident where 200 members of the "We-Love-Kiryung-Electronics" group organized by management together with 30 thugs hired by management entered the union sit-in tent, tore everything apart and fired water hoses on the women workers for over four hours. The women workers were literally flushed outside of the company gate. The group together with the thugs then abducted the women and dragged them inside the factory, locked the factory gates and proceeded to physically menace, assault and humiliate them.

643. What is most disturbing, according to the complainants, is that this attitude toward all-out physical force against irregular workers who unionize has become quite ordinary. According to the complainants, the expanded interpretation and application of "obstruction of business" provisions is aimed at preventing unions from taking root and keeping union leaders separated from the union membership whether by court injunction or imprisonment, thus blocking normal union activities such as rallies through court injunctions.

B. The Government's reply

644. In a communication dated 21 February 2008, the Government indicates in the first place that this complaint should not have been classified as urgent since it does not involve "human life or personal freedom, or new or changing conditions affecting the freedom of action of a trade union movement as a whole", or a "continuing state of emergency" or the "dissolution of an organization" as indicated in the procedure of the Committee on Freedom of Association [*Digest of decisions and principles of the Freedom of Association Committee*, fifth edition, 2006, Annex I, para. 54]. Moreover, the Committee on Freedom of Association does not have authority to decide whether the cases brought before it constitute "illegal dispatch" or who is the actual employer. The Government emphasizes that the bodies with competence to decide the issue of whether the workers in question are "illegal dispatch" labour are the courts after taking into account all the facts. Furthermore, the Committee does not have competence to give an opinion on the type of characteristics of the industrial relations system of the country [*Digest*, op. cit., Annex I, para. 23]. Finally, the Government indicates that certain of the incidents alleged to have occurred go as far back as 2002, and recalls that, according to the procedure of the Committee on Freedom of Association, "while no formal rules fixing any particular period of prescription are embodied in the procedure for the examination of complaints, it may be difficult – if not impossible – for a government to detail allegations regarding matters which occurred a long time ago," (*Digest*, op. cit., Annex I, para. 23) The Government adds that there are also limitations in finding what actually happened at each workplace at that time. Hence, it cannot give responses concerning specific details despite its maximum efforts and therefore seeks the Committee's kind understanding.
645. The Government adds that subcontracting has recently increased as companies contract out parts of their business to subcontractors. The latter carry out their activities or provide their services outside or inside the outsourcing companies. The subcontracting cases brought up

by the complainant are all in-factory subcontracting in which the subcontracted work is conducted inside the outsourcing company's workplace because of the characteristics of the work process.

- 646.** The Government adds that most of the companies involved in in-factory subcontracting in the Republic of Korea work out win-win solutions through labour-management cooperation or autonomous negotiations. The workplaces mentioned in the complaint, however, have failed to reach a smooth settlement and entered into prolonged disputes. In these cases, the Ministry of Labour, after having instructed the employers concerned to correct certain doings which were not in conformity with the Act on the Protection of Dispatch Workers, and then deciding that the employers' measures were not sufficient, reported or sent the cases to the Public Prosecutor's Office. After examining and analysing the contents of subcontracting, the element of subordination and the relevant court precedents, the Public Prosecutor decided to indict Kiryung Electronics for violations of the Worker Dispatch Act but dropped the charges against the other workplaces. The Government attaches a table detailing the grounds for the Public Prosecutor's decision (party with competence to make personnel decisions, independence in business management, carrying out employer responsibility required by law, overseeing work, etc.). In addition to cases where the findings of the Public Prosecutor were unequivocal (HMC Ulsan and Hynix/Magnachip), the Public Prosecutor also found that "although it may be possible to see the subcontracted company workers as subject to KM&I in terms of labour management (a characteristic of workers dispatch), ... given the principle that, if there is any doubt, the defendant should be presumed innocent under criminal laws, it cannot be conclusively said that KM&I and its subcontracted companies' workers have an employer-employee relationship". Moreover, the Public Prosecutor found with regard to Hyundai HYSCO that "although the subcontracting has some characteristics of worker dispatch, it cannot be definitely said that it is a sort of worker dispatch, given the comprehensive contents of the contract, the method of calculating remuneration, the withholding of income tax at source, the payment of health insurance premiums, the personnel right, etc.". The Government adds that the appeals filed by the unions against the Public Prosecutor's decisions not to prosecute were dismissed at the final instance.
- 647.** The Government adds that a parallel system exists under which workers claiming to be victimized can directly bring a civil suit to the courts. In the case of the HMC Asan plant, the court ruled in June 2007 that seven dismissed workers had been "illegal dispatch" labour. Appeals are pending on this decision. Another appeal is pending against a decision of the Seoul Administrative Court rejecting an administrative suit against HMC Ulsan for unfair dismissal and finding that the subcontracting was legitimate.
- 648.** The Government also explains in detail the legislative and administrative steps it has taken to eliminate "illegal dispatch" practices, including through the adoption of the Act on the Protection of Dispatch Workers and the elaboration of criteria for discerning legitimate subcontracting from "illegal dispatch". In particular, a joint task force team between the Ministry of Labour and the Ministry of Justice delivered on 13 August 2007 the "Guidelines for Administrative Guidance of Workplaces" setting inspection standards. According to these standards, a business which intends to introduce in-factory subcontracting should have sufficient consultation with the trade union or workers' representative in advance because in-factory subcontracting could influence existing workers' employment and working conditions. A business involved in in-factory subcontracting but not subject to labour inspection, should conduct self-inspection to see whether its case constitutes "illegal dispatch" or not, and make improvements voluntarily. If businesses involved in in-factory subcontracting are subject to labour inspection by local labour officers, they are ordered to correct any violation of the law by the labour inspectors. The Government also refers to measures taken to build the capacity of the

labour inspectorate, improve procedures for redressing discrimination against dispatched workers, and intensify punishment for employers engaging in “illegal dispatch”.

- 649.** The Government emphasizes that the protection of freedom of association under TULRAA applies to subcontracted workers just like other workers; subcontracted workers are therefore free to organize a trade union, engage in collective bargaining and take collective action. With regard to the allegations concerning acts of anti-union discrimination in Kiryung Electronics, the Government indicates that the union filed a complaint with the Regional Labour Office but the Ministry could not find any evidence after investigation, and therefore sent the case to the Public Prosecutor’s Office on 10 March 2006 informing that “no charge” was found. In addition, the union lodged a suit for unfair dismissal from January to August 2006, but the Administrative Court and High Court dismissed all the cases and an appeal is pending against this decision at the Supreme Court.
- 650.** With regard to the allegations of refusal to bargain collectively by the employer (both the principal employer and the subcontractor), the Government indicates that the choice of collective bargaining structures is fully left to the labour and management concerned. The issue of whether a subcontracting company is under an obligation to negotiate with subcontracted workers should be decided judicially.
- 651.** On the issue of collective action staged by the subcontracted workers, the Government indicates that the subcontracted workers took collective action inside and outside the workplace of the subcontracting company, unilaterally demanding that this company engage in collective bargaining – an issue which should at best be decided by the courts. It adds that Shin, Myeong-Kyun, filed a suit against the subcontractor for unfair dismissal after being dismissed for leaving the workplace without permission, posting illegal notices, being absent from work without permission, refusing to work overtime and leading the refusal. The case was recognized as illegal dismissal because the union’s collective action was considered legitimate in terms of its subject, procedures and objectives, and it was unfair to dismiss the worker for participating in the union’s legitimate industrial action. An appeal filed by the employer was dismissed, enabling the dismissed worker to be reinstated. This is, according to the Government, an example of a case where breaches of workers’ rights are redressed through remedial procedures.
- 652.** With regard to the six workers dismissed in HMC Ulsan, according to the Government, they filed suits for unfair dismissals, four of which were rejected because the workers concerned were acknowledged as responsible for their dismissals, and two were upheld because there was no ground to claim that the workers had led the refusal to work overtime and they simply participated in occupying the subcontracting company’s office; dismissal was considered in their case as too harsh a punishment. The Government adds that in 2005 and 2006, ten workers at the HMC Asan plant filed a suit for unfair dismissal. All of them won at the Regional Labour Relations Commission and the National Labour Relations Commission. However, one case was closed after agreement between the parties and the other nine were brought to the Administrative Court and found to constitute fair dismissals. The nine workers filed an appeal with the High Court but the previous decision was upheld. Six of them decided not to file any further appeal and the appeals filed by the remaining three are now pending before the Supreme Court.
- 653.** With regard to the issue of application of “obstruction of business” provisions, the Government indicates that measures were taken against striking workers according to the laws only in relation to illegal acts such as violence or destruction, which cannot be given immunity from civil and criminal liability under “obstruction of business” provisions. This is essential in order to balance unions’ rights with the employer’s property rights. The unique feature of industrial action in the Republic of Korea is that it tends to take the form of the aggressive occupation of a workplace rather than a strike, i.e. a passive refusal to

work. The occupation of a workplace, disregarding or infringing employers' right to control facilities and to supervise other workers who want to work has been judged illegitimate and has been criticized by the Committee on Freedom of association in paragraph 546 of the *Digest*, op. cit. The Government also emphasizes that in most of the cases illustrated in the complaint, violence occurred repeatedly when industrial relations worsened over an extremely long period. Thus, the allegation that workers were imprisoned just because they had attempted to negotiate with the subcontracting company is untrue according to the Government. The subcontracted workers' unions violated the laws as they occupied the companies' workplaces and conducted collective action for a long period, unilaterally insisting that their collective bargaining partner was not their employer but their subcontracting company.

- 654.** In addition, in some of the workplaces the subcontracting companies asked the courts to issue provisional eviction orders and restraining injunctions against the leaders of the subcontracted company's workers' unions and this was accepted by the courts. However, in most of these cases, the subcontracted company's workers' unions occupied the subcontracting companies' workplaces and staged sit-in protests or committed acts of violence and destruction going far beyond the scope of legitimate union activities. These cases are judged individually by the independent courts on the basis of the law.
- 655.** The Government provides excerpts of the Cheongju District Court decision on incidents, involving violence staged by subcontracted workers in Hynix/Magnachip (attacks on the police guarding the company building with wood panels, stones, fire extinguishers, etc. stabbing and poking them with pickets and banner poles and fisting and kicking them, causing the injury of 16 policemen; moreover, throwing charcoal briquettes at the riot police guarding the Cheongju Regional Labour Office, dragging some police officers out of the front hall, physically abusing them with fists and feet, and wielding wood bars at them, injuring another eight policemen), as a result of which the defendants were convicted to imprisonment and fines for "obstruction of business" (court decision attached by the Government).
- 656.** Concerning damage claims, the Government indicates that Kiryung Electronics filed four cases against 86 union members in the Seoul Central District Court, claiming damages of over 5 billion won in total, between September 2005 and March 2006. Among them, one case (eight union members) was dismissed because the rank-and-file union members could not be seen as responsible for the damages and another case (12 union members) was dismissed because it could not be conclusively said that the damage had actually occurred. An appeal is currently pending against these decisions before the High Court. Another case (14 union members) was withdrawn in July 2007. A fourth case is pending in court. Moreover, Hynix/Magnachip filed a suit seeking compensation for damages and the provisional seizure of properties, for the destruction of property, "obstruction of business", etc., but withdrew it in July 2007. The Government emphasizes that the suits were filed, not because the subcontracting companies avoided collective bargaining on grounds that they were not the employer, but because property was damaged during the collective action of the subcontracted workers.
- 657.** With regard to the specific allegations of imprisonment for "obstruction of business", the Government indicates that Oh Ji Hwan and other subcontracted workers at the HMC Asan plant filed a suit for unfair labour practices and unfair dismissal after they were dismissed because of their poor work attitude, such as absence without permission, occupying the subcontracting company and suppliers' offices and leading an unfair refusal to work overtime. Their complaints were dismissed because HMC could not be acknowledged as a party (defendant) to the case.

- 658.** With regard to the allegations of abduction of An Ghi-ho, President of the Ulsan Irregular Workers' Union, on 13 February 2005 to remove him from the HMC factory premises and bring him to the police station, the Government indicates that by that time, HMC had already sought a provisional eviction order or restraining injunction against 90 union members, including An Ghi-Ho. On the same day, the union members staged a sit-in protest inside the factory, demanding to switch the status of subcontracted company workers to a regular one. During the protest, 30 or so security guards evicted An Ghi-ho from the company premises at around 12.04 p.m.. An Ghi-Ho, for whom an arrest warrant had already been issued because of the occupation of company premises, was arrested by the police at the entrance and investigated. With regard to the alleged abduction of Kwon Soo-jeon, president of the subcontracted company workers' union of HMC in Asan, on 7 September 2005, the Government indicates that, on that day, 70 day-shift workers of the subcontracted company workers' union held a rally from 12.30 p.m. to 13.30 p.m. and, after that rally, they attempted to occupy the seats and interior production lines. But they failed to do so due to the subcontracting company's blockage. Although there was a clash between the union and the subcontracting company's management during the standoff, it is difficult to find out what specific damage was done and its extent. Finally, according to the Government, even though it appears that a group called "We-Love-Kiryung-Electronics" did exist, no evidence was found that the employer had organized it. The members of the group were found to be facility management staff that the company had formally hired under a service contract to protect its facilities after the union occupied by force the production lines for about 50 days from 24 August to 17 October 2005. The Government indicates that the company argues that water cannons were used to protect company facilities when dozens of union members tried to pull down the main gate by fastening a rope to it and pulling it to the ground; yet the water cannons were not fired on protesters. The Government emphasizes that the allegation that the workers were unfavourably treated or physically abused just because of their engagement in union activities is not true; the incidents happened amid an atmosphere where violence was prevalent as labour and management were blaming each other and their feelings against each other were worsening.
- 659.** The Government forwards in its reply comments by the Korean Employers' Federation, which indicate the following: (i) the complaint is based on a misconception of the employment relationship of the subcontracted workers; they are not irregular employees of the subcontracting company, since there is no employment relationship with that company; they are in fact employees of a subcontractor; (ii) these workers face no restraint in exercising their trade union rights, the problem being that the employees demanded collective bargaining with the contractors, who were not the bargaining counterparties and therefore refused to negotiate; (iii) the courts have ruled that, as a collective agreement is to provide for the working conditions of the workers who are in an employment relationship with the employer party to the agreement, if there is no such employment relationship between an employer and some workers, the employer has no obligation to conduct collective bargaining with the workers; (iv) unlawful actions of the subcontracted workers' unions are usually left unchecked because of restraint on the part of the police under the present Participatory Administration; however, faced with illegal and violent acts by the unions (demand for collective bargaining and direct employment with the principal employer, breaking in plants, stealing of documents, destruction of property, assaults, throwing of Molotov cocktails, attempted self-burning, etc.), the companies had no choice but to use their security service in order to minimize the loss to their properties; in the course, physical clashes were unavoidable between the unionists and the employers' employees and, in fact, it was the latter who suffered more injuries; (v) the allegations of unfair dismissal are false given that a subcontracting agreement can be concluded, renewed or terminated by the subcontractor under the principle of private autonomy; (vi) on the allegation that one worker had worked under ten different subcontractors in the same post, it is indicated that whether a new subcontractor will retain the workforce of the previous

subcontractor or not is left to the autonomous decision of the parties under an agreement on business transfer or any other agreement on workforce retention; meanwhile, the unions are not justified in resorting to unlawful acts involving violence despite having access to legal remedial processes; (vii) court rulings on “obstruction of business” with regard to the masterminds of the illegal strikes are a natural outcome of the unions’ overtly unlawful acts and have no relation to discrimination against subcontracted workers; unions’ violent acts should be punished at least in the same way as when committed by ordinary persons; furthermore, the court rulings should be regarded as reasonable, considering that they were aimed to protect an important interest of the contractors by preventing property loss valued at tens of billions of won; (viii) according to the decisions made by the courts and the Government, the direct employment relationship between a contractor and a subcontractor’s employees is recognized only if and when the subcontractor is identified as an agency for labour management, is simply a nominal employer with no individuality as an independent business and is a disguised provider of workers under a fraudulent agreement on subcontracting; the subcontracting agreements referred to in the complaint were found to be properly concluded and implemented in HMC, KM&I and Hynix-Magnachip, in accordance with the principle of private autonomy.

C. The Committee’s conclusions

- 660.** *The Committee notes that the present case concerns allegations that “illegal dispatch” workers, i.e. precarious workers in disguised employment relationships, in HMC Ulsan, Asan and Jeonju plants, Hynix/Magnachip, Kiryung Electronics and KM&I, are effectively denied legal protection under the TULRAA and are left unprotected vis-à-vis: (1) recurring acts of anti-union discrimination, notably dismissals, aimed at thwarting their efforts to establish a union; (2) the consistent refusal of the employer to bargain as a result of which none of the unions representing those workers have succeeded in negotiating a collective bargaining agreement; (3) dismissals, imprisonment and compensation suits claiming exorbitant sums for “obstruction of business” in case of industrial action; (4) physical assaults, court injunctions and imprisonment for “obstruction of business” aimed at preventing dismissed trade union leaders from re-entering the premises of the company to stage rallies or exercise representation functions.*
- 661.** *The Committee observes certain similarities between the allegations in this case and the allegations brought to its attention in Case No. 1865 by the International Federation of Building and Wood Workers (IFBWW) with regard to the criminal prosecution and imprisonment of officials of the Korea Federation of Construction Industry Trade Union (KFCITU) for having negotiated collectively on behalf of subcontracted workers in the construction sector. At the time, the Committee had emphasized the significance of the right to organize and bargain collectively for the precarious and particularly vulnerable construction workers given the complex bargaining context, involving several layers of subcontractors over which only the main contractor had a dominant position and had regretted the court decisions that had concluded that collective agreements signed with the main contractors did not apply to workers hired by subcontractors. The Committee requested the Government to undertake further efforts for the promotion of free and voluntary collective bargaining over terms and conditions of employment in the construction sector covering, in particular, the vulnerable “daily” workers, including through building negotiating capacities of employers and workers in that sector [346th Report, paras 775 and 803].*
- 662.** *With regard to the Government’s comment as to the grounds on which this case might be seen as urgent, the Committee recalls that the complainants, the Government and the Korean Employers’ Federation refer to widespread acts of violence and the imprisonment of trade union leaders. The Committee considers therefore that this case concerns matters involving personal freedom within the meaning of paragraph 54 of its procedures [Digest*

of decisions and principles of the Freedom of Association Committee, fifth edition, 2006, Annex I], also referred to by the Government.

- 663.** *With regard to the Government's comments on the dated nature of some of the allegations, which go according to the Government as far back as 2002, the Committee has not observed any specific allegations dating back to 2002, other than a general reference to the HMC's restructuring of its subcontractors, and in any event does not consider that events taking place six years ago would render it impossible for the Government to reply in detail. This being said, the Committee has fully borne in mind the difficulty that the Government has indicated it has encountered in providing detailed replies to certain allegations.*
- 664.** *The Committee notes that the issue underlying this case concerns "illegal dispatch" workers who, according to the complainants, are denied the effective exercise of freedom of association and collective bargaining rights. The Committee notes that, according to the complainants: (i) "illegal dispatch" is a form of false subcontracting which functions to disguise what is in reality an employment relationship; (ii) the Ministry of Labour ruled that subcontracting in the HMC Asan, Ulsan and Jeonju plants, Hynix/Magnachip and Kiryung Electronics, actually consisted in a disguised employment relationship with the principal employer; (iii) the Act on the Protection of Dispatch Workers made "dispatch labour" legal for 26 occupational categories but the workers in this complaint do not fall under any of the 26 categories; thus, under section 6(3) of the Act on the Protection of Dispatch Workers, they should have been regularized as soon as it was found that they had been illegally employed for over two years as "dispatch labour"; however, the Public Prosecutor has been trying to overturn the Labour Ministry's ruling to this effect and characterize the false subcontracting as a general commercial supply relationship between two autonomous and distinct enterprises.*
- 665.** *The Committee notes that, according to the Government: (i) the Committee does not have authority to decide whether the cases brought before it constitute "illegal dispatch" or who is the actual employer, these being matters for the courts to decide on the basis of applicable legislation, in particular, the Act on the Protection of Dispatch Workers; (ii) several measures have been taken in response to an increase in subcontracting practices, to ensure that dispatch workers are protected, including through the reinforcement of the labour inspectorate; notably, in this framework, a joint task force team between the Ministry of Labour and the Ministry of Justice delivered on 13 August 2007 the "Guidelines for Administrative Guidance of Workplaces"; (iii) the Ministry of Labour reported or sent several cases of companies involved in in-factory subcontracting to the Public Prosecutor's Office after having observed violations of the Act on the Protection of Dispatch Workers; nevertheless, after a careful examination of the contents of subcontracting, the element of subordination and the relevant court precedents, the Public Prosecutor decided to indict Kiryung Electronics but dropped the charges against the other workplaces; this decision has been upheld on appeal at the final instance; (v) several civil suits are pending before the courts with regard to "illegal dispatch" allegations in HMC Asan (the court ruled in the first instance that seven dismissed workers had been "illegal dispatch" labour) and HMC Ulsan (the court found the subcontracting legitimate in the first instance).*
- 666.** *The Committee considers that it is not in a position to reach a conclusion as to whether a particular situation constitutes "illegal dispatch" or not. However, the Committee also observes that it is within its competence to examine alleged obstacles to the effective exercise of the right to organize and collective bargaining by subcontracted workers in the metal sector. Moreover, the Committee recalls that Paragraph 18 of the Employment Relationship Recommendation, 2006 (No. 198), provides that "[a]s part of the national policy, Members should promote the role of collective bargaining and social dialogue as a*

means, among others, of finding solutions to questions related to the scope of the employment relationship at the national level". It is within this spirit that the Committee will pursue its examination of the present complaint.

Right to organize without discrimination

667. The Committee notes that, according to the complainants, the precarious and vulnerable status of "illegal dispatch" workers prevents them in reality from effectively exercising the right to organize and engage in collective bargaining. In the first place, according to the complainants, the usual reaction of employers in the metal sector to the establishment of trade unions representing subcontracted workers, consists in dismissals of the trade union leaders and members. The complainants give examples of pressure on subcontracted workers to leave the union pursuant to its establishment in Hynix/Magnachip (after union establishment in October 2004, all contract workers were dismissed through the non-renewal of their contracts with the subcontractor as well as the termination of the contract between Hynix/Magnachip and the subcontractor on 31 December 2004; those workers who did not join had their contracts renewed and those who withdrew from the union were rehired; it appears that, in total, 180 workers were dismissed) and Kiryung Electronics (after the union's establishment on 5 July 2005, resignation forms for leaving the union were distributed to staff on 7 July and subsequent one-on-one interviews were carried out with those workers who remained members, so as to obtain their withdrawal from the union; subsequent termination of employment of union members on 31 July 2005; afterwards, whenever contract renewal time came up, the employer terminated union members' employment; it appears that, in total, 200 workers were dismissed). They add that HMC typically includes a clause in its supply contracts to the effect that, if a labour problem emerges at the false subcontractor, the supply contract will be terminated and, therefore, all the subcontracted workers will be effectively dismissed.
668. The Committee notes that, according to the Government, the protection of freedom of association under TULRAA applies equally to subcontracted workers just like other workers; subcontracted workers are therefore free to organize a trade union, engage in collective bargaining and take collective action. With regard to the allegations concerning acts of anti-union discrimination in Kiryung Electronics, the Committee observes that, according to the Government, no evidence of such acts was found after investigations by the Regional Labour Office. The Administrative Court and the High Court also dismissed from January to August 2006 a suit for unfair dismissal lodged by the union and an appeal is pending at the Supreme Court. The Committee requests the Government to keep it informed of the decision of the Supreme Court with regard to the proceedings for unfair dismissal lodged by the union of subcontracted workers in Kiryung Electronics.
669. With regard to the allegations of anti-union dismissals in Hynix/Magnachip, the Committee notes from the Cheongju District Court decision provided by the Government that, after its establishment in October 2004, the union put forward a set of claims for equal treatment and protection of the freedom of association rights of subcontracted workers without any response from the employer; on 25 December 2004, the employer (subcontractor) locked out 180 union members; the court decision describes how, after this date, violence escalated gradually, as the locked-out workers first attempted to enter the factory and then addressed themselves to the Regional Labour Office, eventually attacking the riot police guarding the Office – acts for which the workers in question were convicted to fines and prison sentences under "obstruction of business" provisions.
670. The Committee further notes the reply of the Korean Employers' Federation forwarded by the Government, to the effect that the allegations of unfair dismissal are false given that a subcontracting agreement can be concluded, renewed or terminated by the subcontractor under the principle of private autonomy.

671. *The Committee emphasizes that all workers, without distinction whatsoever, whether they are employed on a permanent basis, for a fixed term or as contract employees, should have the right to establish and join organizations of their own choosing [Digest, op. cit., para. 255]. The non-renewal of a contract for anti-union reasons constitutes a prejudicial act within the meaning of Article 1 of Convention No. 98 [Digest, op. cit., para. 785.]. Moreover, subcontracting accompanied by dismissals of union leaders can constitute a violation of the principle that no one should be prejudiced in her or his employment on the grounds of union membership or activities [Digest, op. cit., para. 790.] Finally, the Committee recalls from Case No. 1865, where it examined allegations of extensive interference in the activities of public sector unions in the Republic of Korea, that the distribution of resignation forms to trade union members and one-on-one interviews to obtain the withdrawal of members from the union constitute acts of interference [346th Report, para. 788].*
672. *The Committee notes that the decision of the Cheongju District Court communicated by the Government with regard to Hynix/Magnachip concerns events (acts of violence) which are posterior to the alleged acts of anti-union discrimination, i.e. the de facto dismissal of the subcontracted workers through the termination of the contract between Hynix/Magnachip and the subcontractor allegedly in retaliation for the establishment of a trade union. The Committee also observes that the Government does not provide a reply to the allegations of anti-union discrimination in HMC through the termination of contracts with subcontractors in case of establishment of trade unions of subcontracted workers. The Committee requests the Government to institute an independent investigation into the alleged acts of anti-union discrimination and interference in Hynix/Magnachip and HMC, through the termination of contracts with subcontractors in case of establishment of trade unions of subcontracted workers and, if the allegations are confirmed, to take the necessary measures to reinstate the dismissed trade union leaders and members as primary remedy; if the judicial authority determines that reinstatement of trade union members is not possible for objective and compelling reasons, adequate compensation should be awarded to remedy all damages suffered and prevent any repetition of such acts in the future, so as to constitute a sufficiently dissuasive sanction against acts of anti-union discrimination. The Committee requests to be kept informed in this respect.*

Right to collective bargaining

673. *The Committee notes that, according to the complainants, the protection of collective bargaining under the TULRAA is not in reality applied to them as all union activities directed at the principal employer can be labelled illegal. In particular, the complainants refer to the obstacles they face in their efforts to engage in collective bargaining, as a result of which they have been unable to conclude any collective agreement on subcontracted workers in the metal sector: consistent refusal of the principal employer to negotiate on the ground that it is not the workers' direct employer and is therefore not obligated to bargain with the union; refusal of the subcontractors, (in some plants there are over one hundred like, for instance, in the HMC Ulsan plant), to negotiate on the basis that they do not have effective decision-making capacity over terms and conditions of employment in the plant; on other occasions, they argue that they constitute autonomous enterprises and thereby refuse to negotiate as a group, insisting in meeting the trade union committee on the same day at different locations so as to effectively avoid negotiations. The complainants add that the above has the tacit support of the Government. Another problem, according to the complainants, is that subcontractors are often changed while the subcontracted workforce remains the same; however, as this invalidates agreements concluded with, and talks with, the former subcontractor, the workers' unions need to be able to have stable bargaining relations with the principal employer.*

674. *The Committee notes that the Government indicates that subcontracted workers are free to engage in collective bargaining under the TULRAA and the choice of collective bargaining structures is fully left to the labour and management concerned. The issue of whether a subcontracting company is under an obligation to negotiate with subcontracted workers should be decided judicially. Although most of the companies involved in in-factory subcontracting in the Republic of Korea work out win-win solutions through labour-management cooperation or autonomous negotiations, the workplaces mentioned in the complaint have failed to reach a smooth settlement and entered into prolonged disputes.*
675. *The Committee also notes that the Korean Employers' Federation emphasizes that there is no employment relationship between subcontracted workers and the subcontracting company and, therefore, there is no obligation on that company to bargain; moreover, changes in subcontractors and the retention of the previous subcontractors' workforce belongs to the autonomy of the parties under business transfer agreements.*
676. *The Committee recalls the importance which it attaches to the obligation to negotiate in good faith for the maintenance of the harmonious development of labour relations and emphasizes that measures should be taken to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements [Digest, op. cit., paras 934 and 880]. The right to bargain freely with employers with respect to conditions of work constitutes an essential element in freedom of association, and trade unions should have the right, through collective bargaining or other lawful means, to seek to improve the living and working conditions of those whom the trade unions represent. The Committee therefore deeply regrets that the Government provides no information on steps taken to promote constructive negotiations in HMC, Kiryung Electronics, KM&I and Hynix/Magnachip as a way to avoid prolonged disputes.*
677. *The Committee notes with regret that the Government does not reply to the specific allegations concerning the difficulties encountered in concluding a collective agreement for subcontracted workers in the metal sector but rather confines itself to noting that most of the companies involved in in-factory subcontracting in the Republic of Korea work out "win-win solutions" through labour-management cooperation. More particularly, the Committee regrets the absence of reply to the allegations that the subcontracted workers find themselves caught in a "catch 22" where the principal employer/subcontracting company refuses to negotiate, claiming that it has no employment relationship with the workers, while the subcontractors also refuse to negotiate, claiming that they do not control the terms and conditions of employment in the plant, as well as the allegations that this situation has the tacit support of the Government. The Committee considers that it pertains to the Government to ensure, through appropriate measures, that subcontracting is not used as a way to evade the application of the freedom of association guarantees of the TULRAA and to ensure that trade unions representing subcontracted workers may effectively seek to improve the living and working conditions of those whom they represent.*
678. *In light of the above, the Committee urges the Government to take all necessary measures to promote collective bargaining over the terms and conditions of employment of subcontracted workers in the metal sector, in particular in HMC, Kiryung Electronics, KM&I and Hynix/Magnachip, including through building the negotiating capacities of the parties concerned, so that subcontracted workers in these companies may effectively exercise their right to seek to improve the living and working conditions of their members through negotiations in good faith. The Committee requests to be kept informed of developments in this respect.*

Right to collective action

679. *The Committee notes that, according to the complainants, faced with the employer's refusal to bargain, the trade unions of "illegal dispatch" workers have staged industrial action directed at the principal employer, claiming recognition for collective bargaining purposes from the party they consider as their real employer under a disguised employment relationship. Moreover, such action can only take place at the principal employer's factory. However, because their action is seen as directed at an "unrelated party", it is branded as illegal, giving rise to the dismissal of trade union leaders and members (they refer to the dismissal of three workers at HMC Asan plant in February and July 2005 (Shin, Myeong-Kyun; Choi, Dae-Yeob; Son, Jin), six workers in HMC Ulsan in September 2005 and four workers in HMC Jeonju in September 2005 (Kim, Hyo-Chan; Kim, Dae-Vto; Oh, Hyeon-ho; Seo, Inho)) and, as will be seen later on, the application of section 314 of the Criminal Code on "obstruction of business".*
680. *The Committee notes that, according to the Government: (i) the subcontracted workers took collective action inside and outside the workplace of the subcontracting company, unilaterally demanding that this company engage in collective bargaining – an issue which should at best be decided by the courts; (ii) the subcontracted workers' unions violated the laws as they conducted collective action occupying the companies' workplaces for a long period, unilaterally insisting that their collective bargaining partner was not their employer but the subcontracting company; (iii) nevertheless, certain dismissals were found to be unfair and one worker (Shin, Myeong-Kyun) was reinstated; (iv) appeals for unfair dismissal filed by three workers from HMC Asan are now pending before the Supreme Court.*
681. *The Committee observes that the Government does not provide specific information with regard to the dismissals in HMC Ulsan and Kiryung Electronics, or any legal proceedings pending in this regard. With regard to the issue raised by the Government under (i) above, the Committee recalls that the right to strike is one of the essential means through which workers and their organizations may promote and defend their economic and social interests; the fact that a strike is called for recognition of a union is a legitimate interest which may be defended by workers and their organizations; moreover, a ban on strike action not linked to a collective dispute to which the employee or union is a party is contrary to the principles of freedom of association [Digest, op. cit. paras 521, 535 and 538]. Thus, the Committee considers that a claim for recognition for collective bargaining purposes addressed to the subcontracting company does not render a strike illegal. It recalls that the dismissal of workers because of a strike constitutes serious discrimination in employment on grounds of legitimate trade union activities and is contrary to Convention No. 98 [Digest, op. cit., para. 661].*
682. *This having been said, the Committee also considers that the exercise of the right to strike should respect the freedom to work of non-strikers, as established by the legislation, as well as the right of the management to enter the premises of the enterprise [Digest, op. cit., para. 652]. Taking part in picketing and firmly but peacefully inciting other workers to keep away from their workplace cannot be considered unlawful. The case is different, however, when picketing is accompanied by violence or coercion of non-strikers in an attempt to interfere with their freedom to work; such acts constitute criminal offences in many countries [Digest, op. cit., para. 651]. The Committee emphasizes that trade union organizations should conduct themselves responsibly and respect the peaceful manner in which the right to assembly should be exercised [Case No. 2526, 349th Report, para. 404].*
683. *The Committee requests the Government to institute an independent investigation into the dismissals of the subcontracted workers in HMC Ulsan and Jeonju and, if these workers are found to have been dismissed only on the ground that they staged industrial action*

against a “third party”, i.e. the subcontracting company, to ensure that they are reinstated in their posts without loss of pay as primary remedy; if the judicial authority determines that reinstatement of trade union members is not possible for objective and compelling reasons, adequate compensation should be awarded to remedy all damages suffered and prevent any repetition of such acts in the future, so as to constitute a sufficiently dissuasive sanction against acts of anti-union discrimination. The Committee requests to be kept informed in this respect. The Committee also requests the Government to keep it informed of the Supreme Court decision on the suit for unfair dismissal filed by three workers from the HMC Asan plant and trusts that, in rendering its decision, the Supreme Court will ensure that sanctions for strike action are imposed only where the prohibitions in question are in conformity with the principles of freedom of association.

Application of “obstruction of business” provisions

- 684.** *The Committee notes from the allegations that “obstruction of business” provisions are systematically applied to victimize and intimidate “illegal dispatch” workers who resort to strikes. Thus, workers are punished under section 314 of the Criminal Code without having carried out any violent acts, simply for having exercised a right to which they claim entitlement as regular workers. The relevant sanctions include imprisonment, provisional seizure of assets and compensation claims for exorbitant amounts, in retaliation for the attempt to stage industrial action. The complainants refer in particular to the imprisonment of Kaon, Sujeon; Oh, Ji Hwan; and Kim, Jun-Gyu, from HMC Asan (13 July 2006); Choi, Byeong-Seung, from HMC Ulsan (14 August 2006); Park Jeong-Hun; Jo, Dae-ik; and Jeong, Gyeong-Jin, from HMC HYSCO (3 November 2005).*
- 685.** *The Committee notes that, according to the Government, measures were taken against striking workers, according to the laws only in relation to illegal acts such as violence or destruction, which cannot be given immunity from civil and criminal liability under “obstruction of business” provisions. This is essential in order to balance unions’ rights with the employer’s property rights. The unique feature of industrial action in the Republic of Korea is that it tends to take the form of the aggressive occupation of a workplace rather than a strike, i.e. a passive refusal to work. The Government also emphasizes that, in most of the cases illustrated in the complaint, violence occurred repeatedly when industrial relations worsened over an extremely long period. Thus, the allegation that workers were imprisoned just because they had attempted to negotiate with the subcontracting company is rejected by the Government as untrue.*
- 686.** *The Committee observes, however, that the Government does not provide a reply to the specific allegations of imprisonment of Kaon, Sujeong; Oh, Ji Hwan; and Kim, Jun-Gyu, from HMC Asan (13 July 2006); Choi, Byeong-Seung; from HMC Ulsan (14 August 2006), Park Jeong-Hun; Jo, Dae-ik; and Jeong, Gyeong-Jin, from HMC HYSCO (3 November 2005), which occurred, according to the complainant, in the absence of any violence on the part of the workers.*
- 687.** *The Committee recalls that the issue of the application of “obstruction of business” provisions in an industrial context has been the subject of longstanding comments made in the context of Case No. 1865 concerning the Republic of Korea. The Committee recalls from the last examination of that case that “[a]lthough the Committee notes from the Government’s reply that the Government is making efforts to minimize criminal punishment for “obstruction of business” by refraining from making arrests even in the case of an illegal strike if the strike does not entail any violence; it also notes that, according to the allegations, “obstruction of business” is systematically resorted to in an effort to victimize and intimidate trade unionists who decide to go on strike. In the light of this information, the Committee must once again express its concern that section 314 of the Penal Code concerning “obstruction of business”, as drafted and applied over the years,*

has given rise to the punishment of a variety of acts relating to collective action, even without any implication of violence, with significant prison terms and fines". [346th Report, para. 768; see also para. 758]. The Committee notes with regret that the Government has not taken any steps to review section 314 of the Penal Code on obstruction of business so as to bring it into conformity with freedom of association principles, despite requests that the Committee has been making in this respect since 2000 [see Case No. 1865, 346th Report, para. 758]. The Committee once again requests the Government to take all necessary measures without delay so as to bring section 314 of the Penal Code (obstruction of business) into line with freedom of association principles, and to keep it informed in this respect. The Committee also requests the Government to provide information on the specific acts for which the above workers were convicted to imprisonment for "obstruction of business" and to indicate whether in the meantime the sentences have been served or are still in force.

- 688.** *The Committee also notes that the complainants allege that "obstruction of business" provisions are used as a way to intimidate workers through damage claims for exorbitant amounts (in 2006 only, based on a claim by HMC Jeonju, courts provisionally seized 1 million won (approximately US\$1,000) of assets each for Mm, Tae-Wfen; and Kim, Dong-Seob; 5.4 billion won (approximately US\$5.4 million) were levied against 40 persons in Kiryung Electronics while the company withdrew compensation suits against union members who submitted resignation notices; 500 million won (approximately US\$500,000) compensation was claimed against 37 union members by KM&I). According to the complainants, in Kiryung Electronics and Hynix/Magnachip, once compensation suits have been filed against certain union members, they are used by the employer as a threat to obtain the withdrawal of unfair dismissal suits filed by other union members (under threat of suing them for exorbitant amounts) or to obtain their withdrawal from the union. Finally, the complainants allege that, in HMC, the threat of compensation claims is used against workers who refuse to work overtime, so as to intimidate union members who exercise normal workers' rights.*
- 689.** *The Committee notes that, according to the Government, Kiryung Electronics filed four cases against 86 union members in the Seoul Central District Court, claiming damages of over 5 billion won in total, between September 2005 and March 2006. An appeal is currently pending before the High Court against two decisions (concerning 20 union members in total) dismissing the company's claim at the first instance either because the rank-and-file union members could not be seen as responsible for the damages or because it could not be conclusively said that the damage had actually occurred. Another case (14 union members) was withdrawn in July 2007. A fourth case is pending in court. Moreover, Hynix/Magnachip filed a suit seeking compensation for damages and the provisional seizure of properties, for the destruction of property, "obstruction of business", etc., but withdrew it in July 2007.*
- 690.** *The Committee notes that the Government does not provide any indication as to the grounds on which compensation claims by Kiryung Electronics and Hynix/Magnachip were withdrawn in July 2007 and does not reply to the complainants' allegation that these companies withdrew compensation claims against union members who submitted resignation notices (thus effectively withdrawing their unfair dismissal claims) or withdrew from the union of subcontracted workers. Furthermore, the Committee observes that, while the Government confirms that workers were dismissed for refusing to work overtime in HMC Ulsan and Asan, it does not provide any reply to the allegations that, in HMC, the threat of compensation claims is used against workers who refuse to work overtime, so as to intimidate union members into renouncing normal workers' rights. The Committee requests the Government to institute an independent investigation into allegations that Hynix/Magnachip, Kiryung Electronics and HMC use compensation suits for exorbitant amounts of money, based on "obstruction of business" provisions, as a*

threat to make trade unionists renounce their claims and rights (e.g. withdraw unfair dismissal claims, withdraw from unions representing subcontracted workers or drop their refusal to work overtime) and, if the allegations are confirmed, to take all the necessary measures to reinstate the dismissed trade union leaders and members as primary remedy; if the judicial authority determines that reinstatement of trade union members is not possible for objective and compelling reasons, adequate compensation should be awarded to remedy all damages suffered and prevent any repetition of such acts in the future, so as to constitute a sufficiently dissuasive sanction against acts of anti-union discrimination. The Committee requests to be kept informed in this respect. The Committee also requests the Government to keep it informed of the decisions handed down in three cases pending before the courts with regard to compensation claims filed by Kiryung Electronics on the basis of "obstruction of business" provisions. The Committee trusts that, in rendering their judgements, the courts will take due account of the industrial relations context, the need to build a constructive industrial relations climate and the allegations that these suits are used as a means to intimidate trade unionists into renouncing their rights and claims.

- 691.** *The Committee finally notes that, according to the complainants, once the core union activists are dismissed in retaliation for staging industrial action, the principal employer seeks court injunctions to prevent them from entering the factory to exercise their activities as union representatives. The courts readily grant such injunctions, on the basis of an expanded interpretation of "obstruction of business" provisions, thus opening the way to physical assaults against dismissed workers by the security forces of the principal employer. Thus, on grounds of violating court injunctions prohibiting entry into the HMC Asan plant, Kwon, Sujeong (former union president and founding member); Oh, Ji Hwan (former general secretary of the union); and Kim, Jun-Gyu (former union auditor), were convicted and sentenced for criminal "obstruction of business" to imprisonment for eight months, six months, and six months, respectively. They began serving their sentences on 13 July 2006. Similarly, the HMC Ulsan Irregular Workers' Union general secretary CHOI, Byeong-seung was arrested on 14 August 2006 and imprisoned.*
- 692.** *The Committee notes that, according to the Government, in light of the prolonged occupation of workplaces, some subcontracting companies asked the courts to issue provisional eviction orders and restraining injunctions against the leaders of the subcontracted company workers' unions and this was accepted by the courts. However, in most of these cases, the subcontracted company workers' unions staged sit-in protests or committed acts of violence and destruction going far beyond the scope of legitimate union activities. These cases are judged individually by the independent courts on the basis of the law. The Government provides excerpts of the Cheongju District Court decision on incidents, involving extended violence, staged by subcontracted workers in Hynix/Magnachip, for which the defendants were convicted to imprisonment and fines for "obstruction of business". The Committee also notes that the Korean Employers' Federation emphasizes that violent acts cannot be justified and draws attention to the availability of legal remedies for addressing workers' claims.*
- 693.** *The Committee notes that, while the Government and the Korean Employers' Federation refer in general to acts of violence during rallies and sit-in protests, apart from information on incidents in Hynix/Magnachip which are not part of the complaints' allegations, there is no specific answer to the allegations of imprisonment of Kwon, Sujeong (former president and founding member of the union of subcontracted workers in HMC Asan); Oh, Ji Hwan (former general secretary of the union of subcontracted workers in HMC Asan); Kim, Jun-Gyu (former auditor of the union of subcontracted workers in HMC Asan); and Choi, Byeong-seung (general secretary of the HMC Ulsan Irregular Workers' Union), for having defied court injunctions preventing them from entering the workplace to hold rallies protesting their dismissal on trade union grounds.*

694. *The Committee recalls, on the one hand, that it has drawn the attention of governments to the principle that workers' representatives should enjoy such facilities as may be necessary for the proper exercise of their functions, including access to workplaces and, on the other hand, that the Committee has considered in the past as legitimate a legal provision that prohibited pickets from disturbing public order and threatening workers who continued work [Digest, op. cit., paras 1102 and 650]. The Committee observes that, due to the time which has elapsed since the arrests took place, the prison sentences referred to by the complainants appear to have been served by now. It expects that, in the future, when faced with requests for injunctions preventing dismissed trade union officials from entering the workplace, the courts will emphasize the need for these workers' representatives to enjoy the facilities necessary for the proper exercise of their functions without impairing the efficient operation of the undertaking concerned.*
695. *Finally, the Committee notes that the complainants refer to acts of violence during rallies and sit-ins in HMC Ulsan and Asan and Kiryung Electronics, including physical assaults, abduction of An Ghi-ho, President of the Ulsan Irregular Workers' Union by security guards on 13 February 2005 and Kwon Soo-jeon, President of the HMC subcontracted company's workers' union in Asan, on 7 September 2005, to remove them from the factory premises and the firing of water hoses to flush "illegal dispatch" workers in Kiryung Electronics outside company gates and subsequently locking these workers inside the factory in order to physically threaten, assault and humiliate them. What is most disturbing, according to the complainants, is that this attitude toward all-out physical force against subcontracted workers who unionize has become quite ordinary.*
696. *With regard to the allegations of abduction of An Ghi-ho, President of the Ulsan Irregular Workers' Union on 13 February 2005 to remove him from the HMC factory premises and deliver him to the police station, the Government indicates, that during a protest, 30 or so security guards evicted An Ghi-ho, for whom an arrest warrant had already been issued, from the company premises and he was arrested by the police at the entrance and investigated. With regard to the alleged abduction of Kwon Soo-jeon, President of the subcontracted company workers' union of HMC in Asan, on 7 September 2005, the Government indicates that, in the context of a clash between the union and the subcontracting company's management during the stand-off, it is difficult to find out what specific damage was done and its extent. Finally, the Committee notes that the Government forwards information apparently obtained from Kiryung Electronics, according to which facility management staff did use water cannons to protect its facilities when dozens of union members tried to pull down the main gate by fastening a rope to it and pulling it to the ground, yet did not fire the water cannons on protesters. The Government emphasizes that the allegation that the workers were unfavourably treated or physically abused just because of their engagement in union activities is not true; the incidents happened amid an atmosphere where violence was prevalent as labour and management were blaming each other and their feelings for each other were worsening.*
697. *The Committee expresses its concern at the allegations of violence by private security guards against trade unionists during rallies at HMC Ulsan and Asan and Kiryung Electronics (abduction of An Ghi-ho from HMC Ulsan and Kwon Soo-jeon from HMC Asan and violence against workers in Kiryung Electronics). It recalls that a genuinely free and independent trade union movement cannot develop in a climate of violence and uncertainty [Digest, op. cit., para. 45]. The Committee has found in the past that, while workers and their organizations are obliged to respect the law of the land, police intervention to enforce the execution of a court decision affecting strikers should observe the elementary guarantees applicable in any system that respects fundamental public freedoms [Digest, op. cit., para. 646]. The Committee considers that this is all the more so in situations such as this one, where private security guards intervene instead of the police. Noting that the information provided by the Government is confined to either contradicting*

the statements made by the complainants or indicating that it is difficult to know exactly what happened or relying on information obtained from the company, the Committee requests the Government to ensure that an independent investigation is carried out into the allegations and, if they are confirmed, to take all necessary measures to punish those responsible and compensate the victims for any damages suffered. The Committee requests to be kept informed in this respect.

- 698.** *The Committee finally notes with concern the reference made by both the complainants and the Government as well as the Korean Employers' Federation to what appears to be a generalized climate of violence. In light of the Government's reference to "an atmosphere where violence was prevalent as labour and management were blaming each other and their feelings for each other were worsening" and its statement that "violence occurred repeatedly when industrial relations worsened over an extremely long period", the Committee expresses its concern at acts of violence but also regrets that the Government did not take sufficient preventive measures to promote a resolution to the disputes through dialogue and collective bargaining before they could reach such violent proportions. It urges the Government to promote in the future social dialogue and collective bargaining as preventive measures aimed at restoring confidence and a peaceful industrial relations climate, rather than the application of "obstruction of business" provisions with respect to non-violent acts.*
- 699.** *In conclusion, the Committee is bound to note that this case has brought to the fore a series of allegations concerning specific obstacles to the exercise by subcontracted workers of their freedom of association and collective bargaining rights – normally guaranteed to them, like all other workers, under the TULRAA – for which no meaningful information has been provided on the steps taken to ensure the fundamental rights of these workers: (i) acts of anti-union discrimination disguised as termination of contracts with subcontractors immediately after the establishment of trade unions, which leads to the de facto dismissal of all subcontracted workers if they attempt to exercise their freedom of association and collective bargaining rights; (ii) a "catch 22" situation where the principal employer/subcontracting company refuses to negotiate with subcontracted workers, claiming that it has no employment relationship with them, while the subcontractors also refuse to negotiate, claiming that they do not control the terms and conditions of employment in the plant; (iii) the fact that industrial action can only take place at the principal employer's/subcontracting company's factory while, at the same time, the staging of industrial action against a "third party", i.e. the principal employer/subcontracting company, is treated as an illegal act; (iv) absence of positive measures to promote constructive dialogue and negotiated resolutions to disputes in the face of mounting tensions; (v) use of "obstruction of business" provisions with respect to non-violent acts, and compensation suits for exorbitant amounts of money as a threat to make trade unionists renounce their claims and rights.*
- 700.** *Furthermore, as regards potential abuse of dispatch practices, and while taking due note of the various protective measures referred to by the Government to avoid "illegal dispatch" practices, the Committee is also bound to note that: (i) at least one of the Public Prosecutor's decisions not to prosecute a company for "illegal dispatch" practices was based, not on the lack of evidence relating to the existence of "illegal dispatch" but rather on "the principle that, if there is any doubt, the defendant should be presumed innocent under criminal laws" without permitting the courts to determine whether the workers' rights were effectively being denied; (ii) a business involved in in-factory subcontracting, but not subject to labour inspection, should conduct self-inspection to see whether its case constitutes "illegal dispatch" or not and make improvements voluntarily; the Committee is unclear as to what is meant by "not subject to labour inspection" and expects that the labour inspectorate has an effective role in this context.*

- 701.** *In light of the above, the Committee considers that the general framework within which subcontracted workers may exercise their freedom of association and collective bargaining rights in the Republic of Korea is unsatisfactory and should be strengthened and developed. In particular, the Committee is of the view that there is a need to give further consideration to mechanisms geared to prevent any abuse of subcontracting as a way to evade in practice freedom of association and collective bargaining rights. In this context, the Committee requests the Government to develop appropriate mechanisms in consultation with the social partners concerned, aimed at strengthening the protection of dispatch workers' rights to freedom of association and collective bargaining, guaranteed to all workers under TULRAA, and preventing any abuse of subcontracting as a way to evade in practice the exercise of the freedom of association and collective bargaining rights of these workers. Such mechanisms should include an agreed process for dialogue determined in advance.*
- 702.** *The Committee invites the Government to have recourse to ILO technical assistance, if it so wishes.*

The Committee's recommendations

- 703.** *In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:*
- (a) The Committee requests the Government to keep it informed of the decision of the Supreme Court with regard to the proceedings for unfair dismissal lodged by the union of subcontracted workers in Kiryung Electronics.*
 - (b) The Committee requests the Government to institute an independent investigation into the alleged acts of anti-union discrimination and interference in Hynix/Magnachip and HMC, through the termination of contracts with subcontractors in case of establishment of trade unions of subcontracted workers and, if the allegations are confirmed, to take all the necessary measures to reinstate the dismissed trade union leaders and members as primary remedy; if the judicial authority determines that reinstatement of trade union members is not possible for objective and compelling reasons, adequate compensation should be awarded to remedy all damages suffered and prevent any repetition of such acts in the future, so as to constitute a sufficiently dissuasive sanction against acts of anti-union discrimination. The Committee requests to be kept informed in this respect.*
 - (c) The Committee urges the Government to take all necessary measures to promote collective bargaining over the terms and conditions of employment of subcontracted workers in the metal sector, in particular in HMC, Kiryung Electronics, KM&I and Hynix/Magnachip, including through building negotiating capacities, so that subcontracted workers in these companies may effectively exercise their right to seek to improve the living and working conditions of their members through negotiations in good faith.*
 - (d) The Committee requests the Government to institute an independent investigation into the dismissals of the subcontracted workers in HMC Ulsan and Jeonju and, if these workers are found to have been dismissed only on the ground that they staged industrial action against a "third party", i.e. the subcontracting company, to ensure that they are reinstated in their posts*

without loss of pay as primary remedy; if the judicial authority determines that reinstatement of trade union members is not possible for objective and compelling reasons, adequate compensation should be awarded to remedy all damages suffered and prevent any repetition of such acts in the future, so as to constitute a sufficiently dissuasive sanction against acts of anti-union discrimination. The Committee requests to be kept informed in this respect. The Committee also requests the Government to keep it informed of the Supreme Court decision on the unfair dismissal proceedings filed by three workers from the HMC Asan plant and trusts that, in rendering its decision, the Supreme Court will ensure that sanctions for strike action are imposed only where the prohibitions in question are in conformity with the principles of freedom of association.

- (e) The Committee requests the Government to take all necessary measures without delay so as to bring section 314 of the Penal Code (obstruction of business) into line with freedom of association principles. The Committee requests to be kept informed in this respect.*
- (f) The Committee requests the Government to provide information on the specific acts for which Kaon, Sujeong; Oh, Ji Hwan; and Kim, Jun-Gyu, from HMC Asan; Choi, Byeong-Seung, from HMC Ulsan; and Park Jeong-Hun; Jo, Dae-lk; and Jeong, Gyeong-Jin, from HMC HYSCO were convicted to imprisonment for “obstruction of business” and to indicate whether in the meantime the sentences have been served or are still in force.*
- (g) The Committee requests the Government to institute an independent investigation into allegations that Hynix/Magnachip, Kiryung Electronics and HMC use compensation suits for exorbitant amounts of money, based on “obstruction of business” provisions, as a threat to make trade unionists renounce their claims and rights (e.g. withdraw unfair dismissal claims, withdraw from unions representing subcontracted workers or drop their refusal to work overtime) and, if the allegations are confirmed, to take all the necessary measures to reinstate the dismissed trade union leaders and members as primary remedy; if the judicial authority determines that reinstatement of trade union members is not possible for objective and compelling reasons, adequate compensation should be awarded to remedy all damages suffered and prevent any repetition of such acts in the future, so as to constitute a sufficiently dissuasive sanction against acts of anti-union discrimination. The Committee requests to be kept informed in this respect.*
- (h) The Committee requests the Government to keep it informed of the decisions handed down in three cases pending before the courts with regard to compensation claims filed by Kiryung Electronics on the basis of “obstruction of business” provisions. The Committee trusts that in rendering their judgements, the courts will take due account of the industrial relations context, the need to build a constructive industrial relations climate and the allegations that these suits are used as a means to intimidate trade unionists into renouncing their rights and claims.*
- (i) The Committee expects that, in the future, when faced with requests for injunctions preventing dismissed trade union officials from entering the*

workplace, the courts will take duly into account the need for these workers' representatives to enjoy the facilities necessary for the proper exercise of their functions without impairing the efficient operation of the undertaking concerned.

- (j) The Committee requests the Government to ensure that an independent investigation is carried out into the allegations of violence by private security guards against trade unionists during rallies at HMC Ulsan and Asan and Kiryung Electronics and, if they are confirmed, to take all necessary measures to punish those responsible and compensate the victims for any damages suffered. The Committee requests to be kept informed in this respect.*
- (k) The Committee considers that violence, criminal sanctions or disproportionately heavy pecuniary penalties are not conducive to a constructive industrial relations climate, especially in the absence of affirmative measures to promote dialogue and collective bargaining. It urges the Government to promote in the future social dialogue and collective bargaining as preventive measures aimed at restoring confidence and a peaceful industrial relations climate, rather than the application of "obstruction of business" provisions with respect to non-violent acts.*
- (l) The Committee requests the Government to develop appropriate mechanisms in consultation with the social partners concerned, aimed at strengthening the protection of dispatch workers' rights to freedom of association and collective bargaining, guaranteed to all workers under TULRAA, and preventing any abuse of subcontracting as a way to evade in practice the exercise of the freedom of association and collective bargaining rights of these workers. Such mechanisms should include an agreed process for dialogue determined in advance.*
- (m) The Committee invites the Government to have recourse to ILO technical assistance if it so wishes.*

Appendix

Allegations of discriminatory victimization for union activity in 2005

	HMC Asan Subcontracted Workers' Union Chapter of KMWU	HMC Ulsan Irregular Workers' Union	HMC Jeonju Irregular Workers' Union Chapter of KMWU	Kiryung local (KMWU)	Hynix/Magnachip Subcontracted Workers' Union Chapter of KMWU	KM&I	Hyundai HYSCO
Imprisonment	1 person	6 persons		2 persons	1 person		1 person
Fugitive (on the run)		4 persons					1 person
Dismissal (disciplinary, termination of fixed-term contract, termination of contract with subcontractor where unionization took root)	32 persons	96 persons	4 persons	80 persons	170 persons		
Disciplinary measures for union activity	50 persons (suspended or pay cut)	96 persons suspended	3 persons suspended, 1 person with pay cut				
Compensation suits for principal employer losses (not finalized unless there is a court ruling date)		20 billion won claimed		115.2 billion won claimed	1.4 billion won		7.2 billion won
Fines		70 million won					
Miscellaneous	"Obstruction of business" suits filed against 10 persons	Court Injunction against rallies ("obstruction of business") and against entry	"Obstruction of business" criminal charges against 12 persons; court injunction against rallies ("obstruction of business")			Lockout court injunction prohibiting entry on principal employer property	

Allegations of discriminatory victimization for union activity in 2006

	HMC Asan Subcontracted Workers Union Chapter of KIMWU	HMC Ulsan Irregular Workers' Union	HMC Jeonju Irregular Workers' Union Chapter of KIMWU	Kiryung local KIMWU	Hynix/Magnachip Subcontracted Workers' Union Chapter of KIMWU	KM&I	Hyundai HYSKO
Imprisonment	Kaon, Sujeong; Oh, Ji Hwan; Kim, Jun-Gyu: Imprisoned on 13 July 2006 ("obstruction of business" and court injunction)	Union general secretary Choi, Byeong-Seung, arrested on 14 August 2006 and imprisoned					Park, Jeong-Hun (union chapter president still imprisoned since 3 November 2005) Jo, Dae-Ik (union general affairs) Jeong, Gyeong-Jin (union organizer)
Dismissal (disciplinary, termination of fixed-term contract, termination of contract with subcontractor where unionization took root)	Shin, Myeong-Kyun; Choi, Dae-Yeob: Union members (dismissed on 7 February 2005 for failing to follow orders and leaving the work spot) Son, Jin (dismissed on 16 July 2005)	Hwang, Deok-suk; Hah, Ghi-seon, etc. 6 persons dismissed (on suspicion of leading a strike on 6 September 2005)	Kim, Hyo-Chan; Kim, Dae-Vto; Oh, Hyeon-ho (based on allegations of a "violence" incident that never occurred on 28 August 2005) Seo, Inho (dismissed on 2 September 2005 for insubordination)	Running total for 2006 is 200 dismissed workers	180 dismissed through contract terminations (and the subcontracting firm Hynix/Magnachip contract termination of 31 December 2004)	Continued lockout of union members (8 November 2005)	
Compensation suits for principal employer losses (not finalized unless there is a court ruling date)			31 July 2005. Courts rule to provisionally seize 1 million won of assets each for Mm, Tae-Wfen, and Kim, Dong-Seob	Updated figures for 2006 is 5.4 billion won levied against 40 persons (in the interval the company withdrew compensation suits against union members who submitted resignation notices and gave up the struggle for reinstatement)		500 million won compensation claimed against 37 union members; employer is asking the courts to implement provisional seizure of union members' assets prior to formal review of the claim	2 billion won