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## 1: Introduction

“I want to go home, but the company is not paying me. I went to the 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.”

Note left by Jeong, a 34 year-old Chinese worker.

Jeong was working 12 and 13-hour night shifts in an embroidery factory. When her contract came up for renewal she went to the government-run employment security centre<sup>1</sup> to explain her situation, but to no avail. Her employer refused to allow her to move to another workplace and threatened to sack her. The employer claimed that withholding pay for less than three months was not a sufficient reason to ask to change workplaces. She chose to quit the job and after visiting the employment security centre for one last time April 2004 she threw herself under a subway train.

At least 360,000 migrant workers were believed to be working in the Republic of Korea (South Korea) by June 2006, some 1.5 per cent of the total workforce. Of this total, there were at least 189,000 “irregular” migrant workers (see footnote 9) and at least 115,000 “documented” migrant workers.<sup>2</sup>

A migrant worker is “a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national”

International Convention on the Protection of All Migrant Workers and Members of their Families (Migrant Workers' Convention), Article 2.1<sup>3</sup>

In August 2003 the Korean National Assembly passed the Act Concerning the Employment Permit for Migrant Workers (EPS Act). The Act prohibits discrimination against foreign workers and was 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.<sup>4</sup>

However, two years after the Act came into effect, Amnesty International is concerned that migrant workers remain at risk of a range of human rights violations. Despite

<sup>1</sup> By Employment Security Centres, we refer to government-run employment support centres.

<sup>2</sup> Figures of migrant workers from Ministry of Labor, Republic of Korea (South Korea)

<sup>3</sup> The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families or the Migrant Workers Convention was adopted by the UN General Assembly resolution 45/158 of 18 December 1990. It entered into force on 1 July 2003. ([www.unhchr.ch/html/menu3/b/m\\_mwctoc.htm](http://www.unhchr.ch/html/menu3/b/m_mwctoc.htm))

<sup>4</sup> The EPS Act entered into force on 17 August 2004. (<http://www.eps.go.kr/wem/kh/sub.jsp?menu=4&right=3>)

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the recognition of their rights contained in the EPS Act, in reality migrants continue to have little protection and very limited possibilities for obtaining redress for abuses. In this introduction, we will enumerate Amnesty International's concerns which will highlight this vulnerability faced by the migrant workers in South Korea; the report will discuss these concerns in greater detail in subsequent sections. Later in the introduction, we will also list the range of international treaties protecting the rights of migrant workers. The South Korean government is a State Party to most of these treaties and by enacting the EPS Act, it has undertaken an important step to protect the basic rights of migrant workers in South Korea. The South Korean government now has the obligation to ensure that the EPS system – both in its content and practice – does not violate international human rights law and standards.

### **1.1: Migrant workers: issues and concerns**

Testimonies gathered by Amnesty International from migrant workers, counselling centres and experts in the field, show that migrant workers continue to have **their wages withheld and to work excessively long hours for lower wages than Korean workers in similar jobs.**

Migrant workers continue to be **denied the right to organize in legal trade unions,**<sup>5</sup> and **to experience high levels of verbal and physical abuse in the workplace.** Their work is often dangerous and there are many reports of serious industrial accidents<sup>6</sup> where **injured migrant workers have received inadequate treatment and little or no compensation.**<sup>7</sup>

A third of all migrant workers in South Korea are women.<sup>8</sup> Amnesty International's research has shown that **women migrant workers face discrimination in levels of pay compared to men migrant workers, and that they are also at risk of sexual harassment in the work place.** A range of human rights violations suffered by women migrant workers in South Korea reveal apparent breaches of a number of international human rights treaties to which South Korea is a State Party including the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Many migrant workers **accumulate huge debts in order to pay high recruitment fees for jobs** in South Korea. However, **once in Korea, many find that the jobs are very**

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<sup>5</sup> The International Covenant on Economic, Social and Cultural Rights ((ICESCR), Article 8 to which South Korea became State Party to in April 1990, provides for the right for everyone to form trade unions and join trade unions of his [or her] choice.

<sup>6</sup> ICESCR, Article 7 (b) provides for the right of everyone to "safe and healthy working conditions."

<sup>7</sup> Many industrial accidents are attributable to a combination of factors including lack of safety training; poor communications (most migrant workers do not receive adequate Korean language training before starting their jobs by recruitment agencies in their home countries, during their induction and/or during their employment by their employers); and failure by employers to implement adequate safety standards.

<sup>8</sup> The figure of a third is widely cited by migrant workers' counseling centres, academic experts and government officials in South Korea. According to the Concluding Observations of the Committee on Economic, Social and Cultural Rights on South Korea's second periodic report ((E/C.12/1/Add.59) in May 2001), a great majority of the irregular migrant workers in 2001 – nearly half the work-force – were women.

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**different from those they were promised and are more dangerous or more poorly paid than they had ever expected.** With few rights to negotiate a change of job, many end up giving up their legal employment and going to work as “undocumented” or “irregular” migrant workers<sup>9</sup> elsewhere in the country. Most feel compelled to try to earn enough money to pay their debts and support their families back in their home countries.

Amnesty International’s research has shown that **under the EPS system, migrant workers, in practice, have very limited scope for changing their workplace.** This can seriously hamper their ability to lodge complaints about abuses because they fear antagonizing their employers or because they fear losing their jobs and thereby losing their legal status to work in South Korea. There are also reports that **employers have seized official documents, including passports and work permits, preventing migrant workers from looking for jobs elsewhere.**

The EPS system **calls for the return – voluntary or forced – of irregular migrant workers. This has resulted in the arrest, detention and deportation of thousands of workers since November 2003. The collective nature of the arrest and deportation operations make it very difficult for the government to provide the necessary procedural guarantees, including individual assessment,**<sup>10</sup> and so ascertain whether people legally entitled to remain in the country may be among those expelled. This is in violation of procedural guarantees against forced return provided for in the International Convention on Civil and Political Rights (ICCPR), Article 13.<sup>11</sup>

Amnesty International has also received **reports of excessive use of force by police and immigration officials during arrest and very poor conditions of detention pending deportation.**

**Many migrant workers, who have been forcibly returned to their home countries, did not receive the wages due to them,** leaving them destitute.

In the wake of the operations to arrest and deport irregular migrant workers since November 2003, there has been an increase in people claiming asylum. Amnesty International

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<sup>9</sup> An “irregular” migrant is someone who does not have legal permission to remain in a host country while an “undocumented” migrant worker is someone who lacks the documentation to lawfully enter or stay in a country.

<sup>10</sup> All migrant workers, including undocumented migrant workers, are entitled to specific rights during expulsion and should not be subject to mass or collective expulsion. Their rights include the right to have his/her expulsion examined and decided individually. (See the Migrant Workers Convention, Article 22, which provides an authoritative elaboration on the relevant rights in the context of expulsion. See also in this context, General Comment No. 15 by the Human Rights Committee to the ICCPR on “The Position of Aliens under the Covenant.”)

<sup>11</sup> See the Migrant Workers Convention, Article 22, which provides an authoritative elaboration on the relevant rights in the context of expulsion, especially Article 22 (6). See also in this context, General Comment No. 15 on “The Position of Aliens under the Covenant” issued by the Human Rights Committee to the ICCPR.

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continues to be concerned at continuing reports that the existing refugee recognition system is at times unfair, arbitrary and lacks transparency.<sup>12</sup>

## 1.2: *Migrant workers' rights*

“I heard a shout from my boss insulting/forcing me with verbal abuses to hurry so I was scared and I lost concentration so I was pulled by the machine. When the machine was switched off, I realized my fingers had been chopped off; so I was rushed to the hospital and that was the last time I saw my employer.

“My treatment at the hospital was very poor<sup>13</sup> and it was this poor treatment of my hand that led to a decay of the hand and it was amputated. The company did not do anything about my expenses and my employer was nowhere to be found. I had a one-year visa before the accident; but my employer kept my passport because he did not want the insurance company to compensate me. The Korea Labor Welfare Corporation<sup>14</sup> was responsible for my proper medical treatment and compensation; the Korean government also refused to grant me and my family residence. I was not fully treated before I was harshly discharged on 6 May 2003, and my hand was still very painful. I have been walking on the street for sometime now without treatment, living on charity in Korea, with a wife and two sons aged 13 and 10 in Ghana. Due to this, there is no education for my kids; this also makes my situation even worse and the psychological implications are equally disturbing.”

Testimony to Amnesty International from James Mensah, a migrant worker from Ghana who was injured in October 1998, dated 3 May 2006.

The South Korean government has an obligation to ensure that the EPS system is compatible with international human rights law and standards. All migrant workers, regardless of their legal status, have rights under international human rights and labour rights law. The range of international treaties protecting the rights of migrant workers enshrine and include the indivisibility of civil and political and economic, social and cultural rights:

- the International Convention on the Elimination of All Forms of Racial Discrimination (CERD);
- the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW);
- the International Covenant on Civil and Political Rights (ICCPR);
- the International Convention on Economic, Social and Cultural Rights (ICESCR);

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<sup>12</sup> See Refugees and asylum-seekers section in entry on South Korea, Amnesty International Report 2006.

<sup>13</sup> By not providing adequate medical treatment, the South Korean government has failed to provide the right to the best attainable standard of physical and mental health as provided for by ICESCR, Article 12. This applies even where, as in South Korea, most hospitals are not state-owned.

<sup>14</sup> The Korea Labor Welfare Corporation is a publicly owned company in Korea, which focuses on Employment Insurance and Industrial Accident Compensation Insurance. According to legislation on industrial accident compensation, all employers in Korea who employ one or more employees are required by law to pay contributions towards this insurance. It is not clear if James Mensah's employer regularly contributed towards his insurance.

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- the Convention on the Rights of the Child (CRC);
  - the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Migrant Workers' Convention);<sup>15</sup>
  - Conventions of the International Labour Organization (ILO).

These international treaties guarantee migrant workers the rights to:

- Life;<sup>16</sup>
- freedom from torture, and other cruel, inhuman or degrading treatment or punishment;<sup>17</sup>
- freedom from slavery and servitude;<sup>18</sup>
- freedom from imprisonment for inability to fulfil a contractual obligation;<sup>19</sup>
- recognition as a person before the law;<sup>20</sup>
- freedom of thought, conscience and religion;<sup>21</sup>
- best attainable standard of physical and mental health;<sup>22</sup>
- education;<sup>23</sup>
- adequate housing;<sup>24</sup>
- adequate food and water;<sup>25</sup>
- work and rights at work<sup>26</sup>.

The South Korean government has, by enacting the EPS Act, begun a significant attempt to protect the basic rights of migrant workers in South Korea. However, the implementation of the Act reveals that migrant workers remain a vulnerable community. This report examines how, despite the enactment of the EPS Act, the system for dealing with migration in South Korea has evolved in a manner that disadvantages migrant workers. It also describes human rights violations against migrant workers including discrimination and abuses in the workplace and during arrest, detention and deportation. The report ends with a series of recommendations to the South Korean government and other concerned stakeholders to address these violations and protect the rights of migrant workers.

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<sup>15</sup> South Korea is not a signatory of the Migrant Workers' Convention. Amnesty International believes that the South Korean government should sign the Migrant Workers' Convention as a means to address continuing human rights violations suffered by migrant workers under the EPS Act and other relevant migrant labour regulations.

<sup>16</sup> ICCPR, Article 6.

<sup>17</sup> ICCPR, Article 7.

<sup>18</sup> ICCPR, Article 8 (1) & (2).

<sup>19</sup> ICCPR, Article 11.

<sup>20</sup> ICCPR, Article 16.

<sup>21</sup> ICCPR, Article 18.

<sup>22</sup> ICESCR, Article 12; CERD, Article 5(e)(iv); CEDAW, Articles 12 and 14(b); CRC, Articles 24 and 25.

<sup>23</sup> ICESCR, Articles 13 and 14; CRC, Articles 28 and 29; ICERD, Article 5(e)(v).

<sup>24</sup> ICESCR, Article 11; CEDAW, Article 14(2); CRC, Articles 16(1) and 27(3); ICERD, Article 5(e)(iii).

<sup>25</sup> ICESCR, Article 11; CRC, Article 24(2)(c), CEDAW, Article 14(2)).

<sup>26</sup> ICESCR, Articles 6 to 8; ICERD, Article 5(e)(i); CEDAW, Articles 11 and 14.

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## 2: International Standards

South Korea has ratified a range of key international human rights and labour treaties which provide that the rights of all migrant workers, regardless of their legal status, should be promoted and respected. However it has yet to sign the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families members.

South Korea acceded to the ICCPR and the ICESCR in April 1990; the CERD in December 1978; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) in January 1995 the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in December 1984; and the Convention on the Rights of the Child (CRC) in November 1991.

The South Korean government should also ensure that all migrant workers benefit from the principles and rights in the 1998 ILO Declaration on Fundamental Principles and Rights at Work and its follow-up, which are reflected in the eight fundamental conventions which the ILO has identified as core standards of labour protection.<sup>27</sup> It is a State Party to the following ILO Conventions.

Of the eight fundamental ILO conventions identified as core standards of labour protection, South Korea has ratified:

- ILO Convention No.100: Equal Remuneration Convention, 1951 (which South Korea ratified in December 1997);
- ILO Convention No.111: Discrimination (Employment and Occupation) Convention, 1958 (which South Korea ratified in December 1998);
- ILO Convention No.138: Minimum Age Convention, 1973 (which South Korea ratified in January 1999); and
- ILO Convention No.182: Worst Forms of Child Labour Convention, 1999 (which South Korea ratified in March 2001).

However, South Korea is not a State Party to some key ILO Conventions; the ratification and implementation of which would improve the vulnerable situation of migrant workers in South Korea.

Of the eight fundamental ILO conventions identified as core standards of labour protection, South Korea has **not** ratified:

- ILO Convention No.87: Freedom of Association and Protection of the Right to Organise

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<sup>27</sup> See ILO, "Draft ILO Multilateral Framework on Labour Migration: Non-binding Principles and guidelines for a right-based approach to labour migration," (ILO, TMMFLM/2005/1), p.11.

Convention, 1948;

- ILO Convention No.98: Right to Organise and Collective Bargaining Convention, 1949;
- ILO Convention No. 29: Forced Labour Convention, 1930 and
- ILO Convention No.105: Abolition of Forced Labour Convention, 1957.

South Korea has also not ratified the following ILO Conventions which specifically protect the rights of migrant workers:

- ILO Convention No. 97: Migration for Employment Convention (Revised), 1949 and
- ILO Convention No. 143 on Migrant Workers (Supplementary Provisions) Convention (1975).

Amnesty International welcomes a recent commitment made by the South Korean government to ratify the four core standards of labour protection (ILO Convention Nos. 87, 98, 29 and 105) conventions in a recent letter to the UN<sup>28</sup>, and urges the South Korean government to implement them in full and without delay. AI also urges the South Korean government to ratify the ILO Conventions which specifically protect the rights of migrant workers.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families members (or the Migrant Workers' Convention) is regarded as the foremost international instrument for the promotion and the protection of the rights of all migrant workers and their families. Regarded as a core international human rights convention, the Migrant Workers' Convention imposes a series of obligations on States Parties to promote among other things "sound, equitable, humane and lawful conditions" for all migrant workers, whether documented or irregular. Under the terms of this Convention, migrant workers are entitled to protection of their basic freedoms including the right to life; the right to freedom from torture; the right to due process including freedom from arbitrary arrest and detention; the right to medical care that is urgently required and the right to equal treatment – in comparison to nationals in the country – in respect to remuneration and other conditions of work, membership of trade unions and access to social services. The Migrant Workers' Convention also contains a non-discrimination clause for migrant workers and their families with regard to rights at work, access to education, access to adequate housing, food and water. It also protects the right of migrant workers to possess their identity documents when it states clearly that it is unlawful for anyone, other than officials, to confiscate or destroy identity documents including passports or documents authorizing entry to or stay or work permits.

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<sup>28</sup> In a letter (dated 19 April 2006), the South Korean government, after being elected a founding member of the UN Human Rights Council, made several pledges including a pledge to: "ratify the four ILO Conventions: the Freedom of Association and Protection of the Right to Organise Convention (No.87), the Right to Organise and Collective Bargaining Convention (No.98), the Forced Labour Convention (No.29) and the Abolition of Forced Labour Convention (No.105).



Amnesty International calls on South Korea to ratify this important instrument as a key step towards the full protection of the rights of all migrant workers on its territory.

## 2.1: *Non-discrimination*

Universal Declaration of Human Rights (UDHR), Article 2 – “Everyone is entitled to all the rights and forth in the Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

Everyone is entitled to enjoy their human rights without discrimination. This fundamental principle is of particular importance to groups that are especially vulnerable and marginalised, including migrant workers. As noted above, despite the implementation of the EPS Act, which recognises that migrant workers have the same rights as their Korean counterparts, over a two year period, migrant workers in South Korea face discrimination at various levels. They have to work longer hours than most Korean workers, are paid lower wages, denied the right to organize legal trade unions, and are at risk of verbal and physical abuse in the workplace. In addition injured migrant workers receive inadequate compensation from either employers or the state.

The discrimination they face shows that South Korean authorities and employers of migrant workers are failing to adhere to international standards of non-discrimination in their treatment of migrant workers. Such standards are set out in various international instruments South Korea has ratified and which clearly obligate States Parties to guarantee that all individuals within their territory enjoy all the rights contained in these instruments without discrimination.<sup>29</sup> The ICESCR, in its General Comment No.18,<sup>30</sup> has urged that to ensure that

<sup>29</sup> The ICESCR, ICCPR, CERD, CEDAW, CRC – treaties that South Korea has ratified – provide rights that protect migrant workers from discrimination, even though they do not specifically mention “migrant workers.” For instance, ICESCR, Article 2 (2) states that, “The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

ICCPR, Article 2 (1) states that “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

ICCPR, Article 2 (2) provides that “The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

CERD, Article 1 (2) provides that “This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.”

<sup>30</sup> ICESCR, General Comment 18 (right to work) states that “... These fundamental rights also include respect for physical and mental integrity of the worker in the exercise of his or her employment.” Even though General Comment 18 is principally about Article 6, it emphasizes the indivisibility of rights as provided in Articles 6, 7 and 8. (See Paragraphs 6, 7 and 8 of ICESCR General Comment No.18)

the migrant workers do not face discrimination in their work, there is a “need for national plans of action to be devised to respect and promote [non-discrimination] principles by all appropriate measures, legislative or otherwise.”<sup>31</sup>

In 2004, the Committee on the Elimination of Racial Discrimination adopted General Recommendation No. 30, which outlines the general principles that State Parties to the Convention should adopt in order to protect non-citizens against discrimination. General Recommendation No. 30 (paragraph 33) calls on States Parties of CERD to “(t)ake measures to eliminate discrimination against non-citizens in relation to working conditions and work requirements, including employment rules and practices with discriminatory purposes or effects.”

## **2.2: Rights at work**

In the work place, migrant workers in South Korea often face discrimination in the pay they receive for work which itself is often dirty, dangerous, and difficult. International standards clearly provide that all workers, regardless of their status, should enjoy the right to equal pay for equal work.

UDHR Article 23 (2): Everyone, without any discrimination, has the right to equal pay for equal work.

The ICESCR, in particular Article 7,<sup>32</sup> provides for the right of all workers (including irregular migrant workers), to the enjoyment of just and favourable conditions of work. General Comment No.18 of the CESCR notes the indivisible and multifaceted nature of rights that are needed to improve protection of rights of migrant workers when it states that:

“Protection of the right to work has several components, notably the right of the worker to just and favourable conditions of work, in particular to safe working conditions, the right to form trade unions and the right freely to choose and accept work.” (Paragraph 12 (c))

<sup>31</sup> ICESCR General Comment No.18, paragraph 18 states that, “The principle of non-discrimination as set out in the Covenant, article 2.2, and in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, article 7 should apply in relation to employment opportunities for migrant workers and their families. In this regard the Committee underlines the need for national plans of action to be devised to respect and to promote such principles by all appropriate measures, legislative or otherwise”.

<sup>32</sup> ICESCR, Article 7, “The States Parties to the present Covenant recognizes the right of everyone to the enjoyment of just and favourable conditions of work which ensure, 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.”

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The right to freedom of association, see Section 2.3, gives all workers, especially vulnerable workers such as migrant workers, the power to protect themselves and this gives them the power to ensure that other abuses, such as discrimination, and unsafe conditions do not exist at the workplace.

A way to ensure just and favourable conditions of work, according to Article 7 (b) of the ICESCR, is by States Parties providing “(s)afe and healthy working conditions” and, in Article 12(1), by recognising the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Furthermore, CERD, General Recommendation No.30 (paragraph 36) calls on States Parties to ensure that non-citizens are not denied their right to health when it calls on State Parties to “respect the right of non-citizens to an adequate standard of physical and mental health by, inter alia, refraining from denying or limiting their access to preventive, curative and palliative health services.”<sup>33</sup> Moreover, ILO Convention No.155 (Occupational Health and Safety (1981) and its Protocol (2002) aim at eliminating preventable accidents and diseases and ensuring safe working conditions.<sup>34</sup> Besides, states are obliged in addition to ensure the delivery to all persons on their territory or under their effective control the underlying determinants of health. In addition to available, accessible, acceptable and quality healthcare, this includes respecting, protecting and promoting the rights to adequate food and water.

Within a vulnerable community such as migrant workers in South Korea, the situation of women migrant workers is particularly vulnerable. International law such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) provides in Article 2 that States Parties condemn discrimination against women in all its forms and agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women. Article 11 provides for equality of rights in respect of employment and work and Article 6 calls for the suppression of exploitation of women. Amnesty International is concerned that, in light of the situation faced by thousands of women migrant workers in South Korea, many of these provisions are not being respected.

Apart from the discrimination in pay, many migrant workers in South Korea also face non-payment of wages by their employers; in some cases, migrant workers have not been paid for several months. This is one of the most common reasons cited by migrant workers to change jobs. The Committee on Migrant Workers,<sup>35</sup> has addressed the issue of non-payment of outstanding wages to migrant workers who have been returned to their countries of origin.

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<sup>33</sup> General Comment No. 14 of the ICESCR underlines that States Parties like South Korea are “under the obligation to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum seekers and illegal immigrants, to preventive, curative and palliative health services.”

<sup>34</sup> South Korea has not ratified ILO Convention 155.

<sup>35</sup> The Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (or the Committee on Migrant Workers) is the body of independent experts that monitors implementation of the Migrant Workers Convention by its State Parties. It is the newest treaty body which held its first session in March 2004.

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In its contribution to the High Level Dialogue on International Migration and Development, the Committee has stated that “states should consider entering into bilateral agreements in order to ensure that migrants who return to their country of origin have access to justice in the country of employment in order to claim unpaid wages and benefits”.

### **2.3: Freedom of Association**

Under South Korean law, workers are allowed to form or to join trade unions; but migrant workers in South Korea have not been able to form a legally recognised trade union. Those who have attempted to form a migrant workers’ trade union have faced intimidation and many of the leaders of a nascent migrants’ trade union have been detained and forcibly returned to the countries of their origin.<sup>36</sup> This has further increased the vulnerability of the migrant worker community in South Korea. Without the ability to form trade unions, many migrants are unaware of their rights and lack the means to effectively articulate and campaign for their rights. For irregular migrant workers, the right to freedom of association can be an important step in moving towards the regularization of their status. In addition, the right to associate can enable migrant workers to seek effective redress for abuses perpetrated against them in the workplace by employers and other actors. In most cases, the effective exercise of the rights depends on a level of worker participation made possible only through the existence of a trade union.

The right to freedom of association by all persons is recognised in international law including ICCPR, Article 22 and ICESCR, Article 8. Both provide that States Parties such as South Korea place no restrictions in the enjoyment of this right.<sup>37</sup> This is further supported by

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<sup>36</sup> In December 2003 two leading members of the Korean migrant worker’s union, the Equality Trade Union – Migrants Branch (ETU-MB) K.I. Bidduth and R. Hossen (known as Zamal) from Bangladesh were arrested in a local rally and detained by the immigration office. When deported, four South Korean immigration officials reportedly accompanied them to Dhaka and handed them over to Bangladeshi authorities who allegedly detained them.

Later in February 2004, the then leader of the ETU-MB, Samar Thapa (a Nepali national) who was staging a sit-in protest at Myeongdong cathedral in Seoul with other migrant workers was arrested and detained in the remote Yeonsu detention centre where he continued his struggle by going on a hunger strike. In a letter sent to Amnesty International (14 March 2004) from the detention centre, Samar stated that he was “abducted” on a street as the immigration officials singled out him for specific attention; a migrant worker accompanying him was not arrested. When he was arrested, the police authorities did not furnish Samar with any arrest warrant nor did they show him any identification.

In May 2005, the leader of the Migrant Workers’ Trade Union (MTU, successor to the ETU-MB) was arrested by over 20 immigration and police officials. He was detained until April 2006 when he was released on health grounds.

<sup>37</sup> According to ICCPR, Article 22, “1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right”, and according to ICESCR, Article 8,

1. The States Parties to the present Covenant undertake to ensure: (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization

ILO Convention No. 87, Article 2, according to which both workers and employers, without any distinction, have the right to freedom of association.<sup>38</sup>

## **2.4: Right to freedom of movement**

Migrant workers in South Korea have described to Amnesty International how their identity documents, including passports, visa papers and identity cards, had been confiscated and retained by their employers in breach of their right to identity documents. This has made many migrants in South Korea particularly vulnerable to detention and deportation to their countries of origin, despite their possessing the right to work and remain in South Korea, as there are unable to prove their legal status in the country. The confiscation of documentation such as passports and visa papers hinders the migrant workers' right to liberty of movement which violates ICCPR, Article 12.<sup>39</sup> Lacking documentation, they also face greater difficulty in getting redress from government authorities if they suffer from human rights violations, such as if their wages are withheld by their employers.

## **2.5: Right to liberty and security of the person**

UDHR: Article 3: Everyone has the right to life, liberty and security of person.

Since the implementation of the EPS Act, irregular migrants in South Korea remain at constant risk of arbitrary arrest and detention, often in very poor conditions, followed by forcible return to their countries of origin. International laws and standards including the ICCPR,<sup>40</sup> the UDHR and the Migrant Workers' Convention recognise that no one, regardless

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concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others".

<sup>38</sup> According to ILO Convention No.87, Article 2, "Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization."

<sup>39</sup> ICCPR, Article 12:

"1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own."

<sup>40</sup> ICCPR, Article 91:

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

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

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

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of their legal status in the country, shall be subjected to arbitrary arrest or detention and that everyone has the right to liberty and security of person. In addition, such instruments provide that everyone is entitled to effective protection against violence, physical injury, and intimidation by public officials or by others.

International human rights standards, such as the Standard Minimum Rules for the Treatment of Prisoners provide for the protection, without discrimination, of the human rights of persons subjected to detention or imprisonment. In addition, the UN Working Group on Arbitrary Detention (WGAD) has adopted Deliberation No. 5 concerning the situation of immigrants and asylum-seekers.<sup>41</sup> This sets out ten principles in respect of people held in custody and a number of safeguards governing detention. The principles provide that immigrants and asylum-seekers are informed in a language they understand the nature of and grounds for the decisions of the government authorities and those placed in custody are informed about the internal regulations and applicable disciplinary rules; that they can communicate with the outside world by telephone or fax or electronic mail and can contact lawyers, consular representatives and relatives; that those placed in custody are brought promptly before a judicial or other authority. The principles also provide that the detention period is not unlimited or of excessive length; that the detained immigrant or asylum-seeker can appeal for a remedy against the detention order and that the United Nations High Commissioner for Refugees (UNHCR), International Committee of the Red Cross (ICRC) and duly authorized NGOs have access to these detention facilities.

### **2.5.1: Protection from arbitrary expulsion and threat of *refoulement***

During the two year period of the implementation of the EPS regime, the South Korean authorities have forcibly returned thousands of migrant workers to their country of origin. International law requires that deportation procedures must be in accordance with due process of law and include guarantees that fundamental human rights will be respected and protected.

Migrant workers are entitled to protection against arbitrary or collective expulsion under ICCPR, Article 13.<sup>42</sup> Any expulsion decision must be assessed on an individual basis and be subject to due process.<sup>43</sup>

In addition, the fundamental principle of non-*refoulement* requires South Korean authorities to ensure that no one is returned to a country where there are substantial grounds

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5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

<sup>41</sup> See Working Group on Arbitrary Detention, Deliberation No.5 concerning the situation regarding immigrants and asylum-seekers, (E/CN.4/2000/4, 28 December 1999)

<sup>42</sup> Although ICCPR, Article 13 only refers to aliens lawfully in the territory of a state, the Human Rights Committee has stated that the purpose of Article 13 is clearly to prevent arbitrary expulsions. Thus, the requirements of Article 13 would not be satisfied with laws or decisions providing for collective (or mass) expulsions. See General Comment 15, *The position of aliens under the Covenant*.

<sup>43</sup> It is important to note that collective (or mass) expulsions are different from the deportation of a number of individuals at once; the latter is permissible provided each individual has proceeded through an individual procedure, whereas the former is never permissible.

for believing that she or he would be in danger of being subjected to torture. The South Korean government should ensure that its actions do not violate international law and standards such as the Convention against Torture<sup>44</sup> and the 1951 Refugee Convention<sup>45</sup> which states that none of its States Parties should expel a person to another state where his life or freedom is under danger.

The South Korean authorities have also reportedly failed to submit applications for asylum to a fair refugee determination procedure effectively denying asylum-seekers their fundamental human rights. Immigration officials admitted to Amnesty International in February 2006 that they were not considering claims of irregular migrant workers who had stayed for three years or more prior to applying for asylum.

### 3: South Korea's regulation of migrant workers

In January 1995, 13 Nepali trainees made history at the Myongdong Cathedral in Seoul. They organized a protest to bring public attention to the human rights violations faced by migrant workers and trainees in South Korea.

Their rally highlighted widespread abuses such as verbal and physical violence in the workplace, the seizure of passports by employers, long hours of work in poor conditions, delays in paying wages and the lack of care or compensation for trainees and migrant workers who were injured or killed at work.

Since 1995, there have been some improvements; voluntary organizations have set up several counselling centres and the government has taken steps to protect migrant workers and trainees.

However, many of these abuses – including lack of access to justice for migrant workers and trainees who have suffered abuses, the failure of employers to inform workers of their rights' and continued restrictions on the mobility of migrant workers and trainees – means that tens of thousands of workers in South Korea continue to have very limited protection against human rights violations.

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<sup>44</sup> Convention against Torture, Article 3:

1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.
2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

<sup>45</sup> Convention relating to the Status of Refugees, 1951, Article 33

1. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.
2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.

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Migrant workers in South Korea come from more than 90 countries including Bangladesh, China, Indonesia, Mongolia, Nepal, Pakistan, the Philippines, Sri Lanka and Viet Nam.<sup>46</sup> Almost 95 per cent of migrant workers in South Korea work in jobs classified as low-skilled work.<sup>47</sup>

Until the late 1980s, South Korea was a labour exporting country. It only emerged as a labour importing country around 1987 when domestic workers from the Philippines began to be employed in Seoul. At that time, there were around 6,500 migrant workers in South Korea, all of them “irregular.”

South Korea’s rapid economic growth raised the income and expectations of Korean workers. The demand for manual and unskilled workers in small and medium sized companies – so-called ‘3D’ (dirty, dangerous, and difficult) jobs - was increasingly filled by low-paid migrant workers. By the end of 2002, nearly 290,000 migrants were working in South Korea, 80 per cent of them irregular; after the onset of the EPS, they had declined to a still substantial 189,000 irregular migrant workers, nearly 52 percent of the total.

The following section discusses in more detail the trainee system which has been in operation since the early 1990s, and the Employment Permit System (EPS) which was introduced in 2004. The EPS was intended to overcome the shortcomings of the trainee system both in terms of protecting migrant workers’ rights and by ensuring that Korean industry could fulfil its need for large numbers of migrant workers. However Amnesty International is concerned that it has as yet failed to achieve this objective.

### **3.1: The trainee system**

The Joint Venture Trainee System (JVTS) was established in 1991. In May 2005, 7,352 people were working in South Korea under this system. The JVTS allows companies that have overseas branches to bring non-Korean staff to South Korea for training. The training lasts for six months, with the possibility of a further six-month extension. There is a minimum wage which employers are legally bound to pay, and trainees can claim compensation for industrial accidents and health insurance. However, employers frequently ignore these rules and safeguards. A study in 2004 showed that 53 per cent of JVTS trainees surveyed paid for all or some of their treatment for industrial injuries and only 3.8 per cent had received benefits from the industrial accident compensation and insurance system.<sup>48</sup>

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<sup>46</sup> The largest group by nationality, among the migrant population was Chinese nationals, numbering 62,058 (45 per cent), 54.1 per cent (33,546 people) of whom were Korean-Chinese. The second largest group was Vietnamese nationals (7.4per cent), followed by Bangladeshis (6.9 per cent), Filipinos (6.5 per cent) and Indonesians (6.1per cent).

<sup>47</sup> Yoo Kil-sang, “Migrant Workers’ Labor Market in Korea,” Paper presented at the 5<sup>th</sup> Asian Regional Congress of the International Industrial Relations Association (IIRA) in Seoul, June 2004, p.4.

<sup>48</sup> Korea Labor Institute, 2004, p.89.



Following lobbying by the Korea Federation of Small and Medium Business (KFSB), the government also introduced the Industrial Trainee System (ITS) to enable small and medium-sized manufacturing firms with no more than 300 employees to take on foreign nationals as trainees. The recruitment, placement, training and management of trainees are organized by the Korea International Training Cooperation Corps (KITCO) which was established in 1994.<sup>49</sup> ITS trainees work in manufacturing, construction, agriculture, fisheries and the service industries. Since 2002, there has been a decline in the number of ITS trainees; recent surveys show that there were 26,516 trainees in May 2005. A significant reason for this fall in numbers of ITS trainees could be the onset of the EPS regime since August 2004. Under the Post-training Employment Program, ITS trainees who work for a firm for a year without interruption qualify to live and work in South Korea for another two years as workers rather than as trainees.

Since 1995 all foreign trainees have been covered by Industrial Accident Compensation Insurance, National Health Insurance and by the Minimum Wage Act. Trainees are also given some limited protection under certain provisions of the Labor Standards Act, for example those dealing with forced labour and violence in the workplace.<sup>50</sup> Their rights have also been defined in a Supreme Court ruling<sup>51</sup> and the 1995 Guidelines on Protection and Regulation of Industrial Trainees.<sup>52</sup>

However, both the JVTS and the ITS continue to deny trainees the legal status of “workers” and employers rarely fulfil their obligations to their trainee employees. Because of their status as “trainees” and because they are not Korean nationals, industrial trainees are not given equal protection under the law with Korean workers.<sup>53</sup> There are numerous reports of employers’ discriminatory treatment and abusive behaviour towards foreign trainees. Some

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<sup>49</sup> The KFSB took the lead in implementing the ITS including in areas such as recruitment, placement, training, apart from management of trainees.

<sup>50</sup> Yoo Kil-sung, “Migrant Workers’ Labor Market in Korea”, June 2004, p.2.

<sup>51</sup> According to Supreme Court ruling 95Nu2050 of 22 December 1995:

“Upon his or her receipt of (a) industrial training certificate, even if the industrial trainee closed the labor contract which is drafted according to the guidelines of the Ministry of Commerce, Trade and Employment with his or her employer, the contractual obligation delivered by both parties are still valid even after the training program. Therefore, if he or she supplied labor to his or her employer (for the) purpose of receiving compensation for his or her labor from the employer, that individual is considered as an employee on the context of the Labor Standards Act Article 14.”

<sup>52</sup> The Guidelines on Protection and Regulation of Industrial Trainees were passed on 14 February 1995 and revised on 23 February 1998. The Guidelines, Article 8 states that, “the Constitutional rights of trainees are protected by the Labor Standards Act, Industrial Safety and Health and Industrial Insurance Law and Medical Insurance Law in the following areas: a) Assault and Forced Labor b) Wage Compensation directly and paid by employer in full amount ... and... on time c) Training period, holidays and day-offs, overtime, working holidays d) guaranteed amount of minimum wage e) safety and health in industrial setting f) benefits on Medicare and Industrial Accident Insurance.” (as cited in Hwang, Cha and Hong, “Rights of Migrant Workers: Focusing on Labor Rights Provided in Relevant ILO Conventions,” Unpublished Paper, December 2005/January 2006, p.24)

<sup>53</sup> Hwang, Cha and Hong, “Rights of Migrant Workers: Focusing on Labor Rights Provided in Relevant ILO Conventions,” Unpublished Paper, December 2005/January 2006, p.24

employers take advantage of the weak legal protections and lack of effective access to mechanisms for redress to avoid paying wages, or to physically abuse or insult them.<sup>54</sup>

A number of non-governmental organizations (NGOs), including the Joint Committee for Migrant Workers in Korea (JCMK), have called the ITS a “contemporary form of slavery.”<sup>55</sup> Not surprisingly, industrial trainees choose to leave their workplaces and run the risk of becoming irregular workers rather than continue to work in such conditions. By April 2004, it was estimated that nearly 53 per cent of industrial trainees had left their industrial trainee positions and moved to better paying jobs, many as irregular migrant workers.

In May 2005, in view of the persistent and serious criticisms of this system, the then Korean Prime Minister, Minister of Labour and Minister of Justice announced that the government would abolish the current industrial trainee programme by January 2007.<sup>56</sup> While the South Korean government appears to be on course to abolish the ITS, it has not announced any plans to abolish the JVTS; instead the government is reportedly renaming those working under the JVTS as “Technical Trainees” and maintaining the system. The South Korean government is also believed to be stepping up efforts to bring migrants under a more comprehensive and effectively managed migration system such as that envisaged under the EPS Act.

### **3.2: Employment Permit System (EPS)**

The EPS Act entered into force in August 2004. It was 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. Under the EPS, employers who are unable to find a Korean worker to fill a vacancy can obtain a permit from the Ministry of Labour to employ a foreign national on a one-year contract. The contract can be extended to a maximum of three years.

The EPS Act prohibits discrimination against foreign workers (Article 22).<sup>57</sup> It also recognizes their right to have access to a system of redress against employers in cases of overdue wages and industrial accidents and also to national health insurance.

However, the EPS appears to have had little impact on health and safety at work for migrant workers, many of whom continue to work in unsafe or dangerous conditions. Under safety rules, all employers are obliged to conduct monthly medical check-ups for their staff

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<sup>54</sup> Seol Dong-hoon, “Global Dimensions in Mapping the Foreign Labor Policies of Korea: A Comparative and Functional Analysis,” *Development and Society*, Volume 34, Number 1, June 2005, p.100.

<sup>55</sup> Use *Ibid*, p.101.

<sup>56</sup> JoongAng Ilbo, “Migrant ‘trainee’ program to be abolished by 2007”, 12 May 2005.

<sup>57</sup> 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.

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and to check the safety of their machines. However, Amnesty International's research suggests that very few companies conduct such checks and that migrant workers continue to be exposed to industrial hazards, such as dangerous chemicals, with little protection.

The introduction of the EPS system has been followed by what appears to be a government's decision to arrest and deport all the thousands of migrant workers who have become irregular workers. This has taken the form of operations by police and immigration officials since November 2004 which has already resulted in thousands of irregular and other migrant workers being arrested, detained in detention facilities with very poor facilities and forcibly returned to their countries of origin. The operations have intensified the intense pressures felt by many migrant workers.

In November 2003, a few days before the authorities began an intensive crack-down on irregular migrant workers, Tharaka, a 31 year-old Sri Lankan undocumented migrant worker, threw himself in front of an underground train on 11 November 2003. He committed suicide after finding out that he had been excluded from the South Korean government's legalization measures as these only applied to migrant workers who had been in South Korea for less than four years. Tharaka had initially arrived in South Korea in January 1996. He had been working for four years in a small company in Gwangju, Gyeonggi-do. He was born in Chilil in Sri Lanka when he was 25 years old. He worked in a gas company and a tent factory where he worked for 12 hours daily. His monthly wages were approximately 750 US dollars. He committed suicide five days before he was going to forcibly returned from South Korea.

The EPS also sought to regularize the situation of irregular migrants. For example, an addendum to the EPS allowed irregular foreign workers who had been in South Korea for three years or less by 31 March 2003 to work in the country for a further two years, with certain conditions.<sup>58</sup> This resulted in a sharp decrease in the number of irregular migrant workers. However, this limited and selective legalization has not solved the problem of irregular migrant workers; as of June 2006, there were at least 189,000 irregular migrant workers in South Korea.

The implementation of the EPS has raised a number of concerns. Two key concerns are the continued presence of large numbers of irregular workers and the difficulties faced by migrant workers who do have contracts and want to change employers. Although EPS Act, Article 22 states unambiguously that migrant workers have equal rights, the EPS fails to

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<sup>58</sup> Under the legalization programme for irregular migrant workers, any irregular migrant who had resided in Korea for less than three years as of March 31, 2003, was permitted to work in the industry designated by the Ministry of Labour for a maximum period of two years, if they voluntarily reported to the relevant authorities and went through a specified procedure. Anyone who had lived in Korea for three years or longer but less than four years as of 31 March 2003, and departed from the country after voluntarily reporting to the competent authorities and going through a specified procedure, was allowed to re-enter Korea to work for up to a total of five years, including the length of their previous residence. Those who had lived in Korea for four years or longer as of 31 March 2003 were urged to voluntarily depart from Korea before 15 November 2003, after which they would be subject to arrest and forced deportation.

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provide a mechanism for holding accountable those who violate this provision. The South Korean government should ensure that the EPS regime is compatible with international human rights law and standards and provides for the protection of the human rights and labour rights of migrants.

## 4: Recruitment

An irregular migrant worker from Indonesia recruited under the EPS in 2004 told Amnesty International that he left his job because it turned out to be very different from the job he had been promised; the work was dangerous and so poorly paid that he could not repay the loan his family had taken out to pay for his recruitment in South Korea. He found another job with better pay, but his employer would not agree to sign the necessary papers. The restrictions on mobility, coupled with the pressure of the debt incurred by his family, meant he had little choice but to leave and become an irregular migrant worker, despite the fact that as an irregular worker he could be detained at any time and forcibly returned to Indonesia.

Under the EPS the South Korean government takes a leading role in the process of employing migrant workers, including their selection and placement. The Act provides for a system of bilateral Memoranda of Understanding that the South Korean government can enter with labour exporting (sending) countries.<sup>59</sup>

An aim of Memoranda of Understanding between governments under the EPS was to ensure greater transparency during the recruitment process. This is an important element as Amnesty International has received many reports that migrant workers have been charged excessive recruitment fees by agencies or individuals in their countries of origin. As a result, many migrant workers find themselves with large debts. Once in South Korea, many find that they are unable to pay off their debt and so they are effectively in a position of bonded labour. Because they are paid low wages, which are sometimes paid late or not at all, many migrant workers have seen their debts increase, forcing them to take the risk of becoming undocumented/irregular migrant workers in order to obtain better wages.

The South Korean government has taken action to put an end to improper recruitment practices. For instance, after discovering improper job-brokering activities in Indonesia, the South Korean government suspended the recruitment of Indonesian workers under the EPS from June 2005. In April 2005, the South Korean government scrapped the quota of Nepalese trainee workers for 2005 after two Nepalese recruitment companies were found to have been involved in overcharging prospective workers.<sup>60</sup> However, there is evidence that a number of labour-sending countries are failing to stop exorbitant fees being

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<sup>59</sup> As of August 2004, South Korea has signed bilateral agreements under provisions of the EPS Act with six countries – the Philippines, Sri Lanka, Mongolia, Indonesia, Thailand and Vietnam and anticipated 25,000 workers to be sent from these countries.

<sup>60</sup> Nepal Samacharpatra, 11 April 2005

charged by recruitment agencies.

## 5: Discrimination in freedom to seek work

Five workers from Nigeria -- Prince Kossy, Julius, Chinedu and Tony -- explained how they had arrived as legally employed workers under the EPS system, but were forced to become undocumented workers as a result of actions by their employer against whom they had no means of redress. The five men had signed a paper which they later discovered allowed their employer to allocate some of their promised wages to insurance payments. They asked the employer to increase their wages to make up the amount of the insurance payments so that their pay would not be cut. The employer interpreted their request as collective action -- despite the fact that the men had said they would continue to work for the company even without an increase in wages -- and sacked them. The employer then lodged a report with the authorities claiming that the men had deserted their work without permission. The men had no choice but to become undocumented migrant workers. When Amnesty International met them in September 2004, the men were desperate. They had no jobs or money and feared they could be arrested and deported at any time.

Under the EPS migrant workers who want to change workplace continue to face severe restrictions.<sup>61</sup> For example, migrant workers can change their jobs no more than three times and only with the permission of the employer. Migrant workers are unable to change jobs because of health problems that prevent them from continuing to do a particular job, or when they have suffered human rights violations in a particular workplace unless it (serious health problems and/or human rights violations) has been officially reported.<sup>62</sup> A recent study showed that the majority of migrant workers interviewed (81.8 per cent) found it difficult to change workplaces under the EPS.<sup>63</sup> In some cases, their situation became even more difficult after they highlighted abuses by their employers which made them want to change jobs.

<sup>61</sup> The EPS, in principle, prohibits workers from changing workplaces except exceptional cases defined in the Act on the Foreign Workers Employment, Article 2 etc;

1. *In case an employer intends to cancel labour contract during the contract period or to reject the renewal of contract after expiration for justifiable reasons;*

2. *In case it is deemed impossible to continue to work in the workplace because of shutdown, business closure and other reasons not attributable to foreign worker;*

3. *In case an employment permit is cancelled or any restriction is imposed on employment of foreign workers pursuant to Article 19 and Article 20, respectively; and*

4. *In case there are other reasons determined by the Presidential Decree, i.e. in the event a foreign worker is not fit to continue work at the workplace due to an injury but is able to work at another workplace.*

Changing workplaces is restricted to a total of three times for migrant worker recruited under the EPS. But in any case of change due to the reason stated in 2 or 4, one additional change may be allowed.

<sup>62</sup> According to Seol (June 2005), "Changing the workplace has also not been managed properly, due to the inexperience of civil servants in the Employment Security Centers under the Labor Ministry, and the absence of translation services. Also, there is no strict application of labor inspections for migrant workers, it is difficult to detect unlawful situations." (p.104).

<sup>63</sup> Congressional research Group on Fundamental Labour Rights, "A Year after EPS, Survey on migrant workers standard of living, 2005, p,8-9.

Andri from Indonesia found that his monthly wages had been reduced from the contracted 800,000 won (approximately US\$830) to 500,000 won (approximately US\$520). The employer told Andri he would have to accept the lower wages or leave, but he would not sign the necessary documents to allow Andri to change jobs legally.

Under the EPS migrant workers are given one-year contracts which have to be renewed annually. If a migrant worker is refused an extension to a contract and is unable to find alternative work within one month, they are required to leave the country. Given this ever-present risk of dismissal and deportation, migrant workers often consider they have no choice but to accept poor working conditions and are less likely to seek to exercise fully their rights.

## 6: Health and safety at work

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.<sup>64</sup> 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 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.<sup>65</sup>

According to the women's testimonies, the company appears to have used n-hexane from the beginning. However, initially the room where n-hexane was used was spacious and well ventilated. However, the room was later cut in half and the new restructured room lacked ventilation. The women said that Korean workers did not work in the rooms where n-hexane was used.<sup>66</sup>

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. Indeed, when the women were no longer able to walk, the employer, fearing negative publicity, reportedly confined them to their dormitory for 40 days and

<sup>64</sup> N-Hexane, a colourless and odourless substance, can cause multiple nerve damage when inhaled repeatedly.

<sup>65</sup> Testimonies given to Choi Eun-Mi, of the Ansan Migrant Shelter (AMS) and to Amnesty International.

<sup>66</sup> Donghwa Digital employed a hundred employees, half of whom were Korean nationals and the other half were Thai nationals.

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 organization, received treatment at a local hospital. However, three of the women were returned by their employers to Thailand where they were unable to access appropriate medical help. The three -- Rhochana Nusaram, 31, Saraphee Yindee, 31, and Sirinan Phinihamaneerat, 37 – later arrived in Seoul for treatment at a state-funded hospital. It is reported that 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.

This case presents a clear example of multiple discrimination faced by many migrant workers, and the particular vulnerability of women migrant workers. These workers, on the basis of their nationality, were assigned more dangerous tasks than their Korean colleagues and were not given adequate training or protection. When the women fell ill, they were vulnerable to denial of their rights and were subjected to arbitrary detention by their employer and denied access to appropriate health care.

Migrant workers in South Korea often work in dangerous conditions. Many work long hours on machines that are not safe and about which they receive little training. Others work with dangerous chemicals with little protection equipment or safety training. Many migrant workers interviewed by Amnesty International reported that they had witnessed or been the victims of accidents in the workplace. According to the Ministry of Labour, around 1,300 migrant workers suffered workplace accidents in the first half of 2004, an increase over previous years.<sup>67</sup>

Most migrant workers have at best a basic knowledge of Korean, which is problematic as instructions about working practices or the operation of machinery are generally available only in Korean. This can have serious consequences for their health and safety especially when, as is often the case with employment undertaken by migrant workers, the work is difficult, dangerous and dirty. A number of migrant workers interviewed by Amnesty International complained that they worked in more dangerous conditions than their Korean colleagues.

The Ministry of Labour has stated that all migrant workers, including irregular workers, are eligible to benefit from the industrial accident compensation scheme. However at present, migrant workers appear to be denied this right in many cases. Indeed, some irregular migrant workers who have suffered long-term or permanent injuries as a result of industrial accidents have reportedly been forced to leave South Korea immediately after medical treatment as handicapped persons without compensation.<sup>68</sup>

<sup>67</sup> Ministry of Labor as quoted by Associated Foreign Press and *The Korea Times*, 17 January 2005. In 2003, 2,336 migrant workers were injured; an increase from 1,760 in 2002, 1,278 in 2001 and 1,197 in 2000.

<sup>68</sup> Spokesperson for the Migrant Workers' House cited in *The Korea Times*, 17 January 2005.

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“I was working in a company in Yesan, Chungnam Province. On 15 January 2005 I was hit in the head by a 500kg heavy sand bag; the ligaments in my leg were also torn...”

“When I was injured, the employers took me to a small clinic, where I stayed for three days and I received inadequate treatment. Later I was taken to Dankook Hospital where I was operated upon; I received treatment there for six months. While the doctor advised me not to work, the employers made me work. After one year, the manager did not let me get physiotherapy treatment...”

“Although I received some money for treatment, I did not receive insurance money as the boss did not report my injury to the insurance company. My employers swore a lot but it was not a problem as I did not speak Korean and did not understand them. They did not allow me to leave the dormitory where I lived; I could only talk to my friends over the phone but I could not meet them. The company refused to renew my contract and tried to get me deported on 25 January 2006. I knew it from one of my work colleague so I ran away from there...”

“I live at my friend’s place. Because of my injured leg, I cannot work. So I cannot pay the debts that I have incurred back home. My daughters can’t study and my family members suffer in poverty. My eldest daughter earns some money by breaking rocks in Nepal; it is hard manual work. My passport is with immigration authorities and I am now an undocumented migrant worker.”

YB, a Nepali migrant worker, April 2006

Many injured migrant workers are reported to have received inadequate medical treatment and compensation. In some cases, employers of injured workers have refused to renew contracts, thereby denying them the right to stay in South Korea legally, and informed the immigration authorities. At risk of deportation at any moment, injured irregular workers have sought help from migrant workers’ organizations. Those who are caught and deported face a life of even greater poverty and economic insecurity in their home country. Others continue to fight for compensation in South Korea.

“I worked for a plastic manufacturing company – Misung Industry – in Daegu as an undocumented migrant worker for two years. I worked for 12 hours a day. The payment was right on time, but the condition of the work environment was very poor. Because of the chemical smoke around the working area, I had much pain in my lungs. Masks were not helpful. I had been having pains around my ribs for a year...”

“On 7 October 2005, my left hand glove got stuck and rolled into the plastic making machine; I could not remove my hand. It was not until my left shoulder was about to roll into the machine that the machine was stopped. I heard later that people could hear the sound of the bones being ground by the machine. The machine was switched off by people next door at another company who heard the screams from the scene. When taken out of the machine, my arm was without flesh or bones. Only clothes and skin were left. One person from the company next-door cut off the clothes and ligaments with a pair of scissors. There was no First Aid. I was then taken to an orthopaedic surgery. Some of Korean women workers who witnessed the scene were shocked and one of them fainted”.

“The company was not insured for either industrial accident compensation insurance or health insurance. The company kept the accident in secret. When my friends came to see me, the president of the company initially denied knowledge of my whereabouts and so didn’t tell them which hospital I



was admitted to for treatment. My friends became suspicious of her and informed a migrant workers' centre and the centre made enquiries to the company about my whereabouts. The company refused to give the name of the hospital stating that I had suffered a minor accident. It was only after the centre told the company it would be reporting to the police that the president of the company told the centre where I was. In contrast to what the president said, my injury was very serious. When asked why she had lied, the president of the company said she was going to send me back to Nepal after my treatment was finished. I received treatment for 5 months; since then, the company has not paid for the physiotherapy treatment, nor has it paid for living expenses...."

"I am paying for treatment with my own savings but staying in Korea is another problem. I tried to apply for a visa for temporary stay for treatment, but the company refused to help me. Because I do not have a place to stay, I am staying at the house of one of my friends and paying for my treatment. I still have much pain in the ligaments. I cannot work at all. I would be able to receive treatment at home in Nepal, but it would cost a lot. I don't want to go back to Nepal before getting compensation."

BS, a 33-year-old Nepali worker, April 2006

The failure of many employers to provide mandatory health insurance for migrant workers has serious repercussions for both men and women migrant workers.

### **6.1: Lack of mandatory health insurance on women migrant workers**

There are particular concerns about the ways the lack of mandatory health insurance affects women migrant workers who may become pregnant but cannot afford to pay for appropriate treatment or undertake regular check-ups. Reports suggest that even after miscarriages many migrant women continue to undertake the same heavy workload. In a 2002 survey conducted by the Joint Committee for Migrant Workers in Korea (JCMK), "A Report on the Actual State of Human Rights of Women Migrant Workers," 66.7 per cent of workers who became pregnant did not inform employers for fear of dismissal and 56 per cent of them had had miscarriages.

According to the Women Migrants Human Rights Center, in the case of women trainees, pregnancy can be judged by employers as a justifiable reason for deportation. Such practices are in violation of CEDAW, Article 11, which calls on States Parties to "take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights," and in particular, Article 11 (f), which calls on states to ensure women workers "The right to protection of health and to safety in working conditions (for women), including the safeguarding of the function of reproduction."

Such practices also violate ICESCR, Article 10 (2) that calls on States Parties such as South Korea to recognize that "(s)pecial protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits." In addition such practices do not appear to be in line with ICESCR, Article 12 (1) which calls on States Parties to "recognize the right of everyone to the enjoyment of the highest attainable standard of

physical and mental health.”

## 7: Pay

E, an Indonesian national recruited under the EPS system, found on arrival in South Korea that his wages were much lower than promised by the company and almost half the salary of Korean workers. He was required to work seven days a week with only one day off each month. His salary of 600,000 won (approximately US\$600) per month, including overtime, meant that he could not pay the debts that he and his family had incurred in financing his recruitment. Under the EPS, E could only stay in South Korea legally for three years, barely enough time to pay debts incurred in financing his recruitment and travel to South Korea, so he became an irregular migrant worker to try and pay off the family debt.

Many migrant workers in South Korea are paid less than the prescribed national minimum wage, and their pay is often withheld for long periods. Amnesty International’s research suggests that these discriminatory practices are widespread and frequently go unchallenged in large part because of the precarious legal status of many migrant workers.

Trainees also work very long hours for low pay. According to a 2003 survey by the Korea Labor Institute,<sup>69</sup> JVTs trainees worked on average 11 hours a day. Their pay was delayed, on average, by 7.2 months, and 25.9 per cent of those interviewed were not paid for overtime. Although in reality JVTs trainees did the same amount of work (including overtime) as other workers, their status as trainees meant that employers paid them less. This is because JVTs trainees are only paid an “allowance” for “training” in South Korea, while the remainder of their wages was paid in their country of origin.<sup>70</sup>

R came to South Korea from the Philippines in August 2003 as a trainee. He and Thai and Cambodian colleagues worked for a company which had withheld their wages for three months. Their Korean colleagues had left to find work elsewhere and the company had been reported to the local labour office. R did not want to become an irregular migrant worker but hoped to work for another company legally. When R approached the KFSB for help with a transfer to another workplace, they told them that if he refused to continue to work for his company he would be deported.

In addition, according to NGO activists interviewed by Amnesty International, millions of dollars of unpaid wages have been withheld from migrant workers. Very few of those who were forcibly returned to their home countries received the wages they were due from employers. 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

<sup>69</sup> Korea Labor Institute, *Joint Venture Trainees labour market – an investigative report*, 2004, p.85. (In Korean)

<sup>70</sup> Korea Labor Institute, *An Analysis of the labour market for unskilled foreign workforce*, 2004, p.11. (In Korean)

forcibly returned. Employers also reportedly withhold severance pay from many migrant workers at the end of their contracts.

Women are particularly vulnerable to discrimination in the payment of wages. More than 35 per cent of all migrant workers in South Korea are women and their numbers are increasing. Most are employed in manufacturing, the service sector or sex-related industries. Most women migrant workers experience double or triple discrimination: as migrant workers with legal work permits, as women and as irregular workers.<sup>71</sup> Unequal pay for men and women without good cause is prohibited in South Korea by law.<sup>72</sup> Nevertheless, employers continue to pay women migrant workers less than men migrant workers for equal work. A survey conducted in 2002 by the NHRC, “A Fact Finding Report of the Human Rights of Migrant Workers Living in Korea,” indicates that women migrant workers earned on average 10 per cent less than their male counterparts. This practice violates ICESCR, Article 7(a) (i) which guarantees women “conditions of work not inferior to those enjoyed by men, with equal pay for equal work.”

## 8: Violence and abuse in the workplace

One in every five migrant workers reportedly suffers from direct physical violence in the workplace and more than one in three migrant workers are verbally abused by their Korean employers or colleagues.<sup>73</sup>

“S”, an industrial trainee from Nepal, was dragged out of his dormitory by his employer after he refused to work an extra four hours after his 13-hour night shift. Unable to bear the conditions of work and ill-treatment meted out to him by his employer, “S” complained to the recruiting agency and the KFSB. While “S” was visiting the agency, his company reported that he had left work without permission. When the agency next called him to the office, the police were waiting for him and detained him as an irregular migrant worker. The KFSB then refused to help “S” on grounds that he had become irregular. Later “S” was not allowed to give testimony to a parliamentary inspection team that was investigating problems of the ITS trainees because of his undocumented status. In the absence of any mechanism for obtaining redress for the abuses against him, “S” returned to Nepal.

Women migrant workers are reportedly at risk of sexual harassment and violence. A woman migrant worker from Nepal told Amnesty International that it was usual for women

<sup>71</sup> According to the ILO, women are particularly at risk of discrimination, exploitation and abuse because of their status as women, as migrants or non-nationals, and often as workers in gender-segregated labour markets – for example, in sweatshops. (ILO, South-East Asia and the Pacific Multidisciplinary Advisory Team, Online Gender Learning and Information Module, 1998)

<sup>72</sup> The Constitution, Article 11, the Labor Standard Act, Article 5 and the Employment Act for Gender Equality, Articles 8 and 9 prohibit unequal pay on the basis of gender.

<sup>73</sup> Congressional Research Group on Fundamental Labour Rights, *A year after EPS, Survey on migrant workers' standard of living*, 2005, p.5.

migrant workers to suffer sexual harassment at work carried out by their 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 room door, shouting at her to open the door.<sup>74</sup>

According to the 2002 survey conducted by a prominent NGO Coalition, the Joint Committee for Migrant Workers in Korea, "A Fact Finding Report of the Human Rights of Migrant Workers Living in Korea," 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 said they were threatened by their employers with forcible return to their home countries if they reported the incidents.

Six Sri Lankan women working in an alcohol manufacturing company described to Amnesty International<sup>75</sup> 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 the last week of 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 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.

The women were eventually helped them to leave in December 2005 by a priest from the Ansan Migrant Workers' Centre. The women have no money and would like to work, but they have no visas as these have been withheld by the company president. The women remain presently at the Centre waiting for result of a police investigation.

<sup>74</sup> Amnesty International interview, October 2004.

<sup>75</sup> Amnesty International interview, April 2006.

South Korea has obligations under international law to prevent, investigate and punish acts of violence against women, whether they are perpetrated by state or non-state actors. CEDAW General Recommendation No.19 defines ‘gender-based violence’ as a form of ‘discrimination’ against women under CEDAW, Article 1. States Parties to the CEDAW are obliged *inter alia* “to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise” (CEDAW, Article 2(e)).

## 9: Trade unionists under attack

“I simply pointed out problems and tried to solve them. But the Korean authorities attempted to brand the migrant workers’ movement as terrorist activities... I think the issue of migrant workers is one of the serious problems in Korea.”

Mohammad Anwar Hossain, interview with Amnesty International, May 2006.

Mohammad Anwar Hossain, a Bangladeshi national and leader of the Migrant Workers’ Trade Union (MTU), was arrested by the Korean Immigration Bureau on 14 May 2005 for overstaying his visa. He was arrested by more than 20 immigration and police officials and reportedly assaulted. Anwar Hossain had been actively involved in the migrant workers’ union movement since arriving in South Korea in 1997. The day before his arrest, a national paper had printed an article in which he had criticized government policy towards irregular migrant workers.

His unexpected arrest took place while the MTU was awaiting registration. However, the Ministry of Justice denied that he had been targeted for his union activities and claimed that he was arrested as an irregular migrant worker. Anwar Hossain was released on bail in April 2005 after the MTU paid 5 million won (approximately US\$5,200) for “a temporary cancellation of detention” so he could receive medical treatment for a mental condition he suffers following prolonged detention. He is currently receiving treatment in a medical facility in Seoul.

Under South Korean law, trade unions must register with the Ministry of Labour in order to operate legally. In June 2005, the Ministry rejected the application of the Migrant Workers Trade Union (MTU) on the grounds that a majority of its members were irregular/undocumented migrants. The Ministry reached this decision despite a Supreme Court ruling in 1997 that every worker, regardless of their legal status, should be guaranteed basic rights, including the right to organize.<sup>76</sup>

South Korea is obliged “to respect and to ensure to all individuals within its territory and ‘subject to its jurisdiction’”<sup>77</sup>, freedom of association as provided for in ICCPR, Article 22(1) which includes the “right to form and join trade unions for the protection of his interests.”

<sup>76</sup> *Korea Times*, 22 May 2005.

<sup>77</sup> ICCPR, Article 2(1)

In addition, ICESCR, Article 8(1) (a) to (d) provides further detail regarding South Korea's obligations in relation to the right to form and join trade unions, and the rights of trade unions to organize nationally and to function freely.

Samar Thapa, a Nepali national and a leader of the Equality Trade Union -- Migrants Branch of the Korean Confederation of Trade Unions (the predecessor of the MTU) was arrested in February 2004. At the time of his arrest, he was taking part in a sit-in protest by migrant workers at Myeongdong cathedral, Seoul.

He was taken to Yosu detention centre where he went on hunger strike to protest against his detention and to draw attention to the situation of migrant workers in South Korea.

In a letter sent to Amnesty International from the detention centre in March 2004 he stated that he had been singled out and picked up in the street by immigration officials. The immigration officials did not produce an arrest warrant or any identification.

Samar Thapa's subsequent deportation to Nepal on 1 April 2004 was shrouded in secrecy; it was carried out in the early hours of the morning and he was given no advance notice. As a result of the manner and speed of his forced deportation, Samar Thapa arrived in Nepal without personal identification documents and was arrested by the Nepali authorities. Samar Thapa currently works as a staff member in the international solidarity team of a Kathmandu-based trade union which focuses on the situation of migrant workers.

## 10: Irregular migrants at greatest risk

"J" from Bangladesh was found dead on 9 December 2003 in a cargo container<sup>78</sup> where he lived and hid during operations by police and immigration officials to arrest, detain and deport irregular/undocumented migrant workers. Fearful of arrest he had been unable to seek medical treatment for his heart condition.

The number of irregular migrant workers in Korea has remained high since the late 1980s. By enacting the EPS, the South Korean government has attempted to bring into place a system of managed migration based on bilateral agreements with labour-sending countries. In order to expedite the onset of the EPS system, the South Korean government has, since November 2003, implemented a series of operations by police and immigration officers to arrest and deport all irregular migrant workers who remain in South Korea. However, after an initial decline in the number of irregular migrant workers, their number has increased and by June 2006 stood at around 189,000.<sup>79</sup>

<sup>78</sup> Amnesty International has received reports that many migrant workers live in converted containers which have inadequate protection against the harsh weather, especially the freezing winters, in South Korea.

<sup>79</sup> According to the NHRC, which submitted its concerns to the government in June 2005, 6,185 migrant workers were arrested by the Seoul Immigration Office during 2004 (5,765 in street operations and 420

Many thousands of irregular migrant workers have responded to government operations by going into hiding to avoid being arrested. There are concerns that some may have died as a result of the difficult situation and harsh conditions in which they found themselves.<sup>80</sup>

On 25 December 2003, a homeless Uzbek migrant worker hanged himself in Incheon, Kyonggi province. He had been fired from his work following the government crack-down on undocumented migrant workers. In his pocket was a return ticket to Uzbekistan. With heavy debts incurred to finance his visit to work in South Korea still outstanding back home, and no prospect of repaying them, he apparently could not face returning to his family.

Irregular migrant workers are at heightened risk of exploitation and human rights abuses. Their lack of legal status makes it extremely difficult for them to assert their rights or to seek redress for abuses. Irregular migrant workers are employed in the informal sector or “shadow” economy within which unscrupulous employers are able to exploit their lack of legal status or protection. Employers committing human rights abuses know that they are unlikely to be held accountable. Most irregular migrant workers are reluctant to turn to the authorities to enforce respect for their rights, and are generally fearful of drawing official attention to themselves and so risking arrest or deportation.

Go Okbong, a Chinese irregular migrant worker, was arrested after demanding delayed wages amounting to 2 million won (approximately US\$2,000). The company had employed more than 20 undocumented migrant workers and repeatedly delayed payment of their wages. When Go Okbong went to the employer’s home to ask for payment, his employer reported him to the police who detained him. It is not known if Go Okbong was later released or forcibly returned to China. Three other undocumented colleagues from China working in the same factory are known to have abandoned their claims for their delayed wages.

The EPS has failed to improve to provide an environment within which the number of irregular migrant workers can be reduced and protection for them be strengthened. In practice the EPS, far from reducing the number of irregular undocumented migrant workers, appears to have led to more workers finding themselves forced to accept irregular status - with all the attendant abuses and risks which this entails.

### **10.1: Arrest, detention and deportation**

During arrest and deportation operations by immigration authorities in March 2004, Kim Hyun-joo, a South Korean union activist, tried to stop a van that was carrying a detained documented migrant worker. He also attempted to stop officials from beating a migrant worker and handcuffing the worker’s injured hand. For his actions, Kim Hyun-joo was charged with making a disturbance and

during operations in workplaces). Handcuffs were used during 4,230 of these cases (68.4per cent).

<sup>80</sup> Between 11 November and 30 December 2003 at least six irregular migrant workers had committed suicide and by June 2004 at least eight more had taken their own lives.

impeding government activities, He was sentenced to 30 months in prison for his protest in defence of migrant rights.

Irregular migrants are at constant risk of arrest, detention - often in very poor conditions - and forcible return to their countries of origin. Since November 2003, the government has conducted a series of operations with the intention of ridding South Korea of its irregular migrant workers. Thousands of migrant workers, mostly irregular migrant workers, have been arrested, almost all of whom have been deported back to their countries of origin. By October 2005, according to figures of the Ministry of Justice, more than 30,000 undocumented workers had been deported. This number has increased significantly since the implementation of EPS.<sup>81</sup>

Amnesty International has also received reports that South Korean nationals who have worked as staff or volunteers at migrant workers' shelters have been harassed by immigration officials when they attempted to stop violent arrests of irregular migrant workers.

A range of abuses by police and immigration officials have been reported in the context of operations. Some have carried out arrests without appropriate documentation including arrest warrants or detention order papers.

A 2005 NHRC survey<sup>82</sup> found that 15 per cent of those arrested has suffered injuries.<sup>83</sup> International standards<sup>84</sup> uphold the principle that the use of force is an exception, and to be used only when strictly necessary and to the extent required for the performance of duty. These standards are based on the balance between the right to life and security of the person and the need to prevent crime and bring criminals to justice. All rights emanate from the supreme right to life, and no state may derogate from the right to life, even at a time of public emergency. The exercise of restraint in the use of force and firearms and the requirement to act in proportion to the seriousness of the offence and the legitimate objective to be achieved is contained in Principle 5 (a) of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Basic Principles). Non-violent means should be applied and force only resorted to if non-violent means prove ineffective (Principle 4 of Basic Principles). Within the parameters of proportionality, excessive use of force by law enforcement officials can constitute torture or other ill-treatment and violate the Basic Principles.

"I was handcuffed so tight during the crack-down I could not feel in my hands. It took me three

<sup>81</sup> Hankyoreh, 22 November 2005.

<sup>82</sup> Seol Dong-Hoon, *Survey on Undocumented Migrants in Detention Facilities in Korea*, National Human Rights Commission of Korea, Seoul. (The report was launched in January 2006.)

<sup>83</sup> Amnesty International has heard reports of inappropriate and unnecessary use of nets and stun guns to restrain migrant workers during arrests by police and immigration officials. There were also reports of several detained migrant workers being ill-treated during arrests when they were handcuffed tightly for long periods of time which resulted in the migrant workers sustaining injuries.

<sup>84</sup> UN Code of Conduct for Law Enforcement Officials, Article 3: "Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty."



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months to recover feeling [in my hands].”

Anwar Hossein, president MTU, who was arrested in May 2005

In June 2005, the NHRC recommended that the Ministry of Justice (under whom the immigration authorities work) revise the current Immigration Law, arguing that ministry officials had been violating the basic rights of irregular migrant workers, including their right to liberty and security of person, during operations by police and immigration officials.<sup>85</sup>

Under the Immigration Control Act (ICA), immigration officers have authority to search, detain irregular workers and issue detention orders. The issue of detention orders by immigration officers appears to bypass the constitutional provision requiring the detention orders to be issued by a judge.<sup>86</sup> The immigration officers also issue deportation orders and there is no time limit of detention once the deportation order has been issued. According to reports received by Amnesty International, it appears that once an irregular worker has been identified by an immigration officer, he or she are held under detention orders issued by immigration officers, and then following issue of a deportation order, can be held for an unspecified period of time before being forcibly returned.

There have also been concerns that deportations have subjected migrant workers to arbitrary and collective expulsions which are prohibited in international law. The collective nature of the arrest and deportation operations make it very difficult for the government to provide the necessary procedural guarantees, including individual assessment,<sup>87</sup> and so ascertain whether people legally entitled to remain in the country may be among those expelled.

There have been several cases when Korean immigration authorities have reportedly arrested not only irregular migrant workers, but also documented workers who were arrested, without any justification, because they happened to be at the scene or because of misunderstandings arising from language difficulties. There have also been some reports that regular documented migrant workers have been harassed by immigration officials in an effort to get them to reveal the whereabouts of irregular undocumented migrant workers.

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<sup>85</sup> The NHRC recommended that “there is insufficient legal basis for detaining, the law grants unnecessarily excessive power to immigration officers and in real situations, emergency detention certificates are over-issued, although they are expected to be issued in exceptional cases; this are increasing worries about worsening human rights situation for undocumented migrant workers”

<sup>86</sup> The immigration officials might be in breach of the provision of the Korean Constitution which states in Article 12 (3) that, “warrants issued by a judge through due procedures upon the request of a prosecutor shall be presented in case of arrest, detention, seizure or search.”

<sup>87</sup> All migrant workers, including undocumented migrant workers, should be entitled to specific rights during expulsion and should not be subject to mass or collective expulsion. Their rights include the right to have his/her expulsion examined and decided individually. (See the Migrant Workers Convention, Article 22, which provides an authoritative elaboration on the relevant rights in the context of expulsion. See also in this context, General Comment No. 15 by the Human Rights Committee to the ICCPR on “The Position of Aliens under the Covenant.”)

In August 2004, a group of immigration officials broke into a dormitory for migrant workers at midnight. The only occupant was "A", a migrant worker from Bangladesh. Despite the fact that "A" showed the officials his registration card proving that he had legal status as a documented migrant worker, he was beaten, handcuffed and put into a van where the officials beat him again. They forced "A" to give them the names of his colleagues who were irregular migrant workers. "A" was then released from the van, but his injuries required hospital treatment.

All government employees, including social services and public servants, were obliged to report all irregular migrant workers they come across in the course of their work to the immigration authorities came. According to some experts, this obligation placed at risk irregular migrant workers who may need services such as health care or may be victims of human rights abuses.<sup>88</sup>

## **10.2: Conditions of detention and ill-treatment of detainees**

Amnesty International has received persistent reports of poor conditions, and of abuse by security personnel, in detention facilities used to hold migrant workers.

A nationwide survey announced in January 2006<sup>89</sup> found that 20 per cent of detained migrant workers had experienced beatings and nearly 40 percent had suffered verbal abuse. More than 34 per cent said they had been stripped naked and searched and 5.2 per cent claimed that they had been sexually abused by the immigration officers during body searches after they had been detained. Such acts amount to cruel, inhuman or degrading treatment as proscribed by ICCPR, Article 7. Poor conditions of detention may also amount to ill-treatment.

Foreign nationals under detention are housed in at least 16 detention facilities inside immigrations centres nationwide. These include the detention facilities at Seoul Immigration Center and Incheon International Airport, and the immigration processing centres located in Hwaseong and Cheongju which an Amnesty International delegation visited in February 2006.<sup>90</sup> Each local immigration office also has its own detention cells for foreign nationals for

<sup>88</sup> In addition to placing at risk irregular migrant workers who may need services such as health care or may be the victims of crimes, Amnesty International notes that such policies would penalize those officials who did not comply with this "duty."

<sup>89</sup> Seol Dong-Hoon, *Survey on Undocumented Migrants in Detention Facilities in Korea*, National Human Rights Commission of Korea, Seoul. The report was launched in January 2006 and included surveys conducted in 16 detention facilities located inside immigration centres.

<sup>90</sup> The Hwaseong immigration processing facility can hold 727 people, and during 2005 detainees were held there for average of 12 days. Hwaseong had a separate building housing women detainees. Cheongju has a maximum capacity of 240 detainees. The facility is on three floors with women detainees being housed in a separate floor. Seoul Immigration detention facility can house a maximum of 45 detainees; on average the detention period was 2.5 days. Incheon International Airport detention facility has eight detention rooms including two solitary confinement rooms; on average detainees were held for four to seven days. The Yeosu

short-term detention periods of up to a week<sup>91</sup> after which they are forcibly returned back to their countries of origin.

On 27 February 2006, “K”, a 27-year-old irregular Turkish migrant worker fell from the 6th floor of the Suwon Immigration Office detention cells and died soon after being admitted to hospital. “K” had entered South Korea in March 2004 on a three-month tourist visa. He was arrested on 26 February 2006 during arrest and detention operations by immigration officials. Officials believe that “K” had stripped open the transom window and used the toilet lid to break the outer window. While it is unclear if “K” committed suicide or died trying to escape, it is apparent clear that he was so desperate that he was willing to jump from the sixth floor of the immigration office building. This case was not unprecedented. In October 2005 a Chinese woman had thrown herself to death from the fourth floor of the same building.

Several clauses of the rules governing detention facilities deprive inmates of fundamental rights.

A Nigerian national detained in the Hwaseong Immigration Processing Centre claimed that he had been detained in an isolation cell for three days. He was held in solitary confinement despite a Seoul Central District Court judgment in March 2005 that solitary confinement provisions set out under Enforcement Decree of Foreigner Protection Regulation No. 72 were unconstitutional.<sup>92</sup> Furthermore, officials at Hwaseong had videotaped the Nigerian national’s activities while he was in the isolation cell. They claimed that videotaping inmates’ activities and confining them in isolation cells is permitted under the Enforcement Rule of Foreigner Protection Decree.

The length of the period of detention of migrant workers appears to be arbitrary, and one in five migrant workers faced prolonged detention. According to a 2005 survey by the NHRC, 21.5 per cent of the detainees were detained longer than the legally permissible period of 20 days. In some cases, including that of Anwar Hossein, the period of detention exceeded 10 months.<sup>93</sup>

Amnesty International has also received reports of severe overcrowding in detention facilities. According to a Ministry of Justice decree, a detention centre has to provide at least 6.1m<sup>2</sup> of space for every detainee. However, the 2005 NHRC study revealed that on average detention centres provided 4.7m<sup>2</sup> for each detainee.<sup>94</sup> Most detention centres, with the

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internment rooms for foreign nationals also partially serve as a processing centre.

<sup>91</sup> Immigration Control Act, Article 51 stipulates the purpose of detention: If there is considerable reason to suspect that a foreign national falls under Article 46 (1), and s/he flees or might flee, the immigration control official may detain him/her after obtaining a detention order issued by the head of office or branch office or head of the foreigners’ detention facility.

<sup>92</sup> Korea Broadcasting Service on March 13, 2005, at <http://news.kbs.co.kr/news.php?id=703547&kind=c> (Korean language site)

<sup>93</sup> Seol, Dong-hoon, *Survey on Undocumented Migrants in Detention Facilities in Korea*, National Human Rights Commission of Korea, Seoul, 2005, p.98.

<sup>94</sup> Seol, Dong-hoon, *Survey on Undocumented Migrants in Detention Facilities in Korea*, National

exception of the two immigration processing centres in Hwaseong and Cheongju, provide less than half the space set out in the Ministry of Justice decree. Amnesty International was particularly concerned by reports in July 2005 that 125 detainees held in the Seoul Immigration Office were crowded into cells designed to hold a maximum of 45 detainees. In late July 2005, Suwon Immigration Office was so overcrowded that each detainee had only 1m<sup>2</sup> of space. Detainees living in these conditions are at risk of illness and depression.

Detainees living in such severely overcrowded conditions have complained of the persistent stench in detention centres. Generally, the air quality in cells in immigration offices appears to be bad because cells are small and do not have enough windows or ventilators. Amnesty International delegates, who visited the Incheon Immigration Detention Facility and the Hwaseong Detention Facility in February 2006, found the men crowded together in foul smelling communal cells.

It was evident to Amnesty International delegates that the cells in Seoul and Incheon International Airport immigration centres fell short of the conditions set out in the Standard Minimum Rules for the Treatment of Prisoners.<sup>95</sup>

Detainees in the Hwaseong Immigration Processing Centre told Amnesty International delegates that although the Centre was equipped with air conditioners and heaters, there were many occasions when guards forgot to switch them on, especially at night. This resulted in very cold temperatures in winter and stiflingly hot cells in summer. Guards reportedly rarely responded to detainees' complaints or requests to switch them on.<sup>96</sup>

According to the authorities, detainees at the Hwaseong and Cheongju processing centres are given clean uniforms every 20 days. However, many inmates claimed that they were only given one uniform for the entire time they were detained.<sup>97</sup> Detainees also complained that the blankets and pillows they were given were very dirty. For example, a Nepalese detainee at Hwaseong Immigration Processing Centre told Amnesty International in February 2006 that the detention centre changed sheets once every two months. The detention centre also did not have sufficient facilities for personal hygiene.

“While I was detained for almost one and half years from December 2003 to July 2005, I went outside only three times except when I go to a hospital, which means I had only three chances to exercise in the entire period of my detention.”

A 37-year-old Korean Chinese irregular migrant worker

Human Rights Commission of Korea, Seoul, 2005, p.93.

<sup>95</sup> According to Paragraph 11 (a) of the Standard Minimum Rules for the Treatment of Prisoners, “the windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation.”

<sup>96</sup> Interview with a Nepalese detainee at Hwaseong Immigration Processing Center, 13 February 2006.

<sup>97</sup> Interview with a Nepalese detainee at Hwaseong Immigration Processing Center, 13 February 2006.

South Korean law requires detained foreign nationals to be allowed to exercise.<sup>98</sup> However, detainees held in 14 immigration offices had no opportunity to exercise. Even where there were facilities available, as was the case in the two immigration processing centres, very few inmates were allowed to exercise for more than 30 minutes a day. More than half of those held in detention centers were given no opportunity to exercise.<sup>99</sup>

A concern expressed to Amnesty International by several detainees and NGOs was that detained migrant workers were under constant close surveillance through Closed Circuit Television (CCTV) cameras installed in every cell. These are monitored 24 hours a day, seven days a week. At Seoul Immigration Detention Facility and at Incheon International Airport detention facility, Amnesty International delegates found male guards watching CCTV's that monitored women detainees.

“The cell was small, but there were 10 or 11 of us. Because of the CCTV in the room, I didn't feel comfortable and the half-open style toilet was awful...

“Not all the officers, but some of them didn't care about migrant workers at all. Because there were so many people in the centre, people got easily exhausted by the crowded atmosphere of the centre and there were many people who just returned to their countries with their problems unsolved.”

Anwar Hossein detained in Cheongju detention centre from May 2005 to April 2006.

According to research conducted by the NHRC in 2005, 66 per cent of inmates stated that their physical health had deteriorated while they were held in immigration detention facilities. More than 79 per cent of inmates were concerned about their worsening mental health. Factors contributing to this included the stress of waiting for unpaid wages, unclear refugee determination procedures, and a general lack of support in an environment where conditions were poor. This manifested itself in a range of physical symptoms including insomnia, headaches and digestive problems. Detention facilities in immigration centres reportedly did not employ a single qualified psychiatrist.<sup>100</sup>

<sup>98</sup> The Foreigners' Protection Decree, Article 22 states that, “Detained foreigners must follow the daily schedule given by the head of processing center.” Yet, such freedom can be restricted by four reasons under Foreigner Protection Decree §24(3): 1) when it interferes safety or public order of the Immigration Processing Centre; 2) when the exercises interfere protected foreigners' health; 3) when the weather interferes using the play ground; and 4) when it is reasonably necessary to restrict their exercise.” According to 행정법

(Enforcement Decree of the Penal law) paragraph 96(1), the detainees have a right to exercise at least one hour a day and those in single rooms have an expanded right to exercise up to two hours.

<sup>99</sup> Seol, Dong-hoon, *Survey on Undocumented Migrants in Detention Facilities in Korea*, National Human Rights Commission of Korea, Seoul, 2005, p.152

<sup>100</sup> Seol, Dong-hoon, *Survey on Undocumented Migrants in Detention Facilities in Korea*, National Human Rights Commission of Korea, Seoul, 2005, p.150

### 10.2.1: Lost in translation

“Including guards and officers, not many people speak English here or languages that we can understand. It is a serious problem here that in a government building for foreigners we cannot even communicate in the international common language, English. It sometimes blocks us in our attempts to receive delayed payment of wages and to leave Korea on time.”

A 31-year-old detainee from Bangladesh, interviewed by Amnesty International, February 2006

The Foreigner Protection Decree and its Enforcement Rules<sup>101</sup> have never been officially translated into English or other languages and only a few migrant workers held in detention centers are aware of these rules. Very few detention centre officials could communicate with detainees in English or other languages.

The Immigration Control Act, paragraph 48(6), requires interpreters to be provided for those who are unable to communicate in Korean. However, it appears that in practice the quality of interpretation provided is often problematic. Officials told Amnesty International that they used language students from universities,<sup>102</sup> but it did not appear that the detention centres took steps to ensure that the students were competent in the relevant languages and able to translate adequately the needs of the detainees.<sup>103</sup>

Most South Korean detention centres do not have literature which explains in any detail the detainees’ rights, or the rules they need to follow while in detention. What is available is a poster which cites but does not explain detainees’ rights and gives the telephone numbers of relevant organizations in Korean, English, and Chinese (and sometimes in Russian). There are many detained migrant workers who do not speak these languages and so are unable to access information about their rights and duties. For example, on 31 January 2006, there were detainees, in Hwaseong Immigration Processing Centre, from Bangladesh, Indonesia, Mongolia, Pakistan, Thailand and Vietnam, none of whom had access to a poster notice written in their own languages.

<sup>101</sup> Foreigner Protection Decree (unofficial translation for 외국인보호규칙) is an internal order of the Ministry of Justice whose purpose is to improve the treatment of inmates in processing centers. The Decree consists of 11 chapters and 45 articles. “The general life principles of inmates” in foreign detention centers are regulated in the Decree. In addition, the Enforcement Rules of the Foreigner Protection Decree (unofficial translation for 외국인보호규칙시행세칙) is an internal order of Ministry of Justice to regulate “specific life of inmates” in detention centers. It was enacted in 1993 and revised in 2000. The Enforcement Rule consists of 11 chapters and 105 articles.

<sup>102</sup> The Hwaseong Processing Centre, for instance, explains that they are supported for interpretation in languages other than English by volunteer interpreters and students from the Hankuk University of Foreign Studies who are available to communicate in 11 different languages.

<sup>103</sup> Over a third (37.1 per cent) of the detainees reportedly did not have satisfactory communication with immigration officers even though the government provided interpreters. Because of this, over half (58.6 per cent) of those seeking refugee status brought their own interpreters. Source: H.T.Lee, *Problems of the Korean Refugee Admission System and Suggested Scheme for its Improvement*. Human Right Forum of the National Assembly, Seoul, 2005, P. 6.

Officials at Hwaseong Immigration Processing Center stated that most detainees in immigration processing centres did not need interpreters because the detainees spoke fluent Korean which they had learned during their long-term residency in South Korea.<sup>104</sup> This observation is not reflected in a report sponsored by the NHRC which stated that only 48.6 per cent of detainees were able to communicate in Korean.<sup>105</sup>

### **10.3: Collective expulsion of migrant workers: concerns and international obligations**

According to data collected by the Ministry of Justice, more than 30,000 irregular migrant workers have been deported by October 2005. In 2003, 5,861 were forcibly deported; while in 2004, 9,307 were forcibly deported.<sup>106</sup> This collective expulsion of all irregular migrant workers from South Korea exposes them to the threat of *refoulement*. The fundamental principle of non-refoulement requires South Korean authorities to ensure that no one is returned to a country where there are substantial grounds for believing that she or he would be in danger of being subjected to torture. Amnesty International is concerned that the forcible deportation of migrant workers may at times violate international law and standards including the Convention against Torture<sup>107</sup> and the 1951 Refugee Convention<sup>108</sup> which states that none of its States Parties should expel a person to another state where his life or freedom is under danger.

As mentioned earlier in p.14 Migrant workers are also entitled to protection against arbitrary or collective expulsion under ICCPR, Article 13.<sup>109</sup> Any expulsion decision must be assessed on an individual basis and be subject to due process.

The South Korean government should ensure that all migrant workers, including undocumented migrant workers, should be entitled to specific rights during expulsion and should not be subject to mass or collective expulsion. Their rights include:

- The right to have his/her expulsion examined and decided individually;
- The right to have the decision communicated in a language he/she understands;
- The right to submit the reason he/she should not be expelled;
- The right to have his/her case reviewed by the competent national authority (unless the final decision had already been pronounced by a judicial authority);
- The right to be provided a reasonable opportunity before or after departure to settle any claims for wages.

<sup>104</sup> Fax Response to Amnesty International from official in Hwaseong Immigration Processing Center, January 2006.

<sup>105</sup> Seoul, Dong-hoon, see above footnote number 87, p.74.

<sup>106</sup> Hankyoreh, 22 November 2005.

<sup>107</sup> Convention against Torture, Article 3 (See footnote 44).

<sup>108</sup> Convention relating to the Status of Refugees, 1951, Article 33 (See footnote 45).

<sup>109</sup> See footnote 42.

The South Korean authorities have also failed to submit applications for asylum to a fair refugee determination procedure effectively denying asylum-seekers their fundamental human rights. International law requires that deportation procedures must be in accordance with due process of law and include guarantees that fundamental human rights will be respected and protected.

The Immigration Bureau confirmed to Amnesty International in February 2006 that their officials did not consider claims for refugee status from asylum-seekers who had stayed in South Korea as irregular migrant workers for three years or more prior to applying for asylum.<sup>110</sup>

Asylum applicants did not receive sufficient protection or support, including from qualified interpreters, and were not allowed to work. They were not informed of the grounds for decisions on their cases.

Amnesty International is concerned that these restrictions on the ability of asylum seekers to file a refugee claim violates the right to seek and enjoy asylum provided in the Universal Declaration of Human Rights (UDHR). The UNHCR Handbook on Procedures and Criteria for determining refugee status refers to the situation of persons who “may have decided to ask for recognition of his refugee status after having been abroad for some time ... due to circumstances arising in his country of origin during his absence.”<sup>111</sup>

In addition, international human rights law and standards provide that pre-trial detention “should not be the general rule” as provided for by ICCPR, Article 9(3). If asylum applicants are detained arbitrarily or on the basis of discrimination, this also violates international human rights law.

“After an officer asked me a couple of things, he asked me to return home. When I requested the officer to return my identification card, he refused and asked me to leave without it. I repeated my request to the officer to return my identification card. Then several officials (seven or eight, can't remember exactly) came in and handcuffed me. An officer explained to me that I would be detained for seven or eight hours because I had 'resisted against the authorities'. Instead, I was detained in a detention facility of the immigration office for four days and later sent to an immigration processing center. I was told that an immigration officer was confirming if my identification card had been forged. Of course, my identification card has never been forged. After being detained here, I was not able to eat and sleep well. One of officers who understood my situation advised me to appeal. So, I am trying to file the appeal now.”

A Liberian national who had applied for refugee status

<sup>110</sup> Amnesty International interview with the refugee official at the headquarters of the Ministry of Justice, 8 February 2006.

<sup>111</sup> UNHCR, UNHCR Handbook on Procedures and Criteria for determining refugee status, paragraphs 94-95.



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## 11: Conclusions

Migrant workers in South Korea are subjected to a range of human rights violations, many of which arise from systemic discrimination, lack of legal status, a lack of awareness of their rights, and poverty and marginalisation.

The South Korean government has, to its credit, recognized the vulnerability of migrant workers and tried to increase their protection by drafting and implementing the Act Concerning the Employment Permit for Migrant Workers (EPS Act). However, nearly two years after the implementation of the EPS Act and despite measures to increase the protection of migrant workers, including in relation to prohibiting discrimination, implementing health insurance and ensuring minimum wages, the situation of migrant workers remain vulnerable.

As this report shows, migrant workers – many of whom poor and highly indebted – find that the jobs are very different from those they were promised and are more dangerous or more poorly paid than they had ever expected. They frequently work longer hours doing difficult, dangerous and dirty jobs with little or no training in a work environment which is often unsafe. Apart from discrimination in pay, many migrant workers in South Korea also face non-payment of wages by their employers; in some cases, migrant workers have not been paid for several months.

Under the Employment Permit System, they find it even difficult to change jobs even when they suffer from serious health problems or human rights violations in a particular workplace unless they have officially reported their ill-health or abuse. In addition, employers have reportedly seized official documents, including passports and work permits, preventing migrant workers from looking for jobs elsewhere and making them particularly vulnerable to detention and deportation to their countries of origin, despite their possessing the right to work and remain in South Korea. With few rights to negotiate a change of job, many end up giving up their legal employment and going to work as “undocumented” or “irregular” migrant workers elsewhere in the country. Most feel compelled to try to earn enough money to pay their debts and support their families back in their home countries.

Migrant workers are also denied the right to organize legal trade unions; those who have attempted to form a migrant workers’ trade union have had to face intimidation, as many of the leaders of a nascent migrants’ trade union have been detained and forcibly returned to the countries of their origin.

The EPS Act also appears to have had little impact on health and safety at work for migrant workers, many of whom are employed in work which is difficult, dangerous and dirty. Injured migrant workers reportedly receive inadequate compensation from either employers or the state.

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Women migrant workers are more vulnerable as face discrimination in levels of pay compared to men migrant workers; they are also at risk of sexual harassment in the work place.

In order to implement the EPS, the South Korean government has implemented, since November 2004, a series of operations to arrest, detain – often in very poor conditions – and deport all irregular migrant workers who remain in South Korea. By October 2005, more than 30,000 irregular workers had reportedly been deported. Regular documented migrant workers have also been harassed by immigration officials in an effort to get them to reveal the whereabouts of irregular undocumented migrant workers. The collective expulsion of migrant workers also exposes them to the threat of *refoulement*.

Irregular migrant workers in particular are at heightened risk of exploitation and human rights abuses. Their lack of legal status makes it extremely difficult for them to assert their rights or to seek redress for abuses. Detained migrant workers reportedly face poor conditions and abuse by security personnel in detention facilities used to hold migrant workers. In January 2006, one in five detained migrant workers surveyed had reportedly experienced beatings and nearly two in five surveyed detained migrant workers had reportedly suffered verbal abuse.

Among migrant workers most vulnerable to discrimination are Joint Venture Trainees and Industrial Trainees. Because of their status as “trainees” and because they are not Korean nationals, industrial trainees are not given equal protection under the law with Korean workers while their employers rarely fulfil their obligations to their trainee employees. There are numerous reports of employers’ discriminatory treatment and abusive behaviour towards foreign trainees.

Amnesty International is concerned that the South Korean government is failing to fulfil its own constitutional safeguards and international obligations -- including under the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Convention on the Elimination of All Forms of Discrimination against Women, International Convention on the Elimination of All Forms of Racial Discrimination and International Labour Organisation conventions – to provide adequate protection for migrant workers.

The South Korean government has, by enacting the EPS Act, begun a significant attempt to protect the basic rights of migrant workers in South Korea. However, the implementation of the Act reveals that migrant workers remain a vulnerable community. The South Korean government now has the obligation to ensure that the EPS system – both in its content and practice – does not violate laws provided for in its domestic law and international human rights law and standards.

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## 12: Recommendations

**Amnesty International makes the following recommendations to the South Korean government to address the vulnerability of migrant workers:**

### 1. The Migrants Convention

- Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Migrant Workers' Convention), and ensure that its provisions are applied to all migrant workers and members of their families without distinction of any kind such as sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.

### 2. The regulation of migrant workers: ensuring rights and redress

- Ensure that the Employment Permit System (EPS) policies and practices do not put migrant workers at further risk of abuse;
- Ensure that the implementation of the EPS system does not violate international human rights treaties that the South Korean government has signed or ratified including the ICCPR, ICESCR, ICERD, CEDAW and the Convention against Torture which aims at protection from discrimination, right to liberty and freedom from arbitrary detention, equal rights at work;
- Address the lack of labour mobility of migrant workers which is a major reason for human rights violations and also for forcing migrant workers to become undocumented migrant workers. Work permits should not be tied to one single employer, as this is a major cause of human rights violations;
- Address the situation of unpaid wages and ensure that migrant workers should not be deported unless they have received due wages and compensation for industrial accidents;
- Consider entering into bilateral agreements with labour sending countries in order to ensure that migrants who return to their country of origin have access to justice in the country of employment in order to claim unpaid wages and benefits.

### 3. Ensuring decent and safe work

- Ensure that all migrant workers employed in South Korea have access to decent work, that is work that respects fundamental human rights as well as the rights of workers in terms of conditions of work safety and remuneration. In particular, the government of South Korea is urged to institute relevant national laws or regulations and intervene with employers to ensure that all workplaces are safe and without risk of injury to the safety and health of migrant workers. All workers injured as a result of accidents or negligence in the workplace should have access to immediate and appropriate healthcare, and redress;

- Ensure that every employer who is responsible for violating the human rights of migrant workers is brought promptly to justice, including through criminal prosecutions where relevant. Consideration should be given to allowing irregular migrant workers to remain in South Korea in order to access justice and compensation for abuses by employers;
- Regulate the activities of recruitment agencies in South Korea and take robust measures to ensure that these agencies respect and protect the human rights of all migrant workers. Ensure in this regard that all migrant workers recruited to work in South Korea have clear and enforceable employment contracts.

#### **4. Compliance with international standards**

- Promote, protect and respect the fundamental human rights of all migrant workers and members of their families, irrespective of their status in accord with international human rights law and take adequate measures to protect the rights at work of all without discrimination.

##### *Women*

- 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.

##### *Detention and Deportation*

- Protect the fundamental human rights of irregular migrant workers, including by ensuring that they are not subject to arbitrary detention, abusive conditions of detention, expulsion without due process, and abuses of their economic, social and cultural rights.
- Ensure that conditions of detention are consistent with the Standard Minimum Rules for the Treatment of Prisoners and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.
- End the systematic practice of detaining migrant workers prior to expulsion, recognising that such detention could be prolonged or even indefinite in character.

##### *Asylum seekers*

- Ensure that migrant workers who claim refugee status have their claims decided under a fair and satisfactory refugee recognition procedure in accordance with the 1951 Refugee Convention, of which South Korea is a State Party.

#### **Amnesty International urges the Korean Federation of Small Businesses (KFSB) to:**

- Ensure that its member companies are encouraged to adhere to the UN Norms on Business and that their policy and practice in respect to migrant workers complies in full with human rights standards.

- Ensure that its members promote, protect and respect the fundamental human rights of all migrant workers and members of their families, irrespective of their status.
- Translate health and safety standards in languages that migrant worker employees can adequately understand or alternatively ensure that interpreters to migrant worker employees are trained in health and safety standards.

