DISPOSABLE LABOUR

RIGHTS OF MIGRANT WORKERS IN SOUTH KOREA

AMNESTY INTERNATIONAL

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"*Migrant workers came here to work. We are employed in the most dangerous, dirty and difficult work – jobs that Koreans don't want. But we're not animals, we're human beings so our employers and managers should treat us with respect or at the very least, call us by our names, not derogatory terms or swear words. We want to be treated equally with Korean workers.*"

ST, 30-year-old Vietnamese male EPS worker
Busan, South Korea[1]

1. INTRODUCTION AND SUMMARY

With the implementation of the Employment Permit System (EPS) in August 2004, the Republic of Korea (South Korea) became one of the first Asian countries to legally recognise the rights of migrant workers. Under South Korean law, migrant workers became equal to national workers with equal labour rights, pay and benefits. Now five years into the EPS work scheme, migrant workers in South Korea continue to be at risk of human rights abuses and many of the exploitative practices that existed under the previous Industrial Trainee System (ITS) still persist under the EPS. Amnesty International has identified the following areas of concerns.

In the recruitment process, there have been improvements in bypassing the use of brokers in some countries, but in others, this is still a problem with migrant workers incurring large debts to pay exorbitant broker fees. Moreover, EPS workers found that the job their employer offered to them in their countries of origin was different from the one awaiting them, particularly in regards to their wages and working hours. Moreover, EPS and E-6 entertainment visa applicants[2] are subjected to a discriminatory policy of mandatory disclosure of HIV status.

Although low-skilled South Korean workers also suffer from some of the abusive work conditions documented in this report, migrant workers are at greater risk because of their status. Both regular and irregular migrant workers face discrimination, and verbal and physical abuse in the workplace. They are required to work long hours and night shifts, many without overtime pay, and often have their wages withheld. On average, they are paid less than South Korean workers in similar jobs and are at greater risk of industrial accidents with inadequate medical treatment or compensation. EPS workers are tied to their employer and face restrictions in changing jobs, making them particularly vulnerable to abuse and exploitation such as unfair dismissal.

In the workplace, migrant workers operate heavy machinery or work with dangerous chemicals with little or no training or protective equipment. As a result, compared to South Korean workers, a disproportionately greater number of migrant workers suffer industrial accidents, including fatal accidents. When accidents occur, many migrant workers fail to receive adequate medical treatment or compensation due to the language barrier, their unfamiliarity with their rights as workers or local laws, and in disputes, their inability to access a lawyer.

[1] Amnesty International interview with ST in Busan, South Korea on 8 November 2008.
[2] Along with E-2 (foreign language teachers) applicants.

Women migrant workers are particularly at risk of exploitation. Many are sexually assaulted or harassed by the management or their co-workers. Under the entertainment work scheme, several female E-6 workers, recruited as singers in the US military camp towns, have been trafficked by their employers and managers and live in slavery-like conditions. Upon arrival in South Korea, they discover that their job in reality is to serve and solicit drinks from US soldiers and at some establishments they are forced to have sex with their clients. With little recourse available to them, trafficked E-6 workers either remain in their jobs or run away. Those who run away are doubly victimised, first as trafficked women and then as "illegal" migrants under South Korean law.

The South Korean government's announcement in September 2008 that it would "harshly deal with illegal foreigners" and reduce by half the estimated 220,000 irregular migrant workers by 2012 has meant a dramatic increase in immigration raids of workplaces, on the streets, near public transportation hubs, in markets and private homes of migrant workers. These operations have resulted in a 50 per cent increase in 2008 of the number of arrests of irregular migrant workers with further increases in the first five months of 2009, and the detention and deportation of thousands of irregular migrant workers per month.

During these crackdowns, Amnesty International has documented seven cases where immigration officers, sometimes accompanied by the police, have used unnecessary or excessive force and subjected irregular migrant workers to ill-treatment. These include a crackdown in Pocheon in September 2008 where a Myanmar man died in custody thirteen hours after his arrest. Immigration officials had failed to provide him with interpretation during a medical exam and afterwards refused his request for further medical treatment. In Maseok in November 2008, immigration officials forced a Filipino woman to urinate in public, dragged two Filipino women by their hair while they were still in their underclothes, and denied prompt medical treatment to a Bangladeshi man suffering from a broken leg and other injuries. In Daejeon in April 2009, an immigration officer was captured on video beating a detained Chinese woman.

On numerous occasions documented by Amnesty International, immigration officials did not follow procedures when arresting irregular migrant workers, including failure to be in uniform, identify themselves, and present a detention order signed by a judge. In practice, these legal protections are frequently bypassed in the arrest and detention of irregular migrant workers.

Despite legal guarantees in South Korea's legislation and Constitution, as well as international law, migrant workers, in particular those with irregular status, are not free to form and join trade unions of their choice. The Ministry of Labour continues to deny legal union status to the Seoul-Gyeonggi-Incheon Migrants' Trade Union (MTU) and as of September 2009, the case on its legal status was still pending before the Supreme Court. Immigration officials have also conducted targeted crackdowns against MTU's senior leadership, resulting in the arrest, detention and deportation of its leaders in 2007 and 2008.

The EPS was intended to provide migrant workers with legal recognition of a range of entitlements such as minimum wage and access to national health care. It recognised their rights to freedom of association, collective bargaining and action, and access to a system of redress against employers in cases of unpaid wages or industrial accidents.

In a report, *Migrant Workers are also Human Beings*, published in 2006 – two years after the EPS system came into place, Amnesty International raised a number of key concerns in relation to the implementation of the EPS. These included the difficulties faced by migrant workers who are under existing contracts of employment and want to change employers and failure to provide a mechanism for holding accountable those who violate legal provisions prohibiting discrimination against foreign workers.[3] The absence of a judicial mechanism was also noted by the UN Special Rapporteur on the human rights of migrants following his mission to South Korea in December 2006 who also stated that "both ITS and EPS have serious pitfalls as they maintain the residence status of migrant workers as tied to their position with their initial employers, thus exposing them to greater vulnerability".[4] The Special Rapporteur recommended that "special attention should be given to the need to provide unskilled migrant workers with the possibility of lodging complaints to the competent authorities from his employer in case of violations of his human rights".[5]

In the financial downturn since 2008, cost-cutting plans have included migrants incurring the costs of accommodation and food. Reports from the media and organizations working with migrant workers have indicated that incidents of xenophobia are on the rise.[6]

For this report, Amnesty International interviewed more than 60 regular and irregular migrant workers, as well as staff from shelters, migrant centres and other non-governmental organizations, trade unionists,[7] factory owners and managers, and the National Human Rights Commission of Korea (NHRCK). To protect the identities of migrant workers, their names have been changed. Interviews were conducted between

[3] Amnesty International, *Republic of Korea (South Korea): 'Migrant workers are also human beings'*, August 2006, pp19-20 (AI Index: ASA 25/007/2006).
[4] "Report of the Special Rapporteur on the human rights of migrants, Mission to the Republic of Korea (5-12 December 2006)", UN Doc. A/HRC/4/24/Add.2, 14 March 2007, paras20 and 54.
[5] "Report of the Special Rapporteur on the human rights of migrants, Mission to the Republic of Korea (5-12 December 2006)", UN Doc. A/HRC/4/24/Add.2, 14 March 2007, para59.
[6] See Ahn Soo-chan, "South Korea's Smelly State of Racial Discrimination: Sungkonghoe University's research professor Bonojit Hussein sues a Korean man for racial slurs... will this be the first case to penalize racial discrimination?", *Hankyoreh 21*, 14 August 2009 (in Korean), available at: http://h21.hani.co.kr/arti/society/society_general/25561.html, accessed 17 August 2009; "Anti-Foreigner Sentiment Rising in Korea", *Dong-A Ilbo*, 17 November 2008, accessed at: http://english.donga.com/srv/service.php3?bicode=040000&biid=2008111790388, 1 June 2009; "Tough Times for Migrant Workers", *The Korea Times*, 30 April 2009, available at: http://www.koreatimes.co.kr/www/news/opinon/2009/04/137_44129.html, accessed 1 June 2009.
[7] Non-governmental organizations and trade unions include Ansan Foreign Workers Centre, Ansan Immigrant Centre, Ansan Migrant Workers' Centre, Ansan Migrant Workers' House, Durebang, JCMK, Kasamma-ko, Korea Migrant Workers' Human Rights Centre, Korea Migrants' Centre, Korea Women Migrants Human Rights Centre, Korean Confederation of Trade Unions, Mongolia Gender Equality Centre, MTU, My Sister's Home, Osan Migrant Centre, Seoul Migrant Workers' Centre, Shalom House, Seongdong Migrant Workers' Centre, Solidarity with Migrants.

March 2008 and September 2009 in 11 cities throughout South Korea;[8] Ulan Bator, Mongolia; and Dhaka, Bangladesh.[9] They took place in homes, detention centres, hospitals, shelters, factories and migrant centres. Meetings were also held with the Korea Immigration Service, foreign embassies in Seoul, and the Ministries of Justice, Labour, and Foreign Affairs and Trade.

Amnesty International calls on the South Korean government to:

- ratify, incorporate fully into domestic law and implement in policy and practice the International Convention on the Protection of the Rights of All Migrants Workers and Members of Their Families, and relevant ILO conventions regarding the rights of all migrant workers, in particular the four remaining core ILO conventions that South Korea pledged to ratify in 2006 and 2008;

- carry out rigorous labour inspections covering a greater number of workplaces employing migrant workers to ensure that there are effective penalties for labour rights abuse by employers, in particular for lack of safety measures and training, harassment, violence and labour exploitation, with equal enforcement regardless of immigration status;

- ensure that an effective complaints mechanism is in place with prompt investigation of complaints of abuse of migrant workers, regardless of their status and without fear of reprisals.

- ensure that the procedures for the arrest, detention and deportation of irregular migrant workers are in line with the legal protection given to South Korean nationals, and conduct a prompt, effective, independent, thorough, and impartial investigation into allegations of human rights violations by immigration officials, and hold perpetrators accountable for human rights violations;

- immediately remove obstacles to forming and participating in the Migrants' Trade Union and ensure the rights of all migrant workers to form trade unions and to join a trade union of their choice.

[8] Ansan, Busan, Dongducheon, Gunpo, Hwaseong, Incheon, Maseok, Osan, Pyeongtaek, Seoul and Suwon.
[9] Via telephone link from London, UK.

"With the economic growth, and globalization, the Republic of Korea has become as of the eighties an attractive country for migrants. The Korean authorities, started to initiate programmes to organize the migration flow without necessarily giving the required attention to the protection of the human rights of migrants."

UN Special Rapporteur on the human rights of migrants
14 March 2007[10]

2. BACKGROUND

There are approximately 500,000 low-skilled migrant workers in South Korea who are mostly employed as low-skilled labour in manufacturing, construction, agriculture and other industries. The largest nationalities are Chinese (mainly ethnic Koreans or Korean-Chinese), Vietnamese, Filipino and Thai. About one-tenth are irregular or undocumented migrant workers.[11]

In the late 1980s, South Korea transitioned from a labour-exporting country to a destination country for migrant workers. Economic development and increasing prosperity meant that South Koreans were less willing to be employed in jobs they considered dirty, difficult and dangerous. This transition created a labour shortage that was particularly felt in the small and medium-sized enterprise (SME) sector. Due to labour shortages and domestic wage increases, larger South Korean companies were able to remain competitive by moving their factories to countries where costs and wages were lower. However, SMEs did not have the capital to do the same, thus, relied on migrant workers willing to work for low wages.[12] Prior to 1991, the absence of any formal work scheme or permit system meant that migrant workers in SMEs were in an irregular status.[13]

During the 1990s and in the early 2000s, the South Korean government implemented three migrant labour work schemes: the Joint Venture Trainee System, Industrial Trainee System and Employment Permit System. There has been considerable progress made in the management of migrant labour, first by providing migrant

[10] "Report of the Special Rapporteur on the human rights of migrants, Mission to the Republic of Korea (5-12 December 2006)", UN Doc. A/HRC/4/24/Add.2, 14 March 2007, para53.
[11] Korea Immigration Service, "Monthly Report on Immigration and Policy on Foreigners", September 2009 (in Korean), available at: http://www.immigration.go.kr, accessed 18 October 2009. Low-skilled workers include E-8 (training employment), E-9 (non-professional employment), E-10 (vessel crew) and H-2 (working visa for overseas Koreans in China and the former Soviet Union). As these figures do not include low-skilled migrant workers who came to South Korea on a tourist or business visa, the true numbers of irregular migrant workers are likely to be much higher. In September 2008, there were around 680,000 low-skilled migrant workers in South Korea, one-third of whom were irregular. See Ministry of Labour, Ministry of Justice and Presidential Council on National Competitiveness, "Ways to Improve Unskilled Foreign Workforce Policy", 25 September 2008, available at: http://www.pcnc.go.kr/e_nccusr/m05/PolyView.aspx?seq=18&page=0, accessed 15 May 2009.
An "irregular" migrant worker is someone who does not have the legal permission to remain in a host country while an "undocumented" migrant worker is someone who lacks the documentation to lawfully enter or stay in a country. They are often used interchangeably. For this report, the term "irregular" will be used for both cases.
[12] Seol Dong-hoon, "Migrants' Citizenship in Korea: With Focus on migrant workers and marriage-based immigrants", unpublished paper, November 2008, p9.
[13] Kevin Gray, "From Human to Workers' Rights: The Emergence of a Migrant Workers' Union Movement in Korea", *Global Society*, 21:2, April 2007, p300.

workers regular status as trainees and second by protecting them under labour laws as workers. However, Amnesty International has documented that migrant workers in South Korea are still subjected to human rights violations and exploitative practices.

2.1. Trainee systems and EPS

In 1991, the South Korean government introduced the Joint Venture Trainee System (JVTS)[14] to manage the country's growing migrant labour. Modelled after the Japanese Training Programme, it permitted companies with branches abroad to bring non-Korean staff to South Korea for training. This was followed in 1994 by a broader-based Industrial Trainee System (ITS)[15], which allowed companies with no more than 300 employees to recruit foreign nationals on a three-year contract as trainees in the manufacturing, construction, agriculture, fisheries and service industries.

Business organizations, such as the Korea Federation of Small and Medium Businesses (KFSB),[16] were responsible for the recruitment, placement and training of the trainees but exorbitant recruitment fees charged by these agencies meant that migrant workers incurred large debts. It was not unusual for trainees to be in debt for several years, which led many to stay beyond the three years (maximum allowed under the ITS) and work as irregular migrants so that they could put some savings aside.

In reality, both systems provided migrant workers with little or no on-the-job training. Initially migrant workers under both schemes were given virtually no protection as workers under the law, but in 1995, they were insured by industrial accident compensation and national health. Since then, trainees have also been covered by South Korea's Minimum Wage Act and given some protection under the Labour Standards Act.[17]

The discriminatory and exploitative treatment of trainees in both the JVTS and ITS led many migrant workers to assume irregular status and to protest against the government and to lobby and campaign for reform, along with South Korean civil society organizations, religious groups and trade unions. In 1996, the Joint Committee for Migrant Workers in Korea (JCMK)[18] drafted the Foreign Worker Protection Law, under which the Labour Permit System would provide an alternative to the trainee systems allowing migrant workers full freedom to change jobs and be fully protected and insured as workers. This bill was submitted in the same year to the National Assembly but lawmakers were either disinterested or opposed the bill thanks in part to lobbying efforts by the KFSB. The Asian economic crisis (1997-1999) effectively put on hold any legislative plans to implement a new migrant work scheme.[19]

[14] *Haeoi tuja gieop saneop yeonsusaeng jedo* in Korean.
[15] *Saneop gisul yeonsusaeng jedo* in Korean.
[16] The KFSB is currently known as Kbiz.
[17] Protection included provisions on forced labour and violence in the workplace. See Amnesty International, *Republic of Korea (South Korea): 'Migrant workers are also human beings'*, August 2006, p17 (AI Index: ASA 25/007/2006).
[18] JCMK is a national network of migrant support groups in South Korea.
[19] Kevin Gray, "From Human to Workers' Rights: The Emergence of a Migrant Workers' Union Movement in Korea", *Global Society*, 21:2, April 2007, p307.

Meanwhile in 1998, the South Korean government introduced as a stopgap the Post-training Employment Programme,[20] which permitted certain ITS trainees to work in their third year as "workers" with protection under labour laws equal to nationals.[21] In order to qualify, the trainees had to have arrived after April 1998, been recommended by their employer and passed an exam.

In 2002, a staggering 85 per cent of the total low-skilled migrant workforce in South Korea, estimated at around 340,000, held irregular status. In order to tackle this problem, the government provided an amnesty in March 2003 to irregular migrants who had resided in South Korea for less than four years. For those who had stayed for longer than this period, the only two options given to them were voluntary departure or forced deportation.

Due to mounting pressure by non-governmental organizations and trade unions to address the exploitative nature of the trainee systems, the Ministry of Labour drafted the Employment Permit System (EPS),[22] which the National Assembly passed on 31 July 2003 under the Law Concerning the Employment Permit for Migrant Workers (EPS Act) and was implemented a year later in August 2004. The ITS and EPS work schemes operated in parallel until 2007 when the ITS was finally harmonised into the EPS.

Under the EPS, the Labour Ministry issues a permit to South Korean SMEs employing 300 or less workers that cannot hire national workers,[23] to employ migrant workers from one of the 15 labour-exporting countries[24] that have signed a Memorandum of Understanding (MOU) with South Korea. In order to qualify for the EPS, migrant workers must pass a Korean language test and a medical exam. The costs to the migrant worker differ from country to country but on average the total comes to approximately USD 1,000, which includes the medical exam, visa fees, pre-departure training and orientation, and flight ticket.[25]

2.2. Entertainment visa

The EPS (E-9 visa) does not include the "arts and entertainment" sector, which is under a different work scheme (E-6 visa) and operated by the Ministry of Culture, Sports and Tourism. The E-6 visa, usually valid for six months with the possibility for further six-month extensions, is given largely to female migrant workers to work as singers, dancers and other entertainers. Many E-6 workers are employed in bars and nightclubs in the US military camp towns. Some civil society groups have criticised

[20] *Yeonsu chuieop jedo*.
[21] The visa status of an industrial trainee is a D-3, whereas a post-training "worker" is an E-8.
[22] *Goyong huhga jedo* in Korean.
[23] Employers must demonstrate that they tried to hire national workers, according to article 6(1) of the Act on Foreign Workers' Employment (EPS Act, the law governing the EPS), which states that: "An employer who intends to hire a foreign worker shall first submit an employment announcement seeking native workers to an Employment Security Center (hereinafter referred to as "Employment Security Office") prescribed in Article 4(1) of the Employment Security Act.
[24] Bangladesh, Cambodia, China, Indonesia, Kyrgyzstan, Mongolia, Myanmar, Nepal, Pakistan, Philippines, Sri Lanka, Thailand, Timor-Leste, Uzbekistan and Vietnam.
[25] Amnesty International meeting with the Ministry of Labour in Gwacheon, South Korea on 27 November 2008.

the work scheme under the E-6 entertainment visa for facilitating the exploitation of foreign women, including some cases of trafficking for sexual exploitation.[26]

2.3. International legal framework

All migrant workers, regardless of status, have rights under international law. These are set out in several international treaties, including the following which South Korea is a party to:

- the International Covenant on Civil and Political Rights (CCPR);
- the International Covenant on Economic, Social and Cultural Rights (CESCR);
- the International Convention on the Elimination of All Forms of Racial Discrimination (CERD);
- the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW);
- the Convention on the Rights of the Child (CRC);
- various conventions of the International Labour Organization (ILO, see below).

These treaties provide for the rights of migrant workers to:

- life;[27]
- freedom from torture, cruel, inhuman or degrading treatment or punishment;[28]
- freedom from slavery and servitude;[29]
- freedom from imprisonment for inability to fulfil a contractual obligation;[30]
- freedom from discrimination;[31]
- recognition as a person before the law;[32]
- freedom of thought, conscience and religion;[33]
- health;[34]
- education;[35]
- adequate housing;[36]
- adequate food and water;[37]
- work and rights at work.[38]

[26] This will be discussed in greater detail in section 8.1.
[27] Article 6 of the CCPR, article 9 of the Migrant Workers Convention.
[28] Article 7 of the CCPR, article 10 of the Migrant Workers Convention.
[29] Article 8(1) and (2) of the CCPR, and article 11(1) of the Migrant Workers Convention.
[30] Article 11 of the CCPR, article 20(1) of the Migrant Workers Convention.
[31] For instance article 2(1) of the CCPR, article 2(2) of the CESCR and article 7 of the Migrant Workers Convention. CERD and CEDAW are wholly devoted to the elimination of specific types of discrimination.
[32] Article 16 of the CCPR and article 24 of the Migrant Workers Convention.
[33] Article 18 of the CCPR and article 12(1) of the Migrant Workers Convention.
[34] Article 12 of the CESCR; article 5(e)(iv) of the CERD; articles 12 and 14(b) of the CEDAW; articles 24 and 25 of the CRC; and article 28 of the Migrant Workers Convention.
[35] Articles 13 and 14 of the CESCR; articles 28 and 29 of the CRC; article 5(e)(v) of the CERD; and article 30 of the Migrant Workers Convention.
[36] Article 11 of the CESCR; article 14(2) of the CEDAW; articles 16(1) and 27(3) of the CRC; and article 5(e)(iii) of the CERD.
[37] Article 11 of the CESCR; article 24(2)(c) of the CRC, article 14(2) of the CEDAW.
[38] Articles 6 to 8 of the CESCR; article 5(e)(i) of the CERD; articles 11 and 14 of the CEDAW; and articles 25 and 26 of the Migrant Workers Convention.

The UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Migrant Workers Convention)[39] provides specifically for the rights of migrant workers. It defines a migrant worker as "a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national" (article 2(1)). The Convention provides for "sound, equitable, humane and lawful conditions" (part VI) in destination countries for all migrant workers and their families, including those in an irregular situation. Rights protected under the Convention include the rights to life, freedom from torture, due process, medical care, equal treatment, membership in trade unions and access social services. Its non-discrimination clause also provides that migrant workers and their families have rights to work, access education and adequate housing, and food and water. Although South Korea has not signed the Migrant Workers Convention, it is state party and/or accountable to other international conventions and standards that protect the rights of all migrant workers.

The ILO Declaration on Fundamental Principles and Rights at Work sets out the need for governments and employers' and workers' organizations to uphold "fundamental principles and rights at work". In the Declaration, the ILO states that these rights are universal and applicable to everyone in all states, irrespective of ratification of specific treaties. It declares that all member states must respect freedom of association and the right to collective bargaining; elimination of forced or compulsory labour; abolition of child labour; and elimination of discrimination in employment and occupation.

Eight core ILO conventions set out, expand and complement the fundamental principles and rights at work outlined in the Declaration. Among the eight, South Korea has ratified no. 100 Equal Remuneration Convention, no. 111 Discrimination (employment and Occupation) Convention, no. 138 Minimum Age Convention, and no. 182 Worst Forms of Child Labour Convention. In the 2006 Human Rights Council pledge, South Korea stated that it would consider ratifying by 2008 the remaining four: no. 87 Freedom of Association and Protection of the Right to Organise Convention, no. 98 Right to Organise and Collective Bargaining Convention, no. 29 Forced Labour Convention, and no. 105 Abolition of Forced Labour Convention.[40] Having failed to meet this goal, South Korea in its 2008 election pledge to the Human Rights Council stated once again that it would continue "to consider the ratification" of the four ILO conventions.[41] So far, it has not done so.

In addition, South Korea has ratified ILO conventions no. 81 (Labour Inspection), No. 111 (Discrimination (Employment and Occupation), No. 155 (Occupational Safety and Health), and No. 187 (Promotional Framework for Occupational Safety and Health).

[39] Adopted by UN General Assembly resolution 45/158 of 19 December 1990. Entered into force on 1 July 2003.
[40] UN Document MUN/582/06, 15 March 2006.
[41] UN Document A/62/754, "Note verbale dated 14 March 2008 from the Permanent Mission of the Republic of Korea to the United Nations addressed to the President of the General Assembly", 14 March 2008.

Regardless of ratification, the ILO in 2004 concluded that "ILO instruments apply to all workers, including irregular migrant workers, unless otherwise stated" and that the eight core ILO conventions "cover all migrant workers, regardless of status".[42]

2.4. Government due diligence

As a state party to the CESCR, South Korea is obligated to take all necessary measures to safeguard persons within its jurisdiction from infringements of the right to work by third parties. The Committee on Economic, Social and Cultural Rights has emphasised that a failure to do so would amount to a violation of the Covenant. The state would also violate its obligation to protect through omissions such as "the failure to regulate the activities of individuals, groups or corporations so as to prevent them from violating the right to work of others".[43]

Some of the cases in this report describe abuses of the rights of migrant workers inflicted by private employers, namely individuals who are not state officials – "non-state actors" – rather than by the state. However, states are also obliged, under international human rights law, to exercise due diligence to protect individuals against abuses of their rights by non-state actors. As the Human Rights Committee, the expert body charged with overseeing the implementation of the CCPR, has said in its authoritative General Comment:

> *"…the positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so far as they are amenable to application between private persons or entities. There may be circumstances in which a failure to ensure Covenant rights as required by article 2[44] would give rise to violations by States Parties of those rights, as a result of States Parties' permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities."*[45]

Thus, due diligence obligations are not merely limited to legislating against human rights abuses, but require that the state adopt a whole range of measures including the training of state personnel, the adoption of practical policies and mechanisms to protect individuals' rights, and ensuring that the law is accessible to victims who have

[42] International Labour Conference, "Resolution concerning a fair deal for migrant workers in a global economy", 92nd session, Geneva, 2004, paras28 and 12.
[43] Committee on Economic, Social and Cultural Rights, General Comment No. 18: The Right to Work, E/C.12/GC/18, 6 February 2006, para35.
[44] This article sets out the obligations of states parties to respect and ensure respect of the Covenant's provisions through appropriate means and without discrimination (footnote added).
[45] Human Rights Committee, General Comment No. 31 on Article 2 of the Covenant: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. CCPR/C/74/CRP.4/Rev.6, 21 April 2004, para8. See in the same spirit Committee on Economic, Social and Cultural Rights, General Comment No. 16 (2005) on The equal right of men and women to the enjoyment of all economic, social and cultural rights (article 3 of the International Covenant on Economic, Social and Cultural Rights), UN Doc. E/C.12/2005/4, 11 August 2005, para20.

experienced any form of human rights abuse and can best serve their needs. The state must therefore exercise due diligence, by taking reasonable measure, to ensure that the human rights of migrant workers are respected and protected, including the rights to freedom from discrimination, fair wages and equal remuneration, safe and healthy working conditions, and adequate health care in case of accidents. There may be circumstances where failure to do so would make the state itself responsible for violations.

Migrant workers, both regular and irregular, face multiple forms of discrimination and abuse in the workplace by their employers. Addressing the responsibility of the government, the Committee on the Elimination of Racial Discrimination in its 2007 concluding observations on South Korea recommended that:

> *"The Committee also recommends that the State party take effective measures in order to ensure the right of all migrant workers, regardless of their status, to obtain effective protection and remedies in case of violation of their human rights by their employer."*[46]

[46] Concluding Observations of the Committee on the Elimination of Racial Discrimination on the Republic of Korea, UN Doc. CERD/C/KOR/CO/14, 17 August 2007, para18.

"Contrary to its purpose, the Employment Permit System mass produces irregular migrant workers and elements within the system also violate the human rights of migrant workers."

Moon Kyung-ran, Standing Commissioner
National Human Rights Commission of Korea[47]

3. SHORTCOMINGS OF EPS[48]

The EPS was intended to provide migrant workers with greater legal protection and recognition as workers under domestic labour law; prohibit discrimination; recognise their right to access to a system of redress against employers in cases of unpaid wages or industrial accidents; and have national health insurance. As workers, they are also covered under the Minimum Wage Law and have the rights to freedom of association, collective bargaining and collective action.

However in practice, migrant workers do not have equal rights with South Korean workers. Their access to minimum labour rights is limited because of fear of reprisals. The leverage that an employer has over migrant employees increases their vulnerability to exploitation. Many interviewees have told Amnesty International that the power their employer has over their ability to work legally in South Korea has prevented them from speaking their mind, defending their rights and/or taking action against their employer.

The lack of enforceable accountability has also been noted by the UN Special Rapporteur on the human rights of migrants:

> *"EPS workers receive benefits including industrial accident compensation insurance, employment insurance and national health insurance and the national pension based on reciprocity between the parties of the MOU. They are entitled the same legal status as native workers as stipulated in labour related*

[47] Lee Tae-young, "Current system mass produces irregular migrant workers – also lots of human rights violations, reform needed", *Segye Ilbo*, 17 August 2009 (in Korean), available at: http://www.segye.com/Articles/NEWS/SOCIETY/Article.asp?aid=20090817003952&subctg1=&subctg2=, accessed 15 September 2009.

[48] Addendum: On 16 September 2009, amendments to the EPS Act were passed in the plenary session of the National Assembly. However at the time of publication of this report, the new amendment bill had not come into force yet. Amendments include the following: (1) Instead of the annual renewal of contracts, the length of the contract would be decided between employers and migrant workers. (2) Currently, after their initial three-year-term, migrant workers may extend their contract for a further three years provided that their last employer is willing to re-hire them. Migrant workers must also return to their countries of origin before starting their new contract. The new amendment would allow migrant workers to continue working in South Korea for a further two years without returning to their countries of origin. (3) Job changes that are not the fault of migrant workers would not be counted against them. (4) The time allowed for migrant workers to change jobs would be extended from two to three months. Although it is too early to assess how these new amendments will impact on migrant workers, several NGOs have expressed their concerns to Amnesty International that, for example, an extension to three months is arbitrary and in the current economic situation, may not be enough. They question whether a time limit is really necessary given that migrant workers come to South Korea to earn as much money as possible, therefore, it would not be in their best interest to be unemployed. Any time limit would merely contribute to irregular migration.

> *laws and thus guaranteed a minimum wage, the rights to form trade unions, collective actions and collective bargaining. Nevertheless, the* ***EPS fails to provide a judicial mechanism for holding accountable those who violate this provision****" (emphasis added).*[49]

Article 23 of the Universal Declaration of Human Rights states that:

> *"(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.*
> *(2) Everyone, without any discrimination, has the right to equal pay for equal work.*
> *(3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.*
> *(4) Everyone has the right to form and to join trade unions for the protection of his interests."*

Central to the issue of the vulnerability of EPS workers to discrimination and abuse is the fact that their residence status is bound to the employer without sufficient safeguards to protect them in cases of infringements of their rights by employers. In 2008, the ILO's Committee of Experts on the Application of Conventions and Recommendations in its Individual Observation of South Korea concerning no. 111 Discrimination (Employment and Occupation) Convention addressed this issue, stressing the importance of:

> *"ensuring the effective promotion and enforcement of the legislation to ensure that migrant workers are not subject to discrimination and abuse contrary to the Convention. The Committee also considered that providing for an appropriate flexibility to allow migrant workers to change workplaces may assist in avoiding situations in which migrant workers become vulnerable to discrimination and abuse."*[50]

Although migrant workers can work in South Korea for three years, their contract term is valid for only one year at a time.[51] Thus in order to remain in a regular status, migrant workers must have their contract signed each year by their employer. This seriously hampers their ability to lodge complaints about abuses because they fear antagonising their employers or losing their jobs, thereby losing their legal right to work in South Korea. On this issue, the UN Special Rapporteur on the human rights of migrants stated that:

[49] "Report of the Special Rapporteur on the human rights of migrants, Mission to the Republic of Korea (5-12 December 2006)", UN Doc. A/HRC/4/24/Add.2, 14 March 2007, para20.
[50] CEACR: Individual Observation concerning Discrimination (Employment and Occupation) Convention, 1958 (No. 111) Republic of Korea (ratification: 1998) Published: 2009, ILOLEX Doc. 062009KOR111.
[51] Article 9(3) of the EPS Act states: "The term of the labour contract shall not exceed one year: provided, that the labour contract may be renewed for a period not exceeding that prescribed in Article 18 (1), and in this case, the term of each renewed contract shall not exceed one year." See EPS Act, Act no. 6967, 6 August 2003, last amended on 29 February 2008, available at: www.moleg.go.kr/FileDownload.mo?flSeq=25686, accessed 2 July 2009. See also addendum in footnote 48.

> *"The fact that the EPS requires migrant workers to annually renew employment contracts with their employers for a period not exceeding three years places them in a vulnerable situation. The annual extension of contracts depends upon their employers, therefore very few dare to lodge complaints if their working conditions are inadequate, fearing the non-extension of their contracts. Moreover, it also impedes their freedom of movement of work because they are bound to remain within their first employment company throughout the three-year period."*[52]

The Ministry of Labour has job centres throughout South Korea to assist migrant workers with their application to transfer employment. The Ministry also has labour offices where they handle complaints and disputes, including cases of withheld wages, sexual harassment and discrimination. In any work-related problems, the first-point of contact for remedy should be the job centre or labour office in their district, but many migrant workers and non-governmental organizations have told Amnesty International that the staff members at these offices were unhelpful and unwilling to take the time to understand their clients' problems due to various factors, such as language barrier or shortage of staff. Therefore, migrant workers often seek help first at a migrant centre or trade union before going to the job centre or labour office.

Secondly, although the EPS does not prohibit change of workplace, various restrictions make the process difficult and at the very least, labour mobility is discouraged by the government and employers. For example on the government EPS website, it clearly states that "in principle, foreign workers are not allowed to change business or workplace".[53] Under article 25 (Permission for Change of Business or Workplace) of the Act on Foreign Workers' Employment (EPS Act, the law governing the EPS),[54] migrant workers are only allowed to change their job a total of three times in the three-year period through the job centre[55] and only with the permission of the Minister of Justice, as outlined in article 21(1) (Change and Addition of Work Place) of the Immigration Control Act:

> *"If a foreigner sojourning in the Republic of Korea desires to change or add his work place within the limit of his status of sojourn, he shall obtain permission in advance from the Minister of Justice."*[56]

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[52] "Report of the Special Rapporteur on the human rights of migrants, Mission to the Republic of Korea (5-12 December 2006)", UN Doc. A/HRC/4/24/Add.2, 14 March 2007, para21.
[53] "Important Notice for Foreign Workers, 1.Permission for Change of Business or workplace", available at: http://www.eps.go.kr/wem/en/contents/important.jsp, accessed 26 June 2009.
[54] EPS Act, Act no. 6967, 6 August 2003, last amended on 29 February 2008, available at: www.moleg.go.kr/FileDownload.mo?flSeq=25686, accessed 26 June 2009.
[55] Change of jobs is permitted in "exceptional cases where the current employment relations cannot be continued due to such reasons as follows: Justifiable reasons for changing workplaces: (a) In the event the employer terminates the employment contract under justifiable cause or refuses to renew it; (b) In the event a foreign worker cannot continue to work at a workplace due to the suspension of business, closure of business or other reasons for which the worker is not responsible; (c) In the event an employer is restricted from hiring foreign workers or cancelled the employment permit for foreign workers under the EPS due to a violation of human rights such as physical assault, delayed payment of wages and deterioration of working conditions; or (d) In the event a foreign worker is not fit to continue work at the workplace due to an injury but is able to work at another workplace and other events." From the Ministry of Labour, *Guide to Employment in Korea for Foreign Workers (What Foreign Workers Need to Know When Working in Korea)*, June 2007, pp15-17.
[56] Immigration Control Act, Act No. 7655, 4 August 2005, last amended on 19 December 2008, available at: http://www.moleg.go.kr/FileDownload.mo?flSeq=25839, accessed 9 September 2009.

The inability to change jobs freely prevents migrant workers from raising issues of abuse in the workplace, lack of overtime pay or sexual harassment or violence. In order to ensure continued employment, they are more likely than South Korean workers to put up with poor training, inadequate safety measures, and insufficient medical leave.

In addition, their employer normally must agree to the change by signing a release document.[57] What this ultimately means is that EPS workers do not have the right to withdraw their labour from their employer without losing their legal status, thus risking arrest, imprisonment and deportation. When employers refuse to release migrant workers, some find conditions so unbearable that they have no choice but to leave anyway and become irregular workers. Therefore, their freedom to choose their employer, as outlined in article 6(1) of the CESCR, is greatly limited:

> *"The State Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts...."*

This restriction of labour mobility, along with the migrant workers being tied to their employers and greater freedom of their employers to terminate contracts, lead to a host of human rights abuses of migrant workers.

If a new employment is not found within two months of leaving a job,[58] migrant workers lose their legal status, and thus, are subject to arrest, detention and deportation. The majority are not proficient in the Korean language or familiar with their way around. Thus, the process of going to a district job centre, receiving a list of registered companies who are hiring, visiting the companies on the list and checking out the working conditions is very difficult for many migrant workers.

In the current economic downturn, finding a new job within two months becomes even more challenging. For example, South Korea's National Statistical Office announced that in December 2008 productivity of manufacturing and mining industries had sharply decreased. The average rate of operation in the manufacturing industries was the lowest in 28 years.[59] In the same month, 608 factories closed down in the Siheung and Ansan where many migrant workers are employed. This figure is 30 times higher than Ansan's average monthly closure rate for the rest of 2008. According to Ministry of Labour statistics, the number of EPS workers in 2008 who became irregular due to inability to find work within two months has increased significantly. In the last quarter of 2008, the monthly average number of EPS

[57] In cases where employers have violated labour laws, their consent is not required for a job change.
[58] Migrant workers have two months to look for a new job from the moment their employer submits a notification of the termination of their contract.
[59] "Productivity of industries sharply decreased 18.6 per cent...the lowest ever", *Yonhap News*, 30 January 2009, available at: http://app.yonhapnews.co.kr/yna/basic/article/Search/YIBW_showSearchArticle.aspx?searchpart=article&searchtext=%ec%82%b0%ec%97%85%ec%83%9d%ec%82%b0%20%ea%b8%89%ea%b0%90&contents_id=AKR20090130135500002&search=1, accessed 15 October 2009.

workers who became irregular was 297, which is 72 per cent higher than in the first three quarters of 2008.[60]

Not surprisingly, a 2008 survey of 339 EPS workers from nine MOU countries[61] conducted by JCMK and Alliance for Migrants' Equality and Human Rights found that 66 per cent had changed jobs at least once. The most common reasons given were low wages, withheld wages, poor working conditions and work that was either too heavy or difficult for them. Most of the surveyed found the process of changing jobs very difficult (57 per cent) because of uncooperative employers (24 per cent), interpretation problems at the job centre and labour office (18 per cent), lack of information on how to change jobs (15 per cent) and unhelpful staff at the job centre (11 per cent).[62]

The inability to find new employment in the two month time limit, exacerbated by the economic downturn, often leaves migrant workers with little choice but to accept jobs with unfavourable work conditions just to maintain their immigration status. As a result, many migrant workers then must look for other employment and in doing so, they quickly reach their limit of three changes permitted under the EPS. In January 2008, 3,642 migrant workers changed jobs. But the numbers sharply increased 82 per cent in the last quarter of 2008 (the initial period of the economic downturn) to an average of 6,638 job changes per month.[63] According to the MTU, adhering to the two-month restriction is becoming so difficult under the current economic climate that some job centres have advised migrant workers to get a medical diagnosis stating the need for treatment so that the two-month period may be extended.[64] This is clearly not a solution to an increasingly untenable time restriction under the EPS.

In order to address the issue of irregular migrants within the EPS, restrictions on the number of job changes should be removed. In addition, the time limit within which migrant workers need to find a job should also be removed or greater flexibility should be given to facilitate finding new employment.

[60] JCMK, Network for Migrants' Rights in Korea and MTU, Press Conference on "Guarantee of the Right to Life for Migrant Workers: Do not treat migrant workers as scapegoats in the economic crisis", 5 March 2009 (in Korean).
[61] China, Indonesia, Mongolia, Myanmar, Pakistan, Philippines, Sri Lanka, Thailand and Vietnam.
[62] JCMK and Alliance for Migrants' Equality and Human Rights, 2008 Fact-finding Report on the EPS, 18 December 2008 (in Korean), p3.
[63] JCMK, Network for Migrants' Rights in Korea and MTU, Press Conference on "Guarantee of the Right to Life for Migrant Workers: Do not treat migrant workers as scapegoats in the economic crisis", 5 March 2009 (in Korean).
[64] Amnesty International interview with MTU in Seoul, South Korea on 22 July 2009.

Figure 1: Women's shelter at the Korea Migrants' Centre in Seoul (AI)

3.1. Discrimination

Migrant workers face various forms of discrimination and exploitation in the workplace because of their status. While South Korean workers in similar jobs also suffer from violations of certain labour rights, migrant workers are at greater risk because they are heavily represented in smaller SMEs. For example, 77 per cent of the low-skilled workforce in SMEs employing 30 workers or less is made up of migrant workers.[65] Moreover, South Korean workers have better job mobility – however constrained, they have the choice of leaving an oppressive or exploitative job situation and finding other employment. Whereas migrant workers have limited, if any, job mobility and the reality of becoming irregular if they leave their job without employer permission is a convincing disincentive.

Irregular workers are at greater risk of discrimination because of their status, which exacerbates their exclusion and risk of exploitation. Interviews with migrant workers, trade union representatives and non-governmental organizations indicate that in comparison to South Korean workers, regular and irregular migrants receive lower wages, work longer hours and night shifts – often without monetary compensation – and are subjected to significantly more verbal and physical abuse. They have less access to redress due to a combination of language barrier, unfamiliarity with local laws and inadequate translation or unhelpful staff at the job centre or labour office.

Article 1(a) of ILO Convention No. 111 concerning Discrimination (Employment and Occupation) defines discrimination as:

[65] Ministries of Labour, Justice, and for the Health, Welfare and Family Affairs, and Presidential Council on National Competitiveness, "Ways to Improve Unskilled Foreign Workforce Policy", 25 September 2008 (in Korean), available at: http://www.pcnc.go.kr/nccusr/m03/PolyView.aspx?seq=28&page=1, accessed 8 October 2009. In addition, one of the requirements for SMEs to qualify for employing migrant workers is their inability to hire South Korean workers.

> *"any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation."*

And state parties must:

> *"declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation,* ***with a view to eliminating any discrimination in respect thereof****"* (article 2, emphasis added).

Articles 7, 8, 9, 10 and 11 of the CESCR oblige state parties to:

> *"recognize the right of everyone to ... just and favourable conditions of work which ensure ... fair wages and equal remuneration for work of equal value without distinction of any kind...; a decent living ...; safe and healthy working conditions; equal opportunity for everyone to be promoted ...; rest, leisure, and reasonable limitation of working hours .... the right of everyone to form trade unions and join the trade union of his choice ... for the promotion and protection of his economic and social interests...; the right to strike... the right ... to social security.... Children and young persons should be protected from economic ... exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law.... States Parties ... recognize the right of everyone to an adequate standard of living for himself and his family...."*

Article 2 of the Universal Declaration of Human Rights states that "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". As noted, this right is similarly provided in several human rights treaties to which South Korea is a state party. In 2007, the Committee on the Elimination of Racial Discrimination[66] in its concluding observations on South Korea remained concerned that:

> *"migrant workers can only be granted non-renewable, three-year contracts,[67] and face severe restrictions to their job mobility as well as discriminatory treatment and abuses in the workplace, such as longer working hours, lower wages, unsafe or dangerous conditions of work and short length employment contracts (three years). The Committee is also concerned that migrant workers, in particular those with an irregular status, encounter obstacles in obtaining legal protection and redress in cases of discriminatory treatment at the workplace, unpaid or withheld wages, or injury or illnesses suffered as a result of industrial accidents (articles 5(e) and 6)."*[68]

[66] A UN treaty body composed of independent experts mandated to monitor state parties' compliance with their obligations under CERD.
[67] See addendum in footnote 48 (footnote added).
[68] Concluding Observations of the Committee on the Elimination of Racial Discrimination on the Republic of Korea, UN Doc. CERD/C/KOR/CO/14, 17 August 2007, para18.

South Korea, as a state party to CERD and other international conventions, has an obligation to protect individuals against discrimination.

Under article 6 of South Korea's Labour Standards Act, "an employer shall not discriminate against workers on the grounds of gender, nationality, religion or social status." Thus, discrimination against migrant workers is in breach of South Korean law. The Labour Standards Act entitles regular and irregular migrant workers protection under labour laws equal to that of Korean workers.[69] More specifically, article 22 of the EPS Act states that:

> *"An employer shall not give unfair and discriminatory treatment to foreign workers on grounds of their status."*[70]

However, the Act does not provide any guidance on penalising employers who violate this article.

3.2. Change of employment

In order to change jobs, migrant workers are essentially dependent on the goodwill of their employer to sign the release papers. In the case where permission is not granted, migrant workers face becoming irregular. A case in point is KS, a 29-year-old Sri Lankan male EPS worker, who worked in May 2004 at a factory in Osan, Gyeonggi province that made hamburgers and pork cutlets. Working all day in a refrigerated area, he found it difficult to adjust to the extreme cold:

> *"I couldn't work there anymore. After two months, I asked my boss to allow me to change jobs, but he wouldn't sign my release papers. So, I couldn't find another job. The Sri Lankan Embassy intervened on my behalf, but my boss still refused."*

KS could not work under those conditions so he, like many other regular migrant workers, decided to leave the job without the employer's consent and become irregular.[71]

KD, a 36-year-old Sri Lankan female EPS worker who worked at a thread factory in Incheon,[72] had similar difficulties:

> *"All day I carried heavy rolls of thread – one on each arm – that weighed about five kilos each. I also rotated from day to night shift on a weekly basis. It was very difficult to adjust to the constant change. My body ached and I was ill all the time. When I explained my difficulties to my boss and asked him to sign my release papers, he refused. I had to wait two years before he finally agreed."*[73]

[69] Korea Labor Education Institute, *Easy Korean Labor Law*, 2007, p125.
[70] EPS Act, Act no. 6967, 6 August 2003, last amended on 29 February 2008, available at: www.moleg.go.kr/FileDownload.mo?flSeq=25686, accessed 11 August 2009.
[71] Amnesty International interview with KS in Osan, South Korea on 1 November 2008.
[72] Incheon is one of the six metropolitan cities in South Korea. The others are Busan, Daegu, Gwangju, Daejeon and Ulsan. Similar to the capital of Seoul, which has special city status, metropolitan cities are under the direct administration of the central government (and not under the province in which they are physically located).
[73] Amnesty International interview with KD in Incheon, South Korea on 16 November 2008.

Article 25(2) of the EPS Act states that a job change will not count against the migrant worker:

> *"In case it is deemed impossible to continue to work in a workplace because of business shutdown, closure and other reasons not attributable to the foreign worker."*[74]

Accordingly, a Ministry of Labour directive instructs that a job change due to a reason that is not the fault of the migrant worker is not to be counted as one of the three changes permitted.[75] Despite this directive, an overwhelming majority of EPS workers interviewed for this report was not aware of this. More worrying, interviews with migrant workers and the MTU revealed that staff members at job centres were also not aware or did not follow the procedure.[76]

A case in point is TR, a 34-year-old Filipino male EPS worker, who went to the district job centre in Suwon, Gyeonggi province on 27 March 2008 to request for a job change. He explained that this was due to below minimum wage pay, forced and uncompensated overtime, verbal abuse and no rest days. Without any explanation, the caseworker gave him a "notification of change of workplace" (release form) and told him to get it signed by his employer or manager. When TR tried to get the release paper signed, his manager refused. The next day, he returned to the job centre and explained what had happened. According to TR, his caseworker then advised him:

> *"Your employer might report you as having run away [thus, becoming irregular], so I suggest that you go back to your job and just continue working there".*

As TR did not want to continue working under those conditions, he sought the help of the MTU. It was only then that he found out that when employers violate labour laws, their consent is not required for a job change. Acting on behalf of TR, Lee Jeong-won, MTU's Education and Outreach Director, met with his caseworker on 1 April 2008:

> *"Before I could say anything, the caseworker told me that the job change was not possible because the employer did not sign the release form. When I explained that the EPS law allows for migrant workers to leave a workplace legally without employer's consent when it is not their fault, the caseworker replied that this law was irrelevant in TR's case. When asked why and for documentation, the caseworker said that although he had investigated the case, there was no such paperwork and that it was all in his head.*"[77]

On 22 April 2008, the MTU went to Suwon job centre again but this time to meet with the manager. Upon review, the manager agreed with the MTU that TR's work

[74] EPS Act, Act no. 6967, 6 August 2003, last amended on 29 February 2008, available at: www.moleg.go.kr/FileDownload.mo?flSeq=25686, accessed 26 July 2009. See also addendum in footnote 48.
[75] Amnesty International meeting with the Ministry of Labour in Gwacheon, South Korea on 24 July 2009.
[76] Amnesty International interview with Lee Jeong-won in Seoul, South Korea on 27 July 2009.
[77] Amnesty International interview with Lee Jeong-won in Seoul, South Korea on 27 July 2009.

conditions were against labour laws. So through such third party intervention, the application for a job change was filed without the employer's signature.[78]

In another case involving the Suwon job centre, YJ, a 31-year-old Filipino female EPS worker who arrived in South Korea in May 2006, found out that the factory where she was meant to work had already closed down due to bankruptcy. Despite not being at fault, the job centre in Suwon counted this against her as one job change. It was only through MTU's intervention that YJ's caseworker was made aware of this Labour Ministry directive and that the error was rectified.[79]

The EPS also allows migrant workers a fourth change in exceptional cases where all three changes "were made due to grounds solely accountable to the employer".[80] Valid reasons include factory closure due to bankruptcy or human rights violations of the workers. Obtaining permission for a fourth time is a difficult process because the onus is on the migrant workers to prove that they were not at fault for each job change. YJ had exhausted three job changes in two years. With one year remaining in her three-year EPS work permit, she was no longer able to work legally even though on all three occasions the change of employment was due to reasons attributable to her employers.

After her release from the factory that went bankrupt before her arrival (which was eventually not counted against her), YJ found work at an engine cover factory in July 2006 where she was sexually harassed by her employer (first release). In October 2006, she worked at a phone assembly factory where her employer pressured her to work from 9am to 3am. YJ was so tired one night that she fell asleep and left her middle finger pressed in the machine. She collapsed and was taken to the hospital (second release). In November 2007, the factory where she worked faced liquidation (third release). Despite these valid reasons, she had to file a complaint with the labour office against her previous employer who had sexually harassed her in order to obtain a fourth release:

> *"My former boss must have put on the release form that the reason for my departure was my fault. Even though the job centre knew what he had done to me, they still processed it according to his story and thus, counted this job change against me. For them, it was far more convenient to do that than to verify my claim and ensure that I was not unjustly penalised. If they did their job properly in the first place, then I would not be out of work now asking for a fourth release. I have to win this case so that I can get my E-9 [EPS] status back and be able to work again."*

In 2009, YJ's complaint was unsuccessful due to lack of testimony from a witness. According to YJ, a female colleague was also harassed by the employer but the colleague was unwilling to submit a statement attesting to her harassment and had subsequently left the country. YJ's temporary visa ended at the end of April 2009 but

[78] Information provided by the MTU on 22 July 2009.
[79] Amnesty International interview with YJ in Suwon, South Korea on 26 November 2008.
[80] Ministry of Labour, *Guide to Employment in Korea for Foreign Workers (What Foreign Workers Need to Know When Working in Korea)*, June 2007, pp15-17. See also article 30(1) of Enforcement Decree Of The Act On Foreign Workers' Employment, Etc., Presidential Decree no. 20681, last amended on 29 February 2008, available at: http://www.moleg.go.kr/FileDownload.mo?flSeq=25687, accessed 1 October 2009.

she decided to remain and work in an irregular status in order to recuperate the income lost during the one-year period she was not allowed to work.[81]

3.3. Unfair dismissal

Article 23(1) of the Labour Standards Act states that "No employer shall dismiss, lay off, suspend, or transfer a worker, or reduce wages, or take other punitive measures [...] against a worker without justifiable reasons".[82] EPS workers can file a complaint against their unfair dismissal at the Labour Relations Commission, which is a quasi-judicial governmental body affiliated to the Ministry of Labour and composed of tripartite representatives: workers, employers and public interests. Its principle roles are to adjudicate and mediate (or arbitrate) rights or interests disputes arising out of the employment relationship.[83] The complaint filed at the Regional Labour Relations Commission ordinarily takes two to three months to settle. If the issue remains unresolved, it then goes to the National Labour Relations Commission for review. This takes another three to five months.[84]

Very few migrant workers choose this option because, as interviewees told Amnesty International, the process takes too long during which time they would be without a job and money. Thus for many, it is easier just to find another job. Even if they are able to be reinstated, interviewees felt that it would not be ideal, as the work environment would most likely be quite hostile. Some also expressed little faith in the ability or goodwill of the Labour Relations Commission to deal with their claims in a fair and impartial manner.

MTU has also stated that the complaints procedures are difficult for migrant workers to access without assistance because they may not know that these procedures exist and cannot communicate their concerns verbally or in writing due to language barrier. In the case of the labour office and job centre, the situation is exacerbated by inadequate interpretation and unhelpful or impatient staff who are often understaffed.[85]

Taking into account all these factors, employers under the EPS can effectively fire migrant workers at will, even without just cause. As the EPS is a government-run work scheme, the South Korean authorities have a duty and obligation to ensure that an effective complaints mechanism is in place for all migrant workers to access.

Several EPS workers who have spoken out or defended their rights have been unfairly dismissed by their employer risking irregular status as a result. For example, CR, a 34-year-old Filipino female EPS worker, worked in 2006 at a factory in Osan, Gyeonggi province that made heating coils. She and two other colleagues were dismissed just for asking their employer for a day off for Christmas:

[81] Amnesty International interview with YJ in Suwon, South Korea on 26 November 2008 with updates via email on 3 June 2009.
[82] Labour Standards Act No. 8561, 27 July 2007, last amended on 21 May 2009, available at: http://www.moleg.go.kr/FileDownload.mo?flSeq=25699, accessed 1 October 2009.
[83] See http://www.ilo.org/public/english/employment/gems/eeo/law/korea/c_nlrc.htmm, accessed 9 August 2009.
[84] Amnesty International interview with Lee Jong-ran, a certified public labour lawyer, in Seoul, South Korea on 7 August 2009.
[85] Information provided by the MTU on 3 June 2009.

> *"He got very angry with us but agreed to it. But when we came back to work the day after Christmas, we were shocked to receive our release papers. Our boss had fired us for taking Christmas off."*

CR informed the job centre of her situation, but her caseworker did not take further action and merely gave her a list of available jobs. CR eventually found work in February 2007 at a factory in Paju, Gyeonggi province that made telephone keypads. Despite having her wage withheld for two months, she continued working without pay:

> *"I didn't even have any money for food, which I had to ask my boss. But I stayed on because I didn't want to anger him – especially since I had that bad experience with my previous employer. Ten Filipino workers went to the labour office to file a complaint. I wasn't part of the group, but when our boss found out, he fired them as well as me – just because I was the same nationality."*

During the two months[86] – the maximum time allotted under the law for migrant workers to find a job after being dismissed – that CR searched for a job, she had no place to live so she stayed at a migrant shelter. With only five days left to find a job, she had no choice but to accept the next job that came up. CR said that the two month period is often not long enough:

> *"These days it is very difficult to find another job, especially in winter. Factory employers prefer men because they can do heavier work. Women also have to check and see whether the job is manageable – sometimes the machines are too physically exhausting or dangerous. Also, you have to make sure that the housing situation is safe."*[87]

Some migrant workers are unfairly dismissed because they have incurred unwanted costs to the company. For example, SS, a 26-year-old Sri Lankan male EPS worker, was fired because he "got into too many accidents" and the employer did not want to pay a higher insurance premium.[88]

MR, a 27-year-old Filipino EPS worker, was dismissed in August 2008 when he resisted pressure from his employer at a print factory in Seoul to sign a new contract in the eight month of his first year. The new contract would have extended his work hours on Saturdays:

> *"Under the existing contract, we worked until noon on Saturdays, but the new contract would have given us less basic pay plus made us work until the job was done, which could easily go beyond noon. Despite the pressure, nine other colleagues and I refused to sign the new contract. My boss called us troublemakers, but all we were doing was defending our labour rights. When we continued to resist, he fired us all."*[89]

[86] See addendum in footnote 48.
[87] Amnesty International interview with CR in Osan, South Korea on 1 November 2008.
[88] Amnesty International interview with SS in Ansan, South Korea on 23 November 2008.
[89] Amnesty International interview with MR in Seoul, South Korea on 12 November 2008.

"The Ministry of Labour maintains that the corruption in the EPS recruitment in sending countries is for those countries to sort out on their own. However, the EPS is a bilateral agreement through the Memorandum of Understanding between the government of South Korea and those of the sending countries. Therefore, both South Korea and sending countries are responsible for addressing the corruption issue."

Lee Kyung-suk
Joint Committee for Migrant Workers in Korea (JCMK)[90]

4. PROBLEMS IN THE PRE-DEPARTURE AND RECRUITMENT PROCESS

4.1. Recruitment process: corruption and exploitation

Under the EPS, many migrant workers still go through brokers to obtain work in South Korea. They often have to borrow money from family members, friends or banks in order to pay for the very high broker fees, placing them in debt even before they arrive in South Korea. As a result of their indebtedness or inability to save money, many migrant workers decide to overstay their visas and become irregular. Their irregular status then puts them at greater risk of exploitation and human rights abuses.

Several changes to the recruitment process have been introduced under the EPS in order to address the corruption and exploitation of migrant workers that had been rife in the previous trainee systems. Arguably the most significant was the transfer of the management of migrant labour from private business organizations like the KFSB to the Ministry of Labour. Bilateral agreements through the Memorandum of Understanding (MOU) between South Korea and the relevant state ministry in sending countries meant that in theory private recruitment agencies or brokers would no longer be used, as the process would be handled between governments.

In order to ensure transparency, the Labour Ministry also dispatches one official to each of the 15 countries that have signed a Memorandum of Understanding with South Korea to monitor all aspects of the recruitment process, including fees, on the ground. Part of the remit of the Ministry of Labour official is to monitor recruitment fees, for example, whether EPS applicants resort to the use of brokers. These agreements between governments were to eliminate the use of broker fees that existed under the ITS, but it still remains a problem under the EPS. Countries that violate the bilateral agreements are barred for a certain period of time from sending their nationals to South Korea, as happened with Indonesia (June 2005 – April 2006) and Mongolia (Dec 2004 – March 2005).[91]

Interviews with migrant workers conducted by Amnesty International indicate that there have been improvements in addressing corruption during the recruitment process. As a result, the costs related to the recruitment and application process have, in some countries, significantly decreased. In the case of the Philippines, there

[90] Cho-Lee Yeo-ul, "60 per cent of migrant workers find themselves in different working conditions", *Ilda*, 25 August 2009 (in Korean), available at: http://www.ildaro.com/newnews/print.php?uid=4937, accessed 8 October 2009.
[91] Amnesty International meeting with the Ministry of Labour in Gwacheon, South Korea on 27 November 2008.

was a dramatic difference between the fees paid under the ITS and EPS. GR, a 34-year-old male, paid a broker PHP 95,000 (USD 1,800)[92] in February 2003 to come to South Korea as an ITS trainee. He had to work for two years before he was debt-free. RR, a 31-year-old female ITS trainee, paid PHP 120,000 (USD 2,200) for her visa, and it took more than a year to recover the cost.[93] In sharp contrast, Filipino migrants under the EPS who arrived in South Korea between 2005 and 2007 paid between PHP 12,500 – 45,000 (USD 250 – 900) for their E-9 visa and most said they dealt directly with the state agency, the Philippine Overseas Employment Agency (POEA).[94]

However, migrants from other countries still pay large fees to private agents or brokers in order to obtain an E-9 visa. There is evidence that due to their indebtedness, some migrant workers decide to overstay their visas and become irregular, which is likely to expose them to greater exploitation, including human rights abuses.

In the 2008, JCMK and Alliance for Migrants' Equality and Human Rights surveyed 339 migrant workers from nine MOU countries (China, Indonesia, Mongolia, Myanmar, Pakistan, Philippines, Sri Lanka, Thailand and Vietnam) on the costs incurred in obtaining a work permit under the EPS. The average broker fee was USD 2,025. Migrant workers from Pakistan paid the most, with an average of USD 4,000. The average total costs for the EPS visa was USD 3,520 with Pakistani migrant workers again paying the most at an average of USD 9,500.[95]

For example, KS, a 31-year-old Sri Lankan male, paid an equivalent of about KRW 3.5 million (USD 3,000) to come to South Korea in 2004 under the EPS:

> *"I don't have that kind of money. Who does? I had to borrow the entire amount from a bank. Together with interest, I repaid KRW 4.3 million (USD 3,700) to the bank, which took three and a half years."*

According to KS, crackdowns against irregular migrants have increased since 2008 and as a result, there have been less jobs available.[96] In February 2008, a raid by immigration officers on the factory where he worked meant that he had to look for new employment.[97]

Similarly, ST, a 30-year-old Vietnamese male, paid a broker USD 10,500 to come to South Korea in January 2007. According to him:

> *"If you go through the government, you normally have to wait at least three years. But if you want to go immediately, then you have to pay a broker who knows people at the Ministry of Labour in Vietnam. The normal cost of an EPS [E-9]*

[92] The currency rate at the approximate time of exchange has been used throughout this report.
[93] Amnesty International interviews with GR and RR in Osan and Ansan, South Korea on 1 and 23 November 2008.
[94] Amnesty International interviews with MN, CM, MR, CM and YJ in Osan, Seoul and Suwon, South Korea on 11 March, 1, 12, 19 and 26 November 2008.
[95] JCMK and Alliance for Migrants' Equality and Human Rights, 2008 Fact-finding Report on the EPS, 18 December 2008 (in Korean), p3.
[96] Crackdowns against irregular migrant workers in 2008 led to 30,576 deportations, which is an increase of 66 per cent compared to 2007. For further information, see section 5.
[97] Amnesty International interview with KS in Osan, South Korea on 1 November 2008.

visa is USD 550. Most Vietnamese go through brokers and pay the extra money because it's a lot quicker."

ST had to borrow the money from six different family members at 1.2 per cent interest. At the time of the interview – almost two years later, he was still in debt with USD 1,500 remaining. He told Amnesty International that he would remain in South Korea until he paid back his debt and was able to save some money – even if it meant overstaying and his status becoming irregular.[98]

Two other migrant workers from Sri Lanka told Amnesty International that they each paid a local broker a fee in order to work in South Korea under the EPS. SS, a 26-year-old male, paid about LKR 200,000 (USD 2,000) in November 2005. He borrowed most of the sum from a bank at 7 per cent interest and the rest from his father. It took SS eight months to repay the amount.[99]

KD, a 36-year-old female compatriot, who returned to Sri Lanka during the amnesty in 2003, paid a broker LKR 300,000 (USD 3,000) in August 2005 to return to South Korea under the EPS. Even though she had been working in South Korea for eight years – three years as an ITS trainee and the remaining five as an irregular migrant – she still did not have enough money and had to borrow 20 per cent of the amount from a friend. Upon return, KD was able to repay the debt after six months.[100]

4.2. False promises

Upon arrival in South Korea, some migrant workers under the EPS work scheme found that the job their employer offered to them in their countries of origin was different from the one awaiting them. This runs contrary to article 37 of the Migrant Workers Convention, which provides that:

> *"Before their departure, or at the latest at the time of their admission to the State of employment, migrant workers and members of their families shall have the right to be fully informed by the State of origin or the State of employment, as appropriate, of all conditions applicable to their admission and particularly those concerning their stay and the remunerated activities in which they may engage as well as of the requirements they must satisfy in the State of employment and the authority to which they must address themselves for any modification of those conditions."*

Interviews with migrant workers indicate that there is insufficient monitoring of contracts to ensure that their details are accurate and that they are accurately translated. As the EPS is a South Korean government work scheme, the government through the Ministry of Labour is responsible for monitoring the recruitment process. This means ensuring that the labour contracts detailing the work and pay offered to migrant workers in their countries of origin are upheld by their employer when they arrive in South Korea.

[98] Amnesty International interview with ST in Busan, South Korea on 8 November 2008.
[99] Amnesty International interview with SS in Ansan, South Korea on 23 November 2008.
[100] Amnesty International interview with KD in Incheon, South Korea on 16 November 2008.

With few rights to protect them from abusive recruitment practices and to negotiate a change of job, some end up giving up their legal employment and going to work as irregular migrant workers elsewhere. Most feel compelled to stay in the country to try to earn enough money to pay their debts and support their families back in their home countries.

In the 2008 survey by JCMK and Alliance for Migrants' Equality and Human Rights, 339 migrant workers were asked about changes they found in their labour contracts before and after their arrival in South Korea. As figure 2 indicates, more than 50 per cent answered that their actual wages, working hours, provision of food and accommodation, and breaks and rest day were different from what their employer had promised them while in their countries of origin.[101]

	Number	Percentage
Wages	135	22.5
Working hours	98	16.4
Provision of food and accommodation	95	15.9
Breaks and rest days	91	15.2
Types of industry	89	14.9
Types of work	81	13.5
Others	10	1.7

Figure 2: Changes in labour contract upon arrival in South Korea (Source: JCMK/Alliance for Migrants' Equality and Human Rights)[102]

In line with the findings from the JCMK and Alliance for Migrants' Equality and Human Rights survey, Kasamma-ko, a coalition of migrant Filipino organizations in South Korea, told Amnesty International that the labour contract detailing the work, which Filipino workers receive in their home country, is different from the actual work that they do once in South Korea. Upon arrival, they find that their salary is lower, hours are longer or work is more dangerous than what their employer had stipulated. A case in point is MN, a 32-year-old Filipino woman, who noticed several discrepancies between what her employer told her and the work she did upon arrival:

> *"When I was in the Philippines, I was told that I would be working at a semiconductor factory testing tube fittings. But when I arrived in April 2005, I was sent to work at a CNC factory[103] instead. I was surprised because that was not what was in my contract – at least not what they told me. I can't be certain as it was written in Korean."[104]*

[101] JCMK and Alliance for Migrants' Equality and Human Rights, 2008 Fact-finding Report on the EPS, 18 December 2008 (in Korean), p4.
[102] JCMK and Alliance for Migrants' Equality and Human Rights, 2008 Fact-finding Report on the EPS, 18 December 2008 (in Korean), p4.
[103] A CNC (computer numerical control) factory uses a computer "controller" that reads G-code instructions and drives a powered mechanical device normally used to produce metal components by the selective removal of metal.
[104] Amnesty International interview with MN in Osan, South Korea on 11 March 2008.

ST, a 30-year-old Vietnamese man, told Amnesty International that he already knew in Vietnam where he was going to work, but not all the information that his employer had given him was correct:

> "*My boss told me that I would be working at a factory in Osan that made washing machines but in fact it made antennae. He also said that dormitory accommodation would be provided inside the factory but instead I had to sleep in a shipping container outside the factory grounds. It was so cold inside. There was only a small space heater which wasn't enough. Plus, the bathroom was so far away, about 300 metres from the container. Most importantly, my boss promised me lots of work day and night, but in reality there was hardly any work so no opportunity for overtime. After seven months, he signed my release paper because there was no more work.*"[105]

Under the E-6 entertainment work scheme, brokers or private agencies (often referred to as promoters or managers) work as the intermediary to recruit female migrant workers for nightclub or bar owners. In the countries of origin, promoters or managers offer the women labour contracts for work as singers. It is only upon arrival that the women realise the true nature of their work, which entails serving and soliciting drinks from clients and in some cases having sex with clients (see section 8).

DR, a 25-year-old Filipino woman, came to South Korea in January 2008 under the entertainment visa expecting to sing:

> *"In the Philippines, my promoter told me that I would work as a singer. I was a bit nervous and thought it would be awkward singing to a Korean audience. Little did I know that I would not be singing at all, but serving drinks to American soldiers and getting them to buy me drinks. They called us "juicy girls" or "drinking girls",[106] which made me feel so dirty but you get used to it."*[107]

UP, a 24-year-old Filipino woman, who worked at a nightclub in Songtan, Gyeonggi province from January to August 2007 explained how she was recruited as a singer but in reality was employed in different work not stated in her contract:

> *"I was serving drinks at the nightclub, keeping American soldiers company and selling drinks. I also had to clean the club, wash dishes and even clean the outside windows of nightclub which was located on the second floor of the building. The club owner made my colleague and me clean the windows on the weekdays. I was hanging from the window frame without any safety provisions. I was so scared that I would fall."*[108]

In addition, there is sometimes a discrepancy between the salary stated in the female migrant workers' contract and what they actually earn. Their salary is not given

[105] Amnesty International interview with ST in Busan, South Korea on 8 November 2008.
[106] A derogatory term used to describe women who work at nightclubs or bars in the US military camp towns. The term refers to their job, which is largely to solicit drinks from clients, serve them drinks and keep them company.
[107] Amnesty International interview with DR in Dongducheon, South Korea on 29 November 2008.
[108] Durebang, *2007 Fact-finding Research on Trafficking of Foreign Women in Gyeonggi Province*, 2007 (in Korean), p40.

directly to them, but to their manager who normally takes half or more. It is not unusual for the broker to take all of the first month's salary, as in the case of RD, a 33-year old Filipino woman:

> *"My manager said that she paid PHP 50,000 (USD 950) to get me to South Korea. So instead of giving me my full pay, she confiscated all of my first month's salary and then afterwards, took about 60 per cent of it. It took me one year to repay that amount."*[109]

RD's case is not unusual, as many migrant workers are tied to their employer through debts incurred by administrative costs for their visa, immigration status, flight and accommodation. This situation makes it very difficult for many to leave their jobs.

CN, a 31-year-old Filipino woman, who began working at a bar in Dongducheon, Gyeonggi province in December 2007, noted inconsistencies not only in her pay but also in other working conditions specifically stated in her contract:

> *"Actually, almost everything in the contract was different from reality. For example, I was supposed to get KRW 780,000 (USD 840) but in reality I only received KRW 480,000 (USD 520). They said this was due to deductions for promoting costs in the Philippines and my Korean alien card.*[110] *My contract stated that I would work five hours daily six days per week with Sundays off but I worked everyday from 7 to 12 hours. I was only given one day off per month. The contract even stated that I would not be emotionally stressed but I felt that the club owner and managers put me through mental torture."*[111]

4.3. HIV testing

In order to qualify for work under the E-6 entertainment work scheme, applicants must prove that they do not have HIV. The highlighted area in figure 3 shows that a "certificate of HIV test" is one of the required documents for E-6 applicants to submit to the South Korean government. Among the foreign workforce in South Korea, they, along with those under the E-9 and E-2 work schemes,[112] are singled out by the government in its discriminatory policy of mandatory disclosure of HIV status. South Korean workers are not required to test for HIV in order to apply for similar positions in the entertainment sector or low-skilled industries.

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[109] Amnesty International interview with RD in Dongducheon, South Korea on 29 November 2008.
[110] All foreigners residing in Korea for longer than 90 days must register with the Immigration Office. They are issued an alien registration card (alien card), which under South Korean law should be with them at all times.
[111] Amnesty International interview with CN in Dongducheon, South Korea on 29 November 2008.
[112] The South Korean government requires HIV testing for E-6, E-9 and E-2 (foreign language teachers) applicants/workers. For this report, we will only address the E-6 and E-9 work schemes. For more information on HIV testing under the E-2 work scheme, see Kang Shin-who, "Teachers Fight over "Unfair" Visa Rule", *The Korea Times*, 2 July 2009, available at: http://www.koreatimes.co.kr/www/news/nation/2009/07/117_47849.html, accessed 8 July 2009 and Human Rights Watch, "Letter to the National Human Rights Commission of Korea", 19 June 2009, available at: http://www.hrw.org/en/news/2009/06/19/letter-national-human-rights-commission-korea, accessed 27 July 2009 and Kang Shin-who, "Ban on Foreign AIDS Patients to Be Lifted", *The Korea Times*, 3 September 2009, available at: http://www.koreatimes.co.kr/www/news/nation/2009/09/117_51232.html, accessed 4 September 2009.

Status	Required Document
Art and Entertainment (E-6)	1. Person who desire to be engaged in performance or entertainment activities at tourist hotels and entertainment places require; - Letter of performance recommendation issued by the Image stuff classification committee - Performance project - Certificate of HIV test - Letter of personal reference notarized 2. Other require; - Letter of employment recommendation issued by the head of the relevant central government agency or document proving the necessity of employment - Certificate of qualification or certificate or career - Letter of personal reference notarized

Figure 3: Required documentation for E-6 visa applicants (Source: South Korean Embassy, USA)[113]

The Ministry of Justice has told Amnesty International that E-9 visa applicants are not required by law to disclose HIV status.[114] However in practice, the Ministry of Labour obliges all E-9 applicants to submit physical examination results, which include HIV testing, in their countries of origin. Upon arrival in South Korea, they are tested a second time on their HIV status and if positive, are subject to deportation.[115]

While states can legitimately impose requirements to persons seeking entry into its territory, such requirements cannot be discriminatory.[116] The Human Rights Committee stated that the right to equal protection of the law "prohibits discrimination in law or in fact in any field regulated and protected by public authorities".[117] This would include visa requirements and travel regulations.

[113] Available at: http://www.koreaembassyusa.org, accessed 8 July 2009.
[114] Information provided by the Ministry of Justice on 28 July 2009.
[115] Information provided by the Ministry of Labour on 28 July 2009.
[116] According to article 26 of the CCPR, "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth **or other status**" (emphasis added).
[117] See Human Rights Committee, general comment No. 18: "While article 2 limits the scope of the rights to be protected against discrimination to those provided for in the Covenant, article 26 does not specify such limitations. That is to say, article 26 provides that all persons are equal before the law and are entitled to equal protection of the law without discrimination, and that the law shall guarantee to all persons equal and effective protection against discrimination on any of the enumerated grounds. In the view of the Committee, article 26 does not merely duplicate the guarantee already provided for in article 2 but provides in itself an autonomous right. **It prohibits discrimination in law or in fact in any field regulated and protected by public authorities**. Article 26 is therefore concerned with the obligations imposed on States parties in regard to their legislation and the application thereof. Thus, when legislation is adopted by a State party, it must comply with the requirement of article 26 that its content should not be discriminatory. In other words, **the application of the principle of non-discrimination contained in**

Real or perceived AIDS or HIV status is among the prohibited discriminatory grounds, as stated, by the UN Commission on Human Rights.[118] To justify different treatment that may have negative impact on individuals (in this case, the denial of visa based on AIDS or HIV status) the government needs to prove that such treatment is necessary and proportional to the pursuit of a legitimate goal, notably, in this case, public health.

Screening of international travellers to prevent the spread of HIV/AIDS has long been considered ineffective.[119] The International Guidelines on HIV/AIDS and Human Rights states that "there is no public health rationale for restricting liberty of movement or choice of residence on the grounds of HIV status. [...] Therefore, any restrictions on these rights based on suspected or real HIV status alone, including HIV screening of international travellers, are discriminatory and cannot be justified by public health concerns."[120]

Requiring HIV test certificate for migrant workers seeking to work in the entertainment sector or low-skilled industries could not be justified on public health grounds, especially when such testing is not required for South Koreans performing the same jobs.

The prohibition of discrimination "requires states to review and, if necessary, repeal or amend their laws, policies and practices to proscribe differential treatment which is based on arbitrary HIV-related criteria". Discrimination on the basis of HIV status also "creates and sustains conditions leading to societal vulnerability to infection by HIV, including lack of access to an enabling environment that will promote behavioural change and enable people to cope with HIV".[121] Thus, South Korea should amend its criteria for the E-6 and E-9 work schemes so that applicants living with HIV are not discriminated against.

article 26 is not limited to those rights which are provided for in the Covenant" (para12, emphases added).

[118] In 1996, the former UN Commission on Human Rights confirmed that "discrimination on the basis of AIDS or HIV status, actual or presumed, is prohibited by existing international human rights standards, and that the term "or other status" in non-discrimination provisions in international human rights texts can be interpreted to cover health status, including HIV/AIDS". The Commission called on all states "to ensure, where necessary, that their laws, policies and practices, including those introduced in the context of HIV/AIDS, respect human rights standards, including the right to privacy and integrity of people living with HIV/AIDS, prohibit HIV/AIDS-related discrimination and do not have the effect of inhibiting programmes for the prevention of HIV/AIDS and for the care of persons infected with HIV/AIDS".

[119] See World Health Organization, "Report of the Consultation on International Travel and HIV Infection", WHO/SPA/GLO/787.1, 1987.

[120] Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Joint United Nations Programme on HIV/AIDS (UNAIDS), "International Guidelines on HIV/AIDS and Human Rights", UN Doc. HR/PUB/06/9, 2006, para127, available at: http://data.unaids.org/Publications/IRC-pub07/jc1252-internguidelines_en.pdf, accessed 8 July 2009.

[121] OHCHR and UNAIDS, "International Guidelines on HIV/AIDS and Human Rights", UN Doc. HR/PUB/06/9, 2006, p82, available at: http://data.unaids.org/Publications/IRC-pub07/jc1252-internguidelines_en.pdf, accessed 8 July 2009.

"This massive crackdown operation is to uphold the law and order in foreigners' residence because this area where illegal foreigners reside has turned into slums void of public order and a hotbed of crime committed by foreigners. […] This strong measure is inevitable in order to uphold law and order, protect local citizens, as well as the human rights of illegal foreigners themselves."

Ministry of Justice, 12 November 2008
Press release on immigration raid in Maseok, South Korea[122]

5. PROBLEMS IN THE ARREST AND DETENTION OF IRREGULAR MIGRANT WORKERS

The South Korean government relies on immigration raids as a primary enforcement strategy for tackling irregular migration. Since 2008, these operations have resulted in the arrest, detention and deportation of thousands of irregular migrant workers per month.[123] The Korea Immigration Service, sometimes accompanied by the police, has conducted mass crackdowns on workplaces, on the streets, in markets, train stations, and private homes of migrant workers. Amnesty International has documented instances of arbitrary arrests, collective expulsions and violations of law enforcement procedures, including in some cases, excessive use of force, during these raids. The mass crackdowns have also put pressure on detention facilities, contributing to problems of overcrowding, poor living conditions and delayed access to medical treatment.

In September 2008, the South Korean Office of the President issued a statement in which it announced its plan to "harshly deal with illegal foreigners"[124]:

> *"With the aim of reducing the number of illegal foreign residents in the country to 10 per cent or less of the total number of foreigners (currently at 19.3 per cent), a reduction in the number of illegal foreigners to about 200,000 by the end of this year [2008] is planned."*[125]

What this plan effectively means is that half of the country's estimated 220,000 irregular migrants would be deported by 2012. According to the Ministries of Labour and Justice, and the Presidential Council on National Competitiveness, the main

[122] Ministry of Justice, Press release, "Conducting crackdowns against illegal foreign residents in densely populated area", 12 November 2008 (in Korean), available at: http://www.moj.go.kr, accessed 27 July 2009.
[123] Korea Immigration Service, "Monthly Report on Immigration and Policy on Foreigners", June 2009 (in Korean), available at: http://www.immigration.go.kr, accessed 29 July 2009.
[124] Office of the President, "Import of foreign workers, reform of human resource in business enterprises according to demand: Reduction of the number of illegal foreigners to 10 per cent or less within five years", 25 September 2008 (in Korean), available at: http://www.president.go.kr/kr/president/news/news_view.php?uno=321, accessed 2 June 2009.
[125] Office of the President, "Import of foreign workers, reform of human resource in business enterprises according to demand: Reduction of the number of illegal foreigners to 10 per cent or less within five years", 25 September 2008 (in Korean), available at: http://www.president.go.kr/kr/president/news/news_view.php?uno=321, accessed 2 June 2009.

causes of irregular migration included a "compassionate culture" and "lack of consistent crackdown efforts". [126]

In 2008, 29,906 irregular migrants were arrested and detained, compared to 19,883 in 2007, an increase of 50 per cent. By the end of 2008, 30,576 foreigners with irregular status[127] had been deported. In 2009, the intensity of these crackdowns increased. From January to May, the Immigration Service arrested and detained 11,818 irregular migrant workers and deported 11,318 irregular foreigners, which is a 38 per cent increase compared to the same period in 2008.[128]

As the South Korean government continues these operations, there are growing concerns that regular and irregular migrant workers will become further marginalised. Lyu Seong-hwan, Director of the Ansan Immigrant Centre, explained that the relationship between migrant workers and the local community in Ansan cannot be bad because they rely on each other economically. For example, migrant workers are employed at factories in the Ansan area and with their salary, they rent apartments, eat at restaurants, buy groceries, rent DVDs, etc. In this interdependent relationship, Lyu pointed out that both regular and irregular migrant workers and the Korean community in Ansan oppose immigration raids:

> *"The Korean community dislike crackdowns because afterwards migrant workers – both regular and irregular alike – are afraid to go outside so business in the area suffers as a result. Even those with regular status avoid going outside because they don't like to be harassed or humiliated in public by immigration officers. So when there are a series of raids, migrant workers tend to become more and more isolated."*[129]

This is corroborated by Kwon, a South Korean manager of the industrial complex in Maseok, Gyeonggi province:

> *"We have an interdependent relationship with migrant workers. They work at our factories and we earn a living from their wages through rent, food they buy at grocery stores, etc. So, when the immigration officers come, we try to protect the migrant workers. The officers arrest the migrants as if they were criminals -- they're decent human beings. We oppose these crackdowns because it's tough on the local economy every time they happen. Many factory owners have complained to me about them and I've passed on their complaints to the Immigration Service."*[130]

[126] Ministry of Labour, Ministry of Justice and Presidential Council on National Competitiveness, "Ways to Improve Unskilled Foreign Workforce Policy", 25 September 2008, available at: http://www.pcnc.go.kr/e_nccusr/m05/PolyView.aspx?seq=18&page=0, accessed 15 May 2009.
[127] The Korea Immigration Service only keeps records of the total number of deportations involving foreign nationals. However, it is likely that most of these deportations involve migrant workers, as the figures correspond with the number of arrests and detention.
[128] Korea Immigration Service, "Monthly Report on Immigration and Policy on Foreigners", June 2009 (in Korean), available at: http://www.immigration.go.kr, accessed 29 July 2009.
[129] Amnesty International interview with Lyu Seong-hwan in Ansan, South Korea on 23 November 2008.
[130] Amnesty International interview with Kwon in Maseok, South Korea on 22 November 2008.

These statements go against the government's assertion that the immigration authorities act on behalf of local residents who ask for the government to crackdown against irregular migrant workers.[131]

Figure 4: 2009 migrant workers' May Day rally in central Seoul (AI)

5.1. Violations of immigration and arrest procedures

Amnesty International has documented cases where immigration officials, sometimes accompanied by the police, failed to follow immigration and arrest procedures in the arrest and detention of irregular migrant workers. Furthermore, immigration officials have bypassed certain legal provisions set out in South Korea's Constitution and Law Enforcement Act, which discriminates against migrant workers.

Under the *UN Code of Conduct for Law Enforcement Officials* (UN Code of Conduct), immigration and police officials may use force only when strictly necessary and only to the extent required for the performance of their duty (article 3). Moreover, the *Basic Principles for the Use of Force and Firearms by Law Enforcement Officials* (Basic Principles)[132] state that the police "shall, as far as possible, apply non-violent means before resorting to the use of force" (principle 4). If force cannot be avoided then police officials must "exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved" (principle 5a). Although not legally binding, these guidelines represent global standards on how to best implement international human rights treaties, in particular the provisions of the

[131] Amnesty International meeting with the Korea Immigration Service in Gwacheon, South Korea on 13 and 26 November 2008.
[132] UN Economic and Social Council, Basic Principles, adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August – 7 September 1990.

International Covenant on Civil and Political Rights (CCPR), through legislation, regulation and during actual law enforcement operations.[133]

On 8 April 2009, two immigration officers – not in uniform – used excessive and unnecessary force to arrest a Chinese[134] female irregular migrant worker at a cafe in Daejeon. She had entered South Korea on a tourist visa. A video clip taken by Joongdo Daily captured the scene where two men dressed in civilian clothes hauled a woman by the back of her jeans and shirt. In the van, one man who sat across from the woman punched her in the neck without any apparent provocation. She could be heard crying out in Korean, "I legitimately arrived here yesterday. Why do you beat me?"

Figure 5: Still image from a video clip of Chinese female migrant worker being beaten by immigration officer in Daejeon (Joongdo Ilbo)

The officer from the Daejeon Immigration Office denied any wrongdoing in his interview with Joongdo Daily: "*We might use physical force during an arrest. In the van, she was in handcuffs so we didn't hit her. […] I was not violent.*"[135]

The prosecutor's office began its investigation of the two immigration officers and their supervisor and as of September 2009, the investigations against the three officials were still ongoing.[136]

Following this violent arrest in Daejeon, the Ministry of Justice and Immigration Service promised to improve regulations and practices in order to prevent human rights violations in the law enforcement process.[137] On 15 June 2009, the Ministry issued the "Enforcement of regulations on the proper procedure for conducting

[133] Amnesty International, *Guns and Policing: Standards to prevent misuse*, February 2004, p7 (AI Index: ACT 30/001/2004).
[134] Chinese citizens of Korean ethnic background who are largely from the Korean autonomous prefecture of Yanbian in northeast China.
[135] Video footage from Joongdo Daily available at: http://www.tagstory.com/video/video_post.aspx?media_id=V000305145, accessed 2 June 2009.
[136] Amnesty International meeting with the Korea Immigration Service and Ministry of Justice in Gwacheon, South Korea on 27 July 2009.
[137] Park Si-soo, "Harsh Crackdown on Migrant Workers Draws Protest", *The Korea Times*, 10 April 2009, available at: http://www.koreatimes.co.kr/www/news/nation/2009/04/113_42965.html, accessed 2 June 2009.

immigration raids and the protection of foreigners' human rights". These regulations oblige immigration officers conducting raids to be in uniform, present their identification, announce the reason for their visit and request the identity documents of migrant workers (e.g. passport or alien card).

In the event of an arrest, officers must caution (the Miranda Principle) the migrant worker when presenting a detention order at the scene and not in the immigration van or at the detention centre. Officers must also inform them of their rights (the right to remain silent, access to an attorney and family members, and provision of an interpreter) and make an effort to apply the minimum use of police equipment. [138]

According to the Korea Immigration Service, immigration officials can only enter a workplace without a warrant if they obtain permission from the owner or employer.[139] Both the immigration and police officials have the power to carry out arrests of irregular migrant workers.

Based on existing law enforcement and immigration laws, these regulations are not new, thus, immigration officials should already have been adhering to these procedures during the arrest and detention of migrant workers. Moreover, these regulations lack the full force of the law, and do not provide any penalties in case of their violation.

Despite promises of improved practices, on 10 July 2009 – one month after the regulations on proper immigration raid procedures were issued, immigration officials used excessive and unnecessary force during a morning raid on people's homes in Wongok-dong, Ansan, Gyeonggi province. At 11am, immigration officials entered the home of Y, a Chinese male in his thirties. As Y tried to flee, one of the officials used his handcuffs to assault Y repeatedly in the back of the head. Y managed to escape and went to a hospital in Ansan for treatment. He suffered a deep cut that needed eight stitches.[140]

Lee Jeong-hyeok, Representative at Ansan Migrant Workers' House, witnessed the crackdown in Wongok-dong, Ansan, an area heavily populated by migrant workers. He told Amnesty International that despite the recently issued regulations, the immigration officers did not follow several procedures:

> *"First, none of the immigration officers were in uniform. When I asked them for their identification and the urgent detention order, they refused. Because I continued to ask, they then called the police and told them that I was interfering with official duties. When the police arrive, I was able to verify that they were from the Immigration Service but I still did not know whether they had a detention order."*[141]

[138] Ministry of Justice, "Enforcement of regulations on the proper procedure for conducting immigration raids and the protection of foreigners' human rights", 15 June 2009 (in Korean), available at: http://www.moj.go.kr, accessed 28 July 2009.
[139] Amnesty International meeting with the Korea Immigration Service and Ministry of Justice in Gwacheon, South Korea on 27 July 2009.
[140] JCMK, Press conference on continued violent and illegal crackdown, 15 July 2009.
[141] Amnesty International interview with Lee Jeong-hyeok in Ansan, South Korea (via telephone) on 28 July 2009.

Migrant workers, factory owners and managers in Maseok, Gyeonggi province also told Amnesty International that immigration and police officers entered the factories without presenting a warrant or asking permission to enter the premises and often failing to identify themselves, in violation of article 82 of the Immigration Control Act.[142] In one instance, 10 immigration officers climbed over the factory dormitory wall and kicked in the door of a room where seven Filipino female migrant workers were sleeping. Five of the women were arrested for their irregular status. "Choi", the factory owner, told Amnesty International that he witnessed immigration officers grab two of the women, still in their underclothes, by their hair and drag them to the awaiting van.[143] The Immigration Service explained to Amnesty International that this would be in violation of proper arrest procedures, but they were not able to investigate because they did not know which officials had arrested the women.[144]

The minimum standards of protection for individuals during an arrest are outlined in article 3(4) of the Law Enforcement Act:

> *"When police officers question or accompany an individual, they must show identification, state their affiliation and name, and explain their purpose and reason. When officers accompany an individual, they must state where they are going and why the individual is being questioned."*[145]

These standards should apply to all law enforcement officials,[146] including immigration officers. Furthermore, immigration officials should not bypass existing laws in the arrest and detention procedures of migrant workers. Both foreign nationals, including migrant workers, and South Koreans are entitled to the same legal protection under South Korean law. The failure to do so is discriminatory and in violation of article 26 of the CCPR:

> *"All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."*

Under the Immigration Control Act, immigration officers are permitted to search and detain irregular migrant workers. In the absence of a regular detention order issued by a judge, the Immigration Control Act also allows immigration officers to issue an

[142] Under article 82 of the Immigration Control Act, an immigration officer must present his/her identification to migrant workers.
[143] Amnesty International interview with "Choi" in Maseok, South Korea on 22 November 2008.
[144] Amnesty International meeting with the Korea Immigration Service and Ministry of Justice in Gwacheon, South Korea on 27 July 2009.
[145] Article 3(4) of South Korea's Law Enforcement Act, last amended 21 February 2006 (in Korean), available at: http://likms.assembly.go.kr/law/jsp/Law.jsp?WORK_TYPE=LAW_BON&LAW_ID=A0888&PROM_NO=07849&PROM_DT=20060221&HanChk=Y, accessed 29 July 2009.
[146] The UN Code of Conduct for Law Enforcement Officials (UN Code of Conduct) defines "law enforcement officials" as "all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention" (article 1, commentary (a)). This includes police, customs, immigration and prison officers, paramilitary personnel, and border guards. UN General Assembly, Code of Conduct, adopted by resolution 34/169 of 17 December 1979.

urgent detention order. However, following his mission to South Korea in December 2006, the UN Special Rapporteur on the human rights of migrants expressed concern that this goes against the South Korean Constitution:

> *"The issue of [urgent] detention orders by immigration officers appears to bypass the constitutional provision requiring detention orders to be issued by a judge. In June 2005, the National Human Rights Commission recommended that the Ministry of Justice, under whom the immigration authorities work, revise the current Immigration Law, arguing that ministry officials had been violating the basic rights of undocumented migrants, including their right to liberty and security of person, during operations by police and immigration officials."*[147]

The NHRCK repeated its recommendation to the Ministry of Justice in November 2007,[148] but there have been no changes to immigration policy or procedures in this regard.

The above findings are consistent with those from on-site investigations conducted by the NHRCK from 8 to 14 July 2008 at four detention centres (Cheongju, Hwaseong, Yeosu and Daegu) in which it surveyed a total of 501 detained migrant workers. Nearly three-quarters (72 per cent) of 165 detained migrant workers told the Commission that immigration officers had entered their workplace without a warrant or permission from their employer.[149] In addition, 37 per cent of 428 detainees stated that immigration officers had not identified themselves and without any verbal explanation, took the migrant workers to an awaiting van.[150] Their action is in violation of article 82 of South Korea's Immigration Control Act requiring immigration officers to present their identification to migrant workers.

The 2008 NHRCK survey also found that 74 per cent of 295 detained migrant workers indicated that upon arrest the immigration officers failed to present a detention order to the migrant workers and did not inform them of where they would be detained or for how long.[151] This failure is in violation of article 64(3) of the Enforcement Decree of the Immigration Control Act:

> *"[…] the immigration control official shall issue a written emergency internment order which specifies reasons, place, and time of emergency internment, and show it to the suspect."*[152]

And article 9(2) of the CCPR, which states that:

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[147] "Report of the Special Rapporteur on the human rights of migrants, Mission to the Republic of Korea (5-12 December 2006)", UN Doc. A/HRC/4/24/Add.2, 14 March 2007, para27.
[148] NHRCK, "Findings of on-site investigations into the protective custody of foreigners and immigration detention centers", 2007 (in Korean).
[149] NHRCK, "Crackdown on Irregular Migrant Workers and Foreign Detention Centres: Findings of on-site investigations into immigration detention centers", 2008 (in Korean), p55.
[150] NHRCK, "Crackdown on Irregular Migrant Workers and Foreign Detention Centres: Findings of on-site investigations into immigration detention centers", 2008 (in Korean), p50.
[151] NHRCK, "Crackdown on Irregular Migrant Workers and Foreign Detention Centres: Findings of on-site investigations into immigration detention centers", 2008 (in Korean), p59.
[152] Enforcement Decree of the Immigration Control Act, last amended 16 June 2009, available at: http://www.moleg.go.kr/FileDownload.mo?flSeq=25839, accessed 9 September 2009.

> *"Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him."*

The NHRCK survey also revealed that 48 per cent of 276 detained migrant workers had problems communicating due to the language barrier. Among them, 37 per cent found it "impossible to communicate", as they had no access to an interpreter and 28 per cent were asked by immigration officers to sign documents that they did not understand.[153] This is in violation of article 48(6) of the Immigration Control Act:

> *"If a person who is not versed in the Korean language or is deaf or dumb, such person shall be provided with an interpreter to interpret his/her statement: Provided, That the deaf and the dumb may be interrogated or required to make a statement in writing."*

It also goes against principle 14 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment:

> *"A person who does not adequately understand or speak the language used by the authorities responsible for his arrest, detention or imprisonment is entitled to receive promptly in a language which he understands the information referred to in principle 10, principle 11, paragraph 2, principle 12, paragraph 1, and principle 13 and to have the assistance, free of charge, if necessary, of an interpreter in connection with legal proceedings subsequent to his arrest.*"

Amnesty International has also documented two cases where failure to follow proper arrest procedures have led to arbitrary arrests. On 12 November 2008, one of the largest crackdowns on irregular migrant workers took place in Maseok, Gyeonggi province. About 280 immigration officials and police officers raided factories and factory dormitories and arrested at least 110 regular and irregular migrant workers in less than an hour. It was only when they were taken to the awaiting transport that an attempt was made to separate those who were regular from those who were not. According to witness accounts from migrant workers, South Korean co-workers and factory owners, immigration and police officials indiscriminately rounded up and escorted to the awaiting immigration van all non-South Korean workers without first making an attempt to verify their immigration status.[154]

Also on 30 May 2009, a closed-circuit TV (CCTV) footage obtained by SBS showed Kim, a South Korean woman, being apprehended by two or three men at a market in the Siheung, Gyeonggi province. The men were immigration officers but because they were not in uniform and failed to identify themselves or give a reason for their questioning, Kim refused to show them her ID card. When the officers grabbed her to take her to the awaiting van, Kim resisted and screamed because she thought they were abducting her. She managed to call the police on her mobile. It was only when the police arrived that Kim, like Lee Jeong-hyeok, found out that the men who had

[153] NHRCK, "Crackdown on Irregular Migrant Workers and Foreign Detention Centres: Findings of on-site investigations into immigration detention centers", 2008 (in Korean), p77.
[154] Amnesty International interviews with SN, JK, HB, Kwon, "Lee" and "Park" in Incheon, Hwaseong and Maseok, South Korea on 14, 15 and 22 November 2008.

grabbed her were from the Immigration Service. The immigration officers eventually released her once her South Korean nationality was confirmed.[155]

5.2. Deaths and injuries while fleeing and in custody

While Amnesty International has documented only a few cases of violence where irregular migrant workers died or were injured whilst escaping immigration officers or police, it is nonetheless important to note that during immigration raids, which fall under labour inspections, officials must protect the rights of migrant workers. The ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR) in its Individual Direct Request concerning no. 81 Labour Inspection Convention states that inspectors are empowered "to carry out inspections wherever necessary and whenever possible according to the technical requirements, with a view to ensuring the protection of workers".[156]

The Immigration Service has told Amnesty International that they "cannot be made responsible for indirect injuries caused by migrant workers voluntarily running away" and that the fleeing migrant workers were solely responsible for their injuries.[157] However on 23 June 2008, the Busan High Court made a landmark decision involving Shang Shuai, a 22-year-old irregular Chinese migrant worker, who had fallen from a building in May 2006 while running away from immigration officers. Due to the fall, he suffered brain damage and paralysis in his left arm and leg. The High Court granted Shang industrial accident compensation, overruling a lower court's decision to deny his request for medical fee coverage. The court ruling stated that:

> *"His escape attempt was to avoid many disadvantages that he would receive after the inspection but it is also true that his employers forced him to escape so as to continue their operations because they were not able to find local workers despite repeated recruitment advertisements. Therefore, the escape was part of his duties at work."*[158]

Irregular migrant workers' attempt to flee is motivated by risk of arbitrary detention, deportation and loss of income, including for work already done, which are the result of government policies. In these circumstances, under international standards, the authorities should ensure that proper medical treatment is provided, without discrimination. Under article 6 of the UN Code of Conduct:

> *"Law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required."*[159]

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[155] Lim Chan-jong, "Crackdown against illegal foreigners not respecting human rights ... Also Korean national 'humiliated'", SBS TV 8 News, 3 June 2009 (in Korean), available at: http://news.sbs.co.kr/section_news/news_read.jsp?news_id=N1000602549, accessed 28 July 2009.
[156] CEACR: Individual Direct Request concerning Labour Inspection Convention, 1947 (No. 81), Republic of Korea (ratification: 1992), submitted: 2008, ILOLEX Doc. 092008KOR081.
[157] Amnesty International meeting with the Korea Immigration Service in Gwacheon, South Korea on 26 November 2008.
[158] Park Si-soo, "Illegal Foreign Worker Wins Compensation Case", *The Korea Times*, 23 June 2008, available at: http://www.koreatimes.co.kr/www/news/nation/2008/06/117_26362.html, accessed 27 July 2009.
[159] UN General Assembly, Code of Conduct, adopted by resolution 34/169 of 17 December 1979.

The Commentary attached to the Code adds, among other things, that:

> *"It is understood that law enforcement officials shall also secure medical attention for victims of violations of law or of accidents occurring in the course of violations of law."*

As immigration raids are carried out often without warrants or following other immigration and arrest procedures, these factors increase the likelihood of migrant workers injuring themselves or even dying in the process of fleeing. For example in January 2008, Kwon Bong-ok, a 51-year-old Chinese irregular migrant worker, died when she fell from the eighth floor of a motel in Seoul where she had been working as a cleaner. Kwon had been hiding on the window ledge during an immigration raid.[160] Therefore, the government should ensure that raids on factories and other premises are conducted according to domestic and international human rights law and standards.

The Immigration Service told Amnesty International that in large-scale operations, they always have an ambulance on standby in case migrant workers get injured. For smaller operations, immigration officers will call for an ambulance when a migrant worker is injured, as "it only takes five minutes".[161]

The Immigration Service stated that in Maseok, there were no incidents of injuries to migrant workers as they tried to flee from the immigration raid. Kim Yeong-geun, an immigration officer, stated on the day of the raid that:

> *"If injuries had occurred, they should have been taken to a hospital. We had ambulances ready. But there were no such incidents today."*[162]

This was reiterated by immigration officers in a meeting with Amnesty International:

> *"In Maseok, we had an ambulance on standby from 10-11am but no one was taken because there were no injuries. So, no ambulance was used during the raid."*[163]

Despite these assertions, Amnesty International has documented several cases where migrant workers were seriously injured as they attempted to escape arrest during the raid in Maseok, as well as in other raids.[164] According to their testimonies, their

[160] Kim Soe-jung, "A Lonely Death Underscores Sad Migrants' Plight", *JoongAng Daily*, 11 February 2008, available at: http://joongangdaily.joins.com/article/view.asp?aid=2886045, accessed 23 May 2009.
[161] Amnesty International meeting with the Korea Immigration Service and Ministry of Justice in Gwacheon, South Korea on 27 July 2009.
[162] "5 Illegal Migrant Workers Injured in Police Crackdown: Witnesses", *Yonhap News*, 12 November 2008, available at: http://english.yonhapnews.co.kr/national/2008/11/12/5/0302000000AEN20081112008500315F.HTML, accessed 23 May 2009.
[163] Amnesty International meeting with the Korea Immigration Service in Gwacheon, South Korea on 26 November 2008.
[164] "5 Illegal Migrant Workers Injured in Police Crackdown: Witnesses", *Yonhap News*, 12 November 2008, available at:

injuries were known to the immigration officers, yet the officers made no attempt to seek medical assistance. For example, AB, a 42-year-old Bangladeshi male, broke his right arm while fleeing and was left behind by immigration officers in Maseok:

> *"I saw two immigration officers coming towards me and they yelled "Come here!" I was so scared that I ran outside towards the mountains. They came after me and four other migrant workers who also ran in the same direction. After about ten metres, I slipped and fell. I was badly hurt so I couldn't run any further. The officers left me there and chased the others. They caught the others but didn't take me because I was injured and they didn't want to deal with taking me to the hospital."*[165]

On 16 April 2008, NK, 35-year-old Bangladeshi male irregular migrant worker was working at furniture factory in Maseok when five immigration officers entered the factory:

> *"I got scared and ran up to the roof where I jumped off the 3rd floor building. I fell and injured my back and left leg. I quickly called the priest at Shalom House [local migrant support centre] to help me. When the immigration officers came and saw that I was seriously injured, they started to walk away but the priest who had just arrived wouldn't let them. He blocked them and only let them go when they agreed to pay for my medical treatment."*

The priest and his colleagues took NK to a hospital in Maseok where he was hospitalised for three months and during this time underwent eight surgeries on his leg. At the time of the interview, he required the aid of crutches in order to walk and told Amnesty International that he still needed more surgeries done on his foot. In the end, he had paid for all the hospital bills because the Immigration Service denied any responsibility for his injuries.[166]

On 20 April 2009, Shim Jee-hui, a 39-year-old Chinese male irregular migrant worker, came to South Korea in 2006 on a tourist visa and worked as a construction worker in Suwon, Gyeonggi province. On the way to his friend's house, Shim saw two Immigration Service vans and officers conducting a raid on people's homes. When the immigration officers saw him run away, they chased after him. Shim fell six to seven metres from a retaining wall, breaking his right leg and right arm. He also suffered head injuries and was bleeding from his head and nose. Although the officers witnessed his fall and subsequent injuries, they did not take him to the hospital or call an ambulance. Instead they told him to "just go" and walked away from the scene. His friends eventually took Shim to the hospital where he later had an operation for his head injury. His medical bills came to KRW 20,000,000 (USD 16,000).[167]

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http://english.yonhapnews.co.kr/national/2008/11/12/5/0302000000AEN20081112008500315F.HTML, accessed 23 May 2009.

[165] Amnesty International interview with AB in Maseok, South Korea on 12 November 2008.

[166] Amnesty International interview with NK in Maseok, South Korea on 15 November 2008.

[167] Im In-taek, "Telling a migrant worker in front of a cliff to just go", *Hankyoreh 21*, 22 Many 2009 (in Korean), available at: http://h21.hani.co.kr/arti/society/society_general/25007.html, accessed 28 July 2009.

Figure 6: Shim Jee-hui hospitalised in Suwon with multiple injuries (Hankyoreh 21)

Amnesty International also documented two cases where immigration officials failed to provide prompt medical assistance to irregular migrant workers while in custody, as stipulated in article 6 of the UN Code of Conduct:

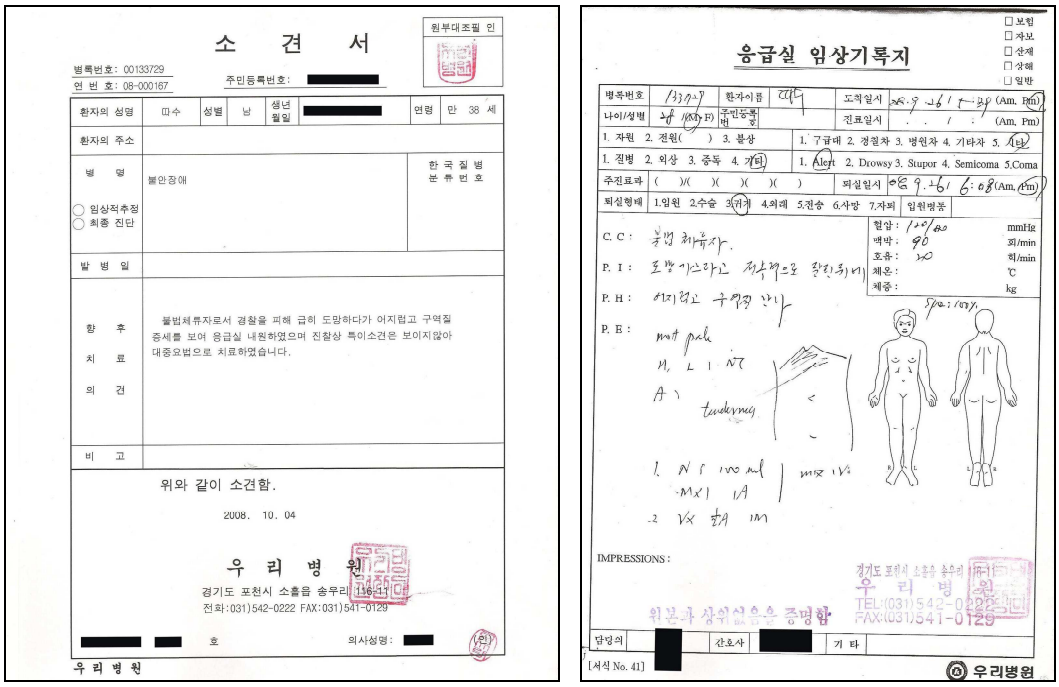
> *1. "Law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required". Commentary (a) states further that* ***medical attention must be secured "when*** *needed or* ***requested***" *(emphasis added).*

Moreover, article 21(1) and (2) of South Korea's Regulation on the Protective Custody of Foreigners states that:

> 1. *"When a detained foreigner is ill or suffers a head injury, he or she must be taken to a doctor for medical treatment."*
>
> 2. *When a detained foreigner has an illness, which cannot be treated with the available medical supplies, equipment or staff at the detention centre, the official in charge may accept the detainee's request to be treated at a hospital outside the detention centre at his or her own cost, taking into consideration the condition of the detainee and his or her flight risk. However in the case of an emergency, the detainee must be taken to the hospital immediately [...]."*

On 26 September 2008 at 4pm, Thar Sow Aye, a 39-year-old male irregular migrant worker from Myanmar, was arrested by immigration officials at the factory in Pocheon,

Gyeonggi province where he worked. During the journey to Incheon detention centre, Thar complained of chest pains. At 5:39pm, immigration officials took him to a hospital in Pocheon. Although he had only basic Korean language skills,[168] he was not provided with an interpreter,[169] thus, was unable to explain what was ailing him.[170] JCMK obtained his medical records (see figure 7), which revealed that there was no mention of the patient complaining of chest pains. The immigration officers then took him to the detention centre at Incheon Airport where, according to a fellow detainee who shared the same cell, Thar upon his arrival at around 8:30pm continued to complain of chest pains. When Thar and other detainees asked the staff to take him to the hospital, a member of staff told Thar: "It's too late now. We can go there tomorrow morning, but will you have enough money to pay for the hospital bills?"[171]



소 견 서

위와 같이 소견함.

2008. 10. 04

우 리 병 원

경기도 포천시 소흘읍 송우리 116-11

전화:031)542-0222 FAX:031)541-0129

응급실 임상기록지

IMPRESSIONS :

우리병원

Figure 7: Thar Sow Aye's medical records from a hospital in Pocheon

According to the Immigration Service, Thar told staff at Incheon Airport detention centre that he had chest pains and asked to be taken to a hospital. Instead of taking him to a hospital, a staff member, who was not a medical doctor,[172] checked him and felt that his condition was not serious. At 10pm, Thar asked for some painkillers but the staff told him that they could not dispense them to Thar because they were prescription medication.[173]

[168] The Korea Immigration Service told Amnesty International that because Thar Sow Aye lived in South Korea for seven years, he was able to communicate in Korean. This has been refuted by JCMK.
[169] The Korea Immigration Service told Amnesty International that an interpreter could not be provided due to a lack of time.
[170] The hospital staff gave Thar Sow Aye an injection of Ringer's solution after they had diagnosed his symptoms as dizziness and nausea due to running away at full speed from immigration officers.
[171] According to the fellow detainee who witnessed the scene, Thar told the staff that he had money to pay for the medical costs, but the Korea Immigration Service told Amnesty International that their staff had not asked Thar Sow Aye this question.
[172] During a facility visit on 4 November 2008, immigration officials at Incheon Airport detention centre told Amnesty International that there are no medical facilities or doctors onsite.
[173] Information provided by the Korea Immigration Service on 4 August 2009.

Thar was unable to sleep and as he continued to complain of chest pains, the staff finally took him to Incheon Airport Medical Centre at 11:54pm where he underwent an electrocardiogram and troponin tests. His pain was diagnosed as ill-defined acute myocardial infarction. He was then transferred to Inha University Hospital where he underwent emergency surgery at 2am and died shortly after surgery at 4:41am.[174]

Thus, failure by the Korea Immigration Service in the first instance to provide interpretation at the hospital in Pocheon and in the second instance to seek prompt medical treatment upon arrival at Incheon detention centre may have contributed to Thar Sow Aye's death.

During the immigration raid in Maseok, Gyeonggi province, EM, a 43-year-old Bangladeshi male irregular migrant worker, injured both legs, breaking his left, when he tried to escape immigration officers. Instead of ensuring that he received immediate medical attention, immigration officers handcuffed him and made him wait five hours before taking him to a hospital.

On 12 and 13 November 2008, Amnesty International made several attempts to contact EM, while he was at the detention centre at Incheon Airport, but the Immigration Service denied having in custody anyone injured or by that name. Amnesty International was able to meet EM four days later at the Seoul Medical Centre where he recounted what had happened:

> *"I cried out in pain and told them my legs hurt so much. I couldn't walk and had to be carried by five immigration officers to an awaiting van. They mocked me and told me to stop crying and exaggerating. Four hours later when we finally arrived at the detention centre at Incheon Airport, I was in so much pain that I cried and begged them to take me to a hospital. They made me wait one more hour before they accompanied me to a nearby hospital."*[175]

EM's Korean manager confirmed how he was arrested:

> *"I saw EM fall from the second floor rooftop and then saw one of the immigration officers follow him down and fall on top of him. That's when EM injured his leg. He yelled out in pain and kept saying to the officers that his leg hurt and thought it might be broken but the officers ignored him and just dragged him away."*[176]

[174] JCMK, Press Conference: "Investigate the Death of Myanmar Migrant Worker Thar Sow Aye and Stop the Cruel Crackdown on and Deportation of Irregular Migrant Workers", 15 October 2008 (in Korean), available at: http://www.jcmk.org/bbs/view.php?id=column_1&no=72, accessed 2 August 2009.
[175] Amnesty International interview with EM in Seoul, South Korea on 16 November 2008.
[176] Amnesty International interview with "Park" in Maseok, South Korea on 22 November 2008.

Figure 8: EM with multiple leg injuries at Seoul Medical Centre (AI)

According to EM's testimony, immigration officers took him to the Seoul Medical Centre on 15 November 2008, gave him temporary leave to remain (G-1 visa)[177] until May 2009 and told him that the Immigration Service was not responsible for him or his medical costs, and that he was on his own.[178]

5.3. Deportation

When the Immigration Service issues a deportation order, migrant workers can make a single appeal within seven days to the Minister of Justice[179] and/or file an administrative litigation through the courts. The appeal process is problematic because of the conflict of interest, as the Ministry of Justice, under which the Korea Immigration Service lies, is responsible for both issuing the deportation order and deciding whether that decision is fair. Currently, there is no external appeals process to challenge a deportation (or detention) order.

The administrative litigation does not offer a more appealing alternative, as it is a difficult process, especially for those who are not proficient in the Korean language or familiar with the Korean legal system, and can be lengthy. Jung Jong-hoon, a human rights lawyer at Gong-Gam, explained further difficulties faced by migrant workers:

[177] G-1 is a general visa status issued for example in situations where migrant workers are unable to work or their work visa has expired, but need to remain in South Korea because of medical care or labour or wage disputes.
[178] Amnesty International interview with EM in Seoul, South Korea on 16 November 2008.
[179] The Korea Immigration Service is under the Ministry of Justice.

> *"When migrant workers file an administrative litigation, it's done while they are in detention, which places them at a considerable disadvantage. With such restriction on their freedom of movement, they cannot access their lawyer, support networks or information freely or as often as they should."*[180]

The Immigration Service has told Amnesty International that it normally does not ask a judge for a detention order because "it needs to quickly deport illegal foreigners – their case is simple and straight-forward because they're either legal or illegal". Attitudes like this, coupled with systematic violations of immigration and arrest procedures, can put irregular migrant workers at risk of arbitrary and collective expulsions, which are prohibited in international law. The collective nature of the arrest and deportation operations makes it very difficult for the government to provide the necessary procedural guarantees, including individual assessment.[181] In this regard, regular and irregular migrant workers should be entitled to specific rights during expulsion, as outlined in article 22 of the Migrant Workers Convention:

> *"Migrant workers and members of their families shall not be subject to measures of collective expulsion. Each case of expulsion shall be examined and decided individually."*

In February 2008, the UN Special Rapporteur on the human rights of migrants reported that:

> *"In some cases States have resorted to police "raids" on private homes in migrants' neighbourhoods, arresting and detaining all residents who cannot show documents of legal residence, leading to separation of children from their arrested parents, including children born in such countries. All cases of expulsion should be decided upon on an individual basis and States should ensure that no collective expulsions take place."*[182]

Thus, collective expulsions risk bypassing due process and procedural guarantees of an individual's human rights.

The risk of collective expulsion is greater in large-scale immigration raids such as the one in Maseok. The Immigration Service told Amnesty International that each migrant worker is assigned an officer who takes care of issues such as recovering back wages and rental deposits, and any complaints they may have. The agency stated that it does not deport migrant workers until their wages are paid or if the migrant workers decide to forfeit their wages.[183]

However, Amnesty International interviewed five irregular migrant workers and two spouses/partners of migrant workers who were arrested in the Maseok crackdown. All seven of the detained migrant workers were deported within a week of their arrest.

[180] Amnesty International interview with Jung Jung-hoon in Seoul, South Korea (via telephone) on 31 July 2009.
[181] Amnesty International, *Republic of Korea (South Korea): 'Migrant workers are also human beings'*, August 2006, p4 (AI Index: ASA 25/007/2006).
[182] "Report of the Special Rapporteur on the human rights of migrants", Summary, UN Doc. A/HRC/7/12, 25 February 2008, para49.
[183] Amnesty International meeting with the Korea Immigration Service and Ministry of Justice in Gwacheon, South Korea on 27 July 2009.

None of the seven were asked by immigration officers whether they had any withheld or unpaid wages. This is consistent with information from Shalom House that found most of the irregular migrant workers arrested on 12 November 2008 whom they were assisting (at least 20) were also deported within a week to ten days. As far as they knew, the migrant workers did not receive any assistance regarding back wages from the Immigration Service.

Also, JN, a 34-year-old Nepalese man was deported leaving behind his South Korean partner and one-year-old son. "Ahn", his South Korean partner, told Amnesty International that they had submitted an application to the Ministry of Justice for a three-month stay of deportation on the grounds that JN had withheld wages but it was refused.[184] This is contrary to Immigration Service's assurance that migrant workers are not deported until their withheld wages are addressed.

According to the Ministry of Justice, the average period of detention of irregular migrant workers before they are deported was 12 days in 2008 and 10 days as of May 2009.[185] As interviews clearly indicate (see section 6.2), recovering withheld wages normally takes months if not years. Given this context, it would be highly unlikely that migrant workers collectively deported after the Maseok crackdown were able to recover their wages within ten days.

5.4. Detention centres

"All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person" (article 10(1) of the CCPR). This rule, coupled with the absolute prohibition on torture and ill-treatment (for instance, in article 7 of the CCPR), has been refined into detailed international standards for the treatment of persons deprived of liberty.[186] Under these standards, detainees and prisoners are to be treated with respect and provided – without discrimination – with the full array of basic human needs, including accommodation, safety food, hygiene, health care, clothing, exercise, access to lawyers, courts and family and more.

Compared to 2007, the number of arrests of irregular migrant workers in 2008 increased sharply by 50 per cent.[187] Amnesty International is concerned that the sharp increase in the number of arrests and the over-reliance on the detention of irregular migrant workers have led to overcrowding, poor conditions in detention and denial of prompt access to medical care. There are very few alternatives to the current, heavily enforced policy of arrest and detention of irregular migrants. In the February 2008 report to the Human Rights Council, the UN Special Rapporteur on the human rights of migrants recommended that:

[184] Amnesty International interview with "Ahn" (JN's partner) in Maseok, South Korea on 15 November 2008.
[185] Information provided by the Ministry of Justice on 24 July 2009.
[186] Including UN Standard Minimum Rules for the Treatment of Prisoners (approved by the Economic and Social Council resolution 663 C (XXIV), 31 July 1957 and 2076 (LXII), 13 May 1977); UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (UNGA resolution 43/173, 9 December 1988); and UN Basic Principles for the Treatment of Prisoners (UNGA resolution 45/111, 14 December 1990).
[187] Korea Immigration Service, "Monthly Report on Immigration and Policy on Foreigners", June 2009 (in Korean), available at: http://www.immigration.go.kr, accessed 29 July 2009.

> *"States should take measures to review their national laws applicable to the detention of migrants to ensure that they are harmonized with international human rights norms that prohibit inhumane treatment and ensure due process. States should take measures to ensure that detention of irregular migrants is not arbitrary and that there is a national legal framework to govern detention procedures and conditions. States should develop and implement systems of alternatives to detention in the context of flows of undocumented migration – which could provide strong procedural safeguards including the obligation to have a judge decide on the legality of detention and on the continuing existence of reasons for detention – and generally permit detention only as a last resort."*[188]

5.4.1. Conditions in detention

Interviews with Amnesty International indicate that overcrowding, lack of recreational space to exercise or move around, verbal abuse and other ill-treatment are ongoing problems. In November 2008, Amnesty International was able to monitor conditions of the detention centre at Incheon Airport but was denied access to monitor the facilities in Mok-dong (Seoul) and Uijeongbu, Gyeonggi province.[189]

Irregular migrant workers are either detained in facilities within immigration centres or in larger purpose-built facilities, such as the ones in Hwaseong and Cheongju. Irregular migrant workers and non-governmental organizations have complained that smaller facilities, such as the ones in Mok-dong and Uijeongbu, are wholly inappropriate, as they were not designed to detain and house people. BH, the Bangladeshi husband of BW, a 25-year-old Bangladeshi woman, told Amnesty International of his wife's conditions of detention at Mok-dong in November 2008:

> *"She said that there were so many people crammed into one room. No one had any space to move. She also couldn't sleep at night because the guards kept the light on all night. They then had to wake up at 5am. There was nothing for her to do – no books or exercise or even ability to move around, as it was so overcrowded."*[190]

In November 2008, Amnesty International interviewed three irregular migrant workers at Hwaseong detention centre, including SM, a 34-year-old Bangladeshi male, who shared one cell, approximately 50 sq m,[191] with about 20 men:

> *"There were too many people in the room so it was hard to sleep. We had no space to ourselves. At 7am we had to wake up, but there wasn't anything to do. During the four days that I was incarcerated, I was only allowed to exercise for 10 minutes in the outdoor area."*[192]

[188] "Report of the Special Rapporteur on the human rights of migrants", Summary, UN Doc. A/HRC/7/12, 25 February 2008, para65.
[189] However, Amnesty International was able to visit and conduct interviews with detained individuals at some of these facilities.
[190] Amnesty International interview with BH in Maseok, South Korea on 15 November 2008.
[191] According to the Korea Immigration Service, a small detention cell for men at Hwaseong detention centre is 50.4 sq m and a large cell is 223.1 sq m. The average size is 87.2 sq m.
[192] Amnesty International interview with SM in Hwaseong, South Korea on 15 November 2008.

Figure 9: Visiting booth at Hwaseong detention centre (AI)

JK, a 27-year-old Bangladeshi male, had also been in detention for four days, during which time he was "only allowed to exercise once and for just a short time, maybe 10 minutes maximum".

Also in November 2008, Amnesty International interviewed three irregular migrant workers who were detained at the Incheon Airport detention centre. OY, a 36-year-old Filipino male, described the treatment he received from the guards at the centre:

> *"Although I asked several times, it took two days before the staff finally allowed me to make a phone call so that I could contact my family. We are locked in a room and the water cooler is outside so we have to ask permission just to have a drink. Today the water ran out and when we politely asked for more, the guards refused and just said "later, later"."*[193]

EM, a 43-year-old Bangladeshi male who had suffered a broken leg during his arrest (see section 5.2), recounted how he did not have crutches or a wheelchair so he was unable to move without assistance. According to EM, the prison guards refused to help so he had to ask another Bangladeshi migrant worker to assist him. He also encountered difficulty when trying to access his medication:

> *"I had to take medication three times per day. The guards held on to them but when the other migrant workers or I called out to them, they just ignored us. We had to yell repeatedly – maybe five times – before they finally agreed to get my*

[193] Amnesty International interview with OY in Incheon, South Korea on 14 November 2008.

> *medication. The guards were visibly annoyed that they had to get my medication. This happened every time I asked for it."*[194]

JT, a 44-year-old Mongolian female, was detained in March 2007 at Hwaseong detention centre where she shared an 80.7 sq m cell[195] with about 30 female migrant workers:

> *"The room was very cold – we were each given two blankets but they were not enough to keep us warm. We were given only an hour to shower so three women had to share one stall. We weren't allowed to have money inside, which meant we couldn't buy basic essentials such as shampoo and soap, which were not provided at the detention centre. All we did was watch TV. Then at 7pm, the guards shut down all power and told us to go to sleep."*[196]

In 2008, a 51-year-old Mongolian female migrant worker was detained at Mok-dong detention facility. She told the NHRCK that she slept on a concrete floor with 15 other women and had to share two blankets among them. According to her, the cell was very small, about three to four pyeong (10-13 sq m), and poorly ventilated.[197]

From June to November 2007, the NHRCK conducted an investigation into the detention of irregular migrant workers held in eight detention centres and two prisons.[198] From its findings, the Commission highlighted major areas of concern, many of them corroborated what interviewees told Amnesty International. For example, the NHRCK report stated that several facilities were office space that had been remodelled, but were still inappropriate for detention purposes. The study found that many facilities had inadequate light and poor ventilation.

In regards to conditions of detention, the findings raised concerns about the lack of recreational space and overcrowding. The vast majority of detention centres had no recreational area so exercise was not possible. Even in facilities with recreational areas, authorities did not allow inmates to exercise everyday. Detained individuals spent most of their time indoors watching TV, as it was the only activity available to them. Many complained of poor ventilation due to lack of access to fresh air, as many facilities did not have windows. According to the detainees, the poor air quality caused headaches and in one case, triggered asthma symptoms.[199] Water fountains were often placed in restricted area so detainees could not access them freely. Similarly, as telephones were also found in restricted areas, detainees needed permission from guards to use them.[200]

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[194] Amnesty International interview with EM in Seoul, South Korea on 16 November 2008.
[195] Information provided by the Korea Immigration Service on 28 July 2009.
[196] Amnesty International interview with JT in Ulan Bator, Mongolia on 17 March 2008.
[197] NHRCK, "Crackdown on Irregular Migrant Workers and Foreign Detention Centres: Findings of on-site investigations into immigration detention centers", 2008 (in Korean), p75.
[198] The detention centres were in Hwaseong and Cheongju; smaller detention facilities within an immigration office were in Seoul, Busan, Suwon, Incheon, Kwangju and Masan; and the two prisons were Cheongju female prison and Cheonan juvenile correctional facility.
[199] NHRCK, "Findings of on-site investigations into the protective custody of foreigners and immigration detention centers", 2007 (in Korean), p50.
[200] NHRCK, "Policy on Detention of foreigners, Detention Facilities and Treatment, Improvements Still Unsatisfactory", 4 March 2008 (in Korean), pp1-3.

"Our managers only swear at us – never at Koreans. We get yelled at when we make mistakes, but with Korean workers, they are just told what they did wrong. Once I accidentally bumped into my manager and made him drop some plastic bottles. They weren't damaged, but he got so angry that he hit me on the head. I told him not to do that again. I'm tired because I work so much and then on top of that I'm subjected to constant verbal abuse and blame, and sometimes even physical abuse. These negative things affect me mentally and my work."

MR, a 27-year-old Filipino male EPS worker
Seoul, South Korea[201]

6. WORKING CONDITIONS

6.1. Rest days, pay and benefits

Under the EPS, the South Korean government, through the Ministry of Labour, is responsible for monitoring workplaces of migrant workers and ensuring that labour standards regarding rest days, pay and benefits are met at these sites. It is also the government's responsibility to conduct follow-up monitoring visits to workplaces where violations have been recorded, as well as monitoring visits in general.

However, interviews with both regular and irregular migrant workers, non-governmental organizations and trade unions have revealed that there is a serious lack of monitoring of workplaces on these and other issues, and an inadequate complaints system in place to address the abuses that take place in the workplace. Migrant workers, the majority of whom are unable to speak Korean fluently, are at a disadvantage, as labour offices reportedly have inadequate interpretation services. Migrant centres and trade unions have told Amnesty International that due to language barrier or lack of will or patience, or a combination of these, caseworkers are more inclined to take the side of the employer. Thus, migrant workers either give up or seek help from a non-governmental organization or trade union before returning to the labour office.

Inherently, the EPS creates a system where employers have greater power over migrant workers than South Korean workers. This is because migrant workers are limited to two months to find new employment[202] and only allowed four changes – if they can prove each dismissal is not their fault – and employers have the power to arbitrarily terminate contracts[203] or renegotiate contracts beyond the three years[204] directly with migrant workers. In these cases, migrant workers' ability to stay in the

[201] Amnesty International interview with MR in Seoul, South Korea on 12 November 2008.
[202] See addendum in footnote 48.
[203] See section 3.3 regarding the complaints mechanism for handling unfair dismissals.
[204] Article 18-2 (Special Cases of Restrictions on Employment) of the EPS Act states that (1) If an employer makes a request before the foreign worker, who has been employed in the Republic of Korea pursuant to this Act and whose employment period of three years has expired, leaves the Republic of Korea, the period stipulated by Article 18 (2) may be reduced as prescribed by the Presidential Decree for the relevant foreign worker. (2) Article 7 (2) and Article 11 shall not be applied to the foreign worker who reenters the Republic of Korea and is employed pursuant to paragraph (1). (3) Other necessary matters such as employer's request procedure, etc. in relation to paragraph (1) may be prescribed by the Ordinance of the Ministry of Labor.

country depends on the good will of their employer, which creates a considerable disincentive for lodging complaints against their employer.

Thus, migrant workers are more at risk of exploitation than South Korean workers because of their inability to freely change jobs, reluctance to complain or denounce their employer for fear of reprisals, including loss of employment/earnings and becoming irregular. Compared to South Korean workers, migrant workers also have less social and community networks to rely upon in the eventuality of unemployment.

In particular, irregular migrant workers are at even greater risk of abuses in the workplace due to their status. They are also less likely to take their complaints to the labour office. If they do, it is normally through a migrant centre or a trade union. Irregular migrant workers are not able to freely complain to government authorities because public officials, including labour officials and the police, are obligated to report any irregular migrant workers to the immigration authorities in accordance with article 84(1) of the Immigration Control Act:

> *"If any public official of the state or local government finds, in the course of carrying out his/her duties, a person falling under any of subparagraphs of Article 46(1) [in an irregular immigration status], or a person deemed to be in contravention of this Act, the official shall without delay inform the head of the office or branch office or the head of the foreigner internment camp."*

This has obvious implications for irregular migrant workers in accessing redress, as they would have valid reasons to fear going to the police or the labour office for help. The NHRCK, in its 2008 on-site investigations of four detention centres (see section 5.1), concluded that:

> *"The mandatory notification to a public official requirement in the Immigration Control Act revealed that due to fear of deportation and other burdens, undocumented migrant workers who suffered from sexual violence, unpaid wages, and other criminal acts or human rights violations experienced serious difficulties in applying for relief to the government organizations.*
>
> *The Commission, therefore, recommended that the Immigration Control Act be amended to clearly state the 'Relieve First, Notification Later' principle suspending or discharging the notification requirement for a public official until violations against migrant workers are remedied completely so that rights of the undocumented migrant workers are protected in full."*[205]

Amnesty International opposes requirements of reporting by public officials to police and/or immigration authorities that would prevent migrant workers, including those in an irregular status, from exercising their human rights, such as accessing remedies to redress human rights abuses at the labour office.

[205] NHRCK, "Findings of On-site Investigations into Immigration Detention Centers", 22 January 2009, available at: http://www.humanrights.go.kr/english/activities/view_01.jsp?seqid=1111&board_id=Press%20Releases, accessed 4 August 2009.

Article 7 of the CESCR provides, among other things, for every worker's right to "Remuneration which provides all workers, as a minimum, with... Fair wages and equal remuneration for work of equal value... A decent living for themselves and their families... Safe and healthy working conditions" and "Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays."

Under article 50 of the Labour Standards Act, regular working hours in South Korea are eight hours per day and 40 hours per week for workplaces employing more than 20 workers (otherwise 44 hours per week, which includes a half day on Saturdays). Working between 10pm and 6am is considered night work with wages for both night shift and overtime calculated at 1.5 times the ordinary wage.[206]

The Labour Standards Act is applicable to all workers – South Koreans and both regular and irregular migrants. As such, everyone should be receiving equal pay, including bonus and severance pay, and entitled to the same benefits such as pension and health care. Through interviews, however, it became apparent that this was not the case and that several migrant workers were clearly not aware of their rights.

Research conducted in 2008 by the Korea Labour Institute[207] found that among 309 SMEs, the average monthly wage of low-skilled[208] South Korean workers was KRW 1,566,000 (USD 1,390), which is 16 per cent more than the monthly average wage of low-skilled migrant workers (KRW 1,315,000 or USD 1,160).[209]

Migrant workers normally welcome working beyond regular hours, as they can earn extra money through overtime or night shifts. However in some workplaces, employers imposed overtime on migrant workers. In 2008, CM, a 37-year-old Filipino male EPS worker, worked at an electronics factory in Yongin, Gyeonggi province where the employer required migrant workers to work longer hours:

> *"We were given only one day off per month and sometimes when it was busy, the management would even make you work on your free day. Korean workers were able to take days off regularly and didn't have to work such crazy hours like we did. On top of all this, our severance pay did not include overtime, which is significant considering the amount of overtime we did."*

CM told Amnesty International that money was deducted from migrant workers' wages for factory rejects while Korean workers were given an allowance of KRW 400,000 (USD 340) for rejects. In July 2008, CM submitted a complaint about these discriminatory practices to the labour office:

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[206] Korea Labor Education Institute, *Easy Korean Labor Law*, 2007, pp53 and 57.
[207] The Korea Labour Institute is a governmental research institute in the areas of industrial relations, employment, human resources development and social policy.
[208] Lee Kyu-yong of the Korea Labour Institute explained to Amnesty International that as statistics for low-skilled South Korean and migrant workers are disaggregated into "unskilled" and "half skilled", both figures needed to be combined in order to arrive at the statistics for "low-skilled" workers. Information obtained via telephone on 17 September 2009.
[209] Korea Labour Institute, Research on the Application of Minimum Wage and Standards of Foreign Workers in Individual Countries (South Korea, Taiwan, Singapore, Hong Kong, UAE and Japan), September 2008.

> *"I went there with a Korean labour lawyer because I'm not familiar with the Korean legal system and I can't communicate well enough in Korean. We met the company representatives and staff from the labour office. The representatives agreed to change the discriminatory conditions. But when I returned to the factory, my employers refused to re-hire any of the migrant workers at the end of our three years unless I agreed to drop the complaint."*

This would effectively cut off their chances of obtaining a work permit for another three-year term. After several rounds of talks between the three parties, an agreement was finally reached in which CM's employer agreed to re-employ the migrant workers and work on changing conditions in the factory. However, as this was done verbally, it is not clear how well it was implemented or if the conditions were monitored by the labour office (CM had left the factory soon after this agreement was reached). [210]

Under the E-6 entertainment work scheme, it is not unusual for female migrant workers to work long hours with no overtime or rest days. In 2007, Durebang conducted a survey of 45 E-6 female workers in the US military camp towns in Gyeonggi province. Despite working 10-12 hour shifts on the weekends, only one woman received overtime.[211]

DR, a 25-year-old Filipino woman, worked Mondays to Thursdays from 5pm to midnight, Fridays and Saturdays from 3pm to 3am and Sundays from 3pm to midnight with no overtime wages.[212] This is confirmed by RD, a 33-year-old Filipino female, who worked similar hours – Mondays to Fridays from 5pm to midnight and from 1pm to 4am on Saturdays and Sundays. She told Amnesty International that she was only allowed to have one day off per month.[213] CN, a 31-year-old Filipino female, explained that even their leisure time had restrictions:

> *"If we didn't get clients to buy enough drinks, our boss or manager prevented us from going out. For example, I went to church on Saturdays, but they would punish me by not letting me go. We also had to adhere to a strict curfew – we could only go out from 11:30am or noon until 3pm. Again, if we were late, they would reduce our free time."*[214]

Imposing these punishments is in violation of article 7 of South Korea's Labour Standards Act, which states that employers cannot "prohibit a worker from going out or force extended work, night work, or holiday work".[215]

When asked why they did not complain to the labour office, all E-6 workers interviewed for this report, including DR, RD and CN, told Amnesty International that they were not aware that they could and thought that the labour office only handled complaints by EPS (E-9) workers.

[210] Amnesty International interview with CM in Seoul, South Korea on 19 November 2008.
[211] Durebang, *2007 Fact-finding Research on Trafficking of Foreign Women in Gyeonggi Province*, 2007 (in Korean), p85.
[212] Amnesty International interview with DR in Dongducheon, South Korea on 29 November 2008.
[213] Amnesty International interview with RD in Dongducheon, South Korea on 29 November 2008.
[214] Amnesty International interview with CN in Dongducheon, South Korea on 29 November 2008.
[215] Korea Labor Education Institute, *Easy Korean Labor Law*, 2007, p45.

From 2005-2007, KD, a 36-year-old Sri Lankan female EPS worker, was employed at a thread factory in Incheon. According to KD, only migrant workers were required to work night shifts. TC, a 39-year-old Vietnamese female migrant worker, was employed at a thread factory in Seoul in 2005. According to TC, her employer made her work night shifts:

> *"I worked day shifts from 8am to 7pm with a 15-20 minute lunch break and then the week after, night shifts from 7pm to 8am. It was only migrants who worked these hours. This type of unequal treatment made me angry. I couldn't get used to the long hours and changes between day and night shifts so I changed jobs after working there for less than a month."*[216]

TC's working hours are in clear violation of the Labour Standards Act, as an employer must "allow a recess period of more than 30 minutes for every four working hours and more than one hour for every eight working hours."[217] She did not complain to the labour office because she was not aware that she could.[218]

Similarly in 2008, GR, a 34-year-old Filipino male irregular migrant worker, found employment at a textile factory in Daegu. He did not want to work night shifts but felt that he had no choice:

> *"As an irregular worker, I have no protection so I need to do what the boss tells me. In my job, I had to switch from day to night shift every week. That meant that I either worked from 8am to 6:30pm or from 6:30pm to 8am with a 30-minute lunch break. The constant change in work hours is very stressful and difficult to get used to."*

GR was afraid that as an irregular migrant worker, he would lose his job if he complained and according to him, jobs were getting increasingly difficult to find. He felt that he did not have the option to go the labour office because the staff would probably have had him arrested. When GR worked at a car parts factory in Yangsan, South Gyeongsang province, his employer required him to work long hours without being properly remunerated:

> *"Sometimes I started work at 6am and didn't stop until midnight with no overtime pay. My boss would wake me up at 3 in the morning to make me switch on the machines which took about 20 minutes. I would then go back to bed."*[219]

LM, a 35-year-old Pakistani male irregular migrant worker, worked at a factory in Gwangju that made plastic plugs. Despite working 12 hours per day, he did not receive any overtime pay because "I was irregular".[220] This sentiment is echoed by BR, a 36-year-old Bangladeshi male irregular migrant worker, who worked at an iron factory in Bucheon, Gyeonggi province "from 8am to 8pm including one hour for lunch but received just my basic salary because I'm irregular".[221]

[216] Amnesty International interview with TC in Gunpo, South Korea on 12 March 2008.
[217] Korea Labor Education Institute, *Easy Korean Labor Law*, 2007, p133.
[218] Amnesty International interview with TC in Gunpo, South Korea on 12 March 2008.
[219] Amnesty International interview with GR in Busan, South Korea on 9 November 2008.
[220] Amnesty International interview with LM in Incheon, South Korea on 16 November 2008.
[221] Amnesty International interview with BR in Incheon, South Korea on 16 November 2008.

HK, a 30-year-old Pakistani male former ITS worker, was employed at a factory in Incheon for one year and three months (2007-2008). Although he worked 12-15 hours per day, he did not receive any overtime. When HK left, his employer refused to give him his severance pay, estimated at around KRW 1.4 million (USD 1,100). In his next job, HK encountered a similar experience:

> *"I then worked at a CNC factory in Incheon that made car parts where I was paid KRW 1.2 million (USD 970) including food allowance and accommodation in a shipping container. I worked from 8:30am to 8 or 10pm. I didn't get any overtime. If there was a lot of work, you just did it until it was done."*[222]

TT, a 33-year-old male from Myanmar, is an irregular migrant worker who arrived in South Korea in 1998 under the ITS and decided to remain after his work visa expired. According to him, migrant workers are paid less than South Koreans and irregular migrants are paid even less. TT thought that both regular and irregular migrant workers were not eligible for the annual bonus (when in fact they are) because it was only given to South Korean workers at the factory in Busan where he worked.[223]

As expressed by TT, discriminatory practices in pay and benefits are not limited to irregular workers. From 2007-2008, MN, a 32-year-old Filipino female EPS worker, worked 12 hours per day, including one hour for lunch, at a plastic injection factory in Osan, Gyeonggi province. Despite working extra hours, she was not paid overtime. According to MN, South Korean employees worked the same hours and did the same job but received KRW 200,000 (USD 210) more than migrant workers and were entitled to overtime pay.[224]

KD, the 36-year-old Sri Lankan female EPS worker, received the same pay as male migrant workers, but less than her South Korean colleagues. Despite the physically gruelling nature of the work, involving carrying rolls of thread weighing 10 kg, she remained for two years but her employer refused to give her severance pay:

> *"With the help of a migrants centre, I filed a complaint against my boss at the labour office. I was able to get the money in the end but it took almost a year. It really upset me because I had worked so hard – even when I was ill. Many of my colleagues ran away because the work was so difficult, but I persevered and stayed on. Sometimes I even had to go to the hospital for physiotherapy, which I paid for myself."*[225]

AJ, a 30-year-old Indonesian female EPS worker who worked at a soap factory in Hwaseong, Gyeonggi province, experienced discrimination not only in pay but in benefits:

> *"Korean workers receive more money than we do but the management told us it is because they do more specialised work. Maybe some of them do, but definitely not all. As regular EPS workers, we should be getting pension and*

[222] Amnesty International interview with HK in Incheon, South Korea on 16 November 2008.
[223] Amnesty International interview with TT in Busan, South Korea on 8 November 2008.
[224] Amnesty International interview with MN in Osan, South Korea on 11 March 2008.
[225] Amnesty International interview with KD in Incheon, South Korea on 16 November 2008.

> *bonus but they are only given to the Koreans. Once a Thai colleague complained but our boss just yelled at her and told her to be quiet. Our boss also gives male migrant workers extra work to do at home, but they don't get any overtime pay for that. When one of them complained, our boss fired him on the spot."*[226]

This case exemplifies how fear of job loss is a valid concern and the reason why many migrant workers do not file a complaint at the labour office about discriminatory practices in pay and benefits.

SR, a 50-year-old Filipino female EPS worker, told Amnesty International that all migrant workers at the aluminium factory near Hwaseong where she has been working since 2006 are denied the annual bonus:

> *"Our boss told us that because he pays for our accommodation and electricity, he doesn't have to pay our bonus. It's unfair because we should get the same benefits as our Korean colleagues."*

SR's employer also deducted KRW 74,000 (USD 80) for pension contributions, instead of KRW 30,000 (USD 30), and refused to pay for her utility bills, which her contract clearly stated that her employer would cover. Through a lawyer from the Korean Confederation of Trade Unions (KCTU), SR was able to recover the extra money taken for her pension and receive her utilities allowance, although the employer refused to reimburse her for the past year and a half.[227]

As of September 2009, a labour bill introduced by the ruling Grand National Party on 18 November 2008 was pending in the National Assembly. This bill proposes changes to the Minimum Wage Law and if passed, a percentage of the cost of food and accommodation (normally provided by the employer in addition to the wages) would be deducted from the wages of migrant workers. In May 2009, the Ministry of Labour proposed amendments to the labour contract under the Enforcement of the EPS Act, which would have both employers and migrant workers share the costs of food and accommodation:

> *"The scope of the room and board and the amount of the cost to be borne by the worker will be decided by mutual consultation between the employer and the worker after the worker's arrival".*[228]

This would undoubtedly increase the cost of living for migrant workers. Both MTU and JCMK told Amnesty International that many employers have already taken the initiative to implement the proposed changes, citing a directive issued by the Korea Federation of Small and Medium Businesses (Kbiz) on 27 March 2009.[229] The document recommended deducting between 8 to 20 per cent from a migrant worker's

[226] Amnesty International interview with AJ in Gunpo, South Korea on 12 March 2008.
[227] Amnesty International interview with SR in Suwon, South Korea on 26 November 2008.
[228] Ministry of Labour, "Advance Notification of Partial Amendment of Administrative Rule in the Act on Foreign Workers' Employment", May 2009 (in Korean).
[229] Amnesty International interviews with JCMK and MTU in Seoul, South Korea on 26 June 2009 and 9 July 2009 respectively.

wages for food and accommodation.[230] These extra costs could dramatically impact on the indebtedness of EPS workers. Many may feel compelled to remain in South Korea as irregular migrant workers in order to earn enough money to pay their debts and support their families back in their home countries.

6.2. Withheld wages

Withheld or unpaid wages are a major problem among all migrant workers, although those with irregular status are more affected. Many interviewees have told Amnesty International that they did not get paid for months at a time – some at more than one place of employment. As figures 10 and 11 indicate, the number of migrant workers whose wages were withheld tripled in 2008 from the year before. It is worrying that the problem of unpaid wages has not improved under the EPS, as the average numbers before 2007 (figures 10 and 11) when the ITS was running in tandem with the EPS are significantly lower than the ones for 2008.

Year	Occurrences			Resolved			Unresolved		
	No. of companies	No. of workers	Amount (million KRW)	No. of companies	No. of workers	Amount (million KRW)	No. of companies	No. of workers	Amount (million KRW)
2004	1,816	3,129	5,920	1,269	2,061	3,488	547	1,068	2,432
2005	1,343	2,133	5,172	1,126	1,742	4,091	217	391	1,081

Figure 10: Withheld wages of migrant workers in 2004 and 2005 (Source: Ministry of Labour)

Year	Occurrences			Resolved			Legally settled		
	No. of companies	No. of workers	Amount (million KRW)	No. of companies	No. of workers	Amount (million KRW)	No. of companies	No. of workers	Amount (million KRW)
2006	1,154	1,832	4,043	745	1,056	2,098	371	686	1,768
2007	1,097	2,249	6,280	654	1,049	2,467	418	1,142	3,673
2008	3,269	6,849	17,037	2,092	4,017	9,129	1,085	2,526	7,102
Feb 2009	765	1,738	4,380	378	915	2,329	210	463	1,125

Figure 11: Withheld wages of migrant workers from 2006 to Feb 2009 (Source: Ministry of Labour)

Under South Korean law, migrant workers can file a complaint with the Ministry of Labour. If unresolved, migrant workers can file a civil litigation, in which case, the court of justice would make the final decision. Many prefer seeking the help of a migrant centre or a trade union to mediate on their behalf and urge their employer to pay. Whether through the labour office or a migrant centre/trade union or a combination of both, negotiations can take months if not years, as explained by Wol-san Liem, International Solidarity Coordinator at the MTU:

> *"The length of time for a withheld wage dispute to be resolved depends on the case and the will of the employer. Once a case is filed, it takes the labour office one to two months to carry out the interviews with the employer and migrant worker. If the case is found in favour of the worker, the labour office sends a notice to the employer ordering that the wages be paid by a certain date and stating that lack of compliance will lead to a penalty. If this procedure goes*

[230] Kbiz, "Preparation and Implementation of Standards for Foreign Workers Responsibility for Housing and Meal Costs", 27 March 2009 (in Korean), available at: http://migrant.kr/?document_srl=20528, accessed 12 July 2009.

according to plan the process takes roughly two months. In my experience perhaps 60 per cent of cases can be cleared within this time frame.

However, if the employer refuses to show up for an interview at the labour office or to pay after the ruling has been made, it can take considerably longer. The employer has to be chased and if he/she does not pay, the case will eventually go to a civil suit or be given up altogether. If it goes to a civil suit there is a government office that provides essentially free legal services to workers (including migrant workers). Such cases can take one to two years. Thus, if the money due is not a very substantial amount, migrant workers often end up forfeiting.

Finally, if an employer makes the case that he/she cannot pay the money, the worker may apply for a portion of what was owed from the government. This is called filing for a chaedangeum [subrogated payment] but in my experience, this is a very difficult procedure which takes a long time so it's rare that migrant workers will seek this option."[231]

Meanwhile, migrant workers are forced to survive on their savings, from money borrowed from friends or colleagues or assistance from a migrant centre.

GR, a 34-year-old Filipino male former ITS worker, had multiple experiences of withheld wages. First, he did not receive his three-year (February 2003 – January 2006) severance pay due to a Korean colleague embezzling the amount. Through the help of a migrant centre, GR was able to claim the entire amount in November 2008 – after almost three years of negotiations. In his second job at a textile factory in Seoul where he worked for three months, he never received his final month's salary. In his third employment at a car parts factory in Yangsan, South Gyeongsang province where he worked for five months, he was once again denied his last month's salary but this time he was able to recover the amount after one year.[232]

In January 2004, MS, a 34-year-old male irregular migrant worker from a non-Asian country, came to South Korea to study. A year and a half later when his funds ran out, he decided to stay and work. In February 2007, MS found work at a mattress factory in Namyangju, Gyeonggi province where he worked for 45 days. His employer promised him KRW 1.5 million (USD 1600) but in the end only paid one third of the amount. To retrieve the remaining wages, MS sought the help of the migrant centre in Namyangju:

"When the centre called my employer, he promised to pay me but he never did. I went to his factory 12 times in total. It cost a lot of money because I sometimes had to travel a long way, as I was in different places for work. He always tried to avoid me – I was able to see him only twice. I think I should just give up."[233]

MN, a 32-year-old Filipino female EPS worker, found work in February 2007 at a plastic injection company in Osan, Gyeonggi province where she worked for one year.

[231] Amnesty International interview with Wol-san Liem in Seoul, South Korea on 28 June 2009.
[232] Amnesty International interview with GR in Busan, South Korea on 9 November 2008.
[233] Amnesty International interview with MS in Osan, South Korea on 1 November 2008.

Her employer owed her KRW 3.8 million (USD 4,000), about three months' wages, but refused to pay her:

> *"My boss filed for bankruptcy but the factory is still operating today. The vice-president gave me a blank paper and tried to force me to sign it so that they could say that I had received all my wages. I was afraid because he verbally abused me and grabbed both my arms in a menacing way. I called my pastor who came with the police and took me out of there."*

MN filed a complaint at the local police station against her employers. With the help of a migrant centre, she was also able to get a G-1 visa to remain in South Korea pending her withheld wages complaint.[234] But many cannot wait indefinitely and must eventually return home, as was the case with MN. In October 2009, she told Amnesty International that she decided to return to the Philippines in May 2008 even though she still had not received her wages.[235]

Employers sometimes avoid paying wages of migrant workers who are nearing the end of their work visa because some migrant workers may not pursue their back wages, give up and just return home. SS, a 26-year-old Sri Lankan EPS worker, who worked at a plastic parts factory in Incheon was not paid from August to November 2008:

> *"Korean employers use migrant workers by working us to the maximum and then discarding us when they no longer need us. I have not been paid for over three months. My three years are up and I want to go home but I can't until I recover the money. Every time I ask my boss for my wages, he makes excuses just to get rid of me, like "next week", "in two weeks", etc."*

SS is worried that he may have to apply for a G-1 visa in order to extend his stay in South Korea so that he can improve his chances of recovering his wages.[236] However, work is not permitted on a G-1 visa.

Wol-san Liem, International Solidarity Coordinator of the MTU, explained that migrant workers first seek the help of migrant centres or trade unions because they are known for assisting migrant workers. Other migrant workers go to them for assistance after attempts to seek redress through the labour office have failed:

> *"There is insufficient support for migrant workers at the labour office. For example, many migrant workers do not know the correct procedure for filing a complaint against their employer or the correct office to go to. Often there aren't enough onsite translators, so they can't understand the procedure well enough to proceed. Relevant forms are also inadequately translated. Moreover, staff members at the labour office are often curt with migrant workers, do not take the time to understand the problem and merely send migrants away or take the side of the employer. Of course irregular migrant workers risk being reported to immigration if they go to the labour office, so necessarily they go elsewhere for help."*[237]

[234] Amnesty International interview with MN in Osan, South Korea on 11 March 2008.
[235] Via e-mail on 4 October 2009.
[236] Amnesty International interview with SS in Ansan, South Korea on 23 November 2008.
[237] Amnesty International interview with Wol-san Liem in Seoul, South Korea on 28 June 2009.

For detained migrant workers, recovering unpaid wages is difficult as they are at risk of deportation and the process becomes more complicated once the worker returns home. Although the Immigration Service told Amnesty International on several occasions[238] that they always make an attempt to recover unpaid wages of detained migrant workers, interviews with five detained individuals and two spouses of detained individuals from the Maseok raid (see section 5.1) revealed that immigration officers did not make any attempt to help them recover their unpaid wages.[239]

For other detained migrant workers, waiting indefinitely until wages are recovered is not a viable option. JT, a 44-year-old Mongolian female, was detained in March 2007 at Hwaseong detention centre in Gyeonggi province. She heard from other detained migrant workers that recovering back wages could take six months or even years. As she had recently undergone surgery, JT decided against remaining in detention. Instead, she forfeited her claim to her unpaid wages in order to return to Mongolia and recover from her surgery.[240]

6.3. Sexual harassment and violence

Sexual harassment in the workplace is prohibited under South Korean law, as provided in the Act On Equal Employment And Support For Work-family Reconciliation (Equal Employment Act).[241] In its General Recommendation No. 19 (1992), the Committee on the Elimination of Discrimination against Women stated that "[e]quality in employment can be seriously impaired when women are subjected to gender-specific violence, such as sexual harassment in the workplace" and that "[s]uch conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment".[242]

However, interviews conducted by Amnesty International indicate that female migrant workers are at risk of sexual harassment and violence at work and in their living quarters. This risk is heightened by the fact that they often find themselves the only female worker or one of the few in their workplace. Women are harassed by their employers, supervisors or fellow workers. The risk is further heightened by the fact that many cases go unreported and consequently, perpetrators know that action against them is unlikely to happen.

Female migrant workers can report instances of sexual harassment or violence to the Ministry of Labour, police/prosecutor's office, the NHRCK or file a lawsuit against the alleged perpetrator. However, very few women do so because they fear dismissal and

[238] Amnesty International meeting with the Korea Immigration Service in Gwacheon and Incheon, South Korea on 6 March, 4 and 26 November 2008.
[239] Amnesty International interviews with SN, OY, SM, JK, BH and KW in Incheon, Hwaseong and Maseok on 14 and 15 November 2008.
[240] Amnesty International interview with JT in Ulan Bator, Mongolia on 17 March 2008.
[241] Act On Equal Employment And Support For Work-family Reconciliation, Act no. 3989, 4 December 1987, last amended on 22 December 2007, available at: http://www.moleg.go.kr/FileDownload.mo?flSeq=27330, accessed 1 October 2009.
[242] CEDAW General Recommendation No.19 on Violence against Women (11th Session), paras17 and 18, 1992.

possible loss of regular status. Several female migrant workers told Amnesty International that two months were not enough to find a new job,[243] as most factory owners preferred men who could do heavier work. Given this context, female migrant workers can ill afford to take dismissals lightly.

Moreover, if female migrant workers lodge a complaint against their employer or co-worker, they have little choice but to remain in their current employment where the alleged sexual harassment or violence has occurred until the investigation by the labour office is completed. This process takes at least two months, but can take longer if delays occur, for example, if the accused fails to turn up for the interview.[244]

With the employer's consent, female migrant workers could change jobs but without the employer's consent or the completion of the investigation concluding in favour of the female migrant workers, a change would count against them. Consequently, they would not be eligible for a fourth change (see section 3.2).

States have a vital duty to exercise due diligence to protect individuals from violence by non-state actors, including sexual violence against women and girls, much of which takes place in the private sphere, and even within households. This duty has been underlined by independent human rights experts such as the UN Special Rapporteur on violence against women (VAW), its causes and consequences:

> *"States must promote and protect the human rights of women and exercise due diligence:*
> *(a) To prevent, investigate and punish acts of all forms of VAW whether in the home, the workplace, the community or society, in custody or in situations of armed conflict;* [...]
> *(d) To intensify efforts to develop and/or utilize legislative, educational, social and other measures aimed at the prevention of violence, including the dissemination of information, legal literacy campaigns and the training of legal, judicial and health personnel."*[245]

General Recommendation 19 of the Committee on the Elimination of All Forms of Discrimination against Women (paragraph 9) states that:

> "*Under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.*"[246]

General Recommendation 26 of the Committee on the Elimination of All Forms of Discrimination against Women (paragraph 20) further asserts that:

[243] See addendum in footnote 48.
[244] Amnesty International interview with Lee Jong-ran in Seoul, South Korea on 7 August 2009.
[245] Radhika Coomaraswamy, UN Special Rapporteur on violence against women, Report to the Commission on Human Rights, UN Doc. E/CN.4/2003/75, 6 January 2003, para85.
[246] Committee on the Elimination of Discrimination against Women, General Recommendation 19 on Violence against women (Eleventh session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI\GEN\1\Rev.1 at 84(), para9.

> *"Women migrant workers are more vulnerable to sexual abuse, sexual harassment and physical violence, especially in sectors where women predominate. Domestic workers are particularly vulnerable to physical and sexual assault, food and sleep deprivation and cruelty by their employers. Sexual harassment of women migrant workers in other work environments, such as on farms or in the industrial sector, is a problem worldwide (see E/CN.4/1998/74/Add.1)."*[247]

The Declaration on the Elimination of Violence against Women (paragraph 4(c)) calls on states to:

> *"[e]xercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons."*[248]

On 24 October 2008, a Chinese woman, who was sexually attacked by a male co-worker while sleeping at the restaurant where she worked, subsequently died while fleeing her attacker.[249] Kim Hae-seong, President of the Korea Migrants' Centre in Seoul, told Amnesty International that many Chinese women working in restaurants are at risk of sexual harassment and violence because they sleep on the premises to save money. Also in a recent survey, his organization:

> *"surveyed 33 Chinese-Korean women and 19 of them reported having been sexually* assaulted by their employer or co-worker*. They say it is dangerous to sleep at the businesses and restaurants but this saves them valuable money. The women also expressed that their attackers keep them quiet by threatening to tell their families what happened."*[250]

This survey indicates that sexual violence against Chinese female migrant workers is an ongoing problem. The powerlessness that women in this situation experience is likely to lead to their ongoing abuse, as they feel they do not have legal protection or access to remedies.

Given this context, it is not unusual for cases of sexual harassment or violence to go unreported, as the women fear dismissal or loss of legal status. For example, TC, a 39-year-old Vietnamese female, came to South Korea under the ITS in 2005. She began working at a canoe factory in Incheon where she was sexually harassed and physically abused by the vice-president of the company:

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[247] Committee on the Elimination of Discrimination against Women, General Recommendation 26 on Women Migrant Workers, UN Doc. C/2009/WP.1/R (5 December 2008), para20.
[248] UN Declaration on the Elimination of Violence against Women, UN Doc. A/RES/48/104, adopted by the UN General Assembly on 20 December 1993.
[249] Park In-ok, "Arrest of Sexual Assault Attacker of Korean-Chinese Restaurant Worker… In critical condition from 3rd floor fall", *Financial News*, 27 October 2008 (in Korean), http://www.fnnews.com/view?ra=Sent1201m_View&corp=fnnews&arcid=00000921463815&cDateYear=2008&cDateMonth=10&cDateDay=27, accessed 17 May 2009.
[250] Amnesty International interview with Kim Hae-seong in Seoul, South Korea on 4 November 2008 and Roh Hyun-woong, "Death leap to avoid sexual abuse - even the last journey is hard for the Korean-Chinese Migrant", *Hankyoreh*, 9 December 2008 (in Korean), available at: http://hani.co.kr/arti/society/society_general/326465.html, accessed 13 April 2009.

> *"Whenever he passed me, he would touch my breasts and stroke my back. Sometimes he grabbed and carried me or tried to hug me. In the evenings, he would come to my dormitory and ask me to massage his legs. If I refused, he would punish me the next day by hitting me on the head when I was working without any provocation. He had done this to another female migrant worker who couldn't take it anymore so she changed jobs."*

TC did not know how to deal with this harassment and abuse. Because he was the vice-president, she felt that it was pointless to complain. After enduring the harassment for three months, she quit her job and became irregular.[251]

YJ, a 31-year-old Filipino female EPS worker, was employed in 2006 at an engine cover factory in Paldangmyeon, Gyeonggi province. She also quit her job because her employer sexually harassed her:

> *"My boss offered to give me an electric fan and came up to my room to give it to me. Then he offered me a roll of KRW 10,000 (USD 10) bills and asked if he could come back that evening to my room to have sex with me. He squeezed his penis then to make his point clear. I was shocked and refused saying, "No, no, Filipino women are not like that!" I cried and went back to the factory in the safety of other workers. My boss came down and saw me crying and left."*

YJ went to the district job centre to ask for release papers. Despite knowing the reason for the release, the job centre allowed her employer to sign the document claiming the fault was not his.[252] YJ's case points to a clear failing by the Ministry of Labour in the monitoring and assessment of claims, and therefore, poor enforcement of labour inspection safety.

Female migrant workers are not only sexually harassed and abused by their employers but also by their co-workers, both migrants as well as South Koreans. Women are often placed in shared living quarters in factory dormitories with male migrant workers, which increases their risk to sexual harassment and violence. This is sometimes due to the fact that there is only one or a few women working in a factory. Women interviewed by Amnesty International who shared accommodation with men expressed discomfort and anxiety over their living situation. Amnesty International believes that in certain cases, such as these, it is necessary to provide separate accommodation for women who are at risk of gender based violence or discrimination.

In 2005, MN, a 32-year-old Filipino EPS worker, was the only female migrant worker at a factory in Osan, Gyeonggi province where she had to share living quarters and a bathroom with Chinese and Vietnamese male co-workers:

> *"When I came out of the bathroom, one of the Vietnamese men grabbed me and tried to kiss me. I screamed and pushed him away. I ran to my room and*

[251] Amnesty International interview with TC in Gunpo, South Korea on 12 March 2008.
[252] YJ later pursued this case when she filed a complaint with the district job centre requesting permission for a fourth job change (see section 3.2). Amnesty International interview with YJ in Suwon, South Korea on 26 November 2008.

> *locked myself in. The next day, I asked my boss to sign my release paper so that I could transfer to another factory."*[253]

CM, a 37-year-old Filipino male EPS worker,[254] lived with three women in a shipping container in the middle of a rice field in Ulsan. He said every night male co-workers, South Korean and migrant, would knock on their door drunk inviting them to drink with them. Another evening, a Korean maintenance engineer knocked on their door at 2am:

> *"We let him in because we thought it was work-related. But then he grabbed my colleague's hand and kept insisting to have sex with her. We ran out and asked for help at the factory. Korean and Filipino colleagues went back to our container but he had left by then. The next day, the maintenance engineer only received a verbal reprimand by our manager."*

According to CM, the management warned them against going to the police and threatened to send them back to the Philippines if they did. When they called the labour office at the Philippine Embassy, the officials blamed them for letting the maintenance engineer in. CM's colleague did not pursue it any further because according to him, she felt intimidated.[255]

[253] Amnesty International interview with MN in Osan, South Korea on 11 March 2008.
[254] CM identifies himself as a man (transgender), but the South Korean government and his employers consider him a woman, thus, he was placed in female accommodation.
[255] Amnesty International interview with CM in Seoul, South Korea on 19 November 2008.

"I broke all five of my toes and two of my fingers. Although I needed to be hospitalised for two months, my boss came to the hospital after 12 days and threatened to fire me if I did not return to work. He didn't even give me time to change out of my hospital clothes. I had difficulty getting around because I lived on the second floor and there were no lifts just stairs. I tried to work but my leg still hurt so much – I could barely stand. My boss was infuriated with me. He dragged me to the immigration office where he cancelled my work visa."

KN, a 34-year-old Sri Lankan male EPS worker
Busan, South Korea[256]

7. HEALTH AND SAFETY

In its third periodic report to the Committee on the Economic, Social and Cultural Rights in February 2008, South Korea maintained that:

> *"In an effort to strengthen safety and health management for foreign workers, the Government has supported workplaces employing foreign workers in improving their work environment, process and facilities. Various materials, such as safety brochures and audio and video materials that foreign workers can easily comprehend have been developed in ten languages and distributed through cooperation among related ministries and agencies. Safety and health education for foreign workers and their employers has also been supported."*[257]

Despite these assertions, interviews with migrant workers indicate that the government has failed to protect the health and safety of migrant workers. For a combination of reasons, including lack of training, language barriers, discrimination and restrictions on changing employers, industrial accidents, including fatal accidents, are disproportionately greater among migrant workers than among South Korean workers. In 2008, the Ministry of Labour documented 5,221 cases of industrial accidents involving migrant workers, compared to 3,967 cases in 2007. This means that from 2007 to 2008, there was a 32 per cent increase in injuries among migrant workers. Among these injuries, there was a 34 per cent increase in the number of deaths. In sharp contrast, there was only a 5 per cent increase in injuries among South Korean workers.[258]

Furthermore as figure 12 indicates, the percentage rate of reported industrial accidents was much higher among migrant workers than among South Korean workers. According to the rate for 2006, there were about 1,060 accidents per 100,000 migrant workers, compared to 770 accidents per 100,000 South Korean workers. And as many industrial accidents involving migrant workers go unreported, the true number is likely to be substantially higher.

[256] Amnesty International interview with KN in Busan, South Korea on 9 November 2008.
[257] "Implementation of the International Covenant on Economic, Social and Cultural Rights, Third periodic reports submitted by States parties under articles 16 and 17 of the Covenant: Republic of Korea", UN doc. E/C.12/KOR/3, 4 February 2008, para132.
[258] Ministry of Labour, "2008 Statistics on Industrial Accidents", 6 February 2009 (in Korean), available at:
http://www.molab.go.kr/view.jsp?cate=3&sec=2&mode=view&smenu=3&bbs_cd=105&state=A&seq=1233887095516, accessed 21 July 2009.

Year	Migrant workers	National workers
2006	1.06 per cent	0.77 per cent
2005	0.9 per cent	0.70 per cent
2004	0.93 per cent	0.85 per cent

Figure 12: Rate of reported industrial accidents per 100 workers (Source: Journal of Occupational and Environmental Medicine)[259]

Under article 1 of South Korea's Occupational Safety and Health Act, the government is obliged "to maintain and promote the safety and health of workers by preventing industrial accidents and diseases through establishing standards on occupational safety and health and clarifying where the responsibility lies, and by creating a comfortable work environment".[260] It is therefore the state's responsibility to ensure that employers "provide safety and health education, conduct work environment monitoring, provide health checkups for workers doing hazardous work, and take safety and health measures aimed at preventing health problems that might be caused by dangerous machines, equipment and other instruments or dust and noise".[261]

Yet interviews with migrant workers indicate a blatant lack of health and safety measures in many factories employing migrant workers, which clearly increases the risk of injuries. Despite these conditions, most migrant workers have told Amnesty International that they were not aware of any government labour inspections taking place at their workplace. The few who witnessed visits from the Labour Ministry pointed out that work conditions did not improve after the visit.

Interviews also indicate that even when working with dangerous machines or chemicals, it is not uncommon for migrant workers to work without any safety equipment, instructions or training. What training or instructions there are, are mostly in Korean, which does not provide sufficient training as most migrant workers have only a basic knowledge of the local language. Many interviewees who have suffered injuries told Amnesty International that the accident rate at their factory was very high, especially among migrant workers due to inadequate training or no training at all.

Lee Jong-ran, a certified public labour lawyer, who represents migrant workers in labour disputes, told Amnesty International that:

[259] These rates are based on figures provided by the Korean Workers' Compensation and Welfare Service, the governmental agency that deals with the Industrial Accident Compensation Insurance. Lee Sun-wung, Kim Kyoo-sang, Kim Tae-woo (Safety and Health Research Institute, Korea Occupational Safety and Health Agency), "The Status and Characteristics of Industrial Accidents for Migrant Workers in Korea Compared with Native Workers", *Korean Journal of Occupational and Environmental Medicine*, December 2008, p353, available at: http://www.ksoem.org/upload/data/d14b57e7d7fbdbf799ba08b94cf82375.pdf, accessed at 14 September 2009.

[260] Occupational Safety Act, Act no. 4220, 13 January 1990 last amended on 6 February 2009, available at: http://www.moleg.go.kr/FileDownload.mo?flSeq=25729, accessed 9 September 2009.

[261] "Implementation of the International Covenant on Economic, Social and Cultural Rights, Third periodic reports submitted by States parties under articles 16 and 17 of the Covenant: Republic of Korea", UN doc. E/C.12/KOR/3, 4 February 2008, para129.

> *"Migrant workers can't speak Korean and there are no interpreters at many of the workplaces. So, employers don't bother offering training. Compared to Korean workers, work conditions for migrant workers are much worse. For example when working with chemicals, migrant workers often work without safety equipment and in poorly ventilated factories. A South Korean worker in that situation would either refuse to work under those conditions or complain to have the situation changed."*[262]

Figure 13: RM, a 44-year-old Bangladeshi man, had his second and third toes amputated after a 500 kg piston ring fell on his left foot (AI)

The Ministry of Labour monitors working conditions in factories twice a year, according to the provisions set in article 102(1) of the Labour Standards Act:

> *"Labour inspector can visit and inspect workplace, accommodation and other annexes, request submitting data and documents, and examine employees and employers."*[263]

The monitoring covers 14 standards, including those on labour standards, minimum wage, equal employment opportunity, and benefit and welfare fund.[264] There are about 60,000 factories where EPS workers are employed, but due to staff shortage, the Ministry is only able to visit 10 per cent of these factories. As one labour official told Amnesty International, "We normally concentrate on monitoring factories with a history of bad practice."[265] Non-governmental organizations and trade unions have

[262] Amnesty International interview with Lee Jong-ran in Seoul, South Korea on 7 August 2009.
[263] Labour Standards Act No. 8561, 27 July 2007, last amended on 21 May 2009, available at: http://www.moleg.go.kr/FileDownload.mo?flSeq=25699, accessed 9 September 2009.
[264] The remaining ten standards are on guarantee of employment (wage) bond, improving employment of construction workers, protection of dispatched workers, guarantee of retirement pension, protection of temporary or short-time workers, prohibition of age discrimination and promotion of the employment of senior citizens, labour union and labour relation mediation, organization and management of teachers' labour union, organization and management of civil servants' labour union, and participation and cooperation of workers.
[265] Amnesty International meeting with the Ministry of Labour in Gwacheon, South Korea on 27 November 2008.

told Amnesty International that the monitoring is wholly insufficient even in the 10 per cent of the factories the Ministry of Labour manages to visit. According to them, the Ministry is more concerned about the use of irregular migrant workers in the workplace. The health and safety of migrant workers, in particular the reasons for their high number of industrial accidents, are not a priority concern and thus, are barely addressed in a labour inspection.[266]

Under the EPS, both migrant workers and their employers make contributions to the national health insurance, which allows migrant workers to access medical care at a reduced rate. However, irregular migrant workers are not eligible for the national health insurance and thus, must pay three times or more the amount that an insured person pays.[267] This has significant medical cost implications for irregular migrant workers who are injured, ill or, in the case of female migrant workers, pregnant (see section 7.3).

South Korea is obligated under article 7(b) of the CESCR to "safe and healthy working conditions". South Korea is also a state party to ILO conventions promoting occupational safety and health, and safe and healthy working environment through national policy, and advancing the rights of workers to safe and healthy working environment. For example, article 9 of ILO Convention No. 155 concerning Occupational Safety and Health stipulates that:

> *"1. The enforcement of laws and regulations concerning occupational safety and health and the working environment shall be secured by an adequate and appropriate system of inspection.*
> *2. The enforcement system shall provide for adequate penalties for violations of the laws and regulations."*

And article 16 details obligations of employers:

> *"1. Employers shall be required to ensure that, so far as is reasonably practicable, the workplaces, machinery, equipment and processes under their control are safe and without risk to health.*
> *2. Employers shall be required to ensure that, so far as is reasonably practicable, the chemical, physical and biological substances and agents under their control are without risk to health when the appropriate measures of protection are taken.*
> *3. Employers shall be required to provide, where necessary, adequate protective clothing and protective equipment to prevent, so far as is reasonably practicable, risk of accidents or of adverse effects on health."*

In addition, article 5(1, 2) of ILO Convention No. 187 concerning the Promotional Framework for Occupational Safety and Health outlines that:

> *"1. Each Member shall formulate, implement, monitor, evaluate and periodically review a national programme on occupational safety and health in consultation with the most representative organizations of employers and workers.*

[266] Amnesty International interviews with JCMK, Lee Jong-ran and MTU.
[267] Migrant Health Association in Korea (MHAK), "Report on the Health Status of Undocumented Migrant Children in Korea", Submitted to the Special Rapporteur on the Human Rights of Migrants on the occasion of the 11th Session of the Human Rights Council, June 2009.

2. The national programme shall:
(a) promote the development of a national preventative safety and health culture;
(b) contribute to the protection of workers by eliminating or minimizing, so far as is reasonably practicable, work-related hazards and risks, in accordance with national law and practice, in order to prevent occupational injuries, diseases and deaths and promote safety and health in the workplace;
(c) be formulated and reviewed on the basis of analysis of the national situation regarding occupational safety and health, including analysis of the national system for occupational safety and health;
(d) include objectives, targets and indicators of progress; and
(e) be supported, where possible, by other complementary national programmes and plans which will assist in achieving progressively a safe and healthy working environment."

Migrant workers are ill-equipped and unprepared to carry out often dangerous work at their workplace, yet employers and managers expect them to carry out their duties with little or no training. TT, a 33-year-old irregular male migrant worker from Myanmar, worked at a press factory in Busan where he was constantly exposed to chemicals. He described the health risks involved:

"Migrant workers don't receive proper training even when we have to operate big and dangerous machines. It's so easy to get injured but if you haven't been trained, your chances are even greater. Also, the fumes from the rubber, plastic and silicone are quite strong. My boss didn't provide any safety equipment, so I had to buy my own mask. The smell is so strong that even if you wear one, you can still smell the fumes. After one year, I couldn't smell it anymore, which I think is more worrying."[268]

RR, a 31-year-old Filipino female EPS worker, worked at a silicon factory in Seoul in 2007. After eight months, she asked to be released from work due to the physically demanding and dangerous nature of the work:

"I had to constantly lift items that weighed about 10 kg. I lost a lot of weight due to the heavy work. I worked with silicon, so I had to inhale strong chemicals all the time – I could smell it even when wearing a mask. My supervisor also expected me to fix machines when they broke down. Of course I wasn't trained in maintenance, repair and operations, so I didn't know how to do it and besides, the parts were too big and heavy for me to take them apart. My body was sore all the time and I was chronically ill."[269]

7.1. Industrial accidents

Many interviewees employed in the manufacturing sector told Amnesty International that they work with heavy machinery, such as press machines, having had little or no training on how to run the machines, safety instructions or guidelines. If written instructions or guidelines are available, they are usually only in Korean. Factors such as dangerous work, lack of training and long hours dramatically increase the risk and occurrence of injuries. For these reasons, it is not surprising that there are higher

[268] Amnesty International interview with TT in Busan, South Korea on 8 November 2008.
[269] Amnesty International interview with RR in Ansan, South Korea on 23 November 2008.

numbers of industrial accidents involving migrant workers than South Korean workers (see section 7).

Smaller SMEs with 30 workers or less offer less favourable work conditions for employees. For example, the legal working hours of workplaces employing less than 20 workers are 44 hours per week, compared to 40 hours for workers in enterprises with 20 or more workers. In addition, under article 56 of the Labour Standards Act, workers are entitled to 50 per cent of their ordinary wages for extended work, night work or holiday work. But this does not apply to those working in enterprises employing less than four workers.[270] Employees in workplaces with less than five workers also do not qualify for the Industrial Accident Compensation Insurance (see section 7.2)[271]

The EPS facilitates employment of migrant workers in SMEs where employers in South Korea encounter difficulty attracting national workers. This essentially means that migrant workers are employed in work that is undesirable to South Korean workers, normally in smaller SMEs where working conditions are arguably poorer with inadequate training and provision of safety equipment.[272]

It is not surprising then that migrant workers make up an overwhelming 77 per cent of the total workforce in SMEs that employ 30 workers or less.[273] But as this figure only includes regular migrant workers, the percentage is likely to be much higher. As migrant workers make up the majority of the workforce in this sector, the lack of training and neglect of health and safety therefore affect them disproportionately.

Amnesty International has documented several cases of industrial accidents involving migrant workers employed in SMEs with less than 30 workers. For example, NB, a 37-year-old Bangladeshi male, came to South Korea on a tourist visa in 2004. He worked at a small factory employing six workers in Paju, Gyeonggi province where they made flower pots. Despite working with dangerous chemicals, NB never received any safety training and was not wearing any protective equipment at the time of his accident in January 2006:

> *"The chemicals were frozen so I had to put them on a stove to defrost. I then went to work on something else. The chemicals spilled onto the stove, which started a big fire. I was trying to put out the fire but my clothes caught fire because they were already soaked in chemicals from the work that I was doing, so the fire spread quickly onto my body. There were no fire extinguishers around, so one of the Korean colleagues went outside to get one. I don't remember much after that."*

[270] To be reduced to 40 hours per week by 2011 (under Presidential Decree). See Korea Labor Education Institute, *Easy Korean Labor Law*, 2007, pp41 and 57.
[271] Information provided by the Ministry of Labour on 30 June 2009.
[272] Amnesty International interviews with Ansan Immigrant Centre, JCMK, KCTU, MTU and Solidarity with Migrants.
[273] Ministries of Labour, Justice, and for the Health, Welfare and Family Affairs, and Presidential Council on National Competitiveness, "Ways to Improve Unskilled Foreign Workforce Policy", 25 September 2008 (in Korean), available at: http://www.pcnc.go.kr/nccusr/m01/NewsView.aspx?seq=15&page=0, accessed 8 August 2009.

Because the fire had not been extinguished immediately, NB sustained third degree chemical burns on his hands and legs. The doctors in the local hospital could not treat him so he had to be transferred to a hospital in Seoul where he remained for seven months undergoing five operations. After being discharged, he had to undergo three more operations and was still receiving outpatient treatment at the time of the interview. The nerve endings in both legs were severely damaged. He still needed to undergo more operations to try and repair the damage in his left leg. His medical costs were eventually covered by the Industrial Accident Compensation Insurance.[274]

Several migrant workers pointed out that they worked with automated machines that had the emergency stop buttons removed (in order to increase production), which was very dangerous and predictably increased the likelihood of an accident. For example, NS, a 39-year-old Bangladeshi male, came to South Korea under the ITS and became irregular once his work visa ran out. He described the level of training he received at a metal factory in Gimhae, South Gyeongsang province that made boat fittings:

> *"It was very dangerous work because machines were on automatic with no emergency stop buttons so if an accident occurred, you had to react quickly because it wouldn't stop. My employers did not provide any training on safety. As I was working, my colleagues just gave me brief instructions on how to use the machines. That was it. There was no proper training from qualified people."*[275]

JCMK, MTU, the Korea Migrants' Centre, and the Korea Migrant Workers' Human Rights Centre told Amnesty International that many industrial accidents involving migrant workers are due to the press machine.[276] NB, the 37-year-old Bangladeshi male, found work at a factory in Incheon but quit after a month because he was afraid of the press machine, which he described as "very dangerous[277]". Another migrant worker commented how it was "so dangerous because you could easily cut your fingers off if you weren't careful".[278]

When working with such dangerous machinery like the press machine, proper training is critical, but interviews indicate that this is often not provided. MR, a 27-year-old Filipino male EPS worker, worked at a book binding factory in Seoul where there were less than 20 workers. His only form of training consisted of his supervisor telling him to "watch a colleague run the press machine, push buttons and then do the same". MR, who was injured in October 2008, less than two weeks into his job, described the dangerous nature of the work:

> *"The press machine is set on automatic so you have to get the timing just right. I was pressing small notebooks so I had to use the tip of my fingers to set them down. My right thumb got caught in the machine so I had to pull it out before the machine pressed my thumb and crushed my bones. My colleagues told me that the press machine used to be manually operated by a foot pedal and had an*

[274] Amnesty International interview with NB in Seoul, South Korea on 3 November 2008 and via telephone on 8 August 2009.
[275] Amnesty International with NS in Busan, South Korea on 9 November 2008.
[276] Amnesty International interviews with JCMK, MTU and Korea Migrant Workers' Human Rights centre in Seoul and Incheon, South Korea on 3, 5 and 16 November 2008.
[277] Amnesty International interview with NB in Seoul, South Korea on 3 November 2008.
[278] Amnesty International interview with CR in Osan, South Korea on 1 November 2008.

emergency stop button, but the factory owner had both removed so that the production line would go faster."

During the four weeks that he was hospitalised, MR underwent three operations to repair the tissue on his thumb and for grafting. His employer was forced to claim for MR's medical costs in the company's Industrial Accident Compensation Insurance policy after a trade union intervened.[279]

BR, a 36-year-old Bangladeshi irregular migrant worker, was working at a press machine in an iron factory employing seven workers that made car handles in Bucheon, Gyeonggi province:

"The machine switch was broken and my right hand got stuck in it. I suffered third degree burns. I underwent seven operations, including a skin graft from my stomach. There were complications due to an infection so I was hospitalised for close to five months. Then I had to spend more than a year in physiotherapy. I couldn't make a fist and I still have difficulty making one."

BR was not able to work for two years and during this time, he had to live with various friends as he had no accommodation. His medical costs were covered by his company's Industrial Accident Compensation Insurance.[280]

Figure 14: BR suffered severe burns when his hand got stuck in a press machine with a faulty switch (AI)

7.2. Industrial accident compensation

Under South Korea's Industrial Accident Compensation Insurance (IACI) Act, all migrant workers regardless of their legal status are eligible for compensation when

[279] Amnesty International interview with MR in Seoul, South Korea on 12 November 2008.
[280] Amnesty International interview with BR in Incheon, South Korea on 16 November 2008 and via telephone on 9 August 2009.

injured in the workplace. Employers are required to contribute to IACI scheme, although certain sectors are exempted, including agriculture, forestry, fishery, hunting and small construction companies and domestic service industry (e.g. restaurants) employing fewer than five workers.[281] Under this Act, a worker (including regular and irregular migrant workers) "who is unable to work due to medical care shall be paid 70 per cent of the average wages" for the period of time that they cannot work due to medical treatment.[282] In the event that an injury results in a disability, "the worker shall be paid compensation according to the level of disability (level 1-14)".[283] For injured workers exempted from the IACI, employers must pay 60 per cent of their average wages as compensation during the period of medical treatment.[284]

Language barriers, unfamiliarity with local laws and the threat of job loss prevent many migrant workers from accessing their rights. Although migrant workers can file for IACI themselves, doing so is more difficult for them than it is for South Korean workers, as they are not proficient in Korean and unfamiliar with local laws and procedures. Therefore, many rely on their employers to file insurance claims for them or ask migrant centres or labour unions for assistance. The long and bureaucratic application process for compensation also delays payment to migrant workers when they need it the most.

Lee Jong-ran, a certified public labour lawyer, who represents migrant workers in labour disputes, explained that industrial accident compensation, in law, does not discriminate but in practice, migrant workers are at a disadvantage:

> *"There are cases where employers go through the proper procedure through the IACI while others – like those who failed to contribute to the IACI – just pay the migrant worker's hospital bills. From my experience, in cases of lighter injuries, migrant workers just pay the medical costs themselves because they're afraid that they won't get paid or that they might get fired. In the case of more severe injuries when employers refuse to accept responsibility, migrant workers will go to a migrant centre or the MTU for assistance. Migrant workers can get compensation from their employer through a civil suit, but the procedure is difficult due to language barrier, inability to access a lawyer and unfamiliarity with local laws. Also, if the dispute is settled through negotiations, then employers would not give as much money to migrant workers, as they would to South Korean workers."*[285]

In addition, the injured are eligible for work compensation only if they are treated at a participating hospital or clinic. As many migrant workers are unfamiliar with the compensation procedure – either due to language barrier or because they were not informed – it is not unusual for them to find out only afterwards that the cost of the medical treatment they had received cannot be compensated because the hospital or clinic was not a participating member of the IACI. A case in point is NS, the 39-year-old Bangladeshi male, who was injured in February 2007 while sweeping the floor at his factory in Gimhae, South Gyeongsang province:

[281] Information provided by the Ministry of Labour on 11 May 2009.
[282] Information provided by the Ministry of Labour on 30 June 2009.
[283] Korea Labor Education Institute, *Easy Korean Labor Law*, 2007, pp87-91.
[284] Information provided by the Ministry of Labour on 30 June 2009.
[285] Amnesty International interview with Lee Jong-ran in Seoul, South Korea on 7 August 2009.

> *"A co-worker operating a forklift didn't see me and as he turned the forklift he pinned me against the wall. I suffered two broken ribs, a broken right arm and the nerve endings were cut in my left arm. The doctors told me that I had to be hospitalised for several months, but my boss forced me to discharge myself after only five days – he threatened to fire me if I remained in the hospital. He left me in the dormitory without any medication – I had to buy it with my own money. I just laid there for three weeks until I couldn't stand the pain anymore and re-admitted myself into the hospital."*

NS was hospitalised for more than a month during which time he underwent surgery to put a steel plate in his right arm. He was not able to work for four months, but only received wage compensation for two of those months because the first hospital he went to did not accept the IACI.[286]

SS, a 26-year-old Sri Lankan male EPS worker, was employed at a pellet factory in Anseong, Gyeonggi province. He was injured twice – in December 2007 and January 2008:

> *"The first time, a pellet machine that nailed wood pieces punctured my left hand and then the second time, it punctured my right thigh. Both times I was hospitalised for several weeks. The work was very dangerous and difficult – other migrant workers also got injured at this factory."*

SS did not receive any compensation and had to find another job because his employer fired him for "getting into too many accidents". [287]

One reason why employers are reluctant to apply for compensation through the IACI is because of the penalties their factory would incur as a result. For example, MR, the 27-year-old Filipino male, sought the help of the MTU when his employer refused to pay his medical bills and lost wages during hospitalisation. According to him, the employer did not want to file a claim with the insurance company, as that would mean reporting the accident to the labour office and consequently being penalised for possible violations of industrial safety or health regulation.[288]

MR's testimony is in line with the 2007 report on South Korea by the UN Special Rapporteur on the human rights of migrants:

> *"According to the Ministry of Labour, all migrant workers are eligible to benefit from the industrial accident compensation scheme. However the Special Rapporteur was told that migrant workers are largely unaware of their rights and, according to information received, the employers do not report work-related accidents as they have not taken the necessary measures to provide insurance to their migrant workers. The reluctance from employers to comply with their obligation to adopt safety environment at work, to insure their migrant employees and report work-related accidents is linked to their fear of*

[286] Amnesty International interview with NS in Busan, South Korea on 9 November 2008.
[287] Amnesty International interview with SS in Ansan, South Korea on 23 November 2008.
[288] Amnesty International interview with MR in Seoul, South Korea on 12 November 2008.

> *investigations by insurance companies and adoption of safety measures which would affect their profitability."*[289]

Injuries suffered by migrant workers can be exacerbated by employers or the management denying migrant workers immediate and adequate medical care, as was the case of ZL, a 28-year-old Chinese male E-10 (vessel crew) worker. He was injured in December 2006 when he was working on a fishing boat off the coast of Busan:

> *"30kg of fish feed fell on my right hand due to rough waves. We didn't have any doctor onboard so my supervisor told me to just put some cream on my injured fingers. I asked him to take me to a hospital but he refused and said the work had to be completed first. He even made me go back to work. I was only able to use my left hand."*

The ship returned to shore one week later. When ZL finally went to the hospital, he was treated for his broken fingers and had to be hospitalised for three months and underwent two operations. According to ZL, there were complications due to the delay in treatment. He did not receive any work compensation for the three months that he was without work. Like NS, his employer also forced him back to work even though he was still unfit for work. ZL could not make a fist with his right hand and felt so much pain working in the refrigerated area of the ship that he had to quit after two weeks.[290]

7.3. Childcare

In a June 2009 report on the health and welfare of irregular migrant children in South Korea, the Migrant Health Association in Korea (MHAK)[291] found that premature births accounted for the majority of their medical treatment cases, which it attributed to the marginalisation of irregular migrant labourers:

> *"As most migrant parents are living in poor working and economic conditions cannot afford necessary prenatal care, premature births and related conditions are common. Premature babies are especially often at risk of death or have complicated illnesses. Even if their babies are in such serious condition, [irregular] migrant parents cannot receive active medical treatment for their babies and at times have had to stop treatment and send their children to their home countries."*

Moreover, the irregular status of migrant workers unfairly places them and their children at greater health risk. MHAK stated that most irregular female migrant workers "lose their jobs when they are pregnant, which is the main reason they cannot complete medical treatment for their sick children". Because they are not insured and some cannot afford the higher premium for medical care, their children do not get

[289] "Report of the Special Rapporteur on the human rights of migrants, Mission to the Republic of Korea (5-12 December 2006)", UN Doc. A/HRC/4/24/Add.2, 14 March 2007, para24.
[290] Amnesty International interview with ZL in Busan, South Korea on 9 November 2008.
[291] A non-governmental organization working on migrants' right to health and wellbeing.

the medical treatment they need. Some parents must resort to sending their children to their countries of origin for adequate health care.[292]

Under article 24(2) of the UN Convention on the Rights of the Child, South Korea is obliged, among other things, to "take appropriate measures... to diminish infant and child mortality". Amnesty International is concerned that South Korea is failing to comply with this key obligation in regard to irregular migrant workers and their children.

In January 2009, the Ministry of Justice deported an infant Chinese girl born prematurely in October 2008 with congenital deformity, along with her parents who were irregular migrant workers. The baby had hyperdactylia, cleft lip and palate, skin problems on the head and around the anus, and hypoplasia of abdominal walls coming out of her internal organs. The hospital requested financial support from the district office, city government, and the Ministry of Health, Welfare and Family Affairs, but it was told that the baby was not eligible for financial support due to her irregular status.[293]

As state party to the UN Convention on the Rights of the Child, South Korea must "respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status".[294] This includes children of all migrant workers, both regular and irregular.[295]

[292] MHAK, "Report on the Health Status of Undocumented Migrant Children in Korea", Submitted to the Special Rapporteur on the Human Rights of Migrants on the occasion of the 11th Session of the Human Rights Council, June 2009, pp4-6.
[293] MHAK, "Report on the Health Status of Undocumented Migrant Children in Korea", Submitted to the Special Rapporteur on the Human Rights of Migrants on the occasion of the 11th Session of the Human Rights Council, June 2009, p6.
[294] Article 2(1).
[295] In particular, articles 2(1), 3(1,3), 6, 24(1,2) and 28(1).

"I don't want any other Filipino women coming to South Korea under these circumstances. We came here to work as singers not to sell drinks or prostitute our bodies. The E-6 entertainment work scheme itself is deceptive."

RP, a 24-year-old Filipino E-6 worker
Songtan, South Korea[296]

8. ENTERTAINMENT WORK SCHEME

Under the E-6 Entertainment work scheme, several female migrant workers recruited as singers have been trafficked. Their employers and managers force or coerce the women to solicit drinks from clients and some to have sex with their customers. The entertainment sector is poorly monitored by the government and there is very little understanding or awareness among the relevant government agencies (Ministries of Labour and Justice, police and Immigration Service) of trafficking or sexual or labour exploitation that occurs in this sector.

There are currently 4,970 E-6 visa holders in South Korea, 77 per cent of whom are women. This visa, valid for up to one year, is intended for those wishing to work in "performance or entertainment activities at tourist hotels and entertainment places". Similar to the EPS, entertainment workers are dependent on their employer for their employment, as well as visa, immigration status, flight and accommodation.

In 1998, the government eased restrictions for foreign entertainers and artists to enter the country under this work scheme and placed its management under the Ministry of Culture, Sports and Tourism (MCST).[297] The MCST has been criticised for automatically approving visa applicants through local entertainment companies.[298] For example, it does not monitor workplaces employing E-6 workers. This responsibility lies with the Ministry of Labour. In such a truncated environment, there are concerns that the state may be failing to properly monitor working conditions of E-6 workers, coordinating between the relevant ministries, and to identify and protect foreign women from being trafficked and/or exploited in the entertainment sector.

States in countries of destination, such as South Korea, have a duty to put in place systems that monitor the recruitment and employment of female migrant workers, as provided in General Recommendation 26 of the Committee on the Elimination of All Forms of Discrimination against Women (paragraph 26):

> *"States parties should adopt regulations and design monitoring systems to ensure that recruiting agents and employers respect the rights of all women migrant workers. States parties should closely monitor recruiting agencies and prosecute them for acts of violence, coercion, deception or exploitation (article 2 (e))."*[299]

[296] Durebang, *2007 Fact-finding Research on Trafficking of Foreign Women in Gyeonggi Province*, 2007 (in Korean), p60.
[297] Formerly known as the Ministry of Culture and Tourism (MOCT).
[298] Kim Kyung-ho, "No More E-6 Visas for Foreign Dancers", *The Korea Herald*, 27 February 2003.
[299] Committee on the Elimination of Discrimination against Women, General Recommendation No. 26 on Women Migrant Workers, UN Doc. C/2009/WP.1/R (5 December 2008), para26(h).

8.1. Trafficking

Trafficking violates victims' rights to liberty and security of the person, freedom from torture or other ill-treatment, freedom of movement, privacy and family life. It exposes them to a series of human rights abuses not only at the hands of traffickers but also to subsequent violations within the criminal justice system. International human rights law obliges governments to act with due diligence to prevent, investigate and prosecute trafficking and to ensure effective redress to those who have been subjected to it.

In December 2008, South Korea signed the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol), but has yet to ratify it.[300] Under article 3(a) of the Trafficking Protocol, trafficking in human beings involves:

> *"the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation".*

South Korea has a very narrow and restrictive definition of trafficking, which criminalises only trafficking for prostitution, as defined under article 4(3) of the Act on the Punishment of Procuring Prostitution and Associated Acts.[301] This is inconsistent with the broader definition provided under international law, such as article 3(a) of the Trafficking Protocol, which defines "exploitation" to include at a minimum "the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery". As a signatory, South Korea is obligated not to undertake measures that are inconsistent with the object and purpose of the Protocol.

Furthermore, the government has an obligation to protect and preserve the rights of trafficked migrant workers as underlined in article 4 of the Universal Declaration of Human Rights, which states that "No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms".

Women from the Philippines account for 84 per cent of the total number of female migrant workers employed under the E-6 entertainment work scheme. Several of these women recruited as singers in the Philippines to work in bars and night clubs in *gijichon* or US military camp towns[302] are deceived by their managers and employers.

[300] Supplementing the UN Convention against Transnational Organized Crime.

[301] Act on the Punishment of Procuring Prostitution and Associated Acts, Act no. 7196, 22 March 2004, last amended on 24 March 2005 (in Korean), available at: http://likms.assembly.go.kr/law/jsp/Law.jsp?WORK_TYPE=LAW_BON&LAW_ID=A1864&PROM_NO=07404&PROM_DT=20050324, accessed 16 October 2009.

[302] These are towns, such as Dongducheon, Pyeongtaek, Songtan and Uijeongbu, where US military bases are located. As the South Korean economy grew in the 1990s, less women were willing to work in the entertainment sector, including in the US military camp towns. A shortage of workers in this sector created an increase in demand for migrant workers to fill the gap. See also Durebang, *2007 Fact-finding Research on Trafficking of Foreign Women in Gyeonggi Province*, 2007 (in Korean), p163.

As interviews demonstrate, they find out once they arrive in South Korea that their job in reality is to serve and solicit drinks from male US soldiers, which often involves clients groping or kissing the women without their consent. At some establishments, E-6 workers are forced to have sex with their clients.[303] But by this time, the women feel compelled to yield to the pressure to continue working in the given circumstances because they are already in debt to their employer for their flight ticket, visa costs, agent's fee, food and accommodation. As their main objective is to earn money and support their family, they have little choice but to remain.[304]

Figure 15: *Gijichon* or US military camp town in Dongducheon (AI)

This is consistent with a 2007 survey by Durebang[305] of 40 female Filipino E-6 workers employed in the US military camp towns. The survey found that 90 per cent were employed in work that was different from what was written in their contract and the majority responded that their employer told them they had to sell drinks and have sex with customers.[306]

[303] Others choose to have sex with their clients to earn extra money. For trafficking of E-6 Filipino women into prostitution outside the US military camp towns, see: Jeong Yu-jin, "Philippine women trafficked into prostitution", *YTN*, 28 September 2009 (in Korean), available at: http://search.ytn.co.kr/ytn_2008/view.php?s_mcd=0103&key=200909281201351687&q=%C7%CA%B8%AE%C7%C9, accessed 28 September 2009 and Jeong Chang-yong, "Filipino women with entertainment visa working at the nightclubs and bars", *Yonhap News*, 28 September 2009 (in Korean), available at: http://media.daum.net/society/others/view.html?cateid=1067&newsid=20090928134805395&p=yonhap&RIGHT_COMM=R12, accessed 28 September 2009.

[304] Durebang, *2007 Fact-finding Research on Trafficking of Foreign Women in Gyeonggi Province*, 2007 (in Korean), p159.

[305] Durebang is a non-governmental organization that provides safe houses and counselling for E-6 workers.

[306] Durebang, *2007 Fact-finding Research on Trafficking of Foreign Women in Gyeonggi Province*, 2007 (in Korean), pp85-86.

The Ministry of Labour is responsible for monitoring workplaces that employ E-6 workers. However, the Ministry has told Amnesty International that it carries out guidance and inspection on workplaces with a large number of foreign workers without any distinction to their visa status. Therefore, it does not know how many workplaces employing E-6 workers they have inspected in any given year.[307] Furthermore in a meeting with the Ministry of Labour, a labour inspector explained that although workplaces employing E-6 workers in Dongducheon were monitored, it was often done during hours when the women were not working or present. It is not surprising given this context that the Ministry of Labour did not come across any cases of trafficking for sexual exploitation.[308]

Park Sumi, Director of My Sister's Home, a shelter run by Durebang, stated that:

> *"The only thing that the labour inspectors are interested in is checking whether the workplace has any irregular migrant workers. The monitoring is so ineffective that I can't even say what it is that they do beyond checking the legal status of workers. They certainly do not monitor the working conditions of E-6 workers, whether there is forced labour or if these women have been trafficked."*[309]

The Immigration Service and Ministry of Justice also told Amnesty International that no trafficking cases came to their attention and that they were unaware of any concerns of trafficking among E-6 workers.[310] Moreover, there seems to be little or no attempt by the Immigration Service to understand why these women run away. As a result, the women are doubly victimised, as they are trafficked for sexual exploitation by their employers and managers, and when they run away, they are then treated as "illegal" migrants under South Korean law.

Not only have the Ministries of Labour and Justice, and the Immigration Service said that they did not come across any trafficking in their line of work, but they also failed to see how the trafficking of E-6 workers was relevant to their work. They all felt it was strictly a law enforcement issue and thus, "a matter for the police".[311] This attitude explains in part the hidden nature of the problem, the vulnerability of trafficked women in the entertainment sector and the difficulties they face in accessing justice.

There is clearly very little understanding among South Korean authorities of trafficking and awareness that in order to tackle this problem, they must first be able to identify victims of trafficking for sexual exploitation and work with relevant agencies and groups (police, social services, non-governmental organizations, etc.) in order to address this problem.

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[307] Information provided by the Ministry of Labour on 16 July 2009.
[308] Amnesty International meeting with the Ministry of Labour in Gwacheon, South Korea on 24 July 2009.
[309] Amnesty International interview with Park Sumi in Uijeongbu, South Korea (via telephone) on 7 August 2009.
[310] Amnesty International meeting with the Korea Immigration Service and Ministry of Justice in Gwacheon, South Korea on 27 July 2009.
[311] Amnesty International meetings with the Ministry of Labour and with the Korea Immigration Service and Ministry of Justice in Gwacheon, South Korea on 24 and 27 July 2009 respectively.

8.1.1. Elements of trafficking

In some entertainment venues, the work of E-6 workers stops at serving and soliciting drinks from customers, thereby filling a drinks quota, while in others, women are expected and at times forced to have sex with their clients. According to Park Sumi, there are at least some elements of trafficking for sexual exploitation, including where women are forced to have sex with their clients, in most establishments in the US military camp towns.

KP, a Filipino woman in her twenties came to South Korea on 26 July 2007 in the belief that she would be singing at a club in Dongducheon, Gyeonggi province. But when she arrived, her employer told her to solicit drinks from male customers and keep them company. After hours, her employer also forced KP to have sex with male customers. When she tried to refuse, her employer beat and swore at her, and threatened to send her back to the Philippines. Out of fear, she did as she was told. On 3 September 2007, she ran away and stayed at My Sister's Home.[312]

JA, a 39-year-old Filipino woman, was told by her promoter in the Philippines that she would be working as a singer in South Korea but found a very different job awaiting her:

> *"All I did was talk to customers – American soldiers – and get them to buy me drinks. I was forced to fill a drinks quota. That was my job. Upstairs there were rooms with beds where customers could have sex with the bar girls. The club owner tried to force me to have sex with the customers by threatening to send me back to the Philippines but I refused and told him that I would rather go back home."*[313]

FJ, a 37-year-old Filipino female, who works at a nightclub in Dongducheon, Gyeonggi province explained how E-6 workers are exposed to sexual violence:

> *"I was so shocked by the things that my boss wanted me to do in Korea. During my first week, my employer brought his friends to the nightclub and locked another woman and me in a room with them and left. His friends demanded that we have sex with them but we kept refusing. Afterwards, I complained to my employer about what had happened but he just yelled at me and threatened to send me back to the Philippines."*[314]

RD, a 33-year-old Filipino female, described the nature of her work at a bar in Dongducheon, Gyeonggi province:

> *"There was a VIP room, which was basically a private room with karaoke facilities. My job was to pour drinks and keep the customers company. I was told by the club owner to just drink and talk to customers. I wasn't forced to have sex but I couldn't refuse if customers groped or kissed me."*

[312] Information provided by My Sister's Home on 7 August 2009.
[313] Amnesty International interview with JA in Dongducheon, South Korea on 29 November 2008.
[314] Durebang, *2007 Fact-finding Research on Trafficking of Foreign Women in Gyeonggi Province*, 2007 (in Korean), p39.

As RD did not know who to turn to, she felt that her only option was to leave her job and become irregular.[315]

Several other women have told Amnesty International that they did not want to become irregular nor did they want to return home without any money or worse, in debt, thus, they felt they had no choice but to remain in their jobs. Like JA, they recounted how their employers, who were fully aware of their situation, threatened to cancel their work permit and report them as irregular to the Immigration Service if they did not do as they were told. This lack of voluntarism combined with an abuse of power, coercion and exploitation of these women constitute forced labour, as defined by article 2(1) of ILO Convention No. 29 concerning Forced or Compulsory Labour (Forced Labour Convention):

> *"For the purposes of this Convention the term forced or compulsory labour shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily."*[316]

Out of 183 ILO member countries, South Korea is one of only nine that has not ratified the Forced Labour Convention.

The drinks quota is the number of drinks women have to sell per month to customers. This can be anywhere from 200 to 500 drinks. If the women fail to make their monthly quota, they are penalised with a "bar fine". This means that they are obliged to have sex with customers who pay about USD 150 to the bar owner for the right to take the women off the premises.

Public humiliation is also used to control and intimidate the women into compliance, as in the case of CN, a 31-year-old Filipino E-6 worker, who arrived in South Korea in December 2007. She had to solicit drinks from customers at a club in Dongducheon, Gyeonggi province:

> *"The owner and managers would humiliate me in front of customers if I didn't get them to buy me enough drinks. It was mental torture to be yelled at constantly. They degraded us in front of customers, calling us sexually explicit, vulgar and derogatory words in English and Tagalog. When I was done with my drink, they would yell at me to find another customer. If I kept talking to a customer, the manager would pull my hair as a signal to hurry up because another customer was waiting."*

When CN failed to make the monthly drinks quota, her employer and manager decided to "punish" her by having her transferred to a bar in Gwangam-dong (Tukguri), Gyeonggi province where according to CN, women are forced to have sex with their clients. It was then that CN decided to run away and her status became irregular.[317]

There is a great degree of control over the women's movements, which is heightened during the initial months of their work. They are often restricted from leaving the

[315] Amnesty International interview with RD in Dongducheon, South Korea on 29 November 2008.
[316] ILO Convention No. 29 concerning Forced or Compulsory Labour.
[317] Amnesty International interview with CN in Dongducheon, South Korea on 29 November 2008.

premises where they work and live, which is in violation of article 7 of the Labour Standards Act:

> *"No employer shall force a worker to work against his own free will through the use of violence, intimidation, confinement or any other means which unlawfully restrict mental or physical freedom."*[318]

CN described how her employers maintained control of her movements:

> *"We could only use the front door of the club to leave so the club owner and manager knew where we were at all times. We also needed their permission to go out. Otherwise, we had to stay inside the club even when we weren't working. If we didn't do as they said, they could transfer us to a bar or club where we would be forced to have sex with the clients."*[319]

This is confirmed by her former colleague, DR, a 25-year-old Filipino E-6 worker, who arrived in South Korea in January 2008:

> *"New girls were not allowed to go out because our boss and manager were afraid we would run away. Even when you're not new, you are discouraged from going out. One time I was late coming back to the club so as a punishment, they put me in 'lock down' for two weeks. During this time, I wasn't allowed to leave the club at all."*

DR eventually ran away when one night her employer forced her to dance in front of male customers wearing very revealing undergarments.[320]

The salary of E-6 workers is generally not given directly to them, but to their manager who in many cases takes half or more. For example, the employer pays the manager KRW 1.2 million (USD 1,200) who then pays the E-6 worker KRW 400-500,000 (USD 400-500). It is not unusual for the manager to confiscate the woman's first month's pay, and deduct charges for "promotions" in the Philippines, Korean alien card and agent's fee. [321]

Another aspect of control is the confiscation of the E-6 workers' passport and alien card. Withholding employees' documents for the purpose of forcing them to work also violates article 7 of the Labour Standards Act. At the time when DR ran away, her passport and alien card were with her employer. Under article 33(2) of South Korea's Immigration Control Act, it is illegal for an employer to keep a foreigner's passport "for the purpose of using it as a means to secure a contract for job or the fulfilment of obligation".[322] But as RD, a 33-year-old Filipino E-6 worker, explained, this is common practice:

[318] Labour Standards Act No. 8561, 27 July 2007, last amended on 21 May 2009, available at: http://www.moleg.go.kr/FileDownload.mo?flSeq=25699, accessed 9 September 2009.
[319] Amnesty International interview with CN in Dongducheon, South Korea on 29 November 2008.
[320] Amnesty International interview with DR in Dongducheon, South Korea on 29 November 2008.
[321] Amnesty International interview with Yu Young-nim, CN, DR, RR in Uijeongbu and Dongducheon, South Korea on 27 and 29 Nov 2008.
[322] Korea Labor Education Institute, *Easy Korean Labor Law*, 2007, p127.

"I worked almost for one year under the E-6 visa and during this time, the club owner and Korean managers always kept my passport and alien card – they kept all the other women's identity documents."

8.1.2. Inability to access justice

The Ministry of Labour informed Amnesty International that E-6 workers were entitled to go to the labour office for help, but interviews with E-6 workers and non-governmental organizations indicate that many are not aware of this. Furthermore, the Ministry of Justice stated that in cases of trafficking, E-6 workers can file a complaint at the police station.[323] But none of these options are easily accessible for trafficked E-6 workers because once they run away, their employer normally reports them to the Immigration Service making them irregular within 15 days.[324] Thus given that labour and police officials, as public servants, are required to report any irregular migrant workers to the Immigration Service,[325] irregular E-6 workers cannot freely file a complaint at the labour office or police station.

But even when E-6 workers seek help with the authorities, they cannot access appropriate judicial assistance. For example, when CN tried to seek help for her situation at the Immigration Office, she was met with scepticism:

"The South Korean government does not help us at all. When I went to the immigration office and explained my situation and asked for help, the people there didn't believe a word I said and weren't helpful at all. But I guess I should consider myself lucky that they at least didn't arrest me because at that time, I was irregular."[326]

PK, a Filipino woman in her twenties, arrived in South Korea on 10 July 2009. Like many others, she was employed to sing but worked instead serving and soliciting drinks at a club in Pyeongtaek, Gyeonggi province. Unable to continue working under those conditions, PK contacted My Sister's Home and after three days, ran away. With the police, the staff at the shelter went to PK's place of work and retrieved her belongings, including her passport and alien card, which her employer had confiscated. The role of the police, however, stopped there. Park Sumi, Director of My Sister's Home, explained that:

"In practice, the police do not help E-6 women who have not been forced to have sex with their clients. They do not consider it trafficking if the women run away before this happens. So as far as the police are concerned, these women are not 'victims' and therefore the police do not investigate their employers."

[323] Information provided by the Ministry of Justice on 24 July 2009.
[324] Amnesty International interview with Yu Young-nim in Uijeongbu, South Korea on 27 Nov 2008. Article 19 (The Reporting Obligation of Those Employing Foreigners) of the Immigration Control Act states that "(1) An employer of a foreigner who has, as prescribed in Article 18(1), a status of stay allowing employment activities shall report any facts occurred set forth in the following sub-paragraphs, within 15 days since the employer first noticed of them", available at: http://www.moleg.go.kr/FileDownload.mo?flSeq=25839, accessed 14 September 2009.
[325] See section 6.1.
[326] Amnesty International interview with CN in Dongducheon, South Korea on 29 November 2008.

PK returned to the Philippines on 23 July 2009, less than two weeks after her arrival in South Korea.[327]

Park said that most E-6 workers do not even consider asking the police or immigration officials for help nor do they think that the authorities could or would help them in any way. This has also been her experience. According to Park, the authorities expect E-6 workers, their employers and managers, and non-governmental organizations to sort out their own problems:

> *"The greatest obstacle E-6 workers face is that immigration, police and other government officials do not consider them workers – unlike say those who come under the EPS work scheme. Due to the government's unequal and discriminatory treatment of E-6 workers, the employers and managers exploit these women without fear of reprisal. They are fully aware that the government will not intervene, especially since there is no effective complaints or judicial mechanism in place to address the exploitation and trafficking of women. Therefore, employers know that if some women run away, there will always be plenty of others to replace them through the E-6 work scheme."*[328]

[327] Information provided by My Sister's Home on 7 August 2009.
[328] Amnesty International interview with Park Sumi in Uijeongbu, South Korea (via telephone and email) on 7 August 2009.

"The myth that Korea can tap into the global flows of labour to solve its own manpower difficulties whilst maintaining complete racial homogeneity drives the basic injustices behind the system. It is the very definition of a human rights violation to have a policy of wanting the labour power without the person, and of using the person without conferring any real rights for their own protection against abuse."

Dr Kevin Gray, University of Sussex
Brighton, UK[329]

9. TRADE UNION ACTIVITIES

Under article 33(1) of the South Korean Constitution, "workers have the right to independent association, collective bargaining, and collective action". Article 5 of South Korea's Trade Union and Labour Relations Adjustment Act (Trade Union Act)[330] also states that "workers are free to organize a trade union or to join it". Article 2(1) of the Labour Standards Act defines a "worker" as "a person who offers work to a business or workplace to earn wages, regardless of [the] kinds of jobs he/she is engaged in". Thus, by definition, this includes both regular and irregular migrant workers. Despite these provisions, as well as international human rights law (see section 9.1.1), migrant workers, in particular those with irregular status, are far from free to form and join trade unions in South Korea.[331]

9.1. MTU's legal status

The Seoul-Gyeonggi-Incheon Migrants' Trade Union (MTU) was formed on 24 April 2005 for all migrant workers regardless of their legal status. Its membership consists of both regular and irregular migrant workers. On 3 June 2005, the South Korean Ministry of Labour rejected MTU's notification of union establishment on the basis that irregular migrant workers do not have the same legally protected rights, including the right to freedom of association, guaranteed to other workers under South Korean law. However on 1 February 2007, the Seoul High Court ruled in favour of MTU, stating that the South Korean Constitution and the Trade Union Law protect the right to freedom of association of all those who enter into an employment relationship as workers, including irregular migrants.[332] The Ministry of Labour has appealed this ruling to the Supreme Court and as of September 2009, the Court's decision was still pending.

On 25 March 2009, the ILO Committee on Freedom of Association issued its concluding remarks on allegations that the South Korean government refused to register the MTU and carried out a targeted crackdown on the union, recalling that:

[329] Kevin Gray, "From Human to Workers' Rights: The Emergence of a Migrant Workers' Union Movement in Korea", *Global Society*, 21:2, April 2007, p305.
[330] Trade Union And Labor Relations Adjustment Act, Act no. 5310, 13 May 1997, last amended on 28 March 2008, available at: http://www.moleg.go.kr/FileDownload.mo?flSeq=27329, accessed 30 September 2009.
[331] Amnesty International, *Republic of Korea (South Korea): Government must respect the right to freedom of association of all migrant workers*, 12 September 2008 (AI Index: ASA 25/009/2008).
[332] Seoul High Court decision 2006 NU 6774.

> *"- in this regard the general principle according to which all workers, without distinction whatsoever, including without discrimination in regard to occupation, should have the right to establish and join organizations of their own choosing [Digest, op. cit., para216].*
>
> *- … when examining legislation that denies the right to organize to migrant workers in an irregular situation – a situation maintained de facto in this case – it has emphasized that all workers, with the sole exception of the armed forces and the police, are covered by Convention No. 87, and it therefore requests the Government to take the terms of article 2 of Convention No. 87 into account in the legislation in question [Digest, op. cit. para214].*
>
> *- … the resolution concerning a fair deal for migrant workers in a global economy adopted by the ILO Conference at its 92nd Session (2004) according to which "[a]ll migrant workers also benefit from the protection offered by the ILO Declaration on the Fundamental Principles and Rights at Work and its follow-up (1998).*
>
> *- In addition, the eight core ILO Conventions regarding freedom of association and the right to bargain collectively, non-discrimination in employment and occupation, the prohibition of forced labour and the elimination of child labour, cover all migrant workers, regardless of status."*[333]

Despite these conclusions, the Ministry of Labour has continued to deny MTU's legal union status. The Ministry of Labour's refusal of MTU's status is discriminatory and infringes on the right of irregular migrant workers to associate in general and to form trade unions in particular.

9.1.1. Domestic and international standards

Article 5(e)(ii) of CERD, article 21(1) of the CCPR and article 8 of the CESCR all protect the right of workers to freedom of association, and in particular to form and join trade unions, irrespective of their immigration status. Although South Korea has made a reservation on article 22 of the CCPR (freedom of association), it has done so stating only that it is to apply this article "in conformity with the provisions of the local laws including the Constitution of the Republic of Korea".

The South Korean Constitution provides that "All citizens are equal before the law. No one shall be discriminated against in any area of political, economic, social or cultural life based on gender, religion or social status". Despite the use of the term "citizen", the Constitutional Court ruled that the basic rights of foreigners and citizens are equally protected under the Constitution with limitations only in the area of political participation.[334] Furthermore, article 33(1) of the Constitution provides that "workers have the right to independent association, collective bargaining, and collective action". Since the right to freedom of association protected in the

[333] International Labour Office, *353rd Report of the Committee on Freedom of Association*, Case 2620 (Republic of Korea): Interim Report, Complaint against the Government of the Republic of Korea presented by the Korean Confederation of Trade Unions (KCTU) and the International Trade Union Confederation (ITUC), GB.304/6, March 2009, para788, available at: http://webfusion.ilo.org/public/db/standards/normes/libsynd/lsgetparasbycase.cfm?PARA=8587&FILE=2646&hdroff=1&DISPLAY=CONCLUSION, accessed 28 May 2009.

[334] Constitutional Court Decision 93 Ma 120, 29 December 1994 and 99 Ma 494, 29 November 2001.

Constitution has been shown to cover irregular migrant workers, the reservation on article 22 of the CCPR cannot therefore be grounds for denying irregular migrant workers the freedom of association, including the right to form and/or join a trade union.

In its 2006 concluding observation on the implementation of the CCPR, the Human Rights Committee expressed concerns:

> *"that migrant workers face persistent discriminatory treatment and abuse in the workplace, and are not provided with adequate protection and redress." and recommended that South Korea "ensure to migrant workers enjoyment of the rights contained in the Covenant without discrimination. In this regard, particular attention should be paid to ensuring equal access to social services and educational facilities, as well as the right to form trade unions and the provision of adequate forms of redress."*[335]

Article 8 of the CESCR provides, among other things, that:

> *"The States Parties to the present Covenant undertake to ensure:*
> *(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others."*

The denial of legal status to the MTU violates this provision and similar ones in the other treaties mentioned above, and cannot be justified on the basis of the restrictions it allows, as the peaceful defence of the rights of workers cannot be interpreted as a threat to national security or public order.

In its General Recommendation No. 30 (2004), the Committee on the Elimination of Racial Discrimination recommended that states "ensure that legislative guarantees against racial discrimination apply to non-citizens regardless of their immigration status" and that "all individuals are entitled to the enjoyment of labour and employment rights, including the freedom of assembly and association, once an employment relationship has been initiated until it is terminated".[336]

In addition, ILO Convention No. 87 protects the right to freedom of association for all workers, "without distinction whatsoever" and has been interpreted to apply to irregular migrant workers by the Committee on Freedom of Association.[337] The ILO Constitution recognises that freedom of association is fundamental to labour rights, and grants the Committee on Freedom of Association the mandate to hear complaints against all ILO Member States regardless of whether they have ratified Convention No.

[335] See Concluding Observations on the Third Periodic Report of the Republic of Korea, CCPR/C/KOR/CO/3, para12.
[336] CERD General Recommendation No.30 on Discrimination Against Non Citizens, 1 October 2004, paras7 and 35.
[337] Case No. 2121 (UGT), 2001 and Case No. 227 AFL-CIO/CTM, 2002.

87 given the fundamental character of freedom of association and the right to organise.

Although South Korea has not ratified ILO Convention No. 87, as a member state it is obligated to respect the fundamental rights protected in this and other ILO conventions under the Declaration of Fundamental Principles and Rights at Work adopted in 1998. During South Korea's 2008 re-election to the Human Rights Council, it pledged to ratify the four ILO Fundamental Conventions, which includes No. 87. [338]

9.2. Crackdown against MTU leadership

The South Korean government has arrested and deported some of the leaders of the MTU since the union was founded in 2005. The targeted nature of these actions seems to indicate that the authorities are attempting to stop the MTU from conducting its legitimate union activities.

The South Korean authorities arrested MTU's first president, Anwar Hossain, a Bangladeshi national, for being in an irregular status soon after the union was founded. On 14 May 2005, more than 20 police and immigration officials arrested and reportedly physically assaulted Hossain. Eleven months later, Hossain was released on bail citing "a temporary cancellation of detention" so he could receive medical treatment for a mental condition that he suffered during detention.[339] When he returned to Bangladesh in August 2007, he was detained by the Bangladeshi authorities and questioned on his "anti-government activities" in South Korea.[340]

Figure 16: Torna Limbu at Cheongju detention centre, 6 May 2008 (MTU)

MTU's second president, Kajiman Khapung (Nepalese), vice president, Raju Kumar Gurung (Nepalese), and general secretary, Abul Basher M. Moniruzzaman (Masum,

[338] Note verbale dated 14 March 2008 from the Permanent Mission of the Republic of Korea to the United Nations addressed to the President of the General Assembly, UN Doc. A/62/754, 27 March 2008, p5.
[339] Amnesty International, *Republic of Korea (South Korea): Briefing to the Human Rights Committee on Republic of Korea's Third Periodic Report on the implementation of the International Covenant on Civil and Political Rights*, October 2006, p19.
[340] Information provided by the MTU on 17 July 2009.

Bangladeshi), were all arrested on 27 November 2007 on grounds of their irregular status in three separate locations in Seoul.

The three leaders were taken to a Cheongju detention centre in North Chungcheong province and later deported to their countries of origin on 13 December 2007. In an interview with Amnesty International, Masum described his arrest:

> *"The immigration officers arrived between 8 and 8:30am. They didn't present an arrest warrant but just asked me if I was "Masum", to which I replied "yes". They then grabbed my wrists and when I refused to be handcuffed, they threatened to use a stun gun, which they showed me, if I continued to resist. They kept swearing at me in Korean."*

According to Masum, on the day he was deported, immigration officers threatened that if he did not go quietly to the airport, he would face problems once he returned to Bangladesh. He also alleged that the South Korean authorities informed the Bangladeshi authorities that he had been engaged in anti-government activities in South Korea, which Masum believes that the Bangladeshi authorities could use against him in the future.[341]

The targeted arrest and deportation of the MTU leadership continued on 2 May 2008 when MTU's third president, Torna Limbu, a Nepalese, and Abdus Sabur, vice president and Bangladeshi, were arrested for being irregular migrants. The arresting immigration officers did not present a detention order for either man. They were detained at Cheongju detention centre. On 15 May 2008, the two leaders were deported despite a call by the National Human Rights Commission for a stay of deportation until it could investigate allegations of abuse during their arrest, including allegations that they had been beaten by immigration officers. Limbu and Sabur submitted an appeal to their detention and deportation orders (see section 5.3) but it was rejected and they were deported to their countries of origin on the same day.

Amnesty International believes that these targeted arrests of senior MTU officials are an attempt by the Government of South Korea to deprive them of their basic labour rights protected in the South Korean Constitution and international law and therefore, considers them prisoners of conscience detained solely for peacefully exercising their labour rights.[342]

In all the above cases against the MTU leadership, the South Korean government failed to respect the right to freedom of association and, in particular, to form trade unions for migrant workers. Respect for these rights is among South Korea's international legal obligations, for instance, under article 21 of the CCPR and article 8 of the CESCR.

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[341] Amnesty International interview with Masum in Dhaka, Bangladesh via telephone link on 16 February 2009.

[342] Amnesty International, *South Korea: Deportation of two senior officials of the Migrants' Trade Union*, 15 May 2008, Amnesty International, *South Korea: On-going Crackdown against Migrant's Trade Union*, 8 May 2008 (AI Index: ASA 25/004/2008), Amnesty International, *Republic of Korea (South Korea): AI condemns secret deportations of senior Migrant Trade Union officials*, 14 December 2007 (AI Index: ASA 25/008/2007), and Amnesty International, *South Korea: Crackdown against Migrants' Trade Union*, 3 December 2007 (AI Index: ASA 25/007/2007).

On 25 March 2009, the ILO Governing Body adopted a report drafted by the Committee on Freedom of Association, in which the Committee, in regards to the targeted arrests of MTU leadership, recommended that the South Korean government:

> *"avoid in the future measures which involve a risk of serious interference with trade union activities such as the arrest and deportation of trade union leaders shortly after their election to trade union office and while legal appeals are pending."*[343]

[343] International Labour Office, *353rd Report of the Committee on Freedom of Association*, Case 2620 (Republic of Korea): Interim Report, Complaint against the Government of the Republic of Korea presented by the Korean Confederation of Trade Unions (KCTU) and the International Trade Union Confederation (ITUC), GB.304/6, March 2009, para795(b).

10. RECOMMENDATIONS

It has been five years since the implementation of the EPS and migrant workers, both regular and irregular, remain at risk of human rights abuses. The South Korean government has the obligation to ensure that this system – both in its content and practice – does not violate domestic laws and international human rights law and standards. The government is also obliged to root out any elements of trafficking for sexual exploitation of female E-6 workers into the entertainment sector, including in the sex industry. Finally in implementing its policy of reducing irregular migration, the South Korean government must ensure that the rights of irregular migrants are fully protected.

In view of the above, Amnesty International makes the following recommendations to the South Korean government to:

1. ratify, incorporate fully into domestic law and implement in policy and practice the International Convention on the Protection of the Rights of All Migrants Workers and Members of Their Families to ensure that the rights of all migrant workers will be respected and protected in South Korea;

2. ratify and implement ILO conventions, in particular the four fundamental ILO Conventions which South Korea has not yet ratified: no. 87 (Freedom of Association and Protection of the Right to Organise), no. 98 (Right to Organise and Collective Bargaining), no. 29 (Forced or Compulsory Labour), and no. 105 (Abolition of Forced Labour);

3. ratify ILO Convention No. 181 concerning Private Employment Agencies Convention and implement measures to prevent abusive practices by certain recruiters and ensure greater respect for migrant workers' rights;

4. ratify and implement the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children;

To the Ministry of Labour:

Regarding EPS workers

5. address the lack of labour mobility of migrant workers which is a major reason for their exploitation by their employers, including by amending article 25 of the EPS Act to remove the restrictions on the number of times migrant workers can change jobs;

6. remove the time limit or allow greater flexibility within which migrant workers need to find new employment;

7. amend article 18 of the EPS Act to clarify that after three years, the ability of migrant workers to renew their visa beyond the initial three-year term is not dependent on their current employer's willingness to re-hire them;

8. provide a clear guidance on the penalties for employers who violate article 22 of the EPS Act on the prohibition of discrimination;

9. remove the requirement, which is not imposed by immigration law, for HIV testing of EPS applicants in their countries of origin and again as EPS workers upon arrival in South Korea;

Regarding all migrant workers

10. ensure that contracts signed in labour sending countries are respected in South Korea;

11. ensure that labour offices, job centres and labour inspection teams are properly trained and adequately staffed, including interpreters, in order to effectively protect human rights of workers, including migrants;

12. carry out rigorous labour inspections covering a greater number of workplaces employing migrant workers, including follow-up visits and monitoring of workplaces with a record of abuse, to ensure that employers are complying with labour laws;

13. strengthen the monitoring of the recruitment process of E-6 and EPS workers, and impose adequate penalties for labour rights abuse by employers, in particular for trafficking, harassment, violence and labour exploitation, and breach of health and safety rules;

14. ensure that migrant workers are paid fully and on time and for the labour offices to assist with recovering the wages in a timely manner;

15. monitor and prosecute employers who remove the identity documents of migrant workers;

16. ensure that an effective and simplified complaints mechanism is in place with adequate interpretation and translation of documents, and prompt investigation of complaints of abuse of migrant workers, regardless of their immigration status;

17. allow irregular migrant workers to remain in South Korea while accessing justice and seeking compensation for abuses by employers;

18. ensure that migrant workers who return to their country of origin have access to justice in South Korea in order to claim unpaid wages and benefits, including by entering into bilateral agreements with labour sending countries;

Regarding female migrant workers

19. take particular measures to respect, protect and promote the rights of all female migrant workers and to ensure that they are not subjected to discriminatory and unlawful practices and human rights abuses at their places of work such as unlawful restrictions on their freedom of movement, torture and ill-treatment, including sexual and other forms of gender-based violence;

Regarding union activities

20. immediately remove obstacles to forming and participating in the Migrants' Trade Union, in particular by recognising its status as a legal union in South Korea in line with domestic law and international law and standards;

21. ensure the rights of everyone, regardless of their immigration status, to form trade unions and to join a trade union of their choice;

To the Korea Immigration Service and Ministry of Justice:

Regarding arrest, detention and deportation

22. ensure that the procedures for the arrest, detention and deportation of irregular migrant workers are in line with the legal protection given to South Korean nationals, and to conduct a prompt, effective, independent, thorough, and impartial investigation into allegations of human rights violations by immigration officials, and hold perpetrators accountable for human rights violations;

23. end the systematic practice of detaining migrant workers prior to expulsion and use detention only when necessary and proportionate to preventing absconding or ensure compliance with a deportation order signed by a judge;

24. ensure that detention of migrants, whatever their legal status, should be justified in each individual case as a necessary and proportionate measure that conforms to international law and standards. Such detention must not be indefinite and should be subject to periodic judicial review, including making available alternative non-custodial measures;

25. to ensure that conditions of detention are consistent with international human rights law and standards, including the Standard Minimum Rules for the Treatment of Prisoners and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;

26. address the situation of unpaid wages and ensure that migrant workers are not forcibly repatriated until they have satisfactorily resolved issues with due wages and compensation for industrial accidents;

27. ensure that in cases of a death or injury while in custody, where official responsibility has been established, the level of compensation, as well as other forms of reparation (restitution, rehabilitation, satisfaction and guarantees of non-repetition) should be agreed with the victims and survivors, or else settled in the courts, in proceedings which meet international standards of fairness;

Regarding all migrant workers

28. amend article 84(1) of the Immigration Control Act, which requires authorities to report irregular migrants without delay, so that it does not lead to the denial or unlawful restriction of the human rights of migrant workers, including those in an irregular status;

29. remove the requirement for E-6 entertainment applicants to disclose HIV status;

Regarding trafficking

30. ensure that relevant officials in the Immigration Service and police have the training and capacity to identify victims of trafficking;

31. ensure that through sensitive questioning, trafficked individuals are not criminalized for status or other offences, but that their rights, including the presumption of innocence, to counsel and to interpreters, are respected;

32. provide trafficked individuals with immediate access to assistance and support and all the rights afforded to victims of human rights abuses;

33. fully investigate trafficking of E-6 workers and to ensure that perpetrators are brought to justice;

Regarding children

34. ensure that children of irregular migrant workers have access to education and health care without fear of reprisals against their parents.

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DISPOSABLE LABOUR
RIGHTS OF MIGRANT WORKERS IN SOUTH KOREA

Many migrant workers in South Korea face discrimination as well as verbal and physical abuse in the workplace. They cannot freely change jobs, work long hours, often without overtime pay, and can have their wages withheld. Many receive inadequate compensation following industrial accidents, usually caused by poor safety standards. Female migrant workers are vulnerable to sexual harassment by the management or their co-workers. Some women recruited as singers have been trafficked and may end up as sex workers in US military camp towns.

This report describes how migrant workers are being exploited by their employers despite the provisions of the Employment Permit System which gives them legal status and equal labour rights to South Korean workers. It examines the plight of both regular and irregular migrant workers, mostly employed in low-skill jobs, and how the South Korean government's inaction and failure to protect have exacerbated their situation.

The South Korean government has engaged in crackdowns against irregular migrant workers, resulting in serious injuries and instances of ill-treatment. It has also denied the legal status of the Migrants' Trade Union on the basis that irregular migrant workers do not have the same rights as other workers under South Korean law. As the government continues this crackdown, fears grow that migrant workers will become further marginalized.

Amnesty International
International Secretariat
Peter Benenson House
1 Easton Street
London WC1X 0DW
United Kingdom

www.amnesty.org

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