REPUBLIC OF KOREA

BRIEFING TO THE UN COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

43RD SESSION, NOVEMBER 2009

AMNESTY INTERNATIONAL

Amnesty International Publications

First published in September 2009 by
Amnesty International Publications
International Secretariat
Peter Benenson House
1 Easton Street
London WC1X 0DW
United Kingdom
www.amnesty.org

Index: ASA 25/011/2009
Original Language: English
Printed by Amnesty International, International Secretariat, United Kingdom

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REPUBLIC OF KOREA (SOUTH KOREA): BRIEFING TO THE UN COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

1. INTRODUCTION

Amnesty International is submitting this briefing to the UN Committee on Economic, Social and Cultural Rights (the Committee) in view of its forthcoming examination of third periodic report by the Republic of Korea (South Korea) on the implementation of the International Covenant on Economic, Social and Cultural Rights (the Covenant) during its 43 session between 2-20 November 2009. The briefing is not an exhaustive review of the government's implementation of the Covenant, but highlights specific concerns about the rights of migrant workers.

In particular, this briefing looks at the failure of South Korea to respect and protect the rights of migrant workers under Articles 2, 3, 4, 6, 7, 8, 10 and 12 of the Covenant. The briefing summarises Amnesty International's concerns around the treatment of migrant workers, including their vulnerability to human rights and labour rights abuses because of the restrictions on labour mobility; failure of the government to enforce and monitor health and safety at workplaces, discriminatory treatment experienced by migrant workers; sexual harassment and violence against female migrant workers ; failure to guarantee the right of migrant workers to form trade unions, trafficking of female migrant workers for sexual exploitation; and detention of migrant workers.[1]

2. TREATMENT OF MIGRANT WORKERS (ARTICLES 2, 6, 7 AND 12)

2.1 DOMESTIC LEGAL FRAMEWORK GOVERNING MIGRANT WORKERS

The legal situation of migrant workers in South Korea is regulated by Employment Permit System (EPS), which was drafted by the Ministry of Labour and passed by the National Assembly on 31 July 2003, as the Law Concerning the Employment Permit for Migrant Workers (EPS Act). With the implementation of the EPS Act in August 2004, migrant workers under the EPS work scheme were fully recognised as workers and therefore, protected under South Korea's Labour Standards Act; Minimum Wage Act; Act On Equal Employment And

[1] The information in this briefing is based on extensive research conducted by AI, which will be elaborated upon in a report due to be released on 21 October 2009: Amnesty International, *Disposable Labour: Rights of migrant workers in South Korea*, (AI Index: ASA 25/001/2009).

Support For Work-family Reconciliation; and Trade Union and Labour Relations Adjustment Act.

The EPS was intended to provide migrant workers with greater legal protection and recognition as workers under domestic labour law; prohibit discrimination; recognise their right to access to a system of redress against employers in cases of unpaid wages or industrial accidents; and have national health insurance.

Under the EPS, the Ministry of Labour issues a permit to South Korean small and medium-sized enterprises (SMEs) employing 300 or less workers, who cannot hire locally, to employ migrant workers from one of the 15 labour-exporting countries that have signed a Memorandum of Understanding (MOU) with South Korea.[2] In order to qualify for the EPS, migrant workers must pass a Korean language test and a medical exam. The costs differ from country to country but on average the total comes to approximately USD 1,000, which includes the medical exam, visa fees, pre-departure training and orientation, and flight ticket. Upon arrival in South Korea, migrant workers are given a one-year contract renewable for a period of up to three years. Every year, migrant workers are obligated to have their contract signed by their employer. They may change jobs with their employer's consent but are not permitted to change sectors, for example, from fisheries to manufacturing.

The EPS provides migrant workers with legal recognition of a range of entitlements and rights such as minimum wage, under the Minimum Wages Act, and access to national health insurance. It recognises their rights to freedom of association, collective bargaining and action, and access to a system of redress against employers in cases of unpaid wages or industrial accidents. However, Amnesty International is concerned that five years after the EPS Act came into effect, migrant workers in South Korea continue to be vulnerable to human rights abuses and many of the exploitative practices that existed under previous systems still persist under the EPS. Furthermore, both migrant workers under the EPS and irregular migrant workers continue to be exploited and marginalised in South Korean society.

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

> "If any public official of the state or local government finds, in the course of carrying out his/her duties, a person falling under any of subparagraphs of Article 46(1) [in an irregular immigration status], or a person deemed to be in contravention of this Act, the official shall without delay inform the head of the office or branch office or the head of the foreigner internment camp."[3]

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[2] Bangladesh, Cambodia, China, Indonesia, Kyrgyzstan, Mongolia, Myanmar, Nepal, Pakistan, Philippines, Sri Lanka, Thailand, Timor-Leste, Uzbekistan and Vietnam.

[3] Available at: http://www.moleg.go.kr/FileDownload.mo?flSeq=25839, accessed 30 September 2009.

2.2 RESTRICTIONS ON LABOUR MOBILITY

Central to the vulnerability of EPS workers is their inability to change jobs freely. Under the EPS, a migrant worker's capacity to move in the job market is severely curtailed due to two aspects of their status that unfairly bind them to their employer. Firstly, although migrant workers can work in South Korea for three years, the contract term is valid for only one year. In order to remain in a regular status, they must have it signed each year by their employer.

Although migrant workers can work in South Korea for three years, their contract term is valid for only one year at a time.[4] Thus in order to remain their regular status, migrant workers must have their contract signed each year by their employer. This seriously hampers their ability to lodge complaints about abuses because they fear antagonising their employers or losing their jobs, thereby losing their legal right to work in South Korea.

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

Furthermore, although the EPS does not prohibit change of workplace, various restrictions make the process difficult and labour mobility is discouraged by the government and employers. For example the government EPS website states that "in principle, foreign workers are not allowed to change business or workplace".[5] Under article 25 of the EPS Act (Permission for Change of Business or Workplace), migrant workers are only allowed to change their job a total of three times in the three-year period through the job centre.[6]

The inability to change jobs freely prevents migrant workers from raising issues of human

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[4] Article 9(3) of the EPS Act states: "The term of the labour contract shall not exceed one year: provided, that the labour contract may be renewed for a period not exceeding that prescribed in Article 18 (1), and in this case, the term of each renewed contract shall not exceed one year."

[5] "Important Notice for Foreign Workers, 1.Permission for Change of Business or workplace", available at: http://www.eps.go.kr/wem/en/contents/important.jsp, accessed 7 September 2009.

[6] EPS Act, Act no. 6967, 6 August 2003, last amended on 29 February 2008, available at: www.moleg.go.kr/FileDownload.mo?flSeq=25686, accessed 7 September 2009. Under article 25(1), change of jobs is permitted: "1. In case an employer intends to cancel a labor contract during the contract period or to reject the renewal of a contract after its expiration for justifiable reasons; 2. In case it is deemed impossible to continue to work in a workplace because of business shutdown, closure and other reasons not attributable to the foreign worker; 3. In case an employment permit is cancelled or any restriction is imposed on the employment of foreign workers pursuant to Article 19 (1) and Article 20 (1), respectively; and 4. In case there are other reasons prescribed by the Presidential Decree."

rights abuses in the workplace, including lack of overtime pay, intimidation, harassment and sexual harassment or violence. In order to ensure continued employment, they are more likely than South Korean workers to put up with poor training, inadequate safety measures, and insufficient medical leave.

In addition, their employer normally must agree to the change by signing a release document.[7] What this ultimately means is that EPS workers, who are essentially dependent on the goodwill of their employer to sign the release papers, do not have the right to withdraw their labour from their employer without losing their legal status, thus risking arrest, imprisonment and deportation. When employers refuse to release migrant workers, some find conditions so unbearable that they have no choice but to leave anyway and become irregular workers. Therefore, their freedom to choose their employer, is greatly limited:

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

If a new employment is not found within two months of leaving a job, migrant workers lose their legal status, and thus are subject to arrest, detention and deportation.[8] The majority are not proficient in the Korean language or familiar with their way around. Thus, the process of going to a district job centre, receiving a list of registered companies who are hiring, visiting the companies on the list and checking out the working conditions is very difficult for many migrant workers.

In the current economic downturn, finding a new job within two months becomes even more challenging. For example, South Korea's National Statistical Office announced that productivity of manufacturing industries had sharply decreased and their average rate of operation in December 2008 was the lowest in 28 years. In the same month, 608 factories closed down in the Siheung district of Ansan, where many migrant workers are employed. This figure is 30 times higher than Ansan's average monthly closure rate for the rest of 2008. According to Ministry of Labour statistics, the number of EPS workers in 2008 who became irregular due to inability to find work within two months has increased significantly. In the last quarter of 2008, the monthly average number of EPS workers who became irregular was 297, which is 72 per cent higher than in the first three quarters of 2008.[9]

The two month time limit, exacerbated by the economic downturn, often leaves migrant workers with little choice but to accept jobs with unfavourable work conditions just to remain regular. As a result, many migrant workers then must look for other employment and in doing so, they quickly reach their limit of three changes permitted under the EPS. In January 2008, 3,642 migrant workers changed jobs. But the numbers sharply increased by 82 per

[7] In cases where employers are found to have violated labour laws, their consent is not required for a job change.

[8] Migrant workers have two months to look for a new job from the moment their employer submits a notification of the termination of their contract.

[9] JCMK, Network for Migrants' Rights in Korea and MTU, Press Conference on "Guarantee of the Right to Life for Migrant Workers: Do not treat migrant workers as scapegoats in the economic crisis", 5 March 2009 (in Korean).

cent in the last quarter of 2008 (the initial period of the economic downturn) to an average of 6,638 job changes per month.[10] Adhering to the two-month restriction is becoming so difficult under the current economic climate that some job centres have reportedly advised migrant workers to get a medical diagnosis stating the need for treatment so that the two-month period may be extended. This is clearly not a solution to an increasingly untenable time restriction under the EPS.

On 16 September 2009, amendments to the EPS Act were passed in the plenary session of the National Assembly. However at the time of writing, the new amendment bill had not come into force yet. Amendments include the following: (1) Instead of the annual renewal of contracts, the length of the contract would be decided between employers and migrant workers. (2) Currently, after their initial three-year-term, migrant workers may extend their contract for a further three years provided that their last employer is willing to re-hire them. Migrant workers must also return to their countries of origin before starting their new contract. The new amendment would allow migrant workers to continue working in South Korea for a further two years without returning to their countries of origin. (3) Job changes that are not the fault of migrant workers would not be counted against them. (4) The time allowed for migrant workers to change jobs would be extended from two to three months.

It is too early to assess how these new amendments will impact on migrant workers. Amnesty International is concerned, however, that an extension from two to three months does not provide sufficient protection and flexibility to migrant workers who have left or want to leave their employment because of labour and human rights abuses by employers, and may force them to remain in these situations or risk losing their status under the EPS.

2.3 HEALTH AND SAFETY OF MIGRANT WORKERS

In its third periodic report to the Committee submitted in February 2008, South Korea maintains that:

> "In an effort to strengthen safety and health management for foreign workers, the Government has supported workplaces employing foreign workers in improving their work environment, process and facilities. Various materials, such as safety brochures and audio and video materials that foreign workers can easily comprehend have been developed in ten languages and distributed through cooperation among related ministries and agencies. Safety and health education for foreign workers and their employers has also been supported."[11]

Despite these assertions, in interviews with Amnesty International, many migrant workers gave testimonies indicating how the government had failed to protect their health and safety.

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[10] JCMK, Network for Migrants' Rights in Korea and MTU, Press Conference on "Guarantee of the Right to Life for Migrant Workers: Do not treat migrant workers as scapegoats in the economic crisis", 5 March 2009 (in Korean).

[11] "Implementation of the International Covenant on Economic, Social and Cultural Rights, Third periodic report submitted by States parties under articles 16 and 17 of the Covenant: Republic of Korea", UN doc. E/C.12/KOR/3, 4 February 2008, para 132.

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

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

Figure 1: Rate of reported industrial accidents per 100 workers (Source: Journal of Occupational and Environmental Medicine)[12]

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

When accidents occur, many migrant workers are denied adequate medical treatment or compensation due to language barriers, unfamiliarity with their rights as workers or local laws, and in disputes, inability to access lawyers.

Under article 1 of South Korea's Occupational Safety and Health Act, the government is responsible for maintaining and promoting "the safety and health of workers by preventing industrial accidents and diseases through establishing standards on occupational safety and health and clarifying where the responsibility lies, and by creating a comfortable work environment".

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

[12] These rates are based on figures provided by the Korean Workers' Compensation and Welfare Service, the governmental agency that deals with the Industrial Accident Compensation Insurance. Publication of the Korean Society of Occupational and Environmental Medicine (in Korean), available at: http://www.ksoem.org/, accessed 7 September 2009.

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

There are about 60,000 factories where EPS workers are employed, but due to staff shortages, the Ministry told Amnesty International that it is only able to visit 10 per cent of these factories. Interviews with migrant workers, non-governmental organizations and trade unions indicate that the monitoring is wholly insufficient, even in the 10 per cent of the factories the Ministry of Labour manages to visit. The Ministry is reportedly more concerned about the use of irregular migrant workers in the workplace. The health and safety of migrant workers, in particular the reasons for their high number of industrial accidents, are not a priority concern, and thus are barely addressed in a labour inspection.

In Amnesty International's view, South Korea has failed to abide by its obligation under article 7(b) of the CESCR to provide "safe and healthy working conditions" for migrant workers through its failure to set up an effective monitoring system and enforce laws and standards on occupations health and safety.

2.4 DISCRIMINATION UNDER THE EMPLOYMENT PERMIT SYSTEM

Both migrant workers working under the EPS and irregular migrant workers face discrimination in the workplace because of their status. They are required to work long hours and night shifts, many without overtime pay, and often have their wages withheld. On average, they are paid less than South Korean workers in similar jobs and are at greater risk of industrial accidents with inadequate medical treatment or compensation. Unlike South Korean workers, migrant workers have limited, if any, job mobility and the reality of becoming irregular if they leave their job without employer permission is a convincing disincentive.

Under article 6 of South Korea's Labour Standards Act "an employer shall not discriminate against workers on the grounds of gender, nationality, religion or social status". Thus, discrimination against migrant workers is in breach of South Korean law. The Labour Standards Act entitles regular and irregular migrant workers to protection under labour laws equal to that of Korean workers. More specifically, article 22 of the EPS Act provides that "an employer shall not give unfair and discriminatory treatment to foreign workers on grounds of their status". [13] However, the Act does not provide any guidance on penalising employers who violate this article.

[13] EPS Act, Act no. 6967, 6 August 2003, last amended on 29 February 2008, available at: www.moleg.go.kr/FileDownload.mo?flSeq=25686, accessed 7 September 2009.

As such, everyone should be receiving equal pay, including bonus and severance pay, and be entitled to the same benefits such as pension and health care.

However, in practice migrant workers do not have equal rights with South Korean workers. They are far less likely to take steps to ensure their minimum labour rights because of fear of reprisals by employers. The powers granted to the employer under the EPS – to hire the migrant worker in the first place, to resume their contract every year and to consent to a change of jobs – have in practice given employers immense leverage, which employers have often exploited.

Many migrant workers have told Amnesty International that the power their employer has over their ability to work legally in South Korea has prevented them from speaking their mind, defending their rights or taking action against their employer.

Interviews which Amnesty International conducted with migrant workers, trade union representatives and non-governmental organizations indicate that in comparison to South Korean workers, regular and irregular migrant workers receive lower wages, work longer hours and night shifts – often without monetary compensation – and are subjected to significantly more verbal and physical abuse. They have less access to redress due to a combination of their vulnerability vis-à-vis their employers, as explained above, language barriers, unfamiliarity with local laws and inadequate translation or unhelpful staff at the job centre or labour offices.

In Conclusion

Amnesty International considers that the authorities in South Korea should:

- address the lack of labour mobility of migrant workers which is a major reason for their exploitation by their employers, including by amending article 25 of the EPS Act to remove the restrictions on the number of times migrant workers can change jobs;
- amend article 18 of the EPS Act to clarify that after three years, the ability of migrant workers to renew their visa beyond the initial three-year term is not dependent on their current employer's willingness to re-hire them;
- amend article 84(1) of the Immigration Control Act, which requires authorities to report irregular migrants without delay, so that it does not lead to the denial or unlawful restriction of the human rights of migrant workers, including those in an irregular status;
- extend or else remove the time limit within which migrant workers need to find new employment;
- ensure that an effective and simplified complaints mechanism is in place with adequate interpretation and translation of documents, and prompt investigation of complaints of abuse of migrant workers, regardless of their immigration status;
- ensure that labour offices, job centres and labour inspection teams are properly trained and adequately staffed, including interpreters, in order to effectively protect human rights of migrant workers;
- ensure that migrant workers who have grievances against their employers are

provided access to justice without fear of harassment or retaliation of any kind;

- ensure that migrant workers wishing to make a complaint against their employment for breach of contract, or the EPS, or of any physical or mental abuse have access to trained staff who can help them process their complaints;
- provide clear guidance on the penalties for employers who violate article 22 of the EPS Act on the prohibition of discrimination;
- carry out rigorous labour inspections covering a greater number of workplaces employing migrant workers, including follow-up visits and monitoring of workplaces with a record of abuse, to ensure that employers are complying with labour laws;
- impose adequate penalties for employers who breach health and safety rules.

3. SEXUAL HARASSMENT AND VIOLENCE AGAINST FEMALE MIGRANT WORKERS (ARTICLES 3, 7)

Sexual harassment in the workplace is prohibited under South Korean law, including in article 12 of the Act On Equal Employment And Support For Work-family Reconciliation (Equal Employment Act).[14] However, interviews conducted by Amnesty International indicate that many female migrant workers are at risk of sexual harassment and violence at work and in their living quarters. This risk is heightened by the fact that they often find themselves the only female worker or one of the few in their workplace. Several women have been harassed and attacked by their employers, supervisors or fellow workers. The risk is further heightened by the fact that many cases go unreported and consequently, perpetrators are likely to know that action against them is unlikely to happen.

Women are often placed in shared living quarters in factory dormitories with male migrant workers, which puts them at increased risk of being abused. This is sometimes due to the fact that there is only one or a few women working in a factory. Several women speaking to Amnesty International have expressed discomfort and anxiety over their living situation. Amnesty International believes that in certain cases, such as these, it is necessary to provide separate accommodation for women who are at risk of gender based harassment, violence or discrimination.

Female migrant workers can report instances of sexual harassment or violence to the Ministry of Labour, police/prosecutor's office, the National Human Rights Commission of Korea or file a lawsuit against the alleged perpetrator. However, very few women do so in practice because they fear dismissal and possible loss of regular status. Given that it is difficult to find a new job within the two-month time limit for doing so, and given that most factory employers prefer men, who can do heavier work, female migrant workers can ill afford to take dismissals lightly.

Moreover, if female migrant workers lodge a complaint against their employer or co-worker, they have little choice but to remain in their current employment where the alleged sexual

[14] Act On Equal Employment And Support For Work-family Reconciliation, Act no. 3989, 4 December 1987, last amended on 22 December 2007, available at: http://www.moleg.go.kr/FileDownload.mo?flSeq=27330, accessed 1 October 2009.

harassment or violence has occurred until the investigation by the labour office is completed. This process takes at least two months, but can take longer if delays occur, for example, if the accused fails to turn up for the interview.

With the employer's consent, female migrant workers could change jobs but without the completion of the investigation concluding in favour of the female migrant workers, this change would count against them. Consequently, they would not be eligible for a fourth job change (as mentioned above, under article 30(2) the EPS, migrant workers are allowed a fourth change in exceptional cases where all three changes were made due to grounds solely accountable to the employer).[15]

Many Korean-Chinese female migrant workers who work in restaurants and in private homes are also at risk of sexual harassment and violence by their employer or co-worker because they sleep on the premises in order to save money. Their attackers keep them quiet by threatening to tell their families what happened. Given this context, it is not unusual for cases of sexual harassment or violence to go unreported, as the women fear dismissal or loss of legal status. The powerlessness that women in this situation suffer is likely to lead to their ongoing abuse, as they feel they do not have legal protection or access to remedies.

In Conclusion

Amnesty International considers that the authorities in South Korea should:

- take particular measures to respect, protect and promote the rights of all female migrant workers and to ensure that they are not subjected to discriminatory and unlawful practices and human rights abuses at their places of work such as sexual harassment, sexual and other forms of gender-based violence.

4. EXPLOITATION AND TRAFFICKING OF WORKERS IN THE ENTERTAINMENT INDUSTRY (ARTICLES 2, 3, 7 AND 10)

In December 2008, South Korea signed the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol), but has yet to ratify it. South Korea has a very narrow and restrictive definition of trafficking, which criminalises only trafficking for prostitution, as defined under article 4(3) of the Act on the Punishment of Procuring Prostitution and Associated Acts.[16] This is inconsistent with the broader definition provided under article 3(a) of the Trafficking Protocol, which defines

[15] Enforcement Decree Of The Act On Foreign Workers' Employment, Etc., Presidential Decree no. 20681, last amended on 29 February 2008, available at: http://www.moleg.go.kr/FileDownload.mo?flSeq=25687, accessed 1 October 2009.

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

"exploitation" to include at a minimum "the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery". As a signatory, South Korea is obligated not to undertake measures that are inconsistent with the object and purpose of the Protocol.

Because the definition of trafficking in national law is restricted to prostitution, the South Korean authorities fail to recognize women who do not work as prostitutes but have been trafficked for sexual exploitation in the entertainment sector under the E-6 government work scheme. Failure to identify these women as trafficked victims has meant that they are not protected under South Korean law and have no recourse to justice.

Women from the Philippines (accounting for 84 per cent of the total number of female migrant workers employed under the E-6 work scheme) are often recruited as singers in the Philippines to work in bars and night clubs in *gijichon*, i.e. US military camp towns. Once in South Korea, they are often deceived by their managers and employers. As interviews with Amnesty International demonstrate, they find out once they arrive in South Korea that their job in reality is to serve and solicit drinks from male US soldiers and, at some establishments, to have sex with their clients. But by this time, women feel compelled to yield to the pressure to continue working in the given circumstances because they are already in debt to their employer for their flight ticket, visa costs, agent's fee, food and accommodation. The employers pressure the women into doing as they are told through verbal abuse, controlling their movements and warning them that they must re-pay their debts. As the women's main objective is to earn money and support their families, they have little choice but to remain.

Several women under the E-6 work scheme have told Amnesty International that their jobs entailed serving drinks to male customers and keeping them company. Some said that if they did not meet a drinks quota (the number of drinks women have to sell per month to customers can be anywhere from 200 to 500 drinks per month), their employer forced them to have sex with clients. Those who were not forced to have sex with clients, however, could not refuse if customers groped or kissed them. One woman was expected to dance in front of male customers wearing very revealing undergarments.

Several E-6 workers told Amnesty International that if they tried to refuse to have sex with their clients or sexual advances from the customers, their employer threatened to cancel their work permit and send them back to the Philippines.

Public humiliation is also used to control and intimidate the female E-6 workers into compliance. Employers or managers humiliate the women through verbal or physical abuse in front of customers if the women do not solicit enough drinks.

There is also considerable control over the women's movements, which is heightened during the initial months of their work. They are often restricted from leaving the premises where they work and live, which is in violation of article 7 of the Labour Standards Act, which provides that "no employer shall force a worker to work against his own free will through the use of violence, intimidation, confinement or any other means which unlawfully restrict mental or physical freedom".[17]

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[17] Labour Standards Act No. 8561, 27 July 2007, last amended on 21 May 2009, available at: http://www.moleg.go.kr/FileDownload.mo?flSeq=25699, accessed 19 October 2009.

The salary of E-6 workers is generally not paid directly to them, but to their manager who in many cases takes half or more. It is not unusual for the manager to confiscate the woman's first month's pay, and deduct charges for "promotions" in the Philippines, Korean alien card and agent's fee.

Another aspect of control is the confiscation of the E-6 workers' passport and alien card. Withholding employees' documents for the purpose of forcing them to work also violates article 7 of the Labour Standards Act, as well as article 33(2) of South Korea's Immigration Control Act, which provides that it is illegal for an employer to keep a foreigner's passport "for the purpose of using it as a means to secure a contract for job or the fulfilment of obligation".

Despite the vulnerability of trafficked women in the entertainment sector, trafficking remains a hidden problem and consequently, E-6 workers face difficulties in accessing justice. Although they are entitled to go to the labour office or the police for help, women are either unaware of their rights or do not trust the authorities. Going to the authorities is also difficult for E-6 workers: Once they run away, their employer normally reports them to the Korea Immigration Service and they then lose their regular status within two weeks. Given that labour and police officials, as public servants, are required to report any irregular migrant workers to the Korea Immigration Service, irregular E-6 workers cannot freely file a complaint at the labour office or police station.

But even when E-6 workers seek help with the authorities, they cannot access appropriate judicial or other official assistance. There is very little understanding among the Ministries of Justice, Labour, and Korea Immigration Service of trafficking and exploitation in general, and of the trafficking and exploitation of E-6 workers in particular. They feel that it is strictly a law enforcement issue, and thus a matter for the police. However, the police will only consider a woman trafficked if she has been forced to have sex with a client. If a woman runs away before this happens, she is not considered a victim of trafficking.

The Ministry of Labour is responsible for monitoring workplaces that employ E-6 workers. However, the Ministry has told Amnesty International that it carries out guidance and inspection on workplaces with a large number of foreign workers without any distinction to their visa status. Therefore, it does not know how many workplaces employing E-6 workers they have inspected in any given year.[18] Furthermore in a meeting with the Ministry of Labour, a labour inspector explained that although workplaces employing E-6 workers in Dongducheon were monitored, it was often done during hours when the women were not working or present. It is not surprising given this context that the Ministry of Labour did not come across any cases of trafficking for sexual exploitation.

The Immigration Service and Ministry of Justice also told Amnesty International that no trafficking cases came to their attention and that they were unaware of any concerns of trafficking among E-6 workers.[19] Moreover, there seems to be little or no attempt by the Immigration Service to understand why these women run away. As a result, the women are doubly victimised, as they are trafficked for sexual exploitation by their employers and

[18] Information provided by the Ministry of Labour on 16 July 2009.

[19] Amnesty International meeting with the Korea Immigration Service and Ministry of Justice in Gwacheon, South Korea on 27 July 2009.

managers, and when they run away, they are then treated as "illegal" migrants under South Korean law.

Not only have the Ministries of Labour and Justice, and the Immigration Service said that they did not come across any trafficking in their line of work, but they also failed to see how the trafficking of E-6 workers was relevant to their work. They all felt it was strictly a law enforcement issue and thus, "a matter for the police".[20] This attitude explains in part the hidden nature of the problem, the vulnerability of trafficked women in the entertainment sector and the difficulties they face in accessing justice.

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

The attitude of government authorities prevents the authorities from properly identifying victims of trafficking, and from working with relevant government agencies and non-governmental organizations in providing assistance and justice for the women.

In Conclusion

Amnesty International considers that the authorities in South Korea should:

- strengthen the monitoring of the recruitment process for E-6 workers and impose adequate penalties for trafficking for sexual exploitation and forced labour;
- ensure that an effective and simplified complaints mechanism is in place with adequate interpretation and translation of documents, and prompt investigation of complaints of abuse of migrant workers, regardless of their immigration status;
- ensure that relevant officials in the Korea Immigration Service and police have the training and capacity to identify victims of trafficking;
- ensure that through sensitive questioning, trafficked individuals are not criminalized for status or other offences, but that their rights, including the presumption of innocence, to counsel and to interpreters, are respected;
- provide trafficked individuals with immediate access to assistance and support and all the rights afforded to victims of human rights abuses;
- fully investigate trafficking of E-6 workers and to ensure that perpetrators are brought to justice; and
- monitor and prosecute employers who remove the identity documents of migrant workers.

[20] Amnesty International meetings with the Ministry of Labour and with the Korea Immigration Service and Ministry of Justice in Gwacheon, South Korea on 24 and 27 July 2009 respectively.

5. THE RIGHT OF MIGRANT WORKERS TO FORM TRADE UNIONS (ARTICLE 8)

Despite guarantees in South Korea's legislation and Constitution, as well as international law, migrant workers, in particular those with irregular status, are not free to form and join trade unions of their choice. Under article 33(1) of the South Korean Constitution, "workers have the right to independent association, collective bargaining, and collective action". Article 5 of South Korea's Trade Union and Labour Relations Adjustment Act (Trade Union Act also states that "all workers have the right to freely form or join labour unions". Article 2(1) of the Labour Standards Act defines a "worker" as "a person who offers work to a business or workplace to earn wages, regardless of [the] kinds of jobs he/she is engaged in". Thus, by definition, this includes both regular and irregular migrant workers.

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

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

> "… the eight core ILO Conventions regarding freedom of association and the right to bargain collectively, non-discrimination in employment and occupation, the prohibition of forced labour and the elimination of child labour, cover all migrant workers, regardless of status."[21]

It then stated:

> "The Committee requests the Government to avoid in the future measures which involve a risk of serious interference with trade union activities such as the arrest and deportation of trade union leaders shortly after their election to trade union office and while legal appeals are pending."[22]

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

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[21] ILO Committee on Freedom of Association Report, Republic of Korea (Case No. 2620) Korean Confederation of Trade Unions (KCTU) and International Trade Union Confederation (ITUC), Report No. 353 *(Vol. XCII, 2009, Series B, No. 1)*, 18 December 2007, (ILO Report No. 353), para 788.

[22] ILO Report No. 353, para 794.

Crackdown against MTU leadership

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

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

MTU's second president, Kajiman Khapung (Nepalese), vice president, Raju Kumar Gurung (Nepalese), and general secretary, Abul Basher M. Moniruzzaman (Bangladeshi), were all arrested on 27 November 2007 on grounds of their irregular status in three separate locations in Seoul.

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

In all the above cases against the MTU leadership, the South Korean government failed to respect the right to freedom of association, and in particular to form trade unions, for migrant workers. Amnesty International believes that these targeted arrests of senior MTU officials are an attempt by the Government of South Korea to deprive them of their basic labour rights as protected in the South Korean Constitution and international law. Amnesty International therefore considers them prisoners of conscience detained solely for peacefully exercising their labour rights and demanded their immediate and unconditional release.

In Conclusion

Amnesty International considers that the authorities in South Korea should:

- immediately remove obstacles to forming and participating in the Migrants' Trade Union, in particular by recognising its status as a legal union in South Korea in line with domestic law and international law and standards;
- ensure the rights of everyone, regardless of their immigration status, to form trade unions and to join a trade union of their choice.

6. DETENTION OF MIGRANT WORKERS (ARTICLES 4 AND 7)

The South Korean government relies on immigration raids as a primary enforcement strategy for tackling irregular migration. Since 2008, these operations have resulted in the arrest, detention and deportation of thousands of irregular migrant workers per month. Korea Immigration Service, sometimes accompanied by police, has conducted mass crackdowns on workplaces, on the streets, in markets, train stations, and private homes of migrant workers. The crackdowns have put pressure on detention facilities, contributing to problems of overcrowding, poor living conditions and delayed access to medical treatment.

Interviews conducted by Amnesty International indicate that overcrowding is an ongoing problem in many of the detention centres housing irregular migrant workers. For example, one Bangladeshi man shared a 50 sq m cell with about 20 men (2.5 sq m per person). Interviewees also recounted how they were only allowed ten minutes of exercise once in four days. Others described problems of poor ventilation, difficulty accessing water and medication, and inability to promptly contact family members upon arrest.

Findings from 2007 and 2008 investigations by the National Human Rights Commission of Korea (NHRCK) of conditions in detention corroborates what interviewees have told Amnesty International.[23] For example, the Commission's report raised concerns about the lack of recreational space and overcrowding. One Mongolian woman shared a 10-13 sq m cell (0.67-0.87 sq m per person) with about 15 women. Also, the vast majority of detention centres had no recreational area so exercise was not possible. Even in facilities with recreational areas, authorities did not allow inmates to exercise every day. Detained individuals spent most of their time indoors watching TV, as this was the only activity available to them.

The Commission pointed out that several facilities were originally office space, and that although they had been remodelled, they were still inappropriate for detention purposes. The study found that many facilities had inadequate light and poor ventilation. Detained individuals often complained of lack of access to fresh air, as many facilities did not have windows. According to the detainees, the poor air quality caused headaches and in one case, triggered asthma symptoms. Water fountains were often placed in restricted areas so detainees could not access them freely. Similarly, as telephones were also found in restricted areas, detainees needed permission from guards to use them.

In Conclusion

Amnesty International considers that the authorities in South Korea should:

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

[23] NHRCK, "Crackdown on Irregular Migrant Workers and Foreign Detention Centres: Findings of on-site investigations into immigration detention centers", 2008 (in Korean), p. 75 and NHRCK, "Findings of on-site investigations into immigration detention centers", 2007 (in Korean), p. 50.

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Index: ASA 25/011/2009, Amnesty International October 2009