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Republic of Korea

Briefing to the UN Committee on the Elimination of Discrimination against Women: Women migrant workers' discrimination in employment

Amnesty International welcomes the steps taken by the Republic of Korea (South Korea) to fulfil its treaty obligations as a state party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW or the Convention), including the submission of its sixth periodic report to the Committee on the Elimination of Discrimination against Women (the Committee).

Amnesty International welcomes the pre-session working group's attention to the situation of migrant women in South Korea in the list of issues and questions with regard to the consideration of South Korea's fifth and sixth periodic reports¹. Amnesty International also welcomes the recent visit in December 2006 of the UN Special Rapporteur on the human rights of migrants to the country.

This briefing looks primarily at the discrimination against women migrant workers in South Korea. The South Korean National Assembly has, by enacting the Act Concerning the Employment Permit for Migrant Workers (2003 EPS Act), begun a significant attempt to protect the basic rights of migrant workers in South Korea. The Act prohibits discrimination against foreign workers and is intended to give migrant workers legal status and to put an end to human rights abuses against them². However, short-comings in the implementation of the Act reveal that migrant workers, especially women migrant workers, remain a vulnerable community³.

Women constitute roughly one-third of the approximately 400,000 migrant workers in South Korea. South Korea has Memoranda of Understanding (MOUs) with eleven countries which allow migrant workers to enter South Korea for the purposes of work: Bangladesh, China, Sri Lanka, the Philippines, Mongolia, Indonesia, Viet Nam, Thailand, Cambodia, Pakistan and Uzbekistan.⁴ Beyond these countries, migrant workers to South Korea come from more than 90 countries. Women migrant workers are at increased risk of being discriminated against as migrant workers and in some cases as irregular migrant workers, which is doubled by gender based discrimination as women.

¹ Committee on the Elimination of Discrimination against Women, List of issues and questions with regard to the consideration of periodic reports: Republic of Korea, UN Doc.CEDAW/C/KOR/Q/6, 27 February 2007, para. 26.

² Under Article 22, EPS Act, migrant workers are protected against discrimination based on race, ethnic origin, religion, gender, social status. The Korean Constitution, Article 11 and the Labor Standard Act, Article 5 prohibit discrimination based on gender, nationality, race, ethnic origin, religion and social status

³ See Amnesty International's report, 'Republic of Korea (South Korea): 'Migrant workers are also human beings'', (AI Index: ASA 25/007/2006), August 2006

⁴ South Korea is currently negotiating MOUs with Nepal, Burma, Kyrgyzstan and Timor Leste

Specifically, this briefing highlights Amnesty International's concerns regarding:

- Discrimination in the workplace with regard to work conditions and wages against women migrant workers;
- Sexual violence and harassment against women in the workplace;
- Poor/dangerous working conditions and lack of mandatory health care and access to health.

Amnesty International has called on the Government of South Korea to:

- Ensure that women migrant workers have access to decent work in terms of condition of work safety and equal remuneration;
- Intervene with employers to ensure that all workplaces are safe and that unscrupulous employers do not take advantage of laws to threaten or otherwise abuse and harass women migrant workers in their place of employment;
- Take particular measures to respect, protect and promote the rights of all women migrant workers and to ensure that they are not subjected to discriminatory and unlawful practices and human rights abuses at their places of work such as unlawful restrictions on their freedom of movement, torture and ill-treatment, including sexual and other forms of gender-based violence.

Constitutional, legislative and institutional framework

In August 2003, the South Korean National Assembly passed the Act Concerning the Employment Permit for Migrant Workers (Employment Permit System Act or EPS Act). The EPS Act prohibits discrimination against foreign workers and is intended to give migrant workers legal status and to put an end to human rights violations against them. By passing the Act, South Korea became the first labour importing country in Asia to attempt to protect the rights of migrant workers through legislation.⁵ Despite the introduction of the EPS Act, Amnesty International is very concerned that migrant workers, particularly women migrant workers, remain at risk of a range of human rights violations.

Migrant workers' freedom of movement is restricted due to provisions in the EPS Act under which a migrant worker can legally work in South Korea for up to three years, but this is subject to annual renewal with employer's approval. Migrant workers cannot change employment, except in special circumstances, unless they have the permission of their current employer. Employers use this provision to exploit migrant workers, including sexual harassment and violence against women in the workplace. Migrant women are also denied access to basic health and livelihood protection under Korean law.

⁵ The EPS Act came into force on 17 August 2004

South Korean law⁶ includes the prohibition of direct or indirect discrimination on grounds of sex, marital status, pregnancy, and childbirth; the prohibition on dismissal during maternity leave plus 30 days, or during parental leave; and the legal right to return to the same position or position of equal wages and status. The Labour Standards Act (LSA) and Equal Employment Act provide maternity protection to all persons working in any occupation in a business or workplace for the purpose of earning wages except domestic workers, day-labourers and 'specially-employed workers' (for example, those classed as freelance contractors are not covered by the LSA).

The Mother-Child Health Act stipulates that, "the head of city/country/urban district shall take appropriate measures necessary for the health care of pregnant or nursing women, up to 6 months after delivery and infants...[which may include] diagnosis, provision of medicine or materials for medical treatment, treatments, operations and other treatment, accommodation in medical facilities, nursing and transfer." This is intended as welfare for single parents but implementation by local governments is patchy. Amnesty International is concerned that migrant women workers are mostly unaware of their eligibility to receive these entitlements.

Discrimination against women migrant workers in employment (Article 11)

Following the consideration of the report of the Republic of Korea at its 19th session the Committee on the Elimination of Discrimination against Women expressed its concern about the situation of women in the labour market, including sexual harassment in the workplace; insufficient social protection of female workers in the private sector; wage differential between women and men. The recommendations by the Committee to the Government of the Republic of Korea included:

- The implementation of the principle of equal pay for work of equal value and recognition of women's unpaid work;⁷
- The provision of equal social protection for women in both the public and private sectors including extension of paid maternity leave to the private sector;⁸
- Awareness-raising campaigns and training programmes to encourage the reporting and elimination of sexual harassment in the workplace.⁹

⁶ According to Article 11(1) of the South Korean Constitution, "Every citizen is equal before the law. No person is subject to discrimination on the grounds of gender, religion or social status in all the fields of political, economic, social, and cultural life." The equal rights guaranteed under the Constitution are further sought to be protected by the Gender Discrimination Prevention and Relief Act, the Labour Standards Act, and the Equal Employment Act.

⁷ Concluding observations of the Committee on the Elimination of Discrimination Against Women: Republic of Korea, 10 July 1998, UN Doc. A/53/38/Rev.1, paras. 347-38, at para. 379(b).

⁸ *Ibid.*, para. 379(c).

⁹ *Ibid.*, at 379(f).

Amnesty International remains concerned about the discrimination faced by women migrant workers in the workplace with regard to training, work conditions, wages and access to health as well as the sexual violence and harassment against women in the workplace

Almost 95 per cent of migrant workers in South Korea work in jobs classified as low-skilled. Women migrant workers typically work in manufacturing, the service sector or sex-related industries. These jobs usually involve dirty, difficult and/or dangerous conditions (3D jobs) for which workers receive little or no training. Where there is training, it usually involves inadequate Korean language teaching and is not human rights oriented. For women migrant workers, language and cultural barriers exacerbate their vulnerable position. These obstacles make it very difficult for women migrant workers to report abuse or seek redress from the authorities.

Discrimination in pay and withholding of pay

Most women migrant workers are at higher risk of experiencing discrimination: as migrant workers with legal permits as women and as irregular workers. Despite legal provisions against discrimination¹⁰ employers continue to pay women migrant workers less than male migrant workers for equal work. A survey conducted in 2002 by the National Human Rights Commission of Korea (NHRCK), 'A Fact Finding Report of the Human Rights of Migrant Workers Living in Korea' (2002 Survey) revealed that women migrant workers earned on average 10 per cent less than their male counterparts. In turn, male migrant workers are discriminated against in wages compared to Korean nationals by as much as 10-25 per cent¹¹. Average monthly wage for migrant women is 861,820 Korean won (KRW) compared to KRW993, 456 for migrant men.

Jeong, a 34 year-old Chinese female migrant worker was working 12-13-hour night shifts in an embroidery factory. Her employer had not paid her for at least three months. When her contract came up for renewal she went to the government-run employment security centre to explain her situation, but to no avail. The employer claimed that withholding pay for less than three months was not a sufficient reason to ask to change workplaces. Her employer refused to allow her to move to another workplace and threatened to sack her. In desperation, she chose to quit her job and after visiting the employment security centre for one last time, Jeong committed suicide by throwing herself in front of a subway train in April 2004. She left a suicide note that stated: "I want to go home, but the company is not paying me. I went to the

¹⁰ The Constitution (Article 11), the Labor Standard Act (Article 5), and the Employment Act for Gender Equality (Articles 8 & 9)

¹¹ According to information received by Amnesty International, millions of dollars of unpaid wages have been withheld from migrant workers, including women migrant workers. Very few of those who were forcibly returned to their home countries received the wages they were due from employers, who have reportedly also withheld severance pay from many migrant workers at the end of their contracts.. Even under the EPS, there is very little support from the South Korean government to ensure the payment of unpaid wages for those migrant workers who have been forcibly returned.

employment security centre, but they did not solve my problem. Migrant workers are also human beings. Why don't they pay for my work? I cannot go home because I don't have money. I have chosen to kill myself as there is no other way."

Sexual violence and harassment against women in the workplace

According to the 2002 Survey, 12 per cent of the women surveyed had suffered sexual violence at work. Many had not reported the abuses as they feared dismissal and the loss of their legal migrant status. Among irregular women migrant workers, 54 per cent of those who said that they had experienced sexual violence shared that they were threatened by their employers with forcible return to their home countries if they reported the incidents.

A female Nepalese migrant worker in South Korea told Amnesty International during an interview in 2004 that it was usual for women migrant workers to suffer sexual harassment at work by their male supervisors. She cited many occasions when she had been woken in the middle of the night by a drunken supervisor who violently beat on her dormitory door, shouting at her to open the door.

Six Sri Lankan women working in an alcohol manufacturing company described to Amnesty International¹² how they endured persistent inappropriate touching and other sexual harassment from the company president. They did not dare to complain because they feared they would be sacked and they desperately needed the money they earned in South Korea to send home to their families. At night the company president would come to their dormitory and would try to open the door when they were taking a shower. In summer, when it was very hot, he removed the door to their room and replaced it with a net door. The women were unable to sleep, knowing that he was watching them and could enter the room at will.

Not knowing what else to do, the women complained to the Sri Lankan Embassy in December 2004, but were merely told to leave the company. In January 2005, they complained to the representative of their recruitment agency, who asked an immigration control official from Chuncheon City to investigate their complaints. The official visited the company but his only suggestion was that the women talk with the company president and agree a solution with him.

From early February onwards, after the immigration official's visit, the president's behaviour deteriorated. He shouted at the women, threatened to send them back to Sri Lanka, gave them very heavy work to do and started censoring their mail. Three weeks after the official's visit, he invited two women to his room and showed them sexually explicit photographs.

A priest from the Ansan Migrant Workers' Centre helped the women to leave in December 2005. The women have no money and would like to work, but they have no visas as these have been withheld by the company president. All the six women have since been granted work visas and have been working in other companies. One of them was taken to court by the former employer for leaving the job without his permission; however when the investigations

¹² Amnesty International interview, April 2006

for the case were being conducted by the prosecutor, the employer changed his mind and offered a very paltry sum of money as part of settlement. The Sri Lankan woman, who was very keen on getting to work in a factory agreed to the settlement.

Health and safety in work conditions and discrimination against pregnant women

Migrant women who become pregnant while in South Korea are not eligible for the Korean Maternity Protection Act. Without access to legal protection offered by the Maternity Protection Act migrant women who become pregnant are left vulnerable to exploitation at the hands of unscrupulous employers. Under the Maternity Protection Act pregnant workers are prohibited from engaging in hazardous or dangerous jobs, night work, and overtime work. Pregnant women have the right to request lighter duties; women who have given birth in the previous 12 months are prohibited from working with hazardous substances or doing overtime, night work unless she so requests. However, there are reports indicating that pregnant migrant women have been threatened with dismissal or with having their documents confiscated when they have informed their employer of their situation.

There are particular concerns about the lack of mandatory health insurance for women migrant workers. Migrant women who become pregnant may struggle to afford treatment or undergo regular check-ups. The 2002 Survey found that 66.7 per cent of female migrant workers who became pregnant while working in South Korea did not inform their employers for fear of dismissal and 56 per cent of those who became pregnant had abortions or miscarriages. Reports suggest that even after miscarriages or abortions, many migrant women continue to undertake the same heavy workload expected of them prior to becoming pregnant.

Some migrant women are assigned more dangerous tasks than their Korean colleagues and not given adequate training or protection. As the case below shows, even when they fall ill, they may be denied basic rights including access to appropriate health care.

Dongwha Digital

Eight Thai women working at a company – Donghwa Digital – which made components for plastic frames for liquid crystal displays (LCD) monitors suffered serious injuries as a result of prolonged exposure to toxic chemicals. The women, seven of whom were irregular migrant workers, worked at a factory in Hwasong, 40 kilometres south of Seoul, for up to four years.

The women told Amnesty International that their job involved cleaning plastic frames with a toxic chemical called n-hexane.¹³ They were not given any safety instructions or warned of the dangers of using the chemical. They worked in closed, windowless rooms for up to 14 hours a day. The women reportedly worked 400 hours per month each, including an average

¹³ N-hexane is a colourless and odourless substance, which can cause multiple nerve damage when inhaled repeatedly

of 160 hours overtime. Despite the fact that they were working with n-hexane, they had no goggles, masks or protective gear, other than cotton gloves.

The women initially attributed their illness to standing all day at work. By October 2004, three of them were very weak and ill. The supervisor took them to hospital where they were informed for the first time that their illness was a result of n-hexane poisoning. Fearful of the cost of treatment and of losing work and pay, the women tried to carry on working.

When their condition worsened, the company president refused to allow them to go to hospital, forcing the women to seek treatment secretly. When the women were no longer able to walk, the employer, fearing negative publicity, reportedly confined them to their dormitory for 40 days and prevented them from going out for treatment or meeting other people.

Five of the women managed to escape from the dormitory and, with the help of friends and a missionary organisation, received treatment at a local hospital. However, three of the women were returned by their employer to Thailand where they were unable to access appropriate medical help. Three of these women later arrived in Seoul for treatment at a state-funded hospital. It is reported that n-hexane poisoning requires intensive treatment for one year or more.

The company had apparently ignored warnings about the dangers of n-hexane given by industry security inspectors. The President of Donghwa Digital was arrested in 2005.

Amnesty International welcomes the opportunity to present information on the situation of migrant women workers in South Korea. Amnesty International also recognised the efforts already made by the South Korean government to address discrimination against women and in particular, migrant women workers. It further hopes that this briefing will shed light on the situation of many migrant women workers in South Korea and areas for improvement.