



BITTER HARVEST

EXPLOITATION AND FORCED LABOUR
OF MIGRANT AGRICULTURAL
WORKERS IN SOUTH KOREA

AMNESTY
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Cover photo: Agricultural land with greenhouses in below freezing temperatures in Gyeonggi province.

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1. EXECUTIVE SUMMARY

“At the vegetable farm, I regularly worked from 6am to midnight with only an hour lunch break. The employer got angry anytime we took a break to stretch our body. So when I felt a sharp pain, I had to stand up when he wasn’t looking and did it quickly – I didn’t dare to linger. It was unfair because the Korean workers were allowed to rest but not us migrants. There was no toilet so we had to dig a hole in the ground to do our business. When that filled up, we dug another. My employer also paid me late once every two months or in instalments. When I complained to the job centre, the caseworker just called my boss and accepted at face value the promise he made to her. She did not follow up so nothing changed.”

CF, a Cambodian migrant agricultural worker ¹

As of 2013, around 250,000 migrant workers were employed in the Republic of Korea (South Korea) under the Employment Permit System (EPS). Since the establishment of the EPS ten years ago, Amnesty International has repeatedly raised concerns on how this work scheme directly contributes to human and labour rights violations by severely restricting migrant workers’ ability to change jobs and challenge abusive practices by employers.

Similar concerns have also been raised by a number of UN bodies,² but the South Korean government has consistently failed to implement their recommendations. As a consequence, a significant number of migrant workers continue to be regularly exposed to serious exploitation, which includes excessive working hours, unpaid overtime, denial of rest days and breaks, threats, violence, trafficking and forced labour.

Following Amnesty International's previous research on the EPS in 2006 and 2009,³ this report focuses on migrant agricultural workers, who account for some 8% of all EPS workers.⁴ Agriculture is one of the sectors with the least legal safeguards and, consequently, migrant workers in this sector are at greater risk of exploitation and abuse.

1.1. EXPLOITATION AND ABUSE OF MIGRANT AGRICULTURAL WORKERS

Amnesty International's interviews with 28 migrant agricultural workers⁵ in 10 different locations in South Korea found that on average, they worked more than 10 hours a day, 28 days a month, which was usually 50 hours more per month than stated in their contract. Twenty-three interviewees never received any payment for working longer than their contracted hours and none were given any paid annual leave. In addition, all interviewees experienced late or non-payment of wages and many reported health problems caused by their work.

Half the migrants interviewed also stated that they were illegally subcontracted by their employer, particularly during the off season (November to February), which put them at risk of arrest and deportation. Other common complaints included substandard accommodation and insufficient food, which were provided as part of their salary.

The great majority of migrants interviewed by Amnesty International were working in circumstances which would constitute forced labour, as they were coerced into working in conditions to which they did not agree, most commonly through threats to terminate their contract, verbal abuse and violence. Similarly, many of the interviewees were also trafficked, as they were recruited using deception for the purposes of exploitation.

These findings are supported by evidence compiled by the National Human Rights Commission of Korea (NHRCK), from a survey of 161 migrant workers. This research was published in 2013 and documented that 58% of respondents were forced to work beyond their contracted hours or on rest days. The NHRCK report also recorded that 76% of respondents reported verbal abuse; 47% threats of dismissal, reporting them as having run away or deportation; 15% physical assault and 16% confiscation of identity documents.⁶

Although South Korea's Labour Standards Act (1997) is supposed to provide a regulatory framework to protect workers, article 63 of the Act specifically excludes some sectors, including agriculture, from protections relating to working hours, weekly paid rest days and daily breaks. While this exclusion applies to Korean and migrant workers alike, a large proportion of the low-skilled full-time labour in the agricultural sector is provided by migrant workers, as illustrated by an IOM report on agricultural workers in Gyeonggi province, which found that seven out of 10 workers are migrants.⁷ Therefore, this exclusion is discriminatory in effect, as it disproportionately impacts on migrant workers. Furthermore, the NHRCK report found that 84% of migrant workers surveyed felt that they experienced some form of discrimination, including regarding pay and benefits, type of work given, and ill treatment.⁸

1.2. HOW THE EPS INCREASES MIGRANT WORKERS' RISK OF EXPLOITATION

Migrant workers employed in agriculture are at risk of exploitation, as the majority will have taken on debts equivalent to more than two years' annual salary in their country of origin to secure employment in South Korea. In this context, it is vital that they retain their job so that they can repay their debts and start earning money to support their families. However, there

are several restrictions and requirements within the EPS, which greatly increase the likelihood of migrants being subjected to human and labour rights abuses at the hands of employers.

In South Korea, employers can terminate or refuse to renew a migrant's contract, usually without having to justify their decision. In contrast, migrants must obtain a signed release form from their employer in order to seek a new job (article 25(1) of the EPS Act). Amnesty International's research found that employers are extremely reluctant to sign release forms and on some occasions would only do so in exchange for a bribe, which is usually between US\$1,000-2,000.

Where migrants do obtain a release form, they must then secure a new job within three months (article 25(3) of the EPS Act) or face deportation. This is not an easy task as they are dependent on government job centres to send them information on available employment and, since August 2012, they can no longer proactively seek work due to a change in law that prevents them from accessing a list of prospective employers. In effect, their ability to exercise their right to work is severely restricted (article 6 of ICESCR).

However, even if they do secure new employment within three months, the job change will still jeopardize their ability to continue working in South Korea after the completion of their initial three-year contract. This is because contract extensions (for one year and 10 months) must be supported by a migrant worker's current employer and visa renewals (for up to four years and 10 months) are only possible if the migrant has never changed jobs (article 18-4 of the EPS Act).

VT, a 26-year-old woman from Vietnam, described how her employer used this system to try and control her when she complained to a government-run job centre about unpaid wages: "My boss told me that he will never release me and will use me for three years, after which he will not allow me to extend my contract in Korea."⁹

In this way, the EPS work scheme requires migrant workers to establish and maintain a good relationship with their employer in order to be able to continue working in South Korea and makes it very difficult for them to challenge exploitative conditions of work and to change jobs.

The only exception to the above is where migrant workers can prove to officials that they have been subjected to "violations of working conditions or unfair treatment by the employer" (article 25(1)(2) of the EPS Act). In this case, a job change does not count against them. However, this procedure is very difficult to access in practice, as migrant workers are routinely told by job centre staff that they must continue working at the place of employment while their complaint is being investigated, thereby exposing them to further abuse at the hands of their employer. To exacerbate matters, the burden of proof to show "unfair treatment" is on the workers, who are unlikely to speak Korean fluently or understand the Korean legal system.

Even if migrants leave their workplace, they are likely to find themselves with no place to live and no income. They also risk being reported to the immigration authorities by their employer as "runaways" and thus, subject to arrest and deportation.

Interviews suggest that migrant workers cannot rely on support from the South Korean authorities to resolve issues at work. While 23 out of 28 migrant interviewees sought assistance from government-run job centres and labour offices in a variety of locations (including Iksan, Mokpo, Damyang, Pyeongtaek, and Seosan), none received adequate assistance from the officials in these offices when seeking to remedy a work-related problem. In the majority of cases, the migrants were actively discouraged from taking the issue forward, and often advised to go back to their employers to apologize or to ask them to sign a release form.

« It was difficult to get this opportunity to work in Korea so I would rather suffer ill treatment so that I can continue working and earning money than be out of work. Once I told my boss that I wanted to leave but he said that he would not sign my release paper so I would become undocumented. I want to work in Korea with regular status and for as long as legally possible. If there was real freedom to change jobs, I would absolutely leave this place in a second. »

SP, a Cambodian migrant agricultural worker¹⁰

Government statistics showed in 2011 that 86% of all migrant workers who applied for a change of workplace did so because their contract was terminated or not renewed and less than 1% applied due to a violation of the employment contract.¹¹ The discrepancy between the prevalence of labour exploitation among EPS migrant workers employed in agriculture and the low rate of such exploitation being cited as the reason for job changes suggests that it is difficult for migrant workers to address violations of labour rights or unfair treatment through the official channels and that the best they can generally hope for is for their employer to sign a release form so that they can secure a job elsewhere.

Where migrants cannot obtain a release form or access an effective dispute resolution mechanism, they are left with little option but to remain in their current job, and suffer the exploitation and abuse or to run away. The majority of migrant agricultural workers interviewed by Amnesty International said that they became irregular to escape exploitative working conditions even though this left them destitute and at risk of imprisonment and deportation.

1.3. INEFFECTIVE REDRESS MECHANISMS

Amnesty International's research indicates that there are serious abuses of migrant agricultural workers' rights within the EPS and that the South Korean government has not exercised its due diligence to protect these workers from abuses by their employers, as required under a number of international treaties it has ratified.¹²

The Ministry of Employment and Labour (MOEL) has job centres and labour offices throughout South Korea, which have a mandate for, among other things, assisting migrant workers. The job centre is responsible for managing the employment permit for migrant workers and the administration of their EPS contracts, including any transfer of employment. The labour office is in charge of labour inspections, and ensuring the application of the Labour Standards Act, and occupational health and safety in the workplace.

The evidence documented in this report demonstrates that a significant number of migrant agricultural workers are regularly subjected to human and labour rights abuses, in

contravention of the terms and conditions of their contracts; South Korea's domestic legislation (including the Labour Standards Act and the EPS Act); and key UN and ILO conventions, which the Government of South Korea has ratified.

Despite this, those employers responsible for exploiting migrant agricultural workers, including through trafficking and forced labour, rarely face any sanctions. This is largely because the EPS discourages migrants from making complaints and changing jobs, and some officials actively dissuade migrants from taking complaints forward. This is reflected in government figures, which state that from all sectors of the EPS, totalling about 250,000 migrant workers, between January and June 2014, only 1,490 complaints were filed with the MOEL.¹³

The South Korean government further reported that during the inspection of 2,241 workplaces employing foreign workers in 2011, 7,994 violations were identified, of which nearly a quarter (22%) concerned wages and working conditions. Despite the large number of violations identified, fines were imposed in just 74 cases and only six cases resulted in prosecutions. This means that only 1% of cases, in which the rights of migrant workers were violated, resulted in any legal sanction.¹⁴ This is a particular concern for migrant agricultural workers, as the Government has itself acknowledged that working conditions in the agriculture, livestock breeding and fishery sectors are "worse than in manufacturing".¹⁵

Given that government institutions are inadequately assisting migrant workers to resolve problems, change jobs and access judicial remedies, it is all the more important that the South Korean government facilitates migrants' access to independent advice and representation, including from trade unions. In this context, it is unacceptable that the Government has failed to comply with the longstanding recommendation from the UN Committee on Economic, Social and Cultural Rights, which called on the Government to "uphold the High Court's decision to grant legal status to the Migrants' Trade Union."¹⁶

1.4. CONCLUSIONS AND RECOMMENDATIONS

Over the last five years, the ILO and other UN institutions have repeatedly called on the South Korean authorities to ensure that the EPS allows for appropriate flexibility for migrant workers to change their workplaces so as to avoid situations in which they are subjected to abuse and discrimination. However, the authorities have not taken the required action and Amnesty International believes that the current restrictions and deterrents in the EPS curtail the job mobility of migrant workers to such an extent that they directly contribute to human and labour rights violations.

Moreover, the South Korean government's failure to adequately investigate and sanction employers for violating migrant agricultural workers' rights has allowed unscrupulous employers to exploit these workers with virtual impunity.

Amnesty International therefore urges the Government of South Korea to accept and implement the following key recommendations as a matter of priority.

The Government of South Korea should:

- Remove all restrictions on the number of job changes allowed to EPS workers;

- Permit all EPS workers to change jobs without having to obtain a release form from their employer. Where EPS workers have filed a complaint against their employer, they must be free to take up another job while their case is being investigated;
- Repeal article 63 of the Labour Standards Act and ensure that the rights which the Act protects, in particular in respect to work hours, daily breaks and weekly paid rest days, are extended to all workers, including migrant workers, irrespective of which sector they work in;
- Amend the current legislation to ensure that an application for a visa extension or a renewal is not restricted or refused on the basis that migrant workers have changed jobs;
- Allow greater flexibility in the time frame within which migrant workers have to secure new employment, for example, by extending the time limit to a year;
- Provide migrant workers who are trying to change jobs with a list of employers who are seeking to employ migrant workers;
- Allow migrant agricultural workers to work in other sectors during the off season;
- Ensure that all migrant agricultural workers are paid the full overtime rate for any work performed outside the regulated hours, as set out in article 56 of the Labour Standards Act, including by clearly stating this on their contract and in the appropriate national legislation, and ensuring that this is implemented in practice;
- Amend article 99 of the Labour Standards Act and relevant subsidiary regulations to clearly establish what constitutes adequate food and accommodation when these are included as part of a migrant worker's contract (e.g. accommodation should meet relevant international standards on adequacy, including heating, running water, doors that lock, adequate ventilation, access to drinking water, etc.);
- Ensure that the Ministry of Employment and Labour regularly inspects all farms to ensure the proper implementation of the Labour Standards Act and EPS contracts, and issue annual reports recording the full details of the visits, including the number and type of violations identified and the action taken to remedy the situation, including appropriate sanctions against employers who are in breach of their obligations;
- Ensure that the Ministry of Employment and Labour immediately removes obstacles to participating in the Migrants' Trade Union, in particular by recognizing its status as a legal union in South Korea in line with domestic law and international law and standards;
- Ratify and fully implement the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, incorporate its provisions into domestic law and implement it in policy and practice;
- Ratify and implement the four fundamental ILO Conventions, which South Korea has yet to ratify: No. 29 on Forced or Compulsory Labour, No. 87 on Freedom of Association and Protection of the Right to Organise, No. 98 on Right to Organise and Collective Bargaining, and No. 105 on Abolition of Forced Labour.

2. INTRODUCTION AND METHODOLOGY

Amnesty International's reports in 2006, *Migrant workers are also human beings*,¹⁷ and 2009, *Disposable Labour: Rights of migrant workers in South Korea*,¹⁸ documented systematic failures by the South Korean authorities to protect migrant workers, especially within the Employment Permit System (EPS), from exploitation and abuse. Despite provisions in the EPS, which give migrants the same labour rights as South Korean workers, the research found that restrictions on changing jobs severely hindered migrant workers from raising abuses at work, such as late or non-payment of wages or benefits, inadequate safety measures, and physical or sexual violence.¹⁹ Although it is 10 years since the EPS was established, EPS workers continue to be subject to human and labour rights abuses.

This follow-up report focuses on migrant workers in the agriculture sector. Although the EPS makes a distinction between the agricultural and livestock breeding sectors, this report looks at migrant workers employed in both sectors under the term "agricultural workers". Combined, these sectors made up 8% of the EPS workforce in 2013.²⁰ Migrant agricultural workers are particularly at risk of abuse and exploitation due to a number of factors, including the exemption of the agricultural sector from labour laws regarding work hours, daily breaks and weekly paid rest days; the seasonal nature of farming; and the remote location of their workplaces.

Between February 2013 and April 2014, Amnesty International interviewed 28 migrant EPS workers employed in the agriculture sector. Interviews were conducted in and around 10 cities²¹ and facilitated by migrant organizations.²² Amnesty International sought to interview migrant workers who had arrived in South Korea between November 2010 and May 2013, and experienced problems within a three-year period (2012-2014) in order to gain an in-depth understanding of the current key issues affecting migrant workers in this sector.

The 28 interviewees, aged between 21 and 40 years, were from Cambodia (20), Vietnam (7) and Nepal (1) and among them, 15 were women and 13 men. Their place of employment covered seven provinces (Gyeonggi, Jeju, Gangwon, North Jeolla, South Chungcheong, South Gyeongsang and South Jeolla) and two municipal cities (Incheon and Gwangju). To protect the identities of these interviewees, their names have been omitted and replaced by random initials to identify the individuals in this report.

Interview questions (see Appendix 1) focused on the pre-departure process in the migrant workers' country of origin; terms and conditions of work in South Korea; and their ability to access redress mechanisms and change jobs.

Amnesty International also conducted interviews with NGOs, trade unions,²³ labour lawyers and employers. In addition, Amnesty International met with the South Korean officials from the Ministry of Employment and Labour (MOEL), regional job centres, the National Human Rights Commission of Korea (NHRCK), and parliamentary members of the National Assembly.²⁴



Figure 1: A supermarket in Seoul selling locally produced vegetables (Source: Amnesty International/Robert Godden)

This report also references the 2013 NHRCK publication, *Fact-finding Report on the Human Rights Situation of Migrant Workers in Agricultural and Stockbreeding Industries*, which surveyed 161 migrant agricultural and livestock breeding workers from Vietnam, Cambodia and Nepal. NGOs and academic institutions²⁵ conducted this research with migrant agricultural workers who were already in contact with the researchers and interpreters, as well as through social networks. The researchers sought migrant interviewees who had been working in the agricultural sector for at least one year and sought to minimize participation from those who went to NGOs for help to try and get a more representative sample. NHRCK survey questions included their terms and conditions of work, food and accommodation, subcontracting, medical treatment, threats and violence, and redress mechanisms.²⁶

South Korea is a party to a number of international human rights treaties, which protect the rights of all workers in the country regardless of their status or national origin. Most significantly, articles 6, 7 and 8 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) guarantee respectively the right to work, the rights of workers to just and favourable conditions in work, and to form and join trade unions, while article 8 of the International Covenant on Civil and Political Rights (ICCPR) prohibits forced labour and article 22 guarantees trade union freedoms.

The degree to which the South Korean government is complying with the international standards it has ratified, as well as its own domestic legislation in relation to the protection of migrant agricultural workers, is analyzed throughout the report.

3. EPS WORK SCHEME

The Employment Permit Scheme (EPS) is a South Korean government-operated work scheme. It was implemented in August 2004 through the enactment of the Law Concerning the Employment Permit for Migrant Workers, which was approved by South Korea's National Assembly on 31 July 2003. The EPS was designed to provide migrant labour to small and medium-sized enterprises employing less than 300 workers that could not hire a sufficient number of national workers. A permit issued by the Ministry of Employment and Labour (MOEL) to qualifying employers allows them to hire workers from 15 countries²⁷ that have signed a Memorandum of Understanding (MOU) on this issue with South Korea. As of 31 December 2013, there were 246,695 EPS workers (under the E-9 "non-professional employment" work visa)²⁸ employed in the manufacturing, agriculture, construction, fishery and service sectors. At the end of 2013, 19,726 migrant agricultural workers, representing 8% of the EPS workforce²⁹ were employed in around 7,000 businesses.³⁰

In order to qualify for work in South Korea, prospective migrants must be between 18 and 39 years old, with no criminal record or experience of deportation from South Korea, and not subject to any travel ban. They are also required to score at least 80 out of 200 points in the EPS-Test of Proficiency in Korean (TOPIK).³¹ Upon passing the EPS-TOPIK, prospective migrant workers can apply for a job under the EPS work scheme.³²

Employers then select workers from a pool of EPS candidates. If a job offer is made, then a standard labour contract (see Appendix 2) between the employer and the migrant worker is sent to the relevant governmental agency, such as the Ministry of Labour, in the worker's country of origin. Each contract must include, among other things, the following information:

- period of the labour contract;
- place of employment and description of occupation;
- daily or monthly working hours, the length of daily breaks and entitlement to weekly paid rest days;
- wages (components and methods of calculation and payment) and date of payment;
- other work conditions which need to be agreed between the employer and foreign worker.³³

3.1. LACK OF A WRITTEN CONTRACT IN A LANGUAGE MIGRANT WORKERS UNDERSTAND

In addition to the requirements of the EPS standard labour contract, article 17 of the Labour Standards Act makes clear that a written contract must be provided outlining basic terms and conditions, both at the beginning of a new employment relationship and following any change in a worker's terms and conditions of employment:

“(1) An employer shall state the following matters clearly. The same shall also apply to the changes of the following matters after entering into a labor contract.

1. *Wages;*
2. *Contractual work hours;*

3. Holidays [rest days] under article 55;
 4. Annual paid leaves under article 60;
 5. Other terms and conditions prescribed by Presidential Decree.
- (2) An employer shall deliver the written statement specifying constituent items, calculation methods and payment methods of wages with respect to the wages under paragraph (1) 1 and the matters prescribed in subparagraphs 2 through 4 to workers [...]"³⁴

Amnesty International's interviews with migrant agricultural workers found that while workers were given a contract in advance, a total of seven interviewees did not receive the document in their own language. As CO, a 24-year-old Cambodian man who worked on a vegetable farm in Icheon, Gyeonggi province (March 2012-April 2013), explained:

"The contract I received was only in English and Korean. As I don't speak either language, I didn't understand it but signed it anyway because if I didn't hurry, I was afraid that I would lose my chance to work in Korea. As I can't understand its content, I don't know if there is a difference between the terms and conditions of my contract and reality."³⁵

Out of the four migrant interviewees who changed jobs, none received a copy of their new contract from their employer. GT, a 33-year-old Vietnamese woman employed at a mushroom farm in Guri, Gyeonggi province (August 2012-present), recounted that:

"I never received a contract for any of my subsequent jobs – the second, third or fourth ones. I asked my second employer for a copy of my contract but he refused, claiming that the job centre was keeping it for me. So, I thought this was normal and therefore didn't ask for it in my other jobs."³⁶

EN, a 25-year-old Vietnamese man who works at a pig farm in Dangjin, South Chungcheong province (February 2011-present), also noted that:

"I never received a contract for my second job. The job centre didn't provide me with one and when I asked my boss's wife, she refused but didn't give a reason."³⁷

This is consistent with the findings of the 2013 NHRCK report, which documented that 76% of interviewees who had changed jobs³⁸ were not given a copy of their second or subsequent contract. Also, 64% said that they did not understand their second or subsequent contract because it was not in a language they understood.³⁹ When Amnesty International asked an official at the job centre in Iksan, North Jeolla province about this issue, the official stated that the job centre must provide a copy for the employers, but not for the migrant workers and that it is the responsibility of the employers to give a copy of the contract to their workers (see section 5.7 on "Ineffective redress mechanisms").⁴⁰

Under article 6 of the ICESCR, which South Korea ratified in 1990, everyone has the right to work, which includes the right to the opportunity to gain his living by work, which he freely chooses or accepts, and states are obliged to take appropriate steps to safeguard this right. Clearly a person's right to freely choose or accept work is significantly undermined if they do not receive a contract or if they receive a contract in a language they do not understand.



Figure 2: Interview with EN (Source: Amnesty International/Robert Godden)

3.2. EXEMPTIONS FOR AGRICULTURAL WORKERS

All EPS migrant workers are protected under South Korean labour laws, thus, they are entitled to the same labour rights, pay and benefits as national workers.⁴¹ However, article 63 of the Labour Standards Act specifies that provisions pertaining to work hours, daily breaks and weekly paid rest days⁴² do not apply to workers engaged in the following sectors:

1. cultivation or reclamation of land, seeding, cultivation or collection of plants, or other agricultural and forestry work;
2. breeding of animals, collection or catching of marine animals and plants, cultivation of marine products, or other cattle breeding, sericulture and fishery business;
3. surveillance or intermittent work, whose employer has obtained the approval of the Minister of Employment and Labour;
4. any such business as prescribed by Presidential Decree.⁴³

In April 2014, the MOEL responded to the recommendations in the NHRCK report, including its proposal to amend article 63. Despite the fact that this issue had been highlighted since the EPS was implemented in 2004, the Ministry stated that applying new regulations would require a long-term review, including in-depth research, case studies from other countries and discussions with stakeholders.⁴⁴

While the exemptions in article 63 apply both to South Korean workers and migrant workers, a large proportion of agricultural workers who are employed full-time for at least six months are migrants and therefore the exclusion of agricultural workers from the protections of the Labour Standards Act in respect to working hours, daily breaks and weekly paid rest days disproportionately impacts on them, exposing them to serious exploitation, as outlined below.

4. EXPLOITATION OF AGRICULTURAL MIGRANT WORKERS

Under article 7 of the ICESCR, states parties such as South Korea are obliged to ensure all workers' right to the enjoyment of just and favourable conditions of work, which includes, in particular: (a) Remuneration which provides all workers, as a minimum, with: (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work; (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant; (b) Safe and healthy working conditions; (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence; (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

These aspects of the right to work have been emphasised by the UN Committee on Economic Social and Cultural Rights, which stated that "Work as specified in article 6 of the Covenant must be decent work. This is work that respects the fundamental rights of the human person as well as the rights of workers in terms of conditions of work safety and remuneration".⁴⁵

As part of this obligation, states are duty bound to protect workers from exploitation by employers. However, in relation to migrant agricultural workers, Amnesty International has documented numerous breaches of article 7 with respect to excessive working hours, denial of weekly paid rest days, inadequate daily breaks, denial or reduction in overtime pay, denial of annual paid leave, late payment of wages, inadequate accommodation and food, and health and safety issues. This is further compounded by widespread discrimination, and intimidation and threats. Many of the migrant interviewees have also been working in forced labour conditions, as they have been compelled to work in conditions that they did not agree to under the threat of some form of punishment. This is a violation of article 8, which prohibits forced labour, of the ICCPR, ratified by South Korea in 1990.

Some of the cases cited in this report describe abuses of the rights of migrant agricultural workers by private employers rather than by the state. However, states are obliged under international human rights law to exercise due diligence to protect individuals against abuses of their rights by non-state actors.⁴⁶

4.1. EXCESSIVE WORK HOURS

Article 50 of the Labour Standards Act provides that "work hours shall not exceed 40 hours a week, excluding hours of recess [break]" and "eight hours a day, excluding hours of recess [break]". Furthermore, "any waiting time, etc. spent by workers under the direction and supervision of their employers that is necessary for the relevant work shall be deemed work hours".⁴⁷ This 40-hour week was introduced in 2004 and all workplaces employing five or more workers had to comply with this provision by 1 July 2011.

However, the exemption of agriculture from the regulations on work hours under article 63 of the Labour Standards Act means that employers in the agricultural sector can require their workers to work whatever hours they choose. This situation is further exacerbated by the non-application of the Labour Standards Act, outlined under article 11(1), to those who are employed in workplaces employing less than five workers. While this report focuses on the exemption of agricultural workers, article 11(1) can also have a negative impact on the basis that it excludes workers, solely based on the size of the workforce, from labour rights and protection.

While working hours in agriculture are not regulated by the Labour Standards Act, they are limited under the terms of the migrant workers' contract. However, the migrant agricultural workers interviewed for this report told Amnesty International that they worked between 250 and 364 hours a month – averaging more than 10 hours per day, 28 days per month (to account for the norm of two monthly rest days – see section 4.2 on “Denial of weekly paid rest days”). These hours were well in excess of the hours stipulated in their contract, which is generally set at 226 hours.

These findings are consistent with those of the 2013 NHRCK report, which documented that migrant agricultural workers performed an average of 284 hours' work a month, or just over 10 hours a day.⁴⁸ However, the average contracted hours for interviewees were 251 hours.⁴⁹

Forcing migrants to work beyond contractual requirements was the most common complaint among migrants interviewed by Amnesty International. A total of 24 interviewees had to work longer hours than they were contracted for and all but one, were not paid at all for the additional hours they worked, in contravention of their contract. The exemption of agricultural workers in article 63 of the Labour Standards Act from the provisions on maximum standard working hours, daily breaks and weekly paid rest days clearly does not mean exemption from payment of wages for the extra hours they have worked.

GL, a 24-year-old man from Cambodia who worked at a vegetable farm (July 2012-June 2013), was one of the 24 interviewees who had to work longer hours than they were contracted for:

“My contract states that I would work eight hours per day, but in reality I worked 11 hours per day. It also said that I would get a rest day twice a month but I only had a day off once every one-and-a-half months.”

Despite working about 330 hours per month, GL was only paid for his contracted hours and not for the extra hours he worked (see section 4.4 on “Underpayment”).⁵⁰ While the vast majority of migrant interviewees were not paid for the extra hours they worked, some stated that they would not have wanted to work as much as they did even if they were paid for the extra hours. It is not unusual for employers to threaten their workers with dismissal if they resist working additional hours (see section 4.10 on “Threats, intimidation and violence”).

4.2. DENIAL OF WEEKLY PAID REST DAYS

Article 55 of the Labour Standards Act provides that “an employer shall allow workers at least one paid holiday [rest day] per week on average”, but the exemption under article 63 means that this is not applied to agricultural workers. Consequently, none of the migrant

agricultural workers interviewed for this report received a weekly paid rest day in their first job.

Furthermore, some agricultural workers are denied rest days altogether. Amnesty International interviewed three migrants who were contractually entitled to a paid rest day twice monthly but never had a day off except for the days when it rained so hard that the work could not be done.⁵¹

SM is a 21-year-old woman from Cambodia who was employed at a fruit and vegetable farm in South Jeolla province (March 2012-June 2013). She described her situation:

“My contract stated a paid rest day every other Saturday but at the beginning, I didn’t have any rest day. My boss made me and another migrant worker clean his house on Saturdays. After six months, we finally got enough courage to complain and although he got angry, we didn’t have to clean anymore. My boss scared me and normally I wouldn’t dare disobey him. He told me never to leave the farm without him accompanying me so it was only after one year that I went out on my rest day to visit a friend in the village. When I returned, my boss got so angry at me – he told me never to leave the farm again without his permission because there could be work at any given day so I had to be on call at all times.”⁵²



Figure 3: Interview with SM (Source: Amnesty International/Robert Godden)

NT, a 35-year-old woman from Cambodia who worked at a fruit and vegetable farm in South Jeolla province (June 2012-June 2013), stated:

“I was supposed to have a day off every other Saturday but from April to June, I worked every day without any rest day from 3am-7pm. Otherwise, rest days were given arbitrarily by my boss who didn't want me to be free on Saturdays because he didn't want me befriending other Cambodians. He was probably afraid that others would find out about my long work hours.”⁵³

Four of the migrant agricultural workers interviewed by Amnesty International were given a half day off every week instead of two full days as stipulated in their contract.⁵⁴

BR, a 34-year-old Cambodian man, was illegally subcontracted by his employer and worked from 5am to 8pm at six different ginseng farms in Gangjin, South Jeolla province (June 2012-July 2013) without any set rest days:

“One day I returned from farming at 9pm and asked my boss for a day off. He refused but I insisted, along with my friend. So the boss threw our belongings out and told us to leave. We were afraid but also felt angry that he did this over one rest day. We left the farm without our belongings because we couldn't carry them all. We found out later that he had thrown our clothes away and reported us to the labour authorities that we had run away – even though we had come to Earthian [an NGO] for advice and had fully intended to return to the farm.”⁵⁵

The information provided to Amnesty International is similar to the data collected in the NHRCK research, which found that 75% of respondents⁵⁶ were only given two rest days a month, with a further 10% receiving either one day a month or no rest day at all. More than a quarter of respondents (26%)⁵⁷ stated that they had their rest day deducted from their salary, in contravention of their contract.⁵⁸

4.3. INADEQUATE DAILY BREAKS

According to article 54 of the Labour Standards Act:

*“(1) An employer shall allow workers a recess [daily break] of not less than thirty minutes if working for four hours or a recess [daily break] of not less than one hour if working for eight hours, during work hours.
(2) Recess [daily break] hours may be freely used by workers.”*

Although employers of migrant agricultural workers are exempt from this provision, daily break times are normally stipulated in their contract. VK, a 28-year-old woman from Cambodia, who worked on a vegetable farm in Wanju, North Jeolla province (April 2012-January 2014), was one of nine migrant interviewees who received less than the contracted break time. Despite a contractual obligation of a 150-minute daily break, she worked up to 13 hours per day with only a 30 or 40-minute break. In addition, VK only received two rest days a month, instead of a weekly rest day, as written in her contract.⁵⁹

NGOs have told Amnesty International that employers insert long daily breaks in migrant workers' contract with no intention of honouring them. Instead they force migrants to work

longer hours without adequate rest periods.⁶⁰ A further example of such conduct is recounted by NR, a woman from Cambodia who was employed at a lettuce farm in Nonsan, South Chungcheong province (May 2013-March 2014). She showed Amnesty International her contract where it stated that she would have a break of three hours for an eight-hour work day, but in reality, she was only given one hour's rest for an average work day of eleven hours.⁶¹

4.4. UNDERPAYMENT

DENIAL OF OVERTIME PAY

Migrant agricultural workers regularly work long hours in excess of what is provided in their contract, including night shifts. This is especially true during harvest season. The Labour Standards Act exempts agricultural workers from maximum standard hours, weekly paid rest days and daily breaks, but it does not exclude them from payment for work beyond the hours stipulated in their contract. However, 23 interviewees told Amnesty International that they were not paid at all for the extra hours they worked, as required under article 2(1)(1,4 and 5) of the Labour Standards Act.⁶²

TH, a 27-year-old woman from Vietnam who works on a strawberry farm in Damyang, South Jeolla province (March 2012-present), is contracted to work from 7am to 4pm. However, during the strawberry harvest season (March and April), she worked from 2am to 6pm and from May to June, 5am to 5:30pm, in each case with an hour break. Despite these long extra hours, TH did not receive any extra wages.⁶³

Amnesty International's research found that even when individuals are paid for the extra hours they have worked, this is not paid at the full overtime rate (see Figure 4), as required under article 56 of the Labour Standards Act:

"An employer shall, in addition to the ordinary wages, pay 50% or more thereof for extended [overtime] work [...], night work (work between 10:00pm and 6:00am), or holiday [rest day] work."⁶⁴

Similarly, the 2013 NHRCK report documented that only 38% of respondents⁶⁵ received some form of payment for the extra hours they worked, but this included a rate that was below the statutory minimum wage.⁶⁶

HH, a 24-year-old woman from Cambodia, worked on a farm that grew strawberries, melons and tomatoes in Damyang, South Jeolla province (March 2012-June 2013). According to her:

"My contractual work hours were from 7am to 4pm with an hour break [226 work hours per month], but instead I worked 13 hours per day with only half a day off on Sundays. So my work hours were either from 5:30am to 7:30pm with a one-hour break or during strawberry picking season from 2am to 6pm with a three-hour break."

Despite working 364 hours per month, HH never received payment for the 138 extra hours she worked.⁶⁷ Calculated on the 2013 overtime wage (see Figure 4), HH should have received an additional KRW 1,006,020 (US\$989) per month for the extra hours she worked.⁶⁸

Year	Hourly minimum wage in KRW (US\$)	Monthly (226 hours) in KRW (US\$)	Hourly overtime, night or holiday wage in KRW (US\$)
2014	5,210 (5.12)	1,177,460 (1,158)	7,815 (7.68)
2013	4,860 (4.78)	1,098,360 (1,080)	7,290 (7.17)
2012	4,580 (4.50)	1,035,080 (1,018)	6,870 (6.76)
2011	4,320 (4.25)	976,320 (960)	6,480 (6.37)

Figure 4: Minimum and overtime wage rates, 2011-2014 (Source: Minimum Wage Council)⁶⁹

While section 7 of the standard labour contract states that additional pay rates apply to overtime, night shifts or holiday work (see Appendix 2), in meetings with South Korean labour officials, there was confusion as to how much migrant workers should be paid for overtime work. The MOEL's EPS Department acknowledged that migrant workers should get paid for the extra hours that they have worked but did not specify at what rate.⁷⁰

This lack of clarity results in different practices in different locations. According to the job centre in Seongnam, Gyeonggi province, migrant workers employed at a workplace with five or more workers are entitled to an overtime rate of 1.5 for any extra hours, night shift or holiday work. Thus, they would be entitled to the national overtime rate applicable for most workers. Those in workplaces with less than five workers are entitled to be paid, but not at the overtime rate.

In contrast, the job centre in Iksan, North Jeolla province informed Amnesty International that there was no distinction in the number of workers – this distinction applied to other sectors – and that migrant agricultural workers are paid the non-overtime rate for any extra hours they worked (see section 5.7 on “Ineffective redress mechanisms”).⁷¹

UNDERPAYMENT DURING THE PROBATIONARY PERIOD

Under article 5 of the Minimum Wage Act, workers, including migrant workers, can be subject to a probationary period of up to three months from commencement of employment. During this time, employers can pay 10% less than the minimum hourly rate.⁷² Although this law applies to all workers, including those working in agriculture, regardless of nationality, several migrant interviewees had not known about the probation period before they left their country of origin. The explanation for this included that it was not specified in the contract, the contract was in a language they could not understand or the content of the contract was not clearly explained to the worker.

NB, a 30-year-old Cambodian woman who worked on a vegetable farm in Nonsan, South Chungcheong province (February 2013-March 2014), showed Amnesty International her bank passbook, which listed payments for the first three months between KRW 852,000-865,000 (US\$840-850). NB was not aware that this was the probationary period or that she was underpaid as the amounts reflected more than the 10% maximum deduction. NB should have received KRW 988,524 (US\$972) for each of the initial three months.⁷³

RP, a 26-year-old Cambodian woman, who worked on a strawberry and tomato farm in Damyang, South Jeolla province (November 2012-June 2013), had a similar problem:

“My contract said a salary of KRW 1,035,080 [US\$1,018] but I only received KRW 900,000 [US\$885] for three months. I asked my boss why the reduction in salary, but he never answered me. He just replied that he didn't know and that it wasn't his responsibility. I found out later that he wasn't my real boss but one that my real boss had subcontracted me out to.”⁷⁴

RP's employer deducted approximately 15% rather than the legally permitted 10% of her salary. Instead of KRW 900,000 (US\$885), she should have received KRW 931,572 (US\$916) a month during the probationary period.

DENIAL OF ANNUAL PAID LEAVE

Under article 60(1), (2) and (4) of the Labour Standards Act, workers are entitled to paid annual leave, which is calculated according to the following period of employment:

- for those who have worked not less than 80% of one year → paid leave of 15 days;
- for those who have continuously worked for less than one year or who have worked less than 80% of one year → one paid leave day for each month they have continuously worked;
- for those who have continuously worked for not less than three years → paid leave days calculated by adding one day for every two continuously working years, not including the first one year to the 15 paid leave days (referred to in point 1). The total cannot exceed 25 days.⁷⁵

While article 63 of the Labour Standards Act and the standard labour contract both clearly state that provisions on working hours, daily breaks and weekly paid rest days do not apply to workers in certain sectors such as agriculture, it says nothing specific about annual paid leave, therefore migrant agricultural workers are legally entitled to paid annual leave, as prescribed under article 60 of the Labour Standards Act. However, none of the migrants interviewed by Amnesty International were given annual leave or paid in lieu of it.

4.5. LATE OR NON-PAYMENT OF WAGES

Article 43 of the Labour Standards Act states that “payment of wages shall be directly made in full to workers” and that “wages shall be paid at least once per month on a fixed day”. In fact, employers are required to indicate in the contract the exact day when each payment is to be made (see Appendix 2). This applies to all workers including those in the agricultural sector.

Despite these provisions, all of the 28 migrant interviewees experienced late or non-payment of their wages. Of those, eight interviewees did not receive at least one month's salary. For example VT, a 26-year-old woman from Vietnam who worked on a tomato and cucumber farm in Iksan, North Jeolla province (March 2011-July 2013), stated:

“After my first year of work, my employer started to pay me at irregular intervals. The longest I had to wait was three weeks. Also, I was not paid for two months – in February and April 2013.”⁷⁶

YV, a 28-year-old man from Cambodia, worked on a vegetable farm in Gangwon province (May 2012-July 2013). In the off-season, his employer illegally subcontracted him to a

vegetable farm in Jeju province. YV experienced late payment at both jobs:

*"I was never paid on time. At the workplace in Gangwon, I had to wait up to three weeks. The situation was worse in Jeju. Once I had to wait for two months in order to receive my wages. I asked my employer several times to pay me, but he said he had no money so I had to wait. He eventually paid me, but in increments."*⁷⁷

This is consistent with the findings of the NHRCK report, which states that 69% of agricultural workers did not get their salary on the designated date and one third did not receive their full salary when it was due.⁷⁸

4.6. ACCOMMODATION AND FOOD

In the agricultural sector, employers normally provide migrant workers with accommodation and partial board. In the standard labour contract, section 10 indicates whether accommodation and board is provided and if so, fully or in part (see Appendix 2). Article 99(1) of the Labour Standards Act states that:

"An employer who intends to lodge his/her workers in a dormitory annexed to a business or workplace shall prepare dormitory rules concerning the following matters:

- 1. Matters pertaining to getting-up and sleeping, and going-out and overnight stay;*
- 2. Matters pertaining to events;*
- 3. Matters pertaining to meals;*
- 4. Matters pertaining to safety and health;*
- 5. Matters pertaining to the maintenance of buildings and facilities;*
- 6. Other matters to be applicable to all workers lodging in the dormitory."*

And under article 100(1):

"An employer shall take measures necessary for the maintenance of health, public morals and lives of the workers lodging in a dormitory annexed to the business or workplace."

The framework highlighted above is problematic as it does not adequately set out employers' obligations in relation to the standards of accommodation and inappropriately indicates that employers should make rules, which interfere with the private lives of workers. The Enforcement Decree of the Labour Standards Act is more specific in some areas such as:

*"Article 55 (Separation of Male and Female Residing in Dormitory)
The employer shall not have male and female workers accommodated in the same room of a dormitory.
Article 56 (Location of Dormitory)
Every employer shall avoid any place with severe noise and vibration in establishing a dormitory.
Article 57 (Bedrooms)
Workers in two or more different shifts shall not be accommodated in one bedroom, if each shift has different working hours.
Article 58 (Standards for Establishment of Dormitory)
The area of a dormitory bedroom shall be at least 2.5 square meters per person, and the number of persons accommodated in one room shall not exceed 15 persons."*⁷⁹

However, the Enforcement Decree still does not provide sufficient detail in relation to what adequate standards are and how they should be met.



Figure 5: Accommodation for migrant agricultural workers (Source: Amnesty International/Robert Godden)

Under article 24-2 of the EPS Act,⁸⁰ the Councils for the Protection of the Rights and Interests of Foreign Workers were established under regional labour offices where at least 5,000 migrant workers are employed in their jurisdiction.⁸¹ Article 3 of the Regulation on Operation of Councils for Protection of Rights and Interests of Foreign Workers provides that each Council shall be composed of seven members (including the chairperson):

1. Workers association within the jurisdiction;
2. Employers association within the jurisdiction;
3. Migrant workers support organisations, such as a support centre or multicultural centre within the jurisdiction;
4. Human Resource Development Service (HRD) Korea⁸² within the jurisdiction;
5. Korea Immigration Service within the jurisdiction;
6. Any other organisation deemed necessary by the chairperson;
7. Business support unit leader from job centre or labour inspection unit leader from labour office.⁸³

The Councils' consultative mandate includes migrant workers' employment issues.⁸⁴ In 2013, the Councils recommended that the MOEL set clearer guidelines on the provision of accommodation. The MOEL responded that the regulations on accommodation are set out in the Labour Standards Act and acknowledged that it could review making the existing standards clearer when the Enforcement Decree of the Labour Standards Act is amended but did not provide a specific timeframe. The MOEL reported that it has in place a set of criteria for exemplary accommodation and that incentives are currently given to employers who provide such accommodation.⁸⁵

In response to the NHRCK's recommendation to introduce a law on accommodation standards, the MOEL responded that setting minimum guidelines on accommodation specifically for foreign workers could be deemed to be reverse discrimination and would put excessive burden on the employers.⁸⁶

All migrant agricultural workers interviewed for this report were provided with accommodation by their employer. Out of the 28, fourteen told Amnesty International that the facilities were very poor. Similarly out of 22 interviewees whose food was provided, 15 felt that the food was insufficient or of poor quality. NV, a 38-year-old Vietnamese man who worked at a paprika farm in Changwon, South Gyeongsang province (June 2011-September 2012), recalled:

"The accommodation was very bad. I slept in a small room with three other colleagues. We didn't have a bathroom so we had to use an outhouse, which was really dirty and located 30 metres away. My employer did not provide meals but just gave me some rice, meat and gas. It wasn't enough so I ended up spending about KRW 100,000 [US\$98] of my own money every month on food. My boss also did not provide clean drinking water – he told my colleagues and me to drink from a tank of water, which was dirty and full of pesticide."⁸⁷



Figure 6: Toilet and shower facilities (Source: Amnesty International/Robert Godden)

SM, a 21-year-old woman from Cambodia, who was employed at a fruit and vegetable farm in South Jeolla province (March 2012-June 2013), also had issues with her living conditions:

"I lived in a container where it was very hot in the summer and very cold in the winter. The bathroom was outside – it smelled so bad that it spread to the container. There was no shower so I had to ask the boss's permission to use his bathroom. There was also no hot water in winter due to frozen pipes, so I had to boil water. Although it was

so cold in the container during winter, the boss refused to let us turn on the radiator high enough to actually feel the heat. He would get angry when I asked to turn it up and said that if I did, I would have to pay for the heating out of my own pocket.

I was provided with lunch, which consisted of only rice and kimchi [spicy fermented cabbage], nothing else. And the kimchi was so old you couldn't eat it. So, I ended up eating only the rice with water for months. He never provided any meat – sometimes vegetables but not a lot and very rarely. When the boss was in a bad mood, he would only provide rice. It was so bad that my colleagues and I wanted to cook for ourselves but there was no facility to do so.”⁸⁸

Eleven interviewees specifically told Amnesty International that they spent their own money on food because what their employers provided was inadequate. NB, a 30-year-old Cambodian woman, explained:

“In my contract, lunch was provided but when I arrived in Korea, my boss only gave me KRW 50,000 [US\$49] for food per month for three months. I spent an extra KRW 50,000 [US\$49] out of my own pocket to supplement. Afterwards, no lunch money was given, only some vegetables and spices. During that time, I spent about KRW 100,000 [US\$98] per month on food. After nine months, my boss didn't give me anything. I then spent about KRW 150,000 [US\$147] for food every month.”⁸⁹

MH, a 23-year-old Cambodian woman who worked on a farm in Nonsan, South Chungcheong province (June 2012-June 2013), had a similar problem:

“My employer was supposed to give me three meals per day, but I only got lunch and dinner and that was just for three months. Afterwards, he just gave me KRW 50,000 [US\$49] per month for food. It wasn't enough so I had to spend my own money.”⁹⁰

Privacy of workers in their living quarters is also regulated under article 98(1) of the Labour Standards Act:

“An employer shall not interfere in the private life of workers lodging in a dormitory annexed to the business or workplace concerned.”

However, RH, a 40-year-old woman from Vietnam who works at a strawberry and tomato farm in Incheon city (August 2013-present), expressed anxiety about her living situation:

“As there are no accommodation facilities at this farm, I'm staying at the dormitory of my boss's younger brother's farm. The living space is shared with the younger brother so he comes to the dorm whenever he wants to. This makes me feel very uncomfortable. My boss promised to build accommodation for me but seven months have passed and still nothing.”⁹¹

Once again, the testimonies collected by Amnesty International reinforce the evidence documented in the NHRCK report. Respondents to NHRCK research stated that they did not receive enough food (36%); did not have a proper toilet (40%); and that they could not stop their employer from freely entering their accommodation (53%).⁹²



Figure 7: Kitchen facilities for migrant agricultural workers (Source: Amnesty International/Robert Godden)

4.7. HEALTH AND SAFETY ISSUES

According to article 5 of the Occupational Safety and Health Act:

“(1) An employer shall observe the following to protect the lives of workers, maintain and promote the safety and health of workers, as well as, comply with the industrial accident and disease prevention policy of the state.

- 1. observe the standards for the prevention of industrial accidents as prescribed by this Act and any order issued under this Act;*
- 2. create a proper work environment and improve working conditions which reduce workers’ physical fatigue, mental stress, etc.;*
- 3. provide workers with information on safety and health in the workplace.”⁹³*

In addition, article 24(1) specifically states that an employer must take necessary measures to prevent health problems in the workplace, including those caused by “simple and repetitive work or work which requires excessive physical labor” or by “gas, vapor, dust, fume, mist, oxygen deficient air, pathogens, etc.”⁹⁴

The spraying of pesticides on fields is a common task allocated to agricultural workers. Many interviewees expressed concern about the effect of pesticide use on their health. According to YV, a 28-year-old man from Cambodia:

“I had to spray pesticide on the fields every day during a two-month period, which gave me a headache. I wasn’t trained on how to do it properly and safely – my employer just told me to do it. He only gave me a cloth mask, which didn’t protect me at all. I was worried so I complained to the job centre. Afterwards, my boss gave me a plastic jumpsuit and gloves, but the mask was still a problem. Despite wearing it, the pesticide still entered my mouth and nose because it was made of cloth so quite porous.”⁹⁵

BR, a 34-year-old Cambodian man, had to:

“spray pesticide five to six days per week throughout the year minus the winter months. Between my Cambodian colleague and I, we used about 5,000 litres of pesticide. When I sprayed pesticide, I wore a mask, which was too small, very tight. There wasn't a larger size, so I ended up using a cloth mask. Although I wore gloves, boots and a rubber suit, I still felt dizzy after spraying pesticide.”⁹⁶

NT, a 35-year-old Cambodian woman, described the effect the pesticide had on her health:

“After spraying pesticide over a period of time, I developed an allergic reaction – a skin irritation – to the chemical. I went to a medical clinic for treatment. The bill came to KRW 70,000 [US\$69], which my boss then deducted from my salary.”⁹⁷

Similarly, VT, a 26-year-old woman from Vietnam, told Amnesty International that she developed blisters on her hands from using pesticides.⁹⁸

SM, a 21-year-old woman from Cambodia, recounted the physically demanding nature of her work:

“I cried almost every day. I am 152cm tall and weigh 43 kg. I am a woman but was given work that men do like spraying pesticide and carrying a very heavy 20L tank on my back. This happened every day. I also carried and transported 25kg bags of fertilizer. My male boss didn't do that work, only us women migrants. Picking fruits was ok but afterwards, putting them into boxes and loading the boxes onto a truck was so physically gruelling. I also had to put fertiliser on the ground using a wheelbarrow, which weighed 60 kg – more than me!”⁹⁹

RP, a 26-year-old Cambodian woman, faced similar difficulties in her work:

“I had to do heavy, men's work that was beyond my physical capability like carry 20kg boxes full of tomatoes and load them onto a delivery truck. Although I received KRW 5,000 [US\$4.90] per hour for overtime work, I didn't want to work the extra hours because it was so physically straining. I tried to refuse three or four times but my boss threatened to send me back to Cambodia so I had to work. The pay was too low for this kind of work.”¹⁰⁰

The extent and seriousness of health and safety issues for agricultural workers is reflected in the fact that 58% of respondents in the NHRCK research reported experiencing work-related illness or injury¹⁰¹ with nearly two thirds (64%) giving the reason for this being the “hard work” they had to do.¹⁰²

Of equal concern is the fact that 44% stated that they were not able to go to the hospital even though they wanted to.¹⁰³ The reasons people gave for not being able to go included: not being able to communicate in Korean, concerns about costs, not having the time, and not being allowed to go by their employer.¹⁰⁴

Under article 14 of the EPS Act and article 7 of the National Health Insurance Act,¹⁰⁵ all employers are obligated to provide National Health Insurance for their workers with contributions equally divided between the employer and worker. Employers are also required

to contribute to the Industrial Accident Compensation Insurance (IACI) scheme under article 5(3) of the Act on the Collection, Etc. of Premiums for Employment Insurance and Industrial Accident Compensation Insurance.¹⁰⁶ However, article 2(1)(6) of the Enforcement Decree of the IACI Act exempts those in “agriculture, forestry (excluding the logging industry), fishery and hunting where the number of workers who are employed ordinarily is less than five”.¹⁰⁷ Article 23(2) of the EPS Act stipulates that migrant workers are responsible for taking out personal injury insurance.

Given the above, it is particularly concerning that the majority of migrants who experienced an industrial accident in the NHRCK research stated that they had to meet the cost of any medical treatment they needed themselves.¹⁰⁸ In the NHRCK’s recommendations, concern was raised regarding employers who opt out of the IACI because they employed less than five workers and migrant workers who were uninsured despite coverage under the National Health Insurance being obligatory. The MOEL agreed to encourage employers to join the IACI scheme through information dissemination and promotional work. The Ministry did not address the issue of uninsured migrant workers under the National Health Insurance, stating that it was under the jurisdiction of the Ministry of Health and Welfare.¹⁰⁹

4.8. SUBCONTRACTING

EPS workers can only work for the employer written in their contract. Only employers with a foreign worker employment permit issued by the MOEL can hire EPS migrant workers. Article 20 of the EPS Act authorizes the head of the job centre to prevent employers who violate provisions of the Act from hiring migrant workers “for three years from the date of the incident”. One of the violations is compelling a “foreign worker to provide his/her services in a business or workplace other than the one stated in the labor contract” (article 25(2) of the Enforcement Decree of the EPS Act).¹¹⁰

This means that migrant workers are not authorized to work for a different employer without going through an official job change or to engage in subcontracting work. Migrant workers who violate this law would lose their right to work in South Korea. The only permitted exception to subcontracted work is under the Ministry of Employment and Labour (the then Ministry of Labour) measure, “Additional Workplace Scheme for Foreign Workers in Agricultural Industries”, which was implemented in June 2009. It allows migrant agricultural workers to temporarily be contracted to another employer in livestock breeding, food processing and services related to the agricultural sector for a maximum and non-extendable period of 2-4 months.¹¹¹ However, our research found that its existence is little known and rarely used by employers.

In fact, 14 out of 28 migrant agricultural workers who spoke to Amnesty International were illegally subcontracted by their employers. As one Vietnamese worker commented, “Whenever there was no work, my boss sent me to work at neighbouring farms. It happened so often that I can’t count the number of times.”¹¹²

A 2013 report by the IOM Migration Research and Training Centre (IOM MRTC) on migrant agricultural workers in Gyeonggi province noted in relation to subcontracting that:

“some farm employers think of foreign workers as someone who is giving a hand in house chores and not as workers working under the labor contract. The current EPS

does not allow employers to send their foreign workers to other farms, but it has become a common practice among farm employers to lend their workers to the farms experiencing labor shortages, and foreign workers have been complaining about such work tradition because it clearly violates the labor contract.”¹¹³

According to the research findings from the 2013 NHRCK report, 61% of interviewees were subject to illegal subcontracting.¹¹⁴ Furthermore, 71% were subcontracted on more than four occasions and 75% were subcontracted without their agreement. Those who were subcontracted reported having to do work that was more difficult (54% of cases) or longer (26% of cases) than in their usual jobs.¹¹⁵ These findings are consistent with Amnesty International’s research that found half of the migrant interviewees were illegally subcontracted.

Employers rarely inform the workers that subcontracting is illegal, but many migrant workers who do know feel that they are unable to refuse because this may lead to the loss of their job and source of income. A case in point is YV, a 28-year-old Cambodian man, who worked on a vegetable farm in Gangwon province and was subcontracted to a farm in Jeju province:

“My boss lied to me and said that subcontracting was not illegal and assured me that it would be ok. I didn’t want to go but had no choice because the boss said there was no work at his farm. In total, there were 10 of us – all Cambodians – who went to Jeju and we were not just from my boss’s farm but other farms in the area.”¹¹⁶

TL, a 31-year-old Cambodian man (May 2011-July 2013), initially refused to engage in subcontracted work:

“At the training upon arrival, I learned that it was illegal for employers to subcontract migrant workers so at first I refused and told my boss that it was against the law. But he told me that I had to do it, so I had no choice. I just hoped I wouldn’t get into trouble with the law.”¹¹⁷



Figure 8: Interview with TL (Source: Amnesty International/Robert Godden)

HM, a 25-year-old Cambodian man who worked on a vegetable and rice farm in Haenam, South Jeolla province (March 2012-April 2013), recalled:

“My boss made me work at different farms in Haenam and Jindo. I had to work at a different farm every day or even multiple farms – up to three in one day. In total, I worked for about 70-80 different employers and 300 fields. My real boss even told me to cut the grass on his ancestor’s grave mound with an electric cutter. Once I argued with him about working for multiples employers. He got angry at me and as a punishment, only gave me a small piece of bread and some water for lunch. It was snowing a lot that day and as a further punishment, at the end of my work shift, my boss didn’t pick me up from a subcontracting farm. So, I had to stay there overnight.”¹¹⁸

BR, a 34-year-old Cambodian man, also worked at multiple farms:

“Aside from my real employer’s ginseng farm, I worked at five other ginseng farms. I had no idea it was illegal but I did think it was strange that I had to travel so much from one farm to another – unlike my Cambodian friends.”¹¹⁹

In the case of RP, a 26-year-old Cambodian woman, she found out when she wanted to change employment that:

“I never worked for my real boss – the one who is named in my contract. This means that I had been subcontracted to work for his friend. So, I have never actually met my real boss.”¹²⁰

4.9. DISCRIMINATION

In all workplaces where the interviewees were employed, migrant workers represented either the only source of labour or the overwhelming majority of full-time contractual workers. If Korean workers were hired, the interviewees said they were usually part-time and/or seasonal, and usually elderly women who performed lighter work during harvest season.

Thus, only two migrant interviewees worked together with other Korean workers in similar jobs and in both cases, they stated that they were discriminated against because of their nationality. One of the interviewees, AN, a 24-year-old Vietnamese man who works at a pig farm in Jeongeup, North Jeolla province (August 2011-present), explained that:

“there are three Vietnamese and three Korean workers at our farm. We do exactly the same work, but the Koreans receive more pay – KRW 3 million [US\$2,950] while our salary is about KRW 1.2 million [US\$1,180]. The treatment and benefits they receive compared to us are like night and day. For example, my boss gives them weekly rest days, holidays and bonus pay, but not us.”¹²¹

The other interviewee, EN, also a Vietnamese man employed at a pig farm, described his situation:

“In total, there are nine migrant workers from Vietnam, Cambodia and China, and two Koreans. Migrant workers are treated totally differently from the Korean workers. For example, when there is a group dinner after work, which our boss pays, only the Korean workers and managers are invited. We also have to work more and are given the most difficult work. The boss’s wife once told me that I am foreign so I will never get to be a team leader regardless of my ability or how hard I work.”¹²²

Such discrimination is in violation of article 11(1) of South Korea’s Constitution¹²³ and article 22 of the EPS Act, which states that: “No employer shall discriminate or unfairly treat any person on the grounds that he/she is a foreign worker” and article 6 of South Korea’s Labour Standards Act, which stipulates that:

“An employer shall neither discriminate against workers on the basis of gender, nor take discriminatory treatment in relation to terms and conditions of employment on the ground of nationality, religion, or social status.”

A large proportion of full-time low skilled labour in the agricultural sector is provided by migrant workers. The IOM MRTC field research on migrant agricultural workers in Gyeonggi province found that seven out of 10 agricultural workers in the province were migrants. The report noted the agricultural sector’s increasing dependence on migrant agricultural workers:

“The shrinking and aging of the farm population in Korea have caused its agricultural communities to lose vitality. Thanks to agricultural machinery and automated management processes, however, the agricultural sector has been able to satisfy the shortage of workers to a certain extent, but the supply of workers is still insufficient, especially in times of great need for seasonal workers. As a result, employers are becoming more and more dependent on the foreign national workforce.”¹²⁴

Similarly, South Korean parliamentary member Hana Jang told Amnesty International that:

“The population in rural areas is significantly ageing, which has led to a shortage of workers in primary industries. Thus, the South Korean government brought in migrant workers and immigrant brides. However from the very beginning, no consideration was given to protecting their human rights. The reality is that primary industries are totally dependent on migrant workers.”¹²⁵

In this way, the exclusion of agricultural workers from the Labour Standards Act's provisions on working hours, recess and weekly paid rest days is discriminatory in effect as it disproportionately affects migrant workers.

The NHRCK report found that 84% of those surveyed felt that they experienced some form of discrimination, including regarding pay and benefits, type of work given and ill treatment (e.g. verbal abuse, being looked down on).¹²⁶ Similarly in 2011, the Joint Committee with Migrants in Korea (JCMK) conducted a survey on discrimination against migrant workers. Of the 931 surveyed, 78% were verbally abused.¹²⁷ According to one of the NHRCK report's authors, Sa-gang Kim:

“Migrant agricultural workers, who live and work in isolated rural areas with farmers and their families, face various forms of discrimination due to traditional employment practices, the local communities' ignorance of foreigners and the uncertain status of migrant workers who came to Korea on short-term contracts. However, the Korean government systematically supports the discrimination against migrant agricultural workers by excluding them from labour laws and running an inflexible Employment Permit System.”¹²⁸

Under article 2(1) of the ICESCR, everybody is guaranteed equal enjoyment of all the rights in the treaty, including the right to work and conditions in work, without discrimination of any kind including as to race or national origin. This is a minimum core obligation of the state, which means it must be implemented immediately. Similarly, under article 5(e)(i) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), state parties like South Korea¹²⁹ are obliged to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law with respect to the right to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, and to just and favourable remuneration.

Similarly, the International Labour Organization (ILO) Convention No. 111 on Discrimination (Employment and Occupation), which South Korea ratified in 1960, has undertaken to eliminate discrimination across all employment sectors. Despite these obligations, the information cited above indicates that discrimination is a serious problem for migrant agricultural workers. In this context, it is important to note that South Korea currently does not have a comprehensive anti-discrimination law. In 2012, the Committee on the Elimination of Racial Discrimination urged the South Korean government to:

“take immediate action on the finalization and adoption of the Discrimination Prohibition Act or other comprehensive legislation to prohibit racial discrimination, in

line with article 4 of the Convention. The Committee recalls that the same recommendation was made in 2009 by the Committee on Economic, Social and Cultural Rights (E/C.12/KOR/CO/3), and in 2011 by the Committee on the Elimination of Discrimination against Women (CEDAW/C/KOR/CO/7) and by the Committee on the Rights of the Child (CRC/C/KOR/CO/3-4)."

The Committee further urged the Government to:

"amend its Criminal Code to include racial discrimination as a crime and to adopt comprehensive legislation which criminalizes racial discrimination, provides for adequate punishments proportional to the gravity of the offence, considers racial discrimination as an aggravating circumstance and provides for reparations to the victims."¹³⁰

Most recently, the UN Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance concluded on 6 October 2014, following his official visit to South Korea, that:

"The situation of migrant workers in the agriculture industry requires serious attention from the authorities. Through my meetings with migrant workers in this sector, I have been informed of the difficult working and living conditions these migrants face, working in small farms in isolated areas of the country, in the cold winter and in the hot summer, particularly in the greenhouses. I have also been informed that many of the migrant workers in the agriculture sector are paid less than the legal minimum wage and have to work longer hours than normally permitted, which is not the case of their Korean co-workers. In addition, these migrant workers are often assigned the most difficult and strenuous tasks in comparison to their Korean counterparts. Given their isolated conditions, it is particularly difficult for them to report violations of the Labour Standards Act and to change employment, as they have to go through the Job Centres and provide justification in order to be allowed to change employer."

Furthermore, the Special Rapporteur recommended better protection to migrant workers, ratification of the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and enactment of a comprehensive anti-discrimination law.¹³¹

4.10. THREATS, INTIMIDATION AND VIOLENCE

Under article 23(1) of the Labour Standards Act, "An employer shall not, without justifiable cause,¹³² dismiss, lay off, suspend, or transfer a worker, reduce his/her wages, or take other punitive measures (hereinafter referred to as "unfair dismissal, etc.") against him/her."

Despite this provision, Amnesty International's research found that 15 interviewees experienced some form of threat to terminate their contract if their work did not meet their employer's expectations – even when these were unreasonable – or if they complained about their terms and conditions of employment.

Comments by NR, a Cambodian woman, typified the experience of many interviewees:

“My boss always told me he would fire me or send me back to Cambodia whenever he was angry or unhappy with my work mainly because he felt that I was not doing it fast enough.”¹³³

AT, a 29-year-old Nepalese woman who worked on a lettuce farm in Anseong, Gyeonggi province (March 2012-March 2014), said that her employer “threatened to reduce my salary if I did not work hard”.¹³⁴ AN, an undocumented Vietnamese migrant worker, told Amnesty International that his employer:

“threatens to call the police to arrest me [as an undocumented migrant] whenever he feels that I’m not working hard enough. This happens at least twice a month. If he finds out that I’m talking to Amnesty International, he will kick me out.”¹³⁵

In the case of GL, a 24-year-old Cambodian man, his employer “fired” him three times:

“Once because I asked my boss if I could call my family on his phone (because I didn’t have a mobile then). He said that if I think about Cambodia then I should just go home. The second time was when I visited Cambodians in the other farms during my free time. And the last incident was when a Cambodian colleague was thirsty, so she asked me for some water. My boss saw us at that moment and accused us of not working. So he fired us on the spot. In all three cases, I had nowhere to go so I remained at the farm accommodation. The following day in each case, the boss came to me and told me to return to work.”

However, employers of migrant workers do not only threaten. Amnesty International identified a range of circumstances when complaints about conditions of employment led to a contract being unfairly terminated. These included cases when migrants asked their employer for a signed release form, a rest day or unpaid wages, or when their employer found out that they had sought advice at a job centre or from an NGO. In the case of GL, he was forced by his employer to leave his job in June 2013 after he complained to the Ansan job centre about his unpaid wages.¹³⁶

The Employment Permit System Management handbook for staff at relevant MOEL offices such as the job centre clarifies that an employer can justifiably dismiss a migrant worker as per article 25(1)(1) of the EPS Act¹³⁷ when there is mutual agreement between the employer and worker, when a worker engages in work sabotage, does not inform his/her employer when he or she does not show up for work, or for any other reason that is attributed to the fault of the worker.¹³⁸

However, research for this and previous reports,¹³⁹ interviews with EPS migrant workers, and meetings with NGOs and trade unions have all indicated that in reality, employers are able to dismiss migrant workers at will without having to justify why they have terminated or not renewed their contract.

Even though the use of violence is prohibited under article 8 of the Labour Standards Act,¹⁴⁰ as well as article 260 of the Criminal Act,¹⁴¹ at least seven interviewees experienced physical

violence in the workplace. A case in point is HM, a 25-year-old Cambodian man:

“One day at work, my back was hurting so much that I sat down for a while and told this to my manager who was watching me. He ordered me to get up and continue working. So I did and began cutting the cabbages but I cut about five cabbages incorrectly – by cutting the root. When he saw this, the manager became furious and grabbed me by my collar. I instinctively pushed his hand away and that’s when he hit me. The manager’s younger brother, who was standing next to him, held me by my neck while the manager beat me. They both then punched me all over my body and kicked me.”¹⁴²

When HM went to the job centre to complain, the caseworker told him that he was at fault for cutting the cabbages the wrong way and advised him to apologize to the manager (see section 5.7 on “Ineffective redress mechanisms”).

GT, a 33-year-old Vietnamese woman, described what happened to a Vietnamese colleague:

“One day she felt ill so lay in bed and didn’t come to work. My boss stormed into the room and hit her – pulled her hair, scratched her neck (it bled), and punched her shoulder. Because I tried to stop him hitting my colleague, my boss swore at me and punched my shoulder three times.”

When GT went to the police to complain, the officer discouraged her from filing a complaint:

“The police officer said that the complaint process would take too long and was too complicated. He advised me to return and negotiate with my employer to sign my release form. As I don’t understand the Korean language or its laws, I gave up and did what the police officer instructed. But even if I had wanted to take the complaint further, I couldn’t realistically have done it because the police was against it.”¹⁴³

NR, a 23-year-old Cambodian woman, told Amnesty International that when she asked her employer to sign her release document so that she could change jobs, “he got very angry with me – he slapped my head and pushed me”. NR did not complain to the authorities because she did not know who to turn to and felt that the process would be “too difficult to do on my own”.¹⁴⁴

Sexual harassment in the workplace is prohibited under article 12 of the Act on Equal Employment and Support for Work-family Reconciliation.¹⁴⁵ However, MH, a 23-year-old Cambodian woman, was subject to sexual harassment where she worked:

“I was sexually harassed by my boss. The first time he hugged me, I thought it was a joke so I let him but he kept doing it. It became so frequent that I can’t remember how many times but it happened from December 2012-April 2013. On three to four occasions, he tried to kiss me. He made me feel so uncomfortable, it was unbearable. I wanted to leave because of this.”¹⁴⁶

The use of threats and violence is also one of the coercive mechanisms through which employers compel migrant agricultural workers to provide forced labour, as outlined in more detail below.

4.11. FORCED LABOUR AND TRAFFICKING

FORCED LABOUR

Article 2 of ILO Convention No. 29 concerning Forced or Compulsory Labour, 1930 (Forced Labour Convention) defines forced or compulsory labour as “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 up voluntarily” with the exception of compulsory military service, normal civic obligations, emergency work required in the event of war or calamity, and work that is a consequence of a criminal conviction. The threat of a penalty includes the loss of rights and privileges and can take different forms:

“its most extreme form involves physical violence or restraint, or even death threats addressed to the victim or relatives. There can also be subtler forms of menace, sometimes of a psychological nature. Situations [...] included threats to denounce victims to the police or immigration authorities when their employment status is illegal [...] Other penalties can be of a financial nature, including economic penalties linked to debts, the non-payment of wages, or the loss of wages accompanied by threats of dismissal if workers refuse to do overtime beyond the scope of their contract or of national law. Employers sometimes also require workers to hand over their identity papers, and may use the threat of confiscation of these documents in order to exact forced labour.”¹⁴⁷

Although South Korea has not ratified the Forced Labour Convention,¹⁴⁸ as a member of the ILO, it is obliged to comply with the Convention’s provisions because it is one of ILO’s eight fundamental conventions. Furthermore, in 2004, the ILO concluded that “ILO instruments apply to all workers, including irregular migrant workers, unless otherwise stated” and that the eight fundamental ILO conventions “cover all migrant workers, regardless of status”.

The ICCPR, to which South Korea is a state party, provides in article 8 that:

- “1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.*
- 2. No one shall be held in servitude.*
- 3. (a) No one shall be required to perform forced or compulsory labour [...]”*

The Human Rights Committee, the expert body charged with overseeing the implementation of the ICCPR, has also indicated that states should take measures to address human trafficking, including into situations of forced labour, in relation to states’ obligations under article 8 of the ICCPR.¹⁴⁹

South Korea has also undertaken to prohibit forced or compulsory labour as part of its obligations to ensure the right to work under article 6 of the ICESCR. The Committee on Economic, Social and Cultural Rights has stated that the right to freely choose or accept work encompasses “not being forced in any way whatsoever to exercise or engage in employment” and that the obligation to protect workers includes “the responsibility of states parties to prohibit forced or compulsory labour by non-state actors”.¹⁵⁰

In domestic law, forced labour is prohibited under articles 10 and 12(1) of the Constitution¹⁵¹ and article 7 of the Labour Standards Act, which states that:

“An employer shall not force a worker to work against his/her own free will through the use of violence, intimidation, confinement, or any other means by which the mental or physical freedom of the worker might be unduly restricted.”

The evidence cited above shows that a significant number of migrant agricultural workers are compelled to work in conditions that they did not agree to under the threat of some form of punishment (e.g. dismissal, non-renewal of their visa and threats of violence) and consequently are subjected to forced labour, as defined in the Forced Labour Convention.

Furthermore, the data from the NHRCK research provides indicators that forced labour is a widespread problem. For example, it documents that 58% of respondents were forced to work beyond their contracted hours or on rest days. In terms of the coercive practices used by employers to force migrants to comply with the demands made of them, the research records that: 76% of respondents reported verbal abuse, 47% threats of dismissal, reporting them as having run away or deportation, 15% physical assault, and 16% confiscation of identification documents.¹⁵²

None of the employers of the migrants interviewed by Amnesty international were charged or prosecuted for forced labour offences against migrant agricultural workers.

The evidence above indicates that insufficient action is being taken to identify and prosecute employers who are using forced labour. This is despite the fact that as a state party to both the ICCPR and ICESCR, South Korea is under an obligation to combat all forms of forced labour. The Committee on Economic, Social and Cultural Rights reaffirmed “the need for states parties to abolish, forbid and counter all forms of forced labour as enunciated in article 4 of the Universal Declaration of Human Rights, article 5 of the Slavery Convention and article 8 of the ICCPR”.¹⁵³

TRAFFICKING

Significant numbers of migrant agricultural workers have been trafficked given that they have been recruited through deception for the purpose of their exploitation. Amnesty International recorded incidents of contractual deception in all 28 cases, particularly in relation to work hours, breaks, rest days and salary.

Despite this, in 2013 the South Korean government informed the US State Department that only 11 convictions were obtained for labour trafficking offences nationally, covering all employment sectors and both South Korean and foreign nationals. The Government was unable to provide statistics on the number of Korean or foreign victims of labour trafficking who were assisted by the authorities, but a MOEL survey of foreign workers on issues related to labour trafficking (carried out in September 2013) found that over 5% of respondents reported passport confiscation, threats or physical assault.¹⁵⁴

However in September 2014, the Ministry of Justice told Amnesty International that the South Korean government charged just two cases of trafficking (under article 289 of the Criminal Act – see below) in 2013 and two more cases in 2014. It did not provide further details on the nationality of the trafficked victims, sanctions given, or whether the cases were for trafficking for labour or sexual exploitation.¹⁵⁵

In 2000, 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.¹⁵⁶ Under article 3(a) of the trafficking Protocol, trafficking in persons 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. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”.*¹⁵⁷

While trafficking is a criminal offence in South Korea, the current definition is not consistent with international law, including article 3(a) of the Trafficking Protocol. Under article 289(1-3) of the Criminal Act, trafficking in persons is defined as:

*“(1) A person who buys or sells another shall be punished by imprisonment for not more than seven years.
(2) A person who buys or sells another for the purpose of engaging in an indecent act, sexual intercourse, marriage, or for gain, shall be punished by imprisonment for at least one year up to ten years.
(3) A person who buys or sells another for the purpose of labor exploitation, sex trafficking, sexual exploitation, or the acquisition of organs shall be punished by imprisonment for at least two years up to fifteen years.”*¹⁵⁸

This definition criminalizes only the act of buying and selling, which makes it difficult to prosecute individuals who have recruited and exploited the labour of migrant agricultural workers through contractual deception.

In 2014, the US State Department Trafficking in Persons (TIP) report urged South Korea to:

*“formalize the government’s legal definition of “trafficking” in the criminal code so that it comprehensively prohibits all forms of trafficking and protects victims; [...] proactively identify trafficking victims among vulnerable populations, including [...] migrant workers, [...] and become a party to the 2000 UN TIP Protocol.”*¹⁵⁹

Furthermore as a signatory to the Trafficking Protocol, South Korea is obligated not to undertake measures that defeat the object and purpose of the Protocol prior to its entry into force, as stated under article 18 of the Vienna Convention on the Law of Treaties, which South Korea ratified in 1977.¹⁶⁰ Therefore, the Government of South Korea urgently needs to amend its domestic legislation on trafficking so that it is fully consistent with the Trafficking Protocol.

5. BARRIERS TO REPORTING ABUSE AND CHANGING JOBS

As detailed in the previous section, a significant number of migrant agricultural workers in South Korea are subject to a range of human and labour rights abuses. Amnesty International's research indicates that there are a variety of issues in the way the EPS works, which increase migrants' risk of abuse and exploitation in the workplace, and also deter them from reporting such violations and accessing effective redress mechanisms. These elements include: the need to obtain a release form from their employer in order to change job; the requirement to secure a new job within three months; the reduced likelihood of securing a visa extension if they change jobs; and the difficulties in accessing the redress mechanisms available to migrants.

These issues, which are examined in detail below, clearly restrict migrant workers' right to freely choose and accept work under article 6 of the ICESCR, as well their right to an effective remedy for human rights abuses.

5.1. COSTS OF THE APPLICATION PROCESS: THE NEED TO PAY OFF DEBTS

The majority of migrants working in agriculture will have taken on debts equivalent to more than two years' annual salary in their country of origin to secure their job. This leaves them at risk of labour exploitation because they must retain their job in South Korea so that they can repay this debt and start earning money to support their families.

Amnesty International's interviews with agricultural migrant workers show the considerable cost involved in seeking employment in South Korea. The costs of securing employment through the EPS are the same across sectors, but differ from country to country. Those interviewed by Amnesty International spent on average US\$2,800, which includes a medical examination (including compulsory testing HIV status)¹⁶¹, visa fee, pre-departure training and orientation, flight ticket, the Korean language proficiency test, TOPIK (which costs around US\$24), and the related exam costs, including tuition, food and accommodation.

These costs are dramatically higher than the average annual income for Cambodia (US\$880), Nepal (US\$700) and Vietnam (US\$1,550) in 2012.¹⁶² Moreover, South Korea's standard monthly wage in 2014 for migrant agricultural workers is KRW 1,177,460 (US\$1,158, see Figure 4), thus, the EPS costs are equivalent to about two and a half months' salary.

As the employers select the workers from a pool of EPS candidates, employment is not guaranteed and the waiting period can vary considerably, ranging from one month to two years. In fact, a common remark from migrant workers interviewed by Amnesty International is that they chose the agricultural sector because it is less competitive and therefore faster to secure employment in Korea. As MN, a 25-year-old Cambodian man, explained:

"The first time I applied for an EPS job, I chose the manufacturing sector. I passed the Korean language exam, but was not able to get a job so this time I chose agriculture because it was easier to find work and I didn't want to lose another

opportunity. From the moment I received my exam results, it took one year and two months before I arrived in Korea for work."¹⁶³

RP, a 26-year-old Cambodian woman, chose agriculture for similar reasons:

*"I wanted to work in manufacturing but I didn't choose it because I heard from others that they don't pick women and that the waiting time was very long. So, I chose agriculture instead. I waited 11 months to come to Korea for work."*¹⁶⁴

In order to raise the necessary funds for their migration, the majority of interviewees borrowed money from family members or took out bank loans. Once they commenced work, it took migrant interviewees an average of seven months to pay back the total cost of getting the EPS job.

For VT, a 26-year-old woman from Vietnam, the repayment took longer:

*"To pay for the EPS process, I needed about US\$3,000 so my family mortgaged our land five months before my arrival in Korea. From the moment I started working, it took me over a year to fully repay the loan."*¹⁶⁵



Figure 9: Interview with BR (Source: Amnesty International/Robert Godden)

For some migrant interviewees, the repayment period took longer because a previous attempt to secure employment through the EPS failed and this increased the costs, as the individual had to re-apply. A case in point is TH, a 27-year-old Vietnamese woman:

*"In a previous attempt in 2009, I chose manufacturing [passed the exam] but I waited one year without any job offer so this time I chose agriculture because it's faster to go to Korea. So, I borrowed from my aunt in increments from 2009 to 2012 a total of about VND 100 million [US\$4,700]."*¹⁶⁶

BR, a 34-year-old Cambodian man, is one of two interviewees who borrowed from a private moneylender. According to him:

“The total cost to get the EPS job was about US\$2,500. I had to borrow US\$1,300 from a moneylender at an annual interest rate of 46%. And to get the rest of the money, we sold two of our family cows and my mother’s jewellery. Once in South Korea, it took me one year just to repay the loan.”¹⁶⁷

Securing and retaining employment abroad is crucial to ensuring that these debts are repaid and that migrant workers can then start supporting their families. This need to repay debts before being able to make any money increases migrants’ risk of exploitation.

5.2. RESTRICTIONS ON CHANGING EMPLOYERS AND CONTRACT EXTENSIONS

In September 2011, the South Korean Constitutional Court upheld the Government’s power to restrict the number of times a migrant worker can change jobs. It has been well documented that these and other restrictions on labour mobility within the EPS, including workers being tied to their employers, and the greater freedom of employers to terminate such contracts, increase migrant workers’ dependency on employers and the risk of discrimination, exploitation and abuse.¹⁶⁸

Article 25(1) of the EPS Act sets out the circumstances in which EPS workers “may apply for a transfer to another business or workplace”:

- “1. The employer intends to terminate the migrant worker’s labour contract during the contract period or refuse to renew the contract after its expiration for a justifiable reason;*
- 2. As specified by the MOEL, the migrant worker is deemed unable to continue to work in the business or workplace according to social norms due to a reason not attributable to him/her, such as temporary shutdown or permanent closure of business, the cancellation of an employment permit under article 19 (1),¹⁶⁹ restrictions on employment under article 20(1),¹⁷⁰ or violations of working conditions or unfair treatment by an employer;*
- 3. Any other cause specified by the Presidential Decree.”*

Under article 25(4) of the EPS Act, migrant workers can normally change employment a maximum of three times for the reasons outlined above.¹⁷¹ If employers terminate a contract early or do not renew a contract, they must sign a release form to allow migrant workers to change jobs. The workers must apply for a transfer to another workplace within one month from the date on which their contract was terminated and must find new employment within three months. Failing that, they must leave South Korea.¹⁷²

Amnesty International’s research shows that employers are very reluctant to sign release forms (see section 5.6 on “Risks of becoming irregular”) and this is supported by findings in the NHRCK research, which recorded that 65% of respondents wanted to change their job, but their employers did not allow it.¹⁷³

However, migrants are themselves extremely reluctant to seek a change in employment because the EPS work scheme, by making contract extensions largely dependent on

continuity of employment, gives migrant workers a strong incentive to stay with their original employer.

After their initial three-year contract, migrant workers can extend their contract for one year and 10 months, but only with the support of their current employer.¹⁷⁴ Thus, even if they manage to get a release form signed and secure new employment, this will still be counted against them, as employers will generally view migrants who have moved jobs in a negative light. Ichan Kim, Director of the NGO, People of the Earth's Station (Earthian), who runs a shelter for largely Cambodian migrant agricultural workers in Ansan, Gyeonggi province, explained that:

*"Employers want, at any cost, to tie the migrant workers' employment exclusively to their farm. Whenever migrants ask to change jobs, the reaction of employers is 'how dare such a worker who can't even work well think he can change jobs!' They view migrants who want to change jobs as lazy, incompetent in their work and lacking in perseverance."*¹⁷⁵

Furthermore, only migrant workers with no previous record of changing workplaces are eligible for a second three-year contract and the possibility of extending the new contract for a further 1 year and 10 months.¹⁷⁶

In this way, the EPS requires migrant workers to establish and maintain a good relationship with their employer in order to be able to continue working in South Korea and makes it very difficult for them to either challenge their terms and conditions of work or change jobs.

VT, a 26-year-old Vietnamese woman, described how her employer took advantage of this system to exploit her:

*"My boss was in the wrong by not paying me my full wages, yet he still got angry at me for complaining to the job centre. He told me that he will never release me and will use me for three years, after which he will not allow me to extend my contract in Korea."*¹⁷⁷

EN, a 25-year-old Vietnamese man, only found out that his employer had transferred him to another farm, thereby incurring a job change, when he tried to get the first one-year-ten-month extension. The transfer had been done at a job centre, but the process was conducted in Korean and never explained to EN. He described the consequences of his employer's actions:

*"So when I found out the truth that I was disqualified from the extension, I was so sad and disappointed but I didn't know where to turn to for help. Because of my employer's fault, I lost a chance to work in Korea for a further seven years. It was a valuable opportunity to help out my family who are in a very difficult financial situation."*¹⁷⁸

As EN has officially changed jobs, he will now have to leave Korea at the end of his contract and, if he wishes to return, he will have to wait for six months before re-applying and paying all of the fees and costs again.

The only exception to the above is when a migrant worker changes job due to reasons where the worker is not at fault, as prescribed in article 25(1)(2), including “violations of working conditions” and “unfair treatment” by an employer. In these circumstances, the job change does not count as one of the three changes permitted.

However, this procedure is very difficult to access in practice. A caseworker at the Seongnam job centre stated that all migrant workers who allege violations of working conditions or unfair treatment must continue working at the place of employment while their complaint is being investigated.¹⁷⁹ This exposes migrants to retaliatory action or further unfair treatment from their employer (see section 5.3 on “Threatened with no place to live”). To exacerbate matters, the burden of proof to show “unfair treatment” is on the workers who are unlikely to speak Korean fluently or understand the Korean legal system.

In response to NHRCK’s recommendation to remove the burden of proof from migrant workers in job changes where the reason is not attributable to them, the MOEL responded that the job centre would do its best to collect evidence on their own, as well as in cooperation with relevant authorities to verify the information.¹⁸⁰

If migrants leave their workplace, they are likely to find themselves with no place to live and no income. They also risk being reported to the immigration authorities by their employer as “runaways” and subject to arrest and deportation.

However, Jinwoo Park, General Secretary of the Migrants’ Trade Union (MTU), pointed out that the advice on how to proceed during a complaint varies greatly, depending on the job centre and the caseworker a migrant worker gets.¹⁸¹ Indeed, the advice from the Seongnam job centre makes no reference to the guidelines in the Employment Permit System Management handbook, which state that if the migrant workers’ complaint takes longer than one month to process, they can seek other employment while their complaint is being investigated. The caseworker should inform migrant workers that if the outcome of the complaint goes against them, they could be deported (e.g. if they were found to have “run away”).¹⁸²

Furthermore in 2012, the South Korean government informed the ILO that when it is “objectively recognized” that a worker is a victim of “unreasonable discrimination”,¹⁸³ he or she does not have to continue working in the same workplace while awaiting the results of the investigation. However, the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR or Committee of Experts) observed that “it is still not entirely clear how the job centres “objectively recognize” a victim of discrimination”.¹⁸⁴

Although the officials in the job centres are supposed to assist migrant workers who encounter problems in their workplace, they generally do not facilitate the use of this provision and regularly advise workers to go back to their employers and/or ask them to sign a release form (see section 5.7 on “Ineffective redress mechanisms”).

Indeed, none of the migrant agricultural workers interviewed by Amnesty International who spoke of being subjected to unfair treatment or of their labour rights being violated were able to make use of article 25(1)(2), although 23 went to the authorities for help.

As detailed in section 4, Amnesty International's research shows that violations of labour laws and contracts are widespread and this is supported by the NHRCK data. However, government statistics show that in 2011, 86% of all migrant workers who applied for a change of workplace did so because their contract was terminated or not renewed and less than 1% applied due to a violation of the employment contract.¹⁸⁵ Data provided for 2013 showed that 90% of all migrant workers who applied for a change of workplace did so because their contract was terminated or not renewed.¹⁸⁶

The discrepancy between the prevalence of labour exploitation among EPS migrant workers employed in agriculture and the low rate of such exploitation being cited as the reason for job changes suggest that it is difficult for migrant workers to address violations of labour rights or unfair treatment through the official channels and that the best they can generally hope for is for their employer to sign a release form so that they can secure another job elsewhere.

The tight restrictions placed on migrant workers' ability to change jobs and extend their visas make them very dependent on their employers for their continued employment in South Korea and thereby increases their risk of abuse and exploitation. These restrictions are also discriminatory in effect as they disproportionately affect migrant workers and impair their enjoyment of labour rights in South Korea on an equal basis with nationals.

Several international bodies have expressed concern over exactly these issues. For example, in 2009, the Committee on Economic, Social and Cultural Rights found that:

*"migrant workers are subject to exploitation, discrimination and unpaid wages. The Committee recommends that the employment permit system that has already recognized migrant workers as workers entitled to labour law protection be further reviewed. It also recommends that particular attention be paid to the fact that the three-month period stipulated for a change in job is highly insufficient."*¹⁸⁷

While in 2012, the Committee on the Elimination of Racial Discrimination concluded that:

*"migrant workers are subject to discrimination, exploitation and lower or unpaid wages. The Committee expresses further concern that migrant workers cannot de facto become eligible for permanent residency in the Republic of Korea, which requires five years of continuous presence in the country, as the maximum employment period amounts to 4 years and 10 months, renewable once after a break of three months outside the country."*¹⁸⁸

Similarly, the ILO has repeatedly made observations on South Korea's failure to comply with ILO Convention No. 111 on Discrimination (Employment and Occupation)¹⁸⁹ and in its 2014 report, the Committee of Experts noted:

*"For a number of years, the Committee has been drawing attention to the need to provide appropriate flexibility to allow migrant workers to change workplaces and to ensure the effective protection of these workers against discrimination".*¹⁹⁰

Despite receiving consistent and repeated recommendations on these issues from inter-governmental organizations, the Government of South Korea has not introduced substantive

changes to the way the EPS operates. This has left migrant workers at heightened risk of discrimination and exploitation, including threats, violence and forced labour.

5.3. THREATENED WITH NO PLACE TO LIVE

Migrant agricultural workers normally live in accommodation at their workplace, which is almost always provided by their employer. This makes the prospect of changing jobs even more difficult. It is not unusual for migrant agricultural workers to remain in exploitative situations because they would otherwise not have a place to stay even if the quality of their current accommodation is wholly inadequate (see section 4.6 on “Accommodation and food”). NR, a 23-year-old woman from Cambodia, explained her reasons for delaying her request for a job change:

“I didn’t go to the job centre to complain about unpaid wages because I needed a job in order to send money to my family so I just endured. Plus, I didn’t know anyone – no one to turn to and no place to stay if I didn’t have employment. It was too difficult to do on my own.

Through colleagues, I heard about an NGO called Earthian that had sheltered accommodation, so I asked them for help. Afterwards, I asked my boss to release me – he became furious and slapped me on the head and shoved me. The NGO is now helping me prepare my documents so that I can request for a transfer of employment at a job centre.”¹⁹¹

GT, a 33-year-old Vietnamese woman, described the ordeal of finding accommodation when looking for a new job:

“When I was in between jobs, I had no place to stay and no money. That was the most difficult part of changing jobs. It took me three months to find new work because there are very few good jobs. So during this time, I slept at friends’ places, the Busan bus terminal, Suwon train station and cheap motels. When I slept at the bus terminal and train station, I was afraid for my safety, but had no choice because I had no money.”¹⁹²

Migrant agricultural workers are particularly at risk of being left without a job and homeless¹⁹³ during the off season. Under article 11 of the ICESCR, everyone has the right to adequate housing, which includes the state’s obligation to ensure that nobody is rendered homeless.

5.4. IMPACT OF SEASONAL WORK

Unlike other EPS sectors, most agriculture work is seasonal, thus, there is little work on crop farms during the winter months from November to February. While migrant workers have labour contracts, which are valid for three years without any breaks and should receive wages, accommodation and board for the duration of their contract (see Appendix 2), employers generally only pay them for the days they work. This leaves migrant agricultural workers at risk of being left unemployed in the off season with no form of income.

As migrant agricultural workers cannot change sectors, they are left at risk of exploitation, particularly through illegal subcontracting. As YV, a 28-year-old Cambodian man, pointed out:

“The farm in Gangwon does not have a greenhouse, which means there is no work during the winter months. So, my employer subcontracted me to a vegetable farm in Jeju for five months.”¹⁹⁴

Migrant agricultural workers who are forced to engage in illegal subcontracted work are not only excluded from certain labour provisions, but if caught by the authorities, also subject to arrest, imprisonment and deportation.



Figure 10: Interview with SP (Source: Amnesty International/Robert Godden)

SP, a 29-year-old Cambodian man employed at a vegetable farm in Ilsan, Gyeonggi province (March 2012-present), described his predicament:

“My boss made deductions from my salary if there wasn't work. The off season months of December, January and February were the hardest because there was no work. The seasonal nature of farming is not my fault but I suffered the penalty. So over two months, I received KRW 1,000,000 [US\$980]. My boss would only pay me after 30 days of work so I was constantly waiting for work each day so that I could finally be paid. I wanted to complain but I was too scared to lose my job so I kept quiet. Because I didn't have my full income, it was difficult to buy food – the farm is so isolated and far from everything that I need to take a taxi as there is no public transport around here, but without incoming wages, that was impossible.”¹⁹⁵

NB, a 30-year-old Cambodian woman, had a similar experience:

*"I didn't work full-time in the off season because there was less work. My boss deducted my wages for days I didn't work – even though he was the one who told me not to work – for example, when the price of lettuce is low, my boss told me not to pick lettuce. My boss deducted KRW 50,000 [US\$49] for each day I didn't work."*¹⁹⁶

Under article 6 of the ICESCR, state parties are obliged to guarantee the right to work and have specialized services to assist and support individuals in order to enable them to identify and find available employment.¹⁹⁷

The Committee on Economic, Social and Cultural Rights has identified one of the core obligations under article 6 of the ICESCR as being ensuring the right of access to employment, especially for disadvantaged and marginalized individuals and groups, permitting them to live a life of dignity.¹⁹⁸

The EPS has not adequately addressed the seasonal nature of agricultural work. Although there is a provision, which allows workers to find temporary employment on other farms (see section 4.8 on "Subcontracting"), few people are aware that it exists. Furthermore, EPS workers are not allowed to work in jobs outside of the sector stipulated in their contract, nor are they allowed to pro-actively seek work (see section 5.5 on "Difficulties finding work even if migrants are permitted to change employers"). Consequently, for those working in the seasonal agricultural sector, this makes finding alternative employment very difficult.

5.5. DIFFICULTIES FINDING WORK EVEN IF MIGRANTS ARE PERMITTED TO CHANGE EMPLOYERS

Under the *Measure for Improvement in Foreign Workers' Change of Workplaces and Prevention of Broker Intervention*,¹⁹⁹ which came into effect in August 2012, migrant workers in search of new employment no longer have access to a list of prospective employers.²⁰⁰ Instead, the Ministry of Employment and Labour's job centres provide a list of job-seeking migrants to employers only. If migrants are not recruited for a new job within three months, they lose their work visa and must leave the country.

This measure makes it more difficult to find new employment because migrant workers are at the mercy of the job centres to send them information on available jobs, which is provided one employer at a time. For migrant workers with less than 30 days remaining to find new employment, the job centre in principle should recommend the worker to five different prospective employers during this period.²⁰¹

However, this is difficult to verify and according to Jinwoo Park, General Secretary of the MTU, the number of prospective employers offered varies depending on the job centre, sector and time of year (due to seasonality of agricultural work).²⁰²

Once again, this is not consistent with the Government's obligations under ICESCR (as noted above). VK, a 28-year-old woman from Cambodia, recounted her experience:

*"I was dependent on the job centre to send me an SMS on job availability. It's very difficult to sit here waiting for that information – to not have access to the job list – like it was before. I hope this law will change soon."*²⁰³

In 2012, a Vietnamese migrant worker, N, struggled to find a job for two months. During this time, he stayed at a motel and friends' places. N expressed helplessness at not being able to proactively secure employment, as he did not know when he would receive a text message from the job centre about available jobs. Because of his limited Korean language skills, N was unable to get enough information from the prospective employer on the telephone. Thus, he had to visit the individual workplaces and, using body language, negotiate his work conditions.²⁰⁴

This system discourages migrant workers from leaving exploitative working conditions and forces many to accept any job they are offered in order to ensure they do not lose their work visa. For example, HM, a 25-year-old Cambodian man, felt that there was insufficient time to secure new employment:

*"All available jobs were so far away and in remote places. So in order to meet my prospective employer and find out more information about the work, I had to travel very far. Also, I couldn't start immediately because I had to first sort out the problems from my previous job. That took one month so I only had two months left to find work before becoming undocumented."*²⁰⁵

5.6. RISKS OF BECOMING IRREGULAR

EPS workers do not have the right to leave their jobs without losing their regular immigration status, thus risking arrest, imprisonment and deportation. When employers refuse to release migrant workers, some find conditions so unbearable that they leave anyway and become irregular workers. In some cases, they have to bribe employers to secure release.

SP, a 29-year-old Cambodian man, had to work longer work hours with shorter breaks than he was contracted for. In addition, he did not receive the minimum wage or wages for the extra hours he worked. Despite this, SP remained in his job because:

*"It was difficult to get this opportunity to work in Korea so I would rather suffer ill treatment so that I can continue working and earning money than be out of work. Once I told my boss that I wanted to leave but he said that he would not sign my release paper so I would become undocumented. I want to work in Korea with regular status and for as long as legally possible. If there was real freedom to change jobs, I would absolutely leave this place in a second."*²⁰⁶

Interviews with migrant agricultural workers indicate that most employers respond to a request for release with threats or retaliatory action, including reporting the migrant to the authorities as a "runaway". AT, a 29-year-old woman from Nepal, sought the help of an NGO to process a job change when her employer refused to sign her release paper. She and two colleagues remained at the work dormitory during this process where their employer and his wife regularly threatened them:

"The boss's wife comes early at 7am and then late at 11pm or midnight to yell at us in our room. We can't use any of the facilities – gas, fridge, cups, plates, etc. Today the boss and his wife threatened us that if we don't leave by 6pm, they are going to throw our belongings away."

*Previously, two other work colleagues couldn't take the abuse anymore so when the boss told them to leave, they did. As soon as they left, the boss called immigration and reported them as runaways so they are now irregular. I'm afraid the same will happen to me so although I'm frightened and stressed out by this situation, I cannot leave this accommodation until our job change has been resolved."*²⁰⁷

NT, a 35-year-old woman from Cambodia, also tried to leave her job through the official procedure because of differences between her contract and her actual work:

*"After five months, things didn't improve at work so I asked my employer to sign my release paper but he got angry and said if I didn't want to work then he'll send me back to Cambodia. He said that he was going to call the police and have me arrested. So, I came to Earthian [an NGO] for help. During this time, my boss reported me as having run away so I am now undocumented. I found this out when I called the job centre."*²⁰⁸

SM, a 21-year-old woman from Cambodia, recounted how she became irregular and was arrested:

"Because the work was so difficult – excessive hours with hardly any rest days – I asked my boss to sign my release paper but he refused. I wanted to complain to the job centre but I didn't know how and plus, I didn't speak Korean. A Cambodian colleague told me about Earthian [an NGO] so we came here together. We didn't run away because our belongings were still at the farm, but my boss reported to the authorities that we had run away.

*My boss later called and told us to pick up our belongings. So we went there with the Earthian director and a pastor. When we arrived, several immigration officers were waiting for us because the boss had called them. Also, there were my boss's friends from the village. When we went inside to collect our belongings, the Earthian director told the officers that because our complaint to the job centre was pending, they couldn't arrest us. The officers initially agreed but when the boss and his friends complained and made phone calls, the officers changed their minds, and handcuffed and arrested us. They took us to the immigration office in Gwangju where we were detained. The [Earthian] director intervened on our behalf and was able to have us released after two days."*²⁰⁹

Seven of the interviewees told Amnesty International that their employer either solicited or received bribes in exchange for a signed release form. AT, a 29-year-old Nepalese woman, is a case in point:

*"In March 2014, I went to the job centre in Pyeongtaek to file a complaint against my boss who wanted me to work more hours but didn't pay for the extra hours. He also deducted KRW 50,000 [US\$49] from my salary but didn't explain why. When I asked the boss and his wife to release me, they refused. The boss's wife told me that if I wanted to leave, I had to pay them KRW 1 million [US\$980]. I don't have that kind of money. Previously, one Cambodian colleague paid KRW 1 million [US\$980] and another two Cambodian colleagues paid KRW 600,000 [US\$590] each to the boss for him to sign their release paper."*²¹⁰

NB, a 30-year-old woman from Cambodia, refused to pay a bribe for a release paper:

“A male colleague got released after my boss paid him a reduced salary of KRW 700-800,000 [US\$690-790 instead of KRW 1,177,460 or US\$1,158] for three months so effectively my boss pocketed the deducted money. A female colleague got released after paying the boss KRW 310,000 [US\$305] each month for three months. In February 2014, I asked my boss five times to sign the release paper but he refused. He told me to leave and do as I pleased but he wouldn't sign it. He later said that if I paid him KRW 4 million [US\$3,930], he would release me. He then told another female colleague he would release her for KRW 2 million (US\$1,970). According to the boss, our amounts differed because it depended on how much he had already paid towards our living expenses). I will not pay him anything.”²¹¹

NV, a 38-year-old Vietnamese man, went to the Masan job centre in June 2012 to request a job change because he had to work longer hours than stipulated in his contract and due to health concerns over frequent exposure to pesticides:

“The caseworker told me that they couldn't help me and that I had to go to my boss and negotiate with him. When I returned to the farm, I asked my boss to release me. At first, he agreed but afterwards changed his mind. I called a migrant helpline who advised me to continue working as the boss could use this as an excuse to report me to immigration as having run away and making me undocumented. My boss said that if I wanted to go, I had to pay him KRW 1.5m [US\$1,475], which I negotiated down to KRW 1 million [US\$980], as one Vietnamese colleague had already left after paying that sum. After I gave my boss the money, he signed my release paper and I left. I agreed to this arrangement because I was sick of arguing and begging to be released.”²¹²

The contract of VK, a 28-year-old woman from Cambodia, stated monthly work hours of 226 hours but she regularly worked between 300-346 hours per month. Her employer refused to pay her for the extra hours she worked, so VK decided to leave:

“In order to get released, I finally negotiated with my boss that I wouldn't file a complaint at the labour office for the unpaid wages, which amounted to about KRW 5 million [US\$4,920], if he signed my release paper.”

The employer agreed to this arrangement, but to expedite the process, VK also agreed to have the job change count against her and at the time of the interview, VK was waiting for the job centre to send her information on available jobs.²¹³

Similarly, 6% of respondents in the NHRCK report stated that their employer asked for money in order to allow them to change jobs.²¹⁴

Out of the 28 migrant workers interviewed by Amnesty International, 20 became irregular in order to escape exploitative work conditions. For example, YV, a 28-year-old man from Cambodia, was illegally subcontracted to work on a farm in Jeju province. He detailed the reasons for becoming irregular:

*"I wanted to change jobs because the work was so difficult – longer hours than my contract with no set rest days (unless it rained and we couldn't work anyway). Plus, I was not happy that my boss illegally subcontracted me to work in Jeju, which was gruelling with lots of heavy lifting. So when I called the job centre in Hongcheon in May 2013, they told me that they would help. I waited but they didn't get back to me so I called one week later and they told me to wait until the beginning of July. Then they called me to inform me that I had to wait until October. I think this is because my boss spoke to the job centre and kept delaying the process, but they should also take my situation into consideration. I couldn't count on the job centre to help any more so I had no choice but to run away.... I am anxious because my family has no money. My parents, older sister, older brother and younger sister rely on me for financial support."*²¹⁵

MH, a 23-year-old Cambodian woman, explained her situation:

*"I called the job centre to complain about not receiving the minimum wage in January and February 2013 – instead of KRW 1,035,080 [1,018], I should have received the new minimum wage of KRW 1,098,360 [US\$1,080]. But the job centre didn't help me get my money so I gave up. When my boss's sexual advances got worse, I didn't have faith in the job centre resolving this situation so I asked my employer to sign my release paper but he refused claiming that the contract was for three years and that I had to honour the full-time period. That's when I decided to run away."*²¹⁶

AN, a 24-year-old Vietnamese man who is employed at a pig farm in Jeongeup, North Jeolla province (August 2011-present), highlighted the impact being made irregular had on him:

*"I was so upset and frustrated that I wanted to go back to Vietnam because the life of an undocumented migrant worker is very precarious – I am constantly afraid that the police or immigration will arrest me on the streets."*²¹⁷

5.7. INEFFECTIVE REDRESS MECHANISMS

The Ministry of Employment and Labour has job centres and labour offices throughout South Korea tasked, among other things, with assisting migrant workers with their application to transfer employment and addressing other work-related issues. The job centre is responsible for managing the employment permit for migrant workers and the administration of their EPS contract, including any transfer of employment. It is usually the first point of contact for migrant workers with work-related complaints. However, any complaint requiring investigation needs to go to the labour office.²¹⁸

The labour office is in charge of labour inspections, and to ensure the application of the Labour Standards Act and occupational health and safety in the workplace.²¹⁹ Thus, migrant workers should go to the job centre to request a transfer of employment or to seek to resolve a work-related issue, and to the labour office to file a complaint (e.g. against their employer for unpaid wages). This and other information should be provided during the orientation training on arrival.



Figure 11: Interview with TH (Source: Amnesty International/Robert Godden)

In addition, there are foreign workforce support centres for both migrant workers and their employers. These centres support migrant workers to try and ensure their smooth integration into their jobs and life in South Korea. Due to the common problems associated with language barriers and cultural differences, the support centres also provide migrant workers with counselling and education on Korean language, law and culture.²²⁰

The Korean government has stated that the MOEL “provides interpreters and has set up 60 job centres, 34 support centres for foreign workers and one call centre to provide counselling and support with regard to grievances and labour law issues”.²²¹ However, the evidence cited in this report shows that the redress mechanisms established by the Government to protect migrant workers are not functioning in an effective manner.

While 23 out of 28 migrant interviewees sought assistance from job centres and labour offices in a variety of locations (including Iksan, Mokpo, Damyang, Pyeongtaek, and Seosan), none received adequate assistance from the officials in these offices when seeking to remedy a work-related problem. In the majority of cases, the migrants were actively discouraged from taking the issue forward and trying to protect or enforce their rights. This appears to reflect a general pattern of behaviour, as government figures show that between January and June 2014, only 1,490 complaints were filed by EPS migrant workers for all sectors with the MOEL.²²²

In 2013, the Councils for the Protection of the Rights and Interests of Foreign Workers recommended that the MOEL improve the complaints procedures and hire counsellors at job centres to help migrant workers in difficulty by providing them with advice and information. The Ministry responded that it would be difficult to implement these recommendations due in part to the current lack of staff and difficulties in dealing with the volume of phone calls and visitors, but that it would consider the issues as part of a long-term review.²²³

Migrant workers have less access to redress than national workers due to a combination of language barriers, unfamiliarity with local laws, a lack of adequate interpreters and/or unhelpful staff at the job centre (see section below). Amnesty international considers that the inability of migrant agricultural workers to access fair and effective dispute resolution mechanisms is one of the reasons why only 0.13% of migrant workers sought to change jobs due to a violation of their employment contract.²²⁴

In August 2014, South Korean parliamentary member Hana Jang asked the South Korean government to provide details of the number of employers who have been investigated, charged and/or prosecuted for unfair dismissal, underpayment of wages, denial of annual leave or subcontracting in relation to EPS agricultural workers, but received no response. In none of the 28 cases interviewed by Amnesty International, were any of the employers subject to sanctions for these activities.

INEFFECTIVE REDRESS AT THE JOB CENTRES

Amnesty International's previous report in 2009²²⁵ documented failures by job centre staff to properly discharge their responsibilities. Similarly, migrant agricultural workers, NGOs and trade unions interviewed for this report consistently identified caseworkers at job centres as a major obstacle in accessing adequate remedies for work-related problems, including job changes.

According to interviews with migrant agricultural workers, caseworkers at job centres are often unhelpful and unwilling to take the time to understand the problems faced by migrants. Many stated that caseworkers were quick to take the side of employers and/or discouraged migrants from taking any official action.

VT, a 26-year-old woman from Vietnam, worked longer hours than those stated in her contract, was not paid for the extra hours and did not receive any pay for two months. According to VT, she suffered chronic headaches from the use of pesticides and the intense heat in the greenhouse in summer. In addition, her employer did not provide heat or hot water in her accommodation during the winter months:

"In August 2013, I went to the job centre in Iksan to file a complaint for unpaid wages and my work conditions, and request a job change. But instead of resolving these issues, the caseworker just told me that they couldn't help me and that my reasons for wanting to leave were not valid enough to process a job change. They said I couldn't change jobs without my boss's consent.

In July 2013, VT ran away because her employer continued to refuse to pay her wages and sign her release document:

"I think it's so unfair that migrant workers can change jobs only by our employer agreeing to sign our release. Our opinions are totally suppressed by this system – so much so that we are not able to freely choose our work."²²⁶

CO is a 24-year-old Cambodian man who worked on a vegetable farm in Icheon, Gyeonggi province (March 2012-April 2013) and was subcontracted illegally to four other farms. He suffered an industrial accident and while his employer paid all the medical costs, he later

attempted to get back some of the money from CO. According to CO, the official at the job centre did not assist him and even threatened to revoke his status if he sought assistance from an NGO:

“My boss tried to make my work colleague and me sign a document that would divide the cost in three (the boss felt that my work colleague had distracted me, thus, was also to blame for the accident). The boss said that if we didn't sign it, then he would stop paying us. We refused so we didn't receive our March and April salaries. My boss also stopped giving us work.

When we went to the job centre in Icheon to complain, the caseworker told us that it was our fault so we needed to sort out these problems ourselves. She said that as we came to Korea with difficulty, it was in our best interest to do our best to stay here and work. So she told us to go back to the employer and continue working. When we complained about the illegal subcontracting, the caseworker called our employer. Of course he lied and said that all the farms were his. The job centre caseworker was satisfied with this answer without verifying or investigating it.

When nothing changed, we returned to the job centre. The same caseworker was not friendly and asked us why we had come back when she had already given us advice. She said that if we didn't want to be undocumented, we have to return and apologize to our employer, and just do our job. We refused and said that the job centre must help us, otherwise, we would seek help at an NGO. She warned us that if we went there, we would do so as undocumented migrants.”²²⁷

HM, a 25-year-old man from Cambodia, went to complain at the job centre in Mokpo about two separate problems:

“My work hours were two hours longer every day compared to what was written in my contract. In addition, I worked for about 70-80 different employers and 300 fields. When I went to the job centre to complain, the caseworker just confirmed it was illegal to subcontract and told me to tell my employer. When I did, he just said it was ok. The job centre didn't take any action so nothing changed.

When my manager and his brother beat me, I returned to the job centre to complain providing evidence of the beating, which my colleague had recorded on his phone. The caseworker told me that it was my fault because I had cut the cabbages the wrong way. She told me to hurry back and apologize to my “boss” (I only found out afterwards that the person who beat me was the manager and not my boss whom I have never met). It was unacceptable so I sought help at an NGO who got in contact with my real boss through the manager. When the boss was told about the recording, he agreed to sign my release paper if I destroyed the recording.”

HM reluctantly agreed, explaining “I desperately needed to work again quickly so that I could continue supporting my family.”²²⁸

In June 2012, TH, a 27-year-old woman from Vietnam, went to the Damyang job centre to request a job change after her boss refused to sign her release. Her account demonstrates how difficult and prolonged a job change can be:

“The caseworker told me to return to my work and negotiate with my boss, which I did. But my boss got angry and told me to leave. In frustration, I grabbed some unripe strawberries. He then grabbed me by the neck and shoved me against a brick wall. When I complained to the job centre, the caseworker just told me that the boss had behaved that way because he was angry. She advised me again to return and speak nicely to him. But the next day, my boss grabbed me and followed me telling me to pack my bags. He threatened me with a metal stick saying, “Do you want to live?” I called the police who came with an interpreter and took me to a migrant shelter. Through police mediation, I was encouraged to return to work.

In November 2013, I stopped work one day in protest against my boss who continued to refuse to release me. When I returned to work, my boss and his mother came at me swearing and telling me to leave the farm. I told them that I wouldn't because I didn't want to be undocumented. The mother grabbed my hat and pulled it down and hit and shoved me. She also grabbed the chair I was sitting on and tried to hit me with it. When I fell, I hurt my hip. I called a migrant centre interpreter who called the police for me. After the police came and accompanied me to the station, I went to the hospital to get a medical report (for my injured hip) and filed a complaint at the police station.”

At the job centre later that month, TH's employer agreed to sign her release form only if she withdrew her police complaint against the employer's mother, which she did. However, TH had to continue working for the same employer until June 2014 when the strawberry season was over.²²⁹

RH, a 40-year-old woman from Vietnam, suffered from chronic back and leg pains due to picking lettuce:

“In early 2013, I went to the hospital and the doctor advised me to stop doing this type of work, as it was bad for my health. I went for weekly treatment for about two months.

In May 2013, I went to the job centre in Pyeongtaek to request a job change. I explained about my back and leg pains and how picking lettuce was adversely affecting my health. I submitted the medical report and relayed to the caseworker what the doctor had advised me. Despite this, the job centre caseworker said he couldn't help me and told me to return to the farm and try to negotiate a release with my employer.”

When RH's boss refused to release her, she returned to the job centre and received a similar response. She then decided to take matters into her own hands:

“In June 2013, I returned but this time with an interpreter friend who had helped me draft a complaint, which I submitted along with a recording of my boss asking for a bribe of KRW 2m [US\$1,970] in exchange for his consent to release me. Thanks solely to this recording – not the unhelpful caseworker at the job centre – I was able to change jobs after one week but it still counted against me [counted as one of the three job changes permitted] despite the fact that I was not at fault.”²³⁰



Figure 12: Interview with RH (Source: Amnesty International/Robert Godden)

All of the nineteen interviewees who had gone to the job centre for help said that they were not provided with sufficient assistance or were told to go back to their employer and negotiate.

Although interpretation should always be made available at job centres, if not in person then via a telephone service,²³¹ the reality is that interpretation services are not always provided. Migrant interviewees frequently commented that important discussions and negotiations at job centres, including with their employers, were conducted in Korean without interpretation.

This is a major obstacle to accessing redress mechanisms, but it also leaves migrant workers at risk of further exploitation. For example, the employer of EN, a 25-year-old Vietnamese man, officially organized a job change without EN's knowledge, thereby preventing him from seeking a visa extension:

"I remember back in March 2011, my boss took me to the job centre in Seosan but I didn't understand Korean so I didn't know what was going on. No one bothered to explain and no interpretation was provided. The boss just told me to sign a document – I didn't know what it was for because it was only in Korean. He then gave it to the caseworker at the job centre."²³²

Another problem for migrants in trying to accessing justice is that job centres are closed on weekends and as most migrant agricultural workers work six or seven days per week, they need to ask permission from their employer to take leave on a weekday. Migrant interviewees told Amnesty International that this was difficult to do without raising suspicion. Others said that they managed to work on a weekend rest day in order to have a weekday free.

At a meeting with the Ministry of Employment and Labour, the officials told Amnesty International that job centre staff, as civil servants, could not be expected to work on weekends.²³³ An employee at a job centre in Seongnam, Gyeonggi province acknowledged that opening hours limited to weekdays made accessing redress mechanisms more difficult, while a caseworker in the Iksan, North Jeolla province felt that it was not his duty to question whether the opening hours were fair but to implement the law.²³⁴

INEFFECTIVE REDRESS AT THE LABOUR OFFICE

Migrant interviewees encountered similar problems when seeking to file a complaint at a labour office. VT, a 26-year-old woman from Vietnam, was one of eight interviewees who felt that the complaint she filed was not satisfactorily resolved:

*"I went to the labour officer in Iksan to file a complaint against my employer for unpaid wages. During the investigation, the caseworker there told me several times that my boss would pay me by a certain date but it never happened. In the end, the caseworker just documented the unpaid wages and advised me to visit a legal aid NGO to get compensation."*²³⁵

Even when a complaint is filed at the Regional Labour Relations Commission, it 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 usually takes another two to three months.²³⁶ During this time, the migrant worker would either have to continue working for their employer or would be left without a job and any form of income. Thus for many, it is easier just to find another job, particularly given that, even if reinstated, they would have to return to a hostile and difficult work environment.

Furthermore, while labour offices are supposed to carry out inspections in order to ensure the full application of the Labour Standards Act, the UN Committee on the Elimination of Racial Discrimination noted in 2012 that it had received information indicating that:

*"the labour inspections carried out in the workplaces are aimed at identifying undocumented migrants, rather than checking working conditions, and that crackdowns have been strengthened and have resulted in a higher number of deportations."*²³⁷

According to government reports, during the inspection of 2,241 workplaces employing "foreign workers" in 2011, 7,994 violations were identified of which nearly a quarter (22%) concerned wages and working conditions. Despite the large number of violations and a request from the ILO Committee of Experts that the legislation be fully enforced, fines were imposed in just 74 cases and only six cases resulted in prosecutions. This means that only 1% of employers who had violated laws in relation to the employment of migrant workers faced any sort of sanction.²³⁸

The Committee on Economic, Social and Cultural Rights has made clear that "Any person or group who is a victim of a violation of the right to work should have access to effective judicial or other appropriate remedies at the national level. [...] All victims of such violations are entitled to adequate reparation, which may take the form of restitution, compensation, satisfaction or a guarantee of non-repetition."²³⁹

In August 2014, South Korean parliamentary member Hana Jang requested information on the number of inspections the MOEL conducted of agricultural²⁴⁰ workplaces employing EPS migrant workers, the number of violations, and what remedies were made. The Ministry replied that it did not have any records specific to the agricultural sector, as the monitoring was not done by sector. However, it stated that 40% of the monitoring conducted in the first half of 2014 was of agricultural workplaces.²⁴¹

According to Ki-don Kim, Director of the Korea Migrant Human Rights Center, government inspections were not effective in addressing problems faced by migrant agricultural workers:

“As far as I can tell, government inspections have not made any significant improvements to the workplace. Migrant agricultural workers continue to come to us with health and safety problems, so something is definitely not working.”²⁴²

Given that the interviews conducted by Amnesty International indicate that the government officials in the institutions which are currently tasked with assisting migrant workers to resolve problems, change jobs and access judicial remedies are not discharging this role adequately, it is all the more urgent that the South Korean government take immediate steps to comply with the longstanding recommendation from the UN Committee on Economic, Social and Cultural Rights, which called on the Government to “uphold the High Court’s decision to grant legal status to the Migrants’ Trade Union.”²⁴³

5.8. FREEDOM OF ASSOCIATION

Under article 33(1) of the South Korean Constitution, “workers have the right to independent association, collective bargaining, and collective action”. Similarly, article 5 of South Korea’s Trade Union and Labour Relations Adjustment Act (Trade Union Act) states that “workers are free to organize a trade union or to join it”.²⁴⁴

Freedom of association and the right to collective bargaining are provided for in article 5(e)(ii) of the ICERD, article 21(1) of the ICCPR,²⁴⁵ and article 8 of the ICESCR, as well as ILO Convention No. 135 on Workers’ Representatives,²⁴⁶ which also guarantees effective protection for union representatives against any prejudicial acts. These standards have all been ratified by South Korea.

The Committee on Economic, Social and Cultural Rights has emphasised that as part of their obligation to guarantee the right to work, and particularly with respect to ensuring accountability, states parties should “respect and protect the work of human rights defenders and other members of civil society, in particular the trade unions, who assist disadvantaged and marginalized individuals and groups in the realization of their right to work”.²⁴⁷

Despite these obligations, migrant workers, and particularly those with irregular status, are far from free to form and join trade unions in South Korea. Nowhere is this more evident than the continued crackdown against the leadership of the Seoul-Gyeonggi-Incheon Migrants’ Trade Union (MTU).

In April 2005, the MTU was formed for all migrant workers regardless of their immigration status. However in June 2005, the Ministry of Employment and Labour (then the 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. This is despite the fact that the ILO has clearly stated that fundamental rights, such as freedom of association, the right to collective bargaining, non-discrimination in employment and the prohibition of forced labour, “cover all migrant workers, regardless of status”.²⁴⁸

In February 2007, the Seoul High Court ruled in favour of MTU, stating that the South Korean Constitution and the Trade Union Act protect the right to freedom of association of all those who enter into an employment relationship as workers, including irregular migrants.²⁴⁹ The Ministry of Employment and Labour (then the Ministry of Labour) appealed this ruling to the Supreme Court, but as of September 2014, the Court still had not handed down a decision, despite having had more than seven years to do so. It is currently the Court’s longest pending administrative case.

Since the MTU was founded in 2005, the immigration authorities have arrested six of its senior officials, five of whom were forcibly and arbitrarily deported. MTU presidents have consistently spoken out against restrictions placed on migrant workers’ freedom to change workplaces and immigration raids, which have resulted in arbitrary arrests, collective expulsions and the excessive use of force. The ILO Committee on Freedom of Association noted that “the Presidents of the MTU, along with other MTU officials have been systematically arrested shortly after their election to trade union office despite the fact that they had been in the country for many years.”²⁵⁰

Amnesty International believes that the actions taken against MTU officials are an attempt by the South Korean government to crack down on the legitimate activities of the MTU and to prevent migrant workers from freely exercising their rights to freedom of association. Migrant workers are unlikely to consult or join the MTU when this might result in reprisals being taken against them by either their employer or the Government. This in turn makes it difficult for them to access the advice and representation they need to help them protect their rights in the workplace.

In 2012, the Committee on the Elimination of Racial Discrimination expressed grave concern:

“about the information that migrant workers, especially those who become undocumented, cannot enjoy their right to organize and join a labour union and that some union executive members have been expelled from the country.”²⁵¹

In November 2013, in the follow-up to the ICERD concluding observations, the South Korean government stated that:

“Legal migrant workers who are working in a domestic workplace under the EPS are allowed to establish and join a labor union just like Korean workers, in accordance with the “Trade Union and Labor Relations Adjustment Act.” However, the right to establish a labor union of illegal migrant workers will be taken into consideration after the ruling on the MTU (Migrants’ Trade Union) case by the Supreme Court.”²⁵²

In March 2014, the ILO Committee on Freedom of Association declared that it “firmly expects that the Government will proceed with the registration of the MTU without further delay, and supply full particulars in relation to this matter”.²⁵³ However, the South Korean government had not taken any action in this regard as of September 2014.

6. CONCLUSION AND RECOMMENDATIONS

As a state party to the ICESCR, the Government of South Korea is obligated, under articles 6, 7, 8, 9 and 11, 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 any distinction; a decent living; safe and healthy working conditions; equal opportunity for everyone to be promoted; rest, leisure and reasonable limitation of working hours; form trade unions and join the trade union of their choice; an adequate standard of living for themselves and their family; and to earn their living through work which they freely choose or accept.

Amnesty International's research demonstrates that migrant agricultural workers are often deprived of one or more of these rights with victims sometimes being subjected to multiple and cumulative violations. In all cases documented in this report, the migrants' terms and condition of work were also in contravention of South Korean law, in particular the Labour Standards Act, the EPS Act and/or the migrant worker's employment contract.

Amnesty International's findings are supported by data from the 2013 NHRCK report, which documented that 71% of migrant workers they interviewed did not receive the minimum wage, 58% were forced to work beyond their contracted hours and more than three quarters were subjected to verbal abuse.²⁵⁴ This research indicates that the exploitation and abuse of migrant agricultural workers is a significant problem in South Korea.

Despite this, those employers responsible for exploiting migrant agricultural workers, including in conditions of forced labour, have generally been allowed to operate with impunity. The redress mechanisms established by the South Korean government are not functioning effectively and some officials are not discharging their responsibilities properly, including by actively discouraging migrant workers from trying to protect their rights.

Since 2009, the ILO and other UN bodies have repeatedly called on the Government to ensure that the EPS work scheme allows for appropriate flexibility for migrant workers to change their workplaces so that they are less dependent on their employers and are able to escape situations of abuse and discrimination.

This has not happened and the current EPS work scheme curtails migrant workers' job mobility to such a degree that it directly contributes to human and labour rights abuses. In order to end these abuses, the South Korean government should remove restrictions and deterrents from the EPS, particularly in relation to job changes, visa extensions and finding new employment in South Korea.

RECOMMENDATIONS

The Government of South Korea should:

- Remove all restrictions on the number of job changes allowed to EPS workers;

- Permit all EPS workers to change jobs without having to obtain a release form from their employer. Where EPS workers have filed a complaint against their employer, they must be free to take up another job while their case is being investigated;
- Repeal article 63 of the Labour Standards Act and ensure that the rights which the Act protects, in particular in respect to work hours, daily breaks and weekly paid rest days, are extended to all workers, including migrant workers, irrespective of which sector they work in;
- Amend the current legislation to ensure that an application for a visa extension or a renewal is not restricted or refused on the basis that migrant workers have changed jobs;
- Allow greater flexibility in the time frame within which migrant workers have to secure new employment, for example, by extending the time limit to a year;
- Provide accommodation and appropriate support to migrant workers, who have lost their job due to reasons set out in article 25(1)(2) of the EPS Act, while they look for a new job;
- Provide migrant workers who are trying to change jobs with a list of employers who are seeking to employ migrant workers;
- Allow migrant agricultural workers to work in other sectors during the off season;
- Amend article 11 of the Labour Standards Act to ensure that the Act applies to all workplaces, irrespective of the number of workers employed, in relation to human and labour rights protections;
- Ensure that all migrant agricultural workers are paid the full overtime rate for any work performed outside the regulated hours, as set out in article 56 of the Labour Standards Act, including by clearly stating this on their contract and in the appropriate national legislation, and ensuring that this is implemented in practice;
- Amend article 99 of the Labour Standards Act and relevant subsidiary regulations to clearly establish what constitutes adequate food and accommodation when these are included as part of a migrant worker's contract (e.g. accommodation should meet relevant international standards on adequacy, including heating, running water, doors that lock, adequate ventilation, access to drinking water, etc.);
- Ensure that the Ministry of Employment and Labour regularly inspects all farms to ensure the proper implementation of the Labour Standards Act and EPS contracts, and issue annual reports recording the full details of the visits, including the number and type of violations identified and the action taken to remedy the situation, including appropriate sanctions against employers who are in breach of their obligations;
- Fully implement domestic legislation to protect migrant workers and the amendments suggested here, and publish annual figures by sector on the number of employers who have been investigated and sanctioned for violations of the Labour Standards Act, EPS Act and labour contracts, including, where appropriate, the sanctions imposed and compensation paid to migrant workers;

- Set up a tripartite body (Government, employers association and trade union) to ensure that officials are properly trained; they discharge their responsibilities to assist migrant workers in line with the law; and appropriate action is taken against officials who fail to do so;
- Ensure that the Ministry of Employment and Labour immediately removes obstacles to participating in the Migrants' Trade Union, in particular by recognizing its status as a legal union in South Korea in line with domestic law and international law and standards;
- Ratify and fully implement the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, incorporate its provisions into domestic law and implement it in policy and practice;
- Ratify and implement the four fundamental ILO Conventions, which South Korea has yet to ratify: No. 29 on Forced or Compulsory Labour, No. 87 on Freedom of Association and Protection of the Right to Organise, No. 98 on Right to Organise and Collective Bargaining, and No. 105 on Abolition of Forced Labour;
- Ratify and implement ILO Convention No. 129 on Labour Inspection (Agriculture);
- Ratify and implement ILO Convention No. 97 on Migration for Employment and 143 Migrant Workers (Supplementary Provisions);
- Ratify and fully implement the UN International Convention on the Protection of the Rights of All Migrants Workers and Members of Their Families;
- Ratify the Optional Protocol to the ICESCR, thereby facilitating the right of workers to make international complaints for breaches of the ICESCR.

7. APPENDICES

APPENDIX 1: SAMPLE OF AMNESTY INTERNATIONAL'S SEMI-STRUCTURED INTERVIEW QUESTIONS FOR EPS AGRICULTURAL WORKERS

Name/Gender:	Age:
Country:	Mobile:
Arrival in Korea:	
Last day of work (specify who terminated):	
Date/Place of interview:	

Pre-departure:

1. Why did you want to work abroad?
2. Why did you choose Korea rather than another country?
3. How much did it cost to find a job through the EPS?
 - Breakdown of costs
 - If you paid for insurance, what did it cover?
4. How did you raise this money (savings, family, bank, moneylender)?
5. If borrowed, at what annual interest rate?
6. Once in Korea, how long did it take to pay back the total cost of getting the EPS job?
7. What score did you receive on the Korean language exam? Did you want to work in agriculture?
8. How long did you have to wait after paying the fees to actually start your job in Korea?
9. Were you given a written contract in a language you could read and understand?
10. When were you given your contract?

11. Were you able to keep your contract and passport in Korea?
12. Were the terms and conditions of work the same as what you were promised in your country of origin? If not, what was different (e.g. occupation, wages, work hours, etc.)?

In Korea:

13. What type of farming do you do? Where is it located?
14. How much are you paid?
 - Did you receive a probationary salary? If so, for how long and were you told about this in your home country?
15. How often are you paid? Were your wages not paid/paid late at anytime while working in Korea?
16. What are your normal hours of work? Is that what you were supposed to work according to your contract?
17. Do you get overtime pay? If so how much? Are you always paid overtime when you work longer than your contracted hours?
18. Do you have one full rest day every week?
19. Do you get any holidays? If so, how many?
20. If accommodation is provided, how would you describe your accommodation: good/average/bad? If bad, explain why.
21. If food is provided, how many meals and how would you describe the food you were given: good / average / bad? If bad, explain why.
 - Did you have to spend money on extra food because what you were given was not adequate?
22. Did you experience any accidents or injuries at work or were you aware of any other migrant workers suffering accidents or injuries? If so, was proper medical treatment and compensation provided?
23. Were you physically or verbally threatened in any way by your employer while working in Korea (e.g. did they say they would fire you or not pay you if you did not do something they wanted?) If so, explain what happened?
24. Did you encounter any other types of problems while working in Korea?

25. Did you feel you were treated the same as Korean workers? If not, in what ways do you think Korean workers were treated better than migrant workers?
26. Did you report or complain about any of the problems that we have just discussed (e.g. wages, overtime, threats, standard of accommodation, etc.)?
 - If yes, what issue did you report and to whom (e.g. employer/manager/job centre/labour office)?
 - Were steps taken to address the problem you reported? If so, was it satisfactorily resolved?
27. Have you changed jobs?
 - If no, why didn't you move jobs given the problems you faced? Would you have left the job if you could have changed jobs without restrictions or penalties?
 - If yes, how many times? Why?
28. How long did it take for you to find another job (indicate for each job change)?
29. What was most difficult about moving jobs?
30. Did you have any previous experience of agricultural work? If not, what work experience or training did you have in your own country?
31. What nationalities are the other migrant workers at your workplace?
32. Were you subcontracted to work for a different employer(s)?
33. Did you have work in the off season? Was it full-time?
34. Were you paid in the off season? If so how much?
35. Were you provided with accommodation during the off season?
36. If you did not have full-time work, how did you survive during the off season (savings, borrowing money, working for another employer/in another sector)?
37. Did the employer threaten to fire you or not re-hire you? Why?
38. Did anyone tell you before you left for Korea that you would not be able to work full-time for 12 months of the year?

APPENDIX 2: STANDARD LABOUR CONTRACT

■ 외국인근로자의 고용 등에 관한 법률 시행규칙 [별지 제 6 호서식]

표준근로계약서 Standard Labor Contract

(앞쪽)

아래 당사자는 다음과 같이 근로계약을 체결하고 이를 성실히 이행할 것을 약정한다.

The following parties to the contract agree to fully comply with the terms of the contract stated hereinafter :

사용자(갑) Employer	업체명 Name of the enterprise	전화번호 Phone number
	소재지 Location of the enterprise	
	성명 Name of the employer	사업자등록번호 (주민등록번호) Identification number
취업자(을) Worker	성명 Name of the worker	생년월일 Birthdate
	본국주소 Address(Home Country)	

1. 근로계약기간	년 월 일부터 년 월 일까지 수습기간 : [] 활용(입국일부터 [] 1개월 [] 2개월 [] 3개월) [] 미활용 ※ 최초 입국자의 경우 근로계약기간의 기산일은 입국일로 변경됨	
1. Term of Labor Contract	from (YY/MM/DD) to (YY/MM/DD) Probation period: [] Included (For [] 1 month [] 2 months [] 3 months from entry date) [] Not included ※ The labor contract enters into effect on the date of entry.	
2. 취업 장소	2. Place of employment	
3. 업무내용	- 업종: - 사무내용: - 직무내용:	
3. Description of work	- Industry: - Business description: - Job description:	
4. 근무시간	<제조업, 건설업, 서비스업> 시 분 ~ 시 분 - 1일 평균 시간외 근로시간 2시간 (사업장 사정에 따라 변동 가능) - 교대제 [] 2조 2교대, [] 3조 3교대, [] 4조 3교대, [] 기타) <농업, 축산업, 어업> - 월 ()시간	※ 가사사용인, 개인간병인, 농업, 축산업 및 어업에 종사하는 사람의 경우에는 기재를 생략할 수 있음. ※ An employer of workers in domestic help, nursing, agriculture and livestock, and fishery can omit the working hours.
4. Working hours	<Manufacturing, construction and service sectors> from () to () - average daily over time: hours (changeable depending on the condition of a company) - shift system ([] 2groups 2 shifts, [] 3groups 3shifts, [] 4groups 3 shifts, [] etc.) <Agriculture & livestock and fishery sectors> - () hours per month	※ 「근로기준법」 제 63 조에 따른 농림, 축산, 양잠, 수산 사업의 경우 같은 법에 따른 근로시간, 휴게, 휴일에 관한 규정은 적용받지 않음.

(뒤쪽)

5. 휴게시간	분 () minutes per day	* In pursuant to the Article 63 of the Labor Standards Act, working hours, recess hours, off-days are not applied to agriculture, forestry, live-stock breeding, silk-raising farming and marine product businesses.
5. Recess hours		
6. 휴일	[]일요일 []공휴일 []매주 토요일 []격주 토요일 []기타()	
6. Holidays	[]Sunday []legal holiday []every Saturday []every other Saturday []etc.()	
7. 임금	1) 월 통상임금 ()원 - 기본급([]급) ()원 - 고정직 수당: 수당: ()원, () 수당: ()원 * 수습기간 중 임금 ()원 2) 연장, 야간, 휴일근로에 대해서는 수당 지급	
7. Payment	1) Monthly Normal wages () won - () wage () won - Fixed Allowances:() allowances:()won, () allowances:()won * Probation period - Monthly wage ()won 2) Additional pay rate applied to overtime, night shift or holiday work.	
8. 임금지급일	매월/매주 ()일/요일. 다만, 임금 지급일이 공휴일인 경우에는 전날에 지급한다.	
8. Payment date	() of every month/every week. If the payment date falls on a holiday, payment will be made on the day before the holiday.	
9. 지급방법	임금 및 수당은 "을"에게 직접 지불하거나 "을"의 명의로 된 예금통장에 입금한다. "갑"은 을의 명의로 된 예금통장, 도장을 관리해서는 안 된다.	
9. Payment methods	Wages and benefits will be paid to the worker or deposited to the bank account of the worker. The employer will not retain the bank book and the seal of the worker.	
10. 숙식제공	1) 숙박시설 - 숙박시설 제공 여부: []제공 []미제공 - 숙박비용 근로자 부담 여부: []부담 []미부담 2) 식사 제공 - 식사 제공 여부: 제공 []조식, []중식, []석식) []미제공 - 식사비용 근로자 부담 여부: []부담 []미부담 * 숙식 제공의 범위와 근로자 부담 비용의 수준은 입국 후 사업주와 근로자 간 협의에 따라 별도로 결정	
10. Room and Board	1) Room - Provided by the employer: []Yes, []No - Cost will be shared by the worker: []Yes, []No 2) Board - Provided by the employer: Yes([]breakfast, []lunch, []dinner), []No - Cost will be shared by the worker: []Yes, []No * 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 worker's	
11.	이 계약에서 정하지 않은 사항은 「근로기준법」에서 정하는 바에 따른다. * 가사서비스업 및 개인간병인에 종사하는 외국인근로자의 경우 근로시간, 휴일·휴가, 그 밖에 모든 근로조건에 대해 사용자와 자유롭게 계약을 체결하는 것이 가능합니다. * 「근로기준법」 제 63 조에 따른 농림, 축산, 양잠, 수산 사업의 경우 같은 법에 따른 근로시간, 휴게, 휴일에 관한 규정은 적용받지 않습니다.	
11.	Other matters not regulated in this contract will follow provisions of the Labor Standard Act. * The terms and conditions of the labor contract for workers in domestic help and nursing can be freely decided through the agreement between an employer and a worker. * In pursuant to the Article 63 of the Labor Standards Act, working hours, recess hours, off-days are not applied to agriculture, forestry, live-stock breeding, silk-raising farming and marine product businesses.	

년 월 일

(YY/MM/DD)

(갑) 사용자 : (서명 또는 인)
Employer : (signature)
(을) 취업자 : (서명 또는 인)
Worker : (signature)

¹ Amnesty International interview with CF in Gyeonggi province on 2 February 2013.

² They include the expert bodies charged with overseeing the implementation of International Labour Organization (ILO) Convention No. 111 on Discrimination (Employment and Occupation) and UN International Covenant on Economic, Social and Cultural Rights (ICESCR), International Covenant on Civil and Political Rights (ICCPR), and International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

³ Amnesty International, *Republic of Korea (South Korea): Migrant workers are also human beings*, August 2006 (AI Index: ASA 25/007/2006) and *Disposable Labour: Rights of migrant workers in South Korea*, 21 October 2009 (AI Index: ASA 25/001/2009).

⁴ As of 31 December 2013, there were 246,695 EPS workers, of which 19,726 worked in agriculture.

⁵ Amnesty International spoke with NGOs, trade unions, labour lawyers, employers, officials from the Ministry of Employment and Labour, regional job centres, the National Human Rights Commission of Korea (NHRCK), and parliamentarians. In addition, the report references the 2013 NHRCK publication, *Fact-finding Report on the Human Rights Situation of Migrant Workers in Agricultural and Stockbreeding Industries*, which surveyed 161 migrants, available at: http://www.humanrights.go.kr/common/board/fildn_new.jsp?fn=in_BB2013103111262611332591.pdf, accessed 3 June 2014 (in Korean).

⁶ 161 interviewees responded to this question. See NHRCK, *Fact-finding Report on the Human Rights Situation of Migrant Workers in Agricultural and Stockbreeding Industries*, October 2013, pp111, 186-187, 190 and 201, available at: http://www.humanrights.go.kr/common/board/fildn_new.jsp?fn=in_BB2013103111262611332591.pdf, accessed 3 June 2014 (in Korean).

⁷ IOM MRTC, *Employment Situation of Foreign Agricultural Workers and Policy Recommendations: With focus on Gyeonggi province in South Korea*, December 2013, pxxvii, available at: http://www.iom-mrtc.org/lib/download.php?file_name=IOM%20MRTC%20RR%202013-07.pdf&save_file=b_201312200954470.pdf, accessed 7 September 2014 (in Korean).

⁸ 161 interviewees responded to this question. See: NHRCK, *Fact-finding Report on the Human Rights Situation of Migrant Workers in Agricultural and Stockbreeding Industries*, October 2013, p202, available at: http://www.humanrights.go.kr/common/board/fildn_new.jsp?fn=in_BB2013103111262611332591.pdf, accessed 8 September 2014 (in Korean).

⁹ Amnesty International interview with VT in Seoul on 25 March 2014.

¹⁰ Amnesty International interview with SP in Ilsan, Gyeonggi province on 17 July 2013.

¹¹ ILO, Convention No. 111 on Discrimination (Employment and Occupation), Observation of the Committee of Experts on the Application of Conventions and Recommendations (CEACR), adopted 2012, published 102nd International Labour Conference (ILC) session (2013).

¹² These include the ICESCR, ICCPR and ICERD.

¹³ Amnesty International received this information, which was provided by the MOEL, from parliamentary

member Hana Jang on 2 September 2014.

¹⁴ ILO, Convention No. 111 on Discrimination (Employment and Occupation), Observation of the Committee of Experts on the Application of Conventions and Recommendations (CEACR), adopted 2012, published 102nd ILC session (2013).

¹⁵ Amnesty International received this information, which was provided by the MOEL, from parliamentary member Hana Jang on 2 September 2014.

¹⁶ Concluding Observations of the Committee on Economic, Social and Cultural Rights on the Republic of Korea, UN doc. E/C.12/KOR/CO/3, 17 December 2009, para21.

¹⁷ Amnesty International, *Republic of Korea (South Korea): Migrant workers are also human beings*, August 2006 (AI Index: ASA 25/007/2006).

¹⁸ Amnesty International, *Disposable Labour: Rights of migrant workers in South Korea*, 21 October 2009 (AI Index: ASA 25/001/2009).

¹⁹ Amnesty International, *Disposable Labour: Rights of migrant workers in South Korea*, 21 October 2009 (AI Index: ASA 25/001/2009).

²⁰ Korea Immigration Service, *Monthly Report on Immigration and Policy on Foreigners*, December 2013, available at:

http://www.immigration.go.kr/HP/COM/bbs_003/ListShowData.do?strNbodCd=noti0097&strWrtNo=129&strAnsNo=A&strOrgGbnCd=104000&strRtnURL=IMM_6070&strAllOrgYn=N&strThisPage=2&strFilePath=, accessed 4 July 2014 (in Korean).

²¹ Ansan, Anseong, Cheonan, Dangjin, Guri, Gwangju, Ilsan, Incheon, Jeongeup and Seoul. Although several interviews took place in towns, only the closest metropolitan city is named to protect the identity of the migrant workers.

²² People of Earth's Station (Earthian) and Vietnam Community Representative.

²³ NGOs and trade unions include Gyeonggi Institute of Research and Policy Development for Migrants' Human Rights, Human Rights Foundation Saram, Korea Migrant Human Rights Center, Korean Confederation of Trade Unions (KCTU), Migrants' Trade Union (MTU), Namyangju Migrant Welfare Centre "Shalom House", People of Earth's Station (Earthian) and Uijeongbu Support Center for Foreign Workers.

²⁴ Parliamentary members Soo Mi Eun, Hana Jang and Jasmine Lee.

²⁵ Solidarity with Migrants managed the research. Research was conducted by Byeong-ryeol Lee (Hanzhong University), Ki-don Kim (Korea Migrant Human Rights Center), Sa-gang Kim (Migration and Human Rights Institute), So-ryeong Kim (Association for Migrant Workers' Human Rights), Ichan Kim (People of Earth's Station), Ji-young Yoon (Gong-gam) and Han-sook Lee (Migration and Human Rights Institute).

²⁶ See NHRCK, *Fact-finding Report on the Human Rights Situation of Migrant Workers in Agricultural and Stockbreeding Industries*, October 2013, available at: http://www.humanrights.go.kr/common/board/fildn_new.jsp?fn=in_BB2013103111262611332591.pdf, accessed 3 June 2014 (in Korean).

²⁷ As of September 2014, these are Bangladesh, Cambodia, China, Indonesia, Kyrgyzstan, Mongolia, Myanmar, Nepal, Pakistan, Philippines, Sri Lanka, Thailand, Timor-Leste, Uzbekistan and Vietnam.

²⁸ This figure includes regular and irregular migrant workers.

²⁹ There are 17,856 EPS workers employed in agriculture and 1,870 in livestock breeding. See Korea Immigration Service, *Monthly Report on Immigration and Policy on Foreigners*, December 2013, available at:

http://www.immigration.go.kr/HP/COM/bbs_003/ListShowData.do?strNbodCd=noti0097&strWrtNo=129&strAnsNo=A&strOrgGbnCd=104000&strRtnURL=IMM_6070&strAllOrgYn=N&strThisPage=2&strFilePath=, accessed 4 July 2014 (in Korean).

³⁰ Amnesty International received this information, which was provided by the MOEL, from parliamentary member Hana Jang on 2 September 2014.

³¹ The EPS-TOPIK test result is valid for two years, after which if a job has not been secured, the applicant must re-take the test.

³² The application is valid for one year, after which if a job has not been secured, the applicant must submit a new application.

³³ See “Standard Labor Contract Signing” available at: https://www.eps.go.kr/ph/poem/poem_03.jsp, accessed 12 June 2014.

³⁴ Labour Standards Act (1997, last amended 21 January 2014, Act No. 12325), available at: <http://www.law.go.kr/lsInfoP.do?lsiSeq=150421&efYd=20140701#0000>, accessed 23 September 2014 (in Korean).

³⁵ Amnesty International interview with CO in Ansan, Gyeonggi province on 17 July 2013.

³⁶ Amnesty International interview with GT in Guri, Gyeonggi province on 21 March 2014.

³⁷ Amnesty International interview with EN in Dangjin, South Chungcheong province on 27 March 2014.

³⁸ 67 interviewees responded to this question.

³⁹ 67 interviewees responded to this question. See NHRCK, *Fact-finding Report on the Human Rights Situation of Migrant Workers in Agricultural and Stockbreeding Industries*, October 2013, pp84-85, available at: http://www.humanrights.go.kr/common/board/fildn_new.jsp?fn=in_BB2013103111262611332591.pdf, accessed 3 June 2014 (in Korean).

⁴⁰ Amnesty International meeting with Iksan job centre in Iksan, North Jeolla province on 2 April 2014.

⁴¹ The introduction of the EPS on the official South Korean government website states: “Implement equality between local (Koreans) and foreign workers on the application and observance of labor related laws and policies such as Labor Standards Act, Minimum Wage Act and Industrial Safety and Health Act.” See “Introduction of Employment Permit System”, available at: https://www.eps.go.kr/ph/view/view_01.jsp, accessed 10 September 2014.

⁴² In the Labour Standards Act, the term “휴게시간” or “recess hours” is used for the daily break or the equivalent of a lunch break during a workday. The term “휴일” or “holidays” is used for the weekly paid rest day or the equivalent of having one day at the weekend off.

⁴³ Labour Standards Act (1997, last amended 21 January 2014, Act No. 12325), available at: <http://www.law.go.kr/lsInfoP.do?lsiSeq=150421&efYd=20140701#0000>, accessed 23 September 2014 (in Korean).

⁴⁴ Correspondence from the NHCRK on 21 August 2014 included the MOEL’s response on 21 April 2014 to its recommendations.

⁴⁵ Committee on Economic, Social and Cultural Rights, General Comment No. 18: The Right to Work, UN doc. E/C.12/GC/18, 6 February 2006, para7.

⁴⁶ The Human Rights Committee, the expert body charged with overseeing the implementation of the ICCPR, stated that the “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 244 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.” (See 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.

⁴⁷ Labour Standards Act (1997, last amended 21 January 2014, Act No. 12325), available at: <http://www.law.go.kr/lsInfoP.do?lsiSeq=150421&efYd=20140701#0000>, accessed 23 September 2014 (in Korean).

⁴⁸ 159 interviewees responded to this question. See NHRCK, *Fact-finding Report on the Human Rights Situation of Migrant Workers in Agricultural and Stockbreeding Industries*, October 2013, p103.

⁴⁹ 114 interviewees responded to this question. See NHRCK, *Fact-finding Report on the Human Rights Situation of Migrant Workers in Agricultural and Stockbreeding Industries*, October 2013, p89, available at: http://www.humanrights.go.kr/common/board/fildn_new.jsp?fn=in_BB2013103111262611332591.pdf, accessed 3 June 2014 (in Korean).

⁵⁰ Amnesty International interview with GL on 9 July 2013 in Ansan, Gyeonggi province.

⁵¹ Amnesty International interviews with BR, TL and YV in Ansan, Gyeonggi province on 13 July 2013.

⁵² Amnesty International interview with SM in Ansan, Gyeonggi province on 20 July 2013.

⁵³ Amnesty International interview with NT in Ansan, Gyeonggi province on 20 July 2013.

⁵⁴ Amnesty International interview with TH in Gwangju on 2 April 2014.

⁵⁵ Amnesty International interview with BR in Ansan, Gyeonggi province on 13 July 2013.

⁵⁶ 159 interviewees responded to this question.

⁵⁷ 161 interviewees responded to this question.

⁵⁸ NHRCK, *Fact-finding Report on the Human Rights Situation of Migrant Workers in Agricultural and Stockbreeding Industries*, October 2013, pp102 and 109, available at: http://www.humanrights.go.kr/common/board/fildn_new.jsp?fn=in_BB2013103111262611332591.pdf, accessed 3 June 2014 (in Korean).

⁵⁹ Amnesty International interview with VK in Ansan, Gyeonggi province on 23 March 2014.

⁶⁰ Amnesty International meetings with People of Earth's Station and Vietnam Community Representative in Ansan, Gyeonggi province and Seoul on 20 and 25 March 2014.

⁶¹ Amnesty International interview with NR in Ansan, Gyeonggi province on 23 March 2014.

⁶² The Labour Standards Act defines a worker as “a person, regardless of being engaged in whatever occupation, who offers work to a business or workplace for the purpose of earning wages” (article 2(1)(1)); a labour contract as “a contract which is entered into in order that a worker offers work for which the employer pays its corresponding wages” (article 2(1)(4)); and wages as “wages, salary and any other kind of money or valuables, regardless of their titles, which the employer pays to a worker as remuneration for work” (article 2(1)(5)).

⁶³ Amnesty International interview with TH in Gwangju on 2 April 2014.

⁶⁴ Work hours may normally be extended up to 12 hours per week and in some sectors, beyond 12 hours. See articles 53, 59 and 69 of the Labour Standards Act (1997, last amended 21 January 2014, Act No. 12325), available at: <http://www.law.go.kr/lsInfoP.do?lsiSeq=150421&efYd=20140701#0000>, accessed 23 September 2014 (in Korean).

⁶⁵ 159 interviewees responded to this question.

⁶⁶ NHRCK, *Fact-finding Report on the Human Rights Situation of Migrant Workers in Agricultural and Stockbreeding Industries*, October 2013, pp105-106, available at: http://www.humanrights.go.kr/common/board/fildn_new.jsp?fn=in_BB2013103111262611332591.pdf, accessed 3 June 2014 (in Korean).

⁶⁷ Amnesty International interview with HH in Ansan, Gyeonggi province on 9 July 2013.

⁶⁸ The currency conversion throughout the report is US\$1 = KRW 1,017 with figures rounded up.

⁶⁹ Minimum Wage Council, "Minimum Wage Rates by Year", available at: <http://www.minimumwage.go.kr/eng/sub04.html#cont7>, accessed 07 September 2014.

Amnesty International meeting with the MOEL's EPS Department in Gwacheon, Gyeonggi province on 29 July 2013.

⁷⁰ Amnesty International meeting with the MOEL's EPS Department in Gwacheon, Gyeonggi province on 29 July 2013.

⁷¹ Amnesty International meetings with job centres in Seongnam, Gyeonggi province and Iksan, North Jeolla province on 26 March 2014 and 2 April 2014 respectively.

⁷² Article 3 (Minimum Wage for Persons, Etc. in Employment on Probation, 1986) of the Enforcement Decree of the Minimum Wage Act (1987, last amended 6 January 2012, Presidential Decree No. 23488), available at: <http://www.law.go.kr/lsInfoP.do?lsiSeq=121518&efYd=20120106#0000>, accessed 23 September 2014 (in Korean).

⁷³ Amnesty International interview with NB in Ansan, Gyeonggi province on 23 March 2014.

⁷⁴ Amnesty International interview with RP in Ansan, Gyeonggi province on 9 July 2013.

⁷⁵ Article 60(1), (2) and (4). For the full provisions of article 60, see the Labour Standards Act (1997, last amended 21 January 2014, Act No. 12325), available at: <http://www.law.go.kr/lsInfoP.do?lsiSeq=150421&efYd=20140701#0000>, accessed 23 September 2014 (in Korean).

⁷⁶ Amnesty International interview with VT in Seoul on 25 March 2014.

⁷⁷ Amnesty International interview with YV in Ansan, Gyeonggi province on 13 July 2013.

⁷⁸ 161 interviewees responded to this question. See NHRCK, *Fact-finding Report on the Human Rights*

Situation of Migrant Workers in Agricultural and Stockbreeding Industries, October 2013, p109, available at:

http://www.humanrights.go.kr/common/board/fildn_new.jsp?fn=in_BB2013103111262611332591.pdf, accessed 3 June 2014 (in Korean).

⁷⁹ Enforcement Decree of the Labour Standards Act (1954, last amended 28 June 2013, Presidential Decree No. 24652), available at: <http://www.law.go.kr/lsInfoP.do?lsiSeq=141600&efYd=20130701#0000>, accessed 23 September 2014 (in Korean).

⁸⁰ Act on Foreign Workers' Employment, Etc. (2003, last amended 28 January 2014, Act No. 12371), available at: <http://www.law.go.kr/lsInfoP.do?lsiSeq=150730&efYd=20140729#AJAX>, accessed 23 September 2014 (in Korean).

⁸¹ Article 2 of the Regulation on Operation of Councils for Protection of Rights and Interest of Foreign Workers (9 June 2010, MOEL Directive No. 15), available at: http://www.moel.go.kr/view.jsp?cate=3&sec=1&smenu=2&mode=view&bbs_cd=116&state=A&seq=1286546860997, accessed 23 September 2014 (in Korean).

⁸² HRD Korea provides support services for the employment of migrant workers. See: <http://www.hrdkorea.or.kr/ENG/1/3>, accessed 10 September 2014.

⁸³ Regulation on Operation of Councils for Protection of Rights and Interest of Foreign Workers (9 June 2010, MOEL Directive No. 15), available at: http://www.moel.go.kr/view.jsp?cate=3&sec=1&smenu=2&mode=view&bbs_cd=116&state=A&seq=1286546860997, accessed 23 September 2014 (in Korean).

⁸⁴ Article 15-2 of the Enforcement Rules of the EPS Act (2004, last amended 28 July 2014, MOEL Directive No.103), available at: <http://www.law.go.kr/lsInfoP.do?lsiSeq=157684&efYd=20140729#0000>, accessed 23 September 2014 (in Korean).

⁸⁵ Amnesty International received this information, which was provided by the MOEL, from parliamentary member Hana Jang on 2 September 2014.

⁸⁶ Correspondence from the NHRCK on 21 August 2014 included the MOEL's response on 21 April 2014 to its recommendations.

⁸⁷ Amnesty International interview with NV in Cheonan, South Chungcheong province on 6 April 2014.

⁸⁸ Amnesty International interview with SM in Ansan, Gyeonggi province on 20 July 2013.

⁸⁹ Amnesty International interview with NB in Ansan, Gyeonggi province on 23 March 2014.

⁹⁰ Amnesty International interview with MH in Ansan, Gyeonggi province on 9 July 2013.

⁹¹ Amnesty International interview with RH in Incheon on 30 March 2014.

⁹² 161 interviewees responded to this question. See NHRCK, *Fact-finding Report on the Human Rights Situation of Migrant Workers in Agricultural and Stockbreeding Industries*, October 2013, pp153 and 162, available at:

http://www.humanrights.go.kr/common/board/fildn_new.jsp?fn=in_BB2013103111262611332591.pdf, accessed 3 June 2014 (in Korean).

⁹³ Amnesty International's translation. For original text, see Occupational Safety and Health Act (1981,

last amended 12 June 2013, Act No. 11882), available at:
<http://www.law.go.kr/lsInfoP.do?lsiSeq=141168&efYd=20140701#0000>, accessed 23 September 2014 (in Korean).

⁹⁴ Occupational Safety and Health Act (1981, last amended 12 June 2013, Act No. 11882), available at: <http://www.law.go.kr/lsInfoP.do?lsiSeq=141168&efYd=20140701#0000>, accessed 23 September 2014 (in Korean).

⁹⁵ Amnesty International interview with YV in Ansan, Gyeonggi province on 13 July 2013.

⁹⁶ Amnesty International interview with BR in Ansan, Gyeonggi province on 13 July 2013.

⁹⁷ Amnesty International interview with NT in Ansan, Gyeonggi province on 20 July 2013.

⁹⁸ Amnesty International interview with VT in Seoul on 25 March 2014.

⁹⁹ Amnesty International interview with SM in Ansan, Gyeonggi province on 20 July 2013.

¹⁰⁰ Amnesty International interview with RP in Ansan, Gyeonggi province on 9 July 2013.

¹⁰¹ 161 interviewees responded to this question. See NHRCK, *Fact-finding Report on the Human Rights Situation of Migrant Workers in Agricultural and Stockbreeding Industries*, October 2013, p170, available at:
http://www.humanrights.go.kr/common/board/fildn_new.jsp?fn=in_BB2013103111262611332591.pdf, accessed 3 June 2014 (in Korean).

¹⁰² 92 interviewees responded to this question. See NHRCK, *Fact-finding Report on the Human Rights Situation of Migrant Workers in Agricultural and Stockbreeding Industries*, October 2013, p170, available at:
http://www.humanrights.go.kr/common/board/fildn_new.jsp?fn=in_BB2013103111262611332591.pdf, accessed 3 June 2014 (in Korean).

¹⁰³ 161 interviewees responded to this question. See NHRCK, *Fact-finding Report on the Human Rights Situation of Migrant Workers in Agricultural and Stockbreeding Industries*, October 2013, p180, available at:
http://www.humanrights.go.kr/common/board/fildn_new.jsp?fn=in_BB2013103111262611332591.pdf, accessed 3 June 2014 (in Korean).

¹⁰⁴ 70 interviewees responded to this question. See NHRCK, *Fact-finding Report on the Human Rights Situation of Migrant Workers in Agricultural and Stockbreeding Industries*, October 2013, p180, available at:
http://www.humanrights.go.kr/common/board/fildn_new.jsp?fn=in_BB2013103111262611332591.pdf, accessed 3 June 2014 (in Korean).

¹⁰⁵ National Health Insurance Act (1999, last amended 1 January 2014, Act No. 12176), available at: <http://www.law.go.kr/lsInfoP.do?lsiSeq=149370&efYd=20140702#0000>, accessed 23 September 2014 (in Korean).

¹⁰⁶ Act on the Collection, Etc. of Premiums for Employment Insurance and Industrial Accident Compensation Insurance (2003, last amended 24 March 14, Act No. 12526), available at: <http://www.law.go.kr/lsInfoP.do?lsiSeq=152319&efYd=20140324>, accessed 23 September 2014 (in Korean).

¹⁰⁷ Enforcement Decree of the Industrial Accident Compensation Insurance Act (1964, last amended 6 August 2014, Presidential Decree No. 25532), available at:

<http://www.law.go.kr/lsInfoP.do?lsiSeq=158141&efYd=20140807#0000>, accessed 23 September 2014 (in Korean).

¹⁰⁸ 92 interviewees responded to this question. See NHRCK, *Fact-finding Report on the Human Rights Situation of Migrant Workers in Agricultural and Stockbreeding Industries*, October 2013, p172, available at: http://www.humanrights.go.kr/common/board/fildn_new.jsp?fn=in_BB2013103111262611332591.pdf, accessed 3 June 2014 (in Korean).

¹⁰⁹ Correspondence from the NHRCK on 21 August 2014 included the MOEL's response on 21 April 2014 to its recommendations.

¹¹⁰ Enforcement Decree of the Act on Foreign Workers' Employment, Etc. (2004, last amended 28 July 2014, Presidential Decree No. 25521), available at: <http://www.law.go.kr/lsInfoP.do?lsiSeq=157531&efYd=20140729#0000>, accessed 23 September 2014 (in Korean).

¹¹¹ "Additional Workplace Scheme for Foreign Workers in Agricultural Industries", available at: <https://www.eps.go.kr/NotiR.eo?targetRow=&pageSpec=&sOption=&sNm=&bbswSn=48>, accessed 27 July 2014 (in Korean).

¹¹² Amnesty International interview with TH in Gwangju on 2 April 2014.

¹¹³ IOM MRTC, *Employment Situation of Foreign Agricultural Workers and Policy Recommendations: With focus on Gyeonggi province in South Korea*, December 2013, p xxxiii, available at: http://www.iom-mrtc.org/lib/download.php?file_name=IOM%20MRTC%20RR%202013-07.pdf&save_file=b_201312200954470.pdf, accessed 7 September 2014 (in Korean).

¹¹⁴ 161 interviewees responded to this question. See NHRCK, *Fact-finding Report on the Human Rights Situation of Migrant Workers in Agricultural and Stockbreeding Industries*, October 2013, p115, available at: http://www.humanrights.go.kr/common/board/fildn_new.jsp?fn=in_BB2013103111262611332591.pdf, accessed 3 June 2014 (in Korean).

¹¹⁵ 98 interviewees responded to this question. See NHRCK, *Fact-finding Report on the Human Rights Situation of Migrant Workers in Agricultural and Stockbreeding Industries*, October 2013, pp117-118, available at: http://www.humanrights.go.kr/common/board/fildn_new.jsp?fn=in_BB2013103111262611332591.pdf, accessed 3 June 2014 (in Korean).

¹¹⁶ Amnesty International interview with YV in Ansan, Gyeonggi province on 13 July 2013.

¹¹⁷ Amnesty International interview with TL in Ansan, Gyeonggi province on 13 July 2013.

¹¹⁸ Amnesty International interview with HM in Ansan, Gyeonggi province on 17 July 2013.

¹¹⁹ Amnesty International interview with BR in Ansan, Gyeonggi province on 13 July 2013.

¹²⁰ Amnesty International interview with RP in Ansan, Gyeonggi province on 9 July 2013.

¹²¹ Amnesty International interview with AN in Jeongeup, North Jeolla province on 6 April 2014.

¹²² Amnesty International interview with EN in Dangjin, South Chungcheong province on 27 March 2014.

¹²³ Article 11(1) provides that "All citizens shall be equal before the law, and there shall be no

discrimination in political, economic, social or cultural life on account of sex, 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 (Constitutional Court Decision 93Hun-Ma120, 29 December 1994 and 99Hun-Ma494, 29 November 2001). Also see the Constitution of the Republic of Korea (1948, last amended 29 October 1987, Constitution No. 10), available at: <http://www.law.go.kr/lsInfoP.do?lsiSeq=61603&chrClsCd=010203&urlMode=engLsInfoR&viewCls=engLsInfoR#0000>, accessed 23 September 2014.

¹²⁴ IOM MRTC, *Employment Situation of Foreign Agricultural Workers and Policy Recommendations: With focus on Gyeonggi province in South Korea*, December 2013, pxxvii, available at: http://www.iom-mrtc.org/lib/download.php?file_name=IOM%20MRTC%20RR%202013-07.pdf&save_file=b_201312200954470.pdf, accessed 7 September 2014 (in Korean).

¹²⁵ Amnesty International's correspondence with parliamentary member Hana Jang on 23 September 2014.

¹²⁶ 161 interviewees responded to this question. See NHRCK, *Fact-finding Report on the Human Rights Situation of Migrant Workers in Agricultural and Stockbreeding Industries*, October 2013, p202, available at: http://www.humanrights.go.kr/common/board/fildn_new.jsp?fn=in_BB2013103111262611332591.pdf, accessed 8 September 2014 (in Korean).

¹²⁷ Kim Kyung-wook, "Immigrants to S. Korea live with public insults", *Hankyoreh*, 20 April 2013, available at: http://www.hani.co.kr/arti/english_edition/e_national/583764.html, accessed 7 September 2014.

¹²⁸ Amnesty International's translation. For original text, see Joint Office of NGOs for the visit of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance to South Korea, *2014 Conference on Racial Discrimination in South Korean Society*, August 2014, p46, available at: <http://www.kpil.org/opboard/down.php?code=actionData&number=151&seq=1&admin=>, accessed 7 September 2014 (in Korean).

¹²⁹ Ratified by South Korea in 1978.

¹³⁰ Concluding Observations of the Committee on the Elimination of Racial Discrimination on the Republic of Korea, UN doc. CERD/C/KOR/CO/15-16, 23 October 2012, paras7-8.

¹³¹ UN OHCHR, "Statement of preliminary observations delivered by the United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, M. Mutuma Ruteere on 6 October 2014 on conclusion of official visit to the Republic of Korea", 6 October 2014, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15140&LangID=E>, accessed 9 October 2014.

¹³² Articles 24 (Restriction on Dismissal for Managerial Reasons), 26 (Advance Notice of Dismissal), 27 (Written Notification of Reasons for Dismissal) and 35 (Exceptions for Advance Notice of Dismissal) provide further details on the requirements for dismissal. See Labour Standards Act (1997, last amended 21 January 2014, Act No. 12325), available at: <http://www.law.go.kr/lsInfoP.do?lsiSeq=150421&efYd=20140701#0000>, accessed 23 September 2014 (in Korean).

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- ¹³³ Amnesty International interview with NR in Ansan, Gyeonggi province on 23 March 2014.
- ¹³⁴ Amnesty International interview with AT in Anseong, Gyeonggi province on 31 March 2014.
- ¹³⁵ Amnesty International interview with AN in Jeongeup, North Jeolla province on 6 April 2014.
- ¹³⁶ Amnesty International interview with GL in Ansan, Gyeonggi province on 9 July 2013.
- ¹³⁷ An EPS worker “may apply for a transfer to another business or workplace” if the “employer intends to terminate the migrant worker’s labour contract during the contract period or refuse to renew the contract after its expiration for a justifiable reason”.
- ¹³⁸ When the head of the job centre determines whether the reason is justifiable, he or she will base the decision on the verification of facts (via phone or in person), testimonies of co-workers, etc. See MOEL, *Employment Permit System Management Handbook*, March 2013, pp210 and 212.
- ¹³⁹ Amnesty International, *Republic of Korea (South Korea): Migrant workers are also human beings*, August 2006 (AI Index: ASA 25/007/2006) and *Disposable Labour: Rights of migrant workers in South Korea*, 21 October 2009 (AI Index: ASA 25/001/2009).
- ¹⁴⁰ “An employer shall not do violence to a worker for the occurrence of accidents or for any other reason.”
- ¹⁴¹ Criminal Act (1953, last amended 14 May 2014, Act No. 12575), available at: <http://www.law.go.kr/lsInfoP.do?lsiSeq=153923&efYd=20140514#0000>, accessed 23 September 2014 (in Korean).
- ¹⁴² Amnesty International interview with HM in Ansan, Gyeonggi province on 17 July 2013.
- ¹⁴³ Amnesty International interview with GT in Guri, Gyeonggi province on 21 March 2014.
- ¹⁴⁴ Amnesty International interview with NR in Ansan, Gyeonggi province on 23 March 2014.
- ¹⁴⁵ Under article 3 of the Framework Act on Women’s Development, sexual harassment is defined as “a case in which any employee, employer or worker of State agencies, local governments or public organizations prescribed by Presidential Decree (hereinafter referred to as “State agencies, etc.”) commits an act falling under any one of the following items in performing duties, employment and other relations: (a) Making the other party feel sexual humiliation or aversion with verbal or physical behavior of a sexual nature, etc. utilizing position or in relation with duties; and (b) Putting the other party at a disadvantage in employment on grounds of not complying with any verbal or physical behavior of a sexual.” Article 17-2(1) requires “heads of state agencies, etc. and business owners” to “take necessary measures, such as implementation of education for the prevention of sexual harassment, as prescribed by Presidential Decree, and the heads of State agencies, etc. shall submit the results of such measures to the Minister of Gender Equality and Family”. See Framework Act on Women’s Development (1995, last amended 30 December 2013, Act No. 12142), available at: <http://www.law.go.kr/lsInfoP.do?lsiSeq=148461&efYd=20140701#0000>, accessed 23 September 2014 (in Korean). See also Act on Equal Employment and Support for Work-family Reconciliation (1988, last amended 14 January 2014, Act No. 12244), available at: <http://www.law.go.kr/lsInfoP.do?lsiSeq=149932&efYd=20140114#0000>, accessed 23 September 2014 (in Korean).
- ¹⁴⁶ Amnesty International interview with MH in Ansan, Gyeonggi province on 9 July 2013.
- ¹⁴⁷ ILO, *A Global Alliance against Forced Labour*, 2005, pp5-6, available at: <http://www.ilo.org/public/english/standards/relm/ilc/ilc93/pdf/rep-i-b.pdf>, 7 September 2014.

¹⁴⁸ Although South Korea has not ratified the Forced Labour Convention, it has repeatedly pledged to do so. See UN Document MUN/582/06, 15 March 2006; and 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.

¹⁴⁹ For example, see Concluding Observations on: Thailand, UN doc. CCPR/CO/84/THA (8 July 2005), para20; Bosnia and Herzegovina, UN doc. CCPR/C/BIH/CO/1 (22 November 2006), para16.

¹⁵⁰ Committee on Economic, Social and Cultural Rights, General Comment No. 18: The Right to Work, UN doc. E/C.12/GC/18, 6 February 2006, paras6 and 25.

¹⁵¹ See ICCPR Fourth periodic reports of States parties due in 2010: Republic of Korea, UN doc. CCPR/C/KOR/4, 4 November 2013, para139.

¹⁵² 161 interviewees responded to this question. See NHRCK, *Fact-finding Report on the Human Rights Situation of Migrant Workers in Agricultural and Stockbreeding Industries*, October 2013, pp111, 186-187, 190 and 201, available at: http://www.humanrights.go.kr/common/board/fildn_new.jsp?fn=in_BB2013103111262611332591.pdf, accessed 3 June 2014 (in Korean).

¹⁵³ Committee on Economic, Social and Cultural Rights, General Comment No. 18: The Right to Work, UN doc. E/C.12/GC/18, 6 February 2006, para9.

¹⁵⁴ US State Department, "Korea, Republic of", *Trafficking in Persons Report 2014*, pp233-234, available at: <http://www.state.gov/j/tip/rls/tiprpt/2014/index.htm>, accessed 22 September 2014.

¹⁵⁵ Correspondence from the Ministry of Justice on 29 September 2014.

¹⁵⁶ In July 2014, the South Korean government submitted the Trafficking Protocol Ratification Bill to the National Assembly where, as of September 2014, it was pending. See: http://likms.assembly.go.kr/bill/jsp/BillDetail.jsp?bill_id=PRC_N104J0M7T100Q1X6U0Q0L4E1I8F8S6, accessed 19 September 2014 (in Korean).

¹⁵⁷ Article 3(b-d) of the Trafficking Protocol further states that consent is irrelevant where any of the listed means have been used. In respect of anyone under 18 years of age, use of force, coercion, etc. need not be involved to be considered trafficking so long as the purpose of the conduct was exploitation.

¹⁵⁸ Criminal Act (1953, last amended 14 May 2014, Act No. 12575), available at: <http://www.law.go.kr/lsInfoP.do?lsiSeq=153923&efYd=20140514#0000>, accessed 23 September 2014 (in Korean).

¹⁵⁹ US State Department, "Korea, Republic of", *Trafficking in Persons Report 2014*, p233, available at: <http://www.state.gov/j/tip/rls/tiprpt/2014/index.htm>, accessed 22 September 2014.

¹⁶⁰ "A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when: (a) It has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty; or (b) It has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed."

¹⁶¹ Screening of international travellers to prevent the spread of HIV/AIDS has long been considered ineffective. 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.” Screening migrant workers seeking to work in the EPS for HIV status 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”. Thus, South Korea should amend its criteria for the E-9 EPS work schemes so that applicants living with HIV are not discriminated against. See Commission on Human Rights, “Guidelines on HIV/AIDS and Human Rights”, available at: http://data.unaids.org/publications/irc-pub03/3797_en.html, accessed 10 September 2014.

¹⁶² This is the Gross National Income (GNI) per capita, converted to US dollars using the World Bank Atlas method, divided by the midyear population. See World Bank, “GNI per capita, Atlas method (current US\$)”, available at: <http://data.worldbank.org/indicator/NY.GNP.PCAP.CD>, accessed 17 June 2014.

¹⁶³ Amnesty International interview with MN in Ansan, Gyeonggi province on 17 July 2013.

¹⁶⁴ Amnesty International interview with RP in Ansan, Gyeonggi province on 9 July 2013.

¹⁶⁵ Amnesty International interview with VT in Seoul on 25 March 2014.

¹⁶⁶ Amnesty International interview with TH in Gwangju on 2 April 2014.

¹⁶⁷ Amnesty International interview with BR in Ansan, Gyeonggi province on 13 July 2013.

¹⁶⁸ See Amnesty International, *Amicus Brief in the matter of “Confirmation of Constitutionality of EPS Act article 25(4) and its Enforcement Decree 30(2)” under consideration by the Constitutional Court of the Republic of Korea*, 1 October 2010, (AI Index: ASA 25/002/2010); Amnesty International, *Disposable Labour: Rights of migrant workers in South Korea*, 21 October 2009 (AI Index: ASA 25/001/2009); and Concluding Observations of the Committee on Economic, Social and Cultural Rights on the Republic of Korea, UN doc. E/C.12/KOR/CO/3, 17 December 2009, para21.

¹⁶⁹ “For any employer falling under any of the following subparagraphs, the head of an employment security office may cancel an employment permit under article 8(4) or confirmation on exceptionally permissible employment under article 12(3), as prescribed by the Presidential Decree: 1. Where the employer obtains an employment permit or confirmation on exceptionally permissible employment in a false or other fraudulent ways; 2. Where the employer violates wages or other labor conditions which had been agreed to before the foreign worker's entry to the Republic of Korea; and 3. Where it is deemed difficult to maintain the labor contract due to the employer's delay in payment of wages or violation of other labor laws, etc.”

¹⁷⁰ “The head of an employment security office may restrict any employer who falls under any of the following subparagraphs from employing foreign workers for three years from the date of the incident: 1. A person who employs a foreign worker without obtaining an employment permit or confirmation on exceptionally permissible employment pursuant to article 8(4) or article 12(3); 2. A person whose employment permit or confirmation on exceptionally permissible employment for a foreign worker is cancelled pursuant to article 19(1); 3. A person who has been punished for violating this Act or the Immigration Control Act; 4. A person who has any other reason specified by the Presidential Decree.”

¹⁷¹ In the event that the contract is extended for a period of “less than two years” (normally one year and 10 months), migrants are permitted to change employment two times during the extended period.

¹⁷² With the exception of those who fail “to obtain permission or apply for a change of workplace due to a reason, such as occupational accident, disease, pregnancy and childbirth, etc.” In these cases, the

relevant period (application for a transfer or finding new employment) will be “calculated from the date on which such a reason ceases to exist”. See article 25(3) of the Act on Foreign Workers' Employment, Etc. (2003, last amended 28 January 2014, Act No. 12371), available at: <http://www.law.go.kr/lsInfoP.do?lsiSeq=150730&efYd=20140729#AJAX>, accessed 23 September 2014 (in Korean).

¹⁷³ 80 interviewees responded to this question. See NHRCK, *Fact-finding Report on the Human Rights Situation of Migrant Workers in Agricultural and Stockbreeding Industries*, October 2013, p213, available at: http://www.humanrights.go.kr/common/board/fildn_new.jsp?fn=in_BB2013103111262611332591.pdf, accessed 3 June 2014 (in Korean).

¹⁷⁴ For further details on the EPS contract duration and extensions, see articles 18 to 18-4 of the EPS Act (2003, last amended 28 January 2014, Act No. 12371), available at: <http://www.law.go.kr/lsInfoP.do?lsiSeq=150730&efYd=20140729#AJAX>, accessed 23 September 2014 (in Korean). See also MOEL, *Employment Permit System Management Handbook*, March 2013, pp236-238.

¹⁷⁵ Amnesty International phone interview with Ichan Kim, Director of People of Earth's Station (Earthian), on 19 September 2014.

¹⁷⁶ However for the second extension, EPS workers must leave Korea for three months before they can return and resume work under a new contract (article 18-4(1) of the EPS Act).

¹⁷⁷ Amnesty International interview with VT in Seoul on 25 March 2014.

¹⁷⁸ Amnesty International interview with EN in Dangjin, South Chungcheong province on 27 March 2014.

¹⁷⁹ Amnesty International meetings with the job centre in Seongnam, Gyeonggi province on 26 March 2014.

¹⁸⁰ Correspondence from the NHCRK on 21 August 2014 included the MOEL's response on 21 April 2014 to its recommendations.

¹⁸¹ Amnesty International phone interview with Jinwoo Park, General Secretary of the MTU, on 22 September 2014.

¹⁸² MOEL, *Employment Permit System Management Handbook*, March 2013, p211.

¹⁸³ The South Korean government stated that “unreasonable discrimination by the employer based on nationality, religion, gender, physical disability and so on” is determined according to social norms and is difficult to set criteria in advance for its determination. See ILO, Convention No. 111 on Discrimination (Employment and Occupation), Observation of the CEACR, adopted 2013, published 103rd ILC session (2014).

¹⁸⁴ ILO, Convention No. 111 on Discrimination (Employment and Occupation), Observation of the CEACR, adopted 2013, published 103rd ILC session (2014).

¹⁸⁵ ILO, Convention No. 111 on Discrimination (Employment and Occupation), Observation of the CEACR, adopted 2012, published 102nd ILC session (2013).

¹⁸⁶ Article 25 of the EPS Act was amended in February 2012, in which article 25(1)(2) includes job change due to (1) a reason not attributable to the worker and (2) violations of working conditions or unfair treatment by an employer. In the previous version of the Act, these two reasons were categorised

separately (article 25(1)(2) and 25(1)(4) respectively). Thus, the change in law means that the data can no longer be separated to distinguish those whose working conditions were violated or unfairly treated by their employer from those who experienced a temporary shutdown, closure of business or cancellation of permits. Amnesty International received this information, which was provided by the MOEL, from parliamentary member Hana Jang on 2 September 2014.

¹⁸⁷ Concluding Observations of the Committee on Economic, Social and Cultural Rights on the Republic of Korea, UN doc. E/C.12/KOR/CO/3, 17 December 2009, para21.

¹⁸⁸ Concluding Observations of the Committee on the Elimination of Racial Discrimination on the Republic of Korea, UN doc. CERD/C/KOR/CO/15-16, 23 October 2012, para11.

¹⁸⁹ Article 1(a) of ILO Convention No. 111 on Discrimination (Employment and Occupation) defines discrimination as: “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.” While article 2 obliges parties to: “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”.

¹⁹⁰ ILO, Convention No. 111 on Discrimination (Employment and Occupation), Observation of the CEACR, adopted 2013, published 103rd ILC session (2014).

¹⁹¹ Amnesty International interview with NR in Ansan, Gyeonggi province on 23 March 2014.

¹⁹² Amnesty International interview with GT in Guri, Gyeonggi province on 21 March 2014.

¹⁹³ A 2012 NHRCK report found that 13 out of 123 (11%) migrant workers interviewed for the research had experienced homelessness. See NHRCK, *Fact-finding Report on the improvement of social welfare support system for migrants living in South Korea*, November 2012, p49, available at: http://www.humanrights.go.kr/common/board/fildn_new.jsp?fn=in_20121227103411649.pdf, accessed 10 September 2014 (in Korean).

¹⁹⁴ Amnesty International interview with YV in Ansan, Gyeonggi province on 13 July 2013.

¹⁹⁵ Amnesty International interview with SP in Ilsan, Gyeonggi province on 17 July 2013.

¹⁹⁶ Amnesty International interview with NB in Ansan, Gyeonggi province on 23 March 2014.

¹⁹⁷ Committee on Economic, Social and Cultural Rights, General Comment No. 18: The Right to Work, UN doc. E/C.12/GC/18, 6 February 2006, para12(a).

¹⁹⁸ Committee on Economic, Social and Cultural Rights, General Comment No. 18: The Right to Work, UN doc. E/C.12/GC/18, 6 February 2006, para31(a).

¹⁹⁹ Ministry of Employment and Labour, *Measure for Improvement in Foreign Workers' Change of Workplaces and Prevention of Broker Intervention*, 4 June 2012, available at: <http://www.korea.kr/common/download.do?tblKey=EDN&fileId=205417>, accessed 4 July 2014 (in Korean).

²⁰⁰ According to the MOEL, the reasons for introducing the Measure include: in most cases, contracts are terminated by mutual consent and not by the expiration of the contracts; some migrant workers “illegally” leave their workplaces and recent figures show a rapid increase; frequent workplace changes lower productivity, deepen labour shortages within small businesses and curtail the enthusiasm of diligent workers; and some recent illegal practices involving brokers who encourage migrant workers to

change workplaces and disappear after taking fees from the workers. See Ministry of Employment and Labour, *Measure for Improvement in Foreign Workers' Change of Workplaces and Prevention of Broker Intervention*, 4 June 2012, available at:

<http://www.korea.kr/common/download.do?tblKey=EDN&fileId=205417>, accessed 4 July 2014 (in Korean).

²⁰¹ MOEL, *Employment Permit System Management Handbook*, March 2013, p217.

²⁰² Amnesty International phone interview with Jinwoo Park, General Secretary of the MTU, on 24 July 2014.

²⁰³ Amnesty International interview with VK in Ansan, Gyeonggi province on 23 March 2014.

²⁰⁴ Ok-guem Won, "Foreign workers have to await for employment information text message, while staying in motel rooms", *Redian*, 6 November 2012, available at: <http://www.redian.org/archive/45252>, accessed 14 September 2014 (in Korean).

²⁰⁵ Amnesty International interview with HM in Ansan, Gyeonggi province on 17 July 2013.

²⁰⁶ Amnesty International interview with SP in Ilsan, Gyeonggi province on 17 July 2013.

²⁰⁷ Amnesty International interview with AT in Anseong, Gyeonggi province on 31 March 2014.

²⁰⁸ Amnesty International interview with NT in Ansan, Gyeonggi province on 20 July 2013.

²⁰⁹ Amnesty International interview with SM in Ansan, Gyeonggi province on 20 July 2013.

²¹⁰ Amnesty International interview with AT in Anseong, Gyeonggi province on 31 March 2014.

²¹¹ Amnesty International interview with NB in Ansan, Gyeonggi province on 23 March 2014.

²¹² Amnesty International interview with NV in Cheonan, South Chungcheong province on 6 April 2014.

²¹³ Amnesty International interview with VK in Ansan, Gyeonggi province on 23 March 2014.

²¹⁴ 80 interviewees responded to this question. See NHRCK, *Fact-finding Report on the Human Rights Situation of Migrant Workers in Agricultural and Stockbreeding Industries*, October 2013, p213, available at: http://www.humanrights.go.kr/common/board/fildn_new.jsp?fn=in_BB2013103111262611332591.pdf, accessed 3 June 2014 (in Korean).

²¹⁵ Amnesty International interview with YV in Ansan, Gyeonggi province on 13 July 2013.

²¹⁶ Amnesty International interview with MH in Ansan, Gyeonggi province on 9 July 2013.

²¹⁷ Amnesty International interview with AN in Jeongeup, North Jeolla province on 6 April 2014.

²¹⁸ Article 14(3)(38) of the Enforcement Rules on the Organisation of MOEL and its Subsidiaries (1998, last amended 11 March 2014, MOEL Directive No. 98), available at: <http://www.law.go.kr/lsInfoP.do?lsiSeq=151923&efYd=20140311#0000>, accessed 12 September 2014 (in Korean).

²¹⁹ Article 19(4, 5 and 8) of the Enforcement Decree on the Organisation of MOEL and its Subsidiaries (1981, last amended 11 March 2014, Presidential Decree No. 25232), available at: <http://www.law.go.kr/lsInfoP.do?lsiSeq=151817&efYd=20140311#AJAX>, accessed 12 September 2014 (in Korean).

- ²²⁰ "Foreign Workforce Support Centres", available at: <http://eps.hrdkorea.or.kr/h2/center/empSupCenter.do>, accessed 10 September 2014 (in Korean).
- ²²¹ ILO, Convention No. 111 on Discrimination (Employment and Occupation), Observation of the CEACR, adopted 2012, published 102nd ILC session (2013).
- ²²² Amnesty International received this information, which was provided by the MOEL, from parliamentary member Hana Jang on 2 September 2014.
- ²²³ Amnesty International received this information, which was provided by the MOEL, from parliamentary member Hana Jang on 2 September 2014.
- ²²⁴ ILO, Convention No. 111 on Discrimination (Employment and Occupation), Observation of the CEACR, adopted 2012, published 102nd ILC session (2013).
- ²²⁵ Amnesty International, *Disposable Labour: Rights of migrant workers in South Korea*, 21 October 2009 (AI Index: ASA 25/001/2009).
- ²²⁶ Amnesty International interview with VT in Seoul on 25 March 2014.
- ²²⁷ Amnesty International interview with CO in Ansan, Gyeonggi province on 17 July 2013.
- ²²⁸ Amnesty International interview with HM in Ansan, Gyeonggi province on 17 July 2013.
- ²²⁹ Amnesty International interview with TH in Gwangju on 2 April 2014.
- ²³⁰ Amnesty International interview with RH in Incheon on 30 March 2014.
- ²³¹ Amnesty International meetings with job centres in Seongnam, Gyeonggi province and Iksan, North Jeolla province on 26 March 2014 and 2 April 2014 respectively.
- ²³² Amnesty International interview with EN in Dangjin, South Chungcheong province on 27 March 2014.
- ²³³ Amnesty International meeting with the MOEL's EPS Department in Gwacheon, Gyeonggi province on 29 July 2013.
- ²³⁴ Amnesty International meetings with job centres in Seongnam, Gyeonggi province and Iksan, North Jeolla province on 26 March 2014 and 2 April 2014 respectively.
- ²³⁵ Amnesty International interview with VT in Seoul on 25 March 2014.
- ²³⁶ Amnesty International phone interview with Sangchul Yu, certified public labour law attorney, Public Labour Law Attorneys' Association for Human Rights, on 24 July 2014.
- ²³⁷ Concluding Observations of the Committee on the Elimination of Racial Discrimination on the Republic of Korea, UN doc. CERD/C/KOR/CO/15-16, 23 October 2012, para12.
- ²³⁸ ILO, Convention No. 111 on Discrimination (Employment and Occupation), Observation of the CEACR, adopted 2012, published 102nd ILC session (2013).
- ²³⁹ Committee on Economic, Social and Cultural Rights, General Comment No. 18: The Right to Work, UN doc. E/C.12/GC/18, 6 February 2006, para48.
- ²⁴⁰ In the correspondence to the MOEL, the term was specified as agricultural and livestock breeding workplaces.
- ²⁴¹ Amnesty International received this information, which was provided by the MOEL, from parliamentary member Hana Jang on 2 September 2014.

²⁴² Amnesty International phone interview with Ki-don Kim, Director of Korea Migrant Human Rights Center, on 22 September 2014.

²⁴³ Concluding Observations of the Committee on Economic, Social and Cultural Rights on the Republic of Korea, UN doc. E/C.12/KOR/CO/3, 17 December 2009, para21.

²⁴⁴ Trade Union and Labour Relations Adjustment Act (1997, last amended 20 May 2014, Act No. 12630), available at: <http://www.law.go.kr/lsInfoP.do?lsiSeq=154056&efYd=20140520#0000>, accessed 23 September 2014 (in Korean).

²⁴⁵ South Korea's reservation on article 22 of the ICCPR (freedom of association) states 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 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 (see Constitutional Court Decision 93Hun-Ma120, 29 December 1994 and 99Hun-Ma494, 29 November 2001). 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 Constitution has been shown to cover irregular migrant workers, the reservation on article 22 of the ICCPR cannot be grounds for denying irregular migrant workers the freedom of association, including the right to form and/or join a trade union.

²⁴⁶ Ratified by South Korea in 2001.

²⁴⁷ Committee on Economic, Social and Cultural Rights, General Comment No. 18: The Right to Work, UN doc. E/C.12/GC/18, 6 February 2006, para51.

²⁴⁸ ILO, *371st Report of the Committee on Freedom of Association*, Case No. 2620 (Republic of Korea): Interim Report, Complaints 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.320/INS/12, 13–27 March 2014, para252, available at: http://www.ilo.org/gb/GBSessions/GB320/ins/WCMS_239692/lang--en/index.htm, accessed 21 July 2014.

²⁴⁹ Seoul High Court decision 2006 NU 6774.

²⁵⁰ ILO, *371st Report of the Committee on Freedom of Association*, Case No. 2620 (Republic of Korea): Interim Report, Complaints 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.320/INS/12, 13–27 March 2014, para251, available at: http://www.ilo.org/gb/GBSessions/GB320/ins/WCMS_239692/lang--en/index.htm, accessed 21 July 2014.

²⁵¹ Committee on the Elimination of Racial Discrimination, Concluding Observations on the combined fifteenth and sixteenth periodic reports of the Republic of Korea, Addendum: Information received from the Republic of Korea on follow-up to the concluding observations, UN doc. CERD/C/KOR/CO/15-16/Add.1, 13 November 2013, para7.

²⁵² Concluding Observations of the Committee on the Elimination of Racial Discrimination on the Republic of Korea, UN doc. CERD/C/KOR/CO/15-16, 23 October 2012, para11.

²⁵³ ILO, *371st Report of the Committee on Freedom of Association*, Case No. 2620 (Republic of Korea): Interim Report, Complaints 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.320/INS/12, 13–27 March 2014, para255, available at: http://www.ilo.org/gb/GBSessions/GB320/ins/WCMS_239692/lang--en/index.htm, accessed 21 July 2014.

²⁵⁴159, 161 and 161 interviewees respectively responded to these questions. See NHRCK, *Fact-finding Report on the Human Rights Situation of Migrant Workers in Agricultural and Stockbreeding Industries*, October 2013, pp104, 111 and 187, available at: http://www.humanrights.go.kr/common/board/fildn_new.jsp?fn=in_BB2013103111262611332591.pdf, accessed 3 June 2014 (in Korean).



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BITTER HARVEST

EXPLOITATION AND FORCED LABOUR OF MIGRANT AGRICULTURAL WORKERS IN SOUTH KOREA

Migrant workers under the Employment Permit System (EPS) make up a substantial proportion of the agricultural workforce in South Korea. Their labour is important to the survival of farms throughout the country. Despite this, a significant number of employers exploit migrant agricultural workers who endure excessive working hours, underpayment, discrimination and poor living conditions. They are also denied a weekly paid rest day and annual leave.

Severe restrictions on migrants' ability to change jobs prevents many from escaping exploitative conditions. In addition, the Labour Standards Act excludes agricultural workers from legal protections covering working hours, breaks and weekly rest days.

This report reveals how the majority of migrants interviewed by Amnesty International were trafficked for exploitation and were working in conditions of forced labour. Most were coerced into working under conditions to which they did not agree, most commonly through threats and violence. The report also highlights shortcomings in the redress mechanisms, finding that many of the interviewees who sought help from the authorities were actively discouraged from taking complaints forward.

Consequently, many unscrupulous employers have been allowed to exploit migrant agricultural workers with virtual impunity. Until the rights of these migrants are protected in practice, the EPS will continue to be synonymous with a system of labour exploitation.

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