

A written submission to the UN Human Rights Council by the Asia Pacific Mission for Migrants (APMM)

ASIA PACIFIC: Action required to protect the human rights of migrant workers in the Republic of Korea

1. The Asia Pacific Mission for Migrants (APMM) would like to draw the attention of the Human Rights Council of the United Nations to the increasing trend of abuses, exploitations, deceits, government neglect and other forms of human rights violations against migrants in the Republic of Korea.

Background

2. At present the population of migrant workers, marriage migrants, and foreign nationals in South Korea is constantly increasing due to various social developments such as the avoidance of labor intensive jobs colloquially called 3D jobs – referring to “difficult, dirty and dangerous jobs” – by Korean citizens, who have opted to work in automobile, electronic, business and other professional careers.¹

3. There are over 2 million migrants in South Korea based on Korean Immigration statistics in 2016², equivalent to 4% of total population of the country. Meanwhile, marriage migration has grown rapidly and has become highly diverse today - the number of countries represented by foreign husbands and wives have increased from 88 countries in 2001 to 143 countries in 2015. It is estimated that there are more than 210,000 marriage migrants in South Korea.³

4. The influx of migrant workers from underdeveloped and developing countries in Asia, Latin America, Middle East and Africa started in 1991 when Korea further opened its economy, and introduced a systematic recruitment of foreign workers called the Industrial and Technical Training System (ITTS) following the Japanese model. According to the program, the imported foreign workers will enter Korea as trainees and not as workers. Although their visa status is "trainee" they actually work in factory without training and are regarded as "disguised workers".

5. ITTS is primarily designed to get low-skilled, cheap and docile labor that can augment the needs for labor of the booming economy of the country. It is an exploitative system used by the Korean government to deprive migrants of their rights and privileges as workers; it breeds undocumented workers due to the inhuman working conditions in the workplaces (long working hours, verbal and physical abuse, low wages, despite working in dirty, difficult and dangerous jobs). Korea has adopted the trainee system to prevent migrant workers from becoming permanent workers and control their stay.⁴

6. The trainee system has been subjected to broad criticisms from NGOs, worker's unions, and international institutions in Korea and abroad. The clamor to improve the condition has opted the government to come up with a new system. But instead of changing the so called “modern day slave system”, the Korean government introduced the system that will co-exist with Industrial Trainee System.

7. In August 2004, the South Korea government introduced the Employment Permit System (EPS) primarily designed to address the problem of undocumented migrants and, at the same time, ensure the

¹ Rev. Francisco J. Hernando and Rev. Gloria De la Cruz-Hernando, *Migration and Empowerment Mission Report, 2015, An evaluative summary of mission expertise from 2004-2014, PROK-UCCP, p. 2*

² http://www.immigration.go.kr/doc_html/attach/imm/f2016//20160830263386_1_1.hwp.files/Sections1.html

³ Rev. Francisco J. Hernando and Rev. Gloria De la Cruz-Hernando, *Migration and Empowerment Mission Report, 2015, An evaluative summary of mission expertise from 2004-2014, PROK-UCCP, p. 2*

⁴ *In the interest of profit, labor flexibility took shape in Korea in the form of Trainee System and the Employment permit system, a paper presented by KASAMMA-KO (Alliance of Different Migrant Organizations in Korea), 2007*

need of small and medium entrepreneurs (SMEs) for cheap, docile and disposable labor offered by migrant workers. It was fully implemented in January 2007 and replaced the more than a decade-old Trainee System.

8. The Employment Permit System Act according to Korean government has three purposes: 1.) Facilitating smooth labor supply and balanced development of the national economy by allowing the employment of the foreign workers in the industrial sectors that are going through the labor shortage; 2.) Protecting employment opportunity for Koreans and managing the foreign workers in systemic manner, and; 3.) Preventing human rights violation on foreign workers and developing the institutional mechanism to guarantee the rights of foreign workers.

9. So far, the Korean government has signed MOUs with 15 origin countries in the framework of the EPS: Bangladesh, Cambodia, China, Indonesia, Kyrgyzstan, Mongolia, Myanmar, Nepal, Pakistan, the Philippines, Sri Lanka, Thailand, Timor-Leste, Viet Nam and Uzbekistan. They are holders of EPS E-9 visa (MOEL, 2012).

Migrant rights and dignity are continually violated and disregarded under EPS

10. First and foremost, South Korea is signatory to numerous international treaties and conventions pertaining to the protection of cultural, economic and political rights such as International Convention on Economic, Social and Cultural Rights (CESCR), International Covenant on Civil and Political Rights (CCPR), International Convention on the Eliminations of All Forms of Discrimination Against Women (CEDAW), International Convention on the Elimination of All Forms of Racial Discrimination (CERD) among others.

11. The EPS Act on the other hand further contributes to human and labour rights violations by severely restricting migrant workers' ability to change jobs and challenge abusive and exploitative practices by employers. For instance, Korean employers are extremely reluctant to sign release forms and on some occasions will only do so in exchange for a bribe, which is usually between US\$1,000-2,000.

12. Migrant workers continue to be regularly exposed to serious exploitation, which includes excessive working hours, unpaid overtime, denial of rest days and breaks, threats, violence, trafficking and forced labour.

13. The Employment of Foreign Workers' Act or commonly referred as Employment System Act is silent on the right of migrant workers to organize and form a union, which it is guaranteed in the South Korean Constitution that clearly stipulates, "Workers have the right to independent association, collective bargaining, and collective action" (Article 33 (1). Similarly, Article 5 of South Korea's Trade Union and Labour Relations Adjustment Act (Trade Union Act) states that "workers are free to organize a trade union or to join it."

14. The formation of the Migrant Trade Union in South Korea is a collaborative effort of the migrant workers organizations and the Korean Confederation of Trade Unions (KCTU). Many members of the MTU are undocumented migrant sweatshop workers from Bangladesh, Indonesia, Indo-China, Philippines, etc.⁵ Their leaders have reportedly been threatened with deportation and tailed by immigration police everywhere – be it at the workplace or in public areas like the case of Michel Catuira in 2011 after he strongly criticized the massive crackdown of undocumented migrants in 2010.⁶

⁵ Ramon Bultron, *The Grave Attacks on Migrants' Rights Taught Us One Thing: Get Organized! Build Alliances!*, 2006, York University, Toronto, Canada, *Asia Pacific Mission for Migrants*, http://www.apmigrants.org/articles/papers/CS_Grave_Attack_on_Migrants.pdf

⁶ *Despite the decision of the court allowing Michel to stay in Korea, the Korean Immigration did not reinstate his E9 visa (working visa). With G1 visa still valid he decided to go back to South Korea to pursue his case. But Catuira was forcefully and*

15. The EPS Act does not solve the problem of undocumented migrants who are the most vulnerable sector of migrants in South Korea. Instead, it perpetuates hiring of undocumented migrants by Korean to evade compliance on minimum wages, benefits and leaves.

16. Moreover, the EPS Act fails to prosecute Korean employers who avoid paying their migrant workers of severance pay and pension after several years of working in their companies as stated in the law on severance pay and National Pension System.

17. The case of Gerly Santos, a Filipina migrant worker who worked in a textile company in 2012 is an example of the failure of the EPS to protect the rights of migrant workers. Gerlyn worked for 4 years in the textile company Kubong Somyo in SamDong, Gwangju-si, Gyeonggi-do, Korea. She was deprived of her right for severance payment amounting to US \$4,000. The said company also failed to remit her monthly deduction intended for National Pension Plan in partnership with the Social Security System (SSS) in the Philippines.

18. According to KASAMMA-KO (alliance of different Filipino migrant organizations in Korea), EPS violates workers rights to organize and form a union, deprives them of the right for collective bargaining, and results to other forms of human rights violation. Most of the EPS workers after they reach the maximum years of stay in Korean return to home country without receiving their severance pay, pension and other benefits. Many Korean employers deliberately evade such responsibilities due to failure of Korean government to run after and prosecute delinquent employers who have records of human rights violations.

Domestic violence and other forms of HRVs continue against marriage migrants

19. Marriage migrants of whom many are women from China, Vietnam, the Philippines, Cambodia, Thailand, and few others, find themselves suffering from domestic violence, racial and gender discrimination and other forms of human rights violations.⁷

20. Long-term stay in Korea and the acquisition of nationality of marriage migrants totally rely on their Korean spouses. As long as the status of marriage migrants depends on the Korean spouse, marriage migrants will have to endure human rights violations such as domestic violence.⁸

21. Moreover, there are cases of marriage migrants whose application for Korean citizenship was absolutely denied because their Korean spouse or family did not have enough funds or properties equivalent to KRW30 million as required in the Immigration Control Act and the Naturalization Act. There are also cases when the husband is reluctant to provide the required financial documents and thus jeopardizing the application of marriage migrants for citizenship.

22. It is always possible after divorce that the Korean spouse with parental right may lose the capacity to bring up his or her child. Current provisions of the Immigration Control Act and Nationality Act of Korea deprive children the right to live with their mother as well as deprive migrant women of their right to live with their children.

23. There are several cases where migrant women return home with their children without legal parental rights because they believe that when they secure such parental right from the court they will

physically dragged to board a plane back to the Philippines despite his pleas that he be allowed to file an appeal after the May 1st holiday. The moved of Korean government is primarily designed to weaken the resolve of MTU to fight for migrant rights and dignity.

⁷ *for better or for worse: Comparative Research on Equity and Access for Marriage Migrants, 2010, Asia Pacific Mission for Migrants, Hong Kong, SAR, China, p. 75.*

⁸ *Ibid. p. 82*

be deprived of sojourn status or right of stay in Korea. Due to the fact that the court's important consideration in deciding for the parental right is the economic condition or capacity of those who wish to look after their child. In these cases, marriage migrants are always on the losing end and the children who do not have full Korean identity and family documents when brought to their mother's home country are restricted to receive formal education or to fall into becoming undocumented from foreigner status..⁹

Recommendations

24. Allow migrant workers to change jobs under EPS system without having to obtain a release form from their previous employer. Where migrants file cases against their employer, they must be free to find jobs and allowed to work while their cases are being investigated;
25. Recognize MTU as a legitimate union of migrants in line with the existing domestic law and international law pertaining to the right to organize and form a union;
26. Regulate working hours for migrant workers ensure that they have regular daily breaks, day-off and weekly paid rest days as local workers are entitled to;
27. Prosecute employers who evade the responsibilities of paying the migrants of their severance pay and pension plans and are found violating the rights of migrants. Set up an effective and efficient mechanism to ensure that migrants can receive their severance pay and pension after years of working in the company;
28. Ensure effective and efficient mechanisms for migrants to easily find jobs after their contract has been terminated; when they become victims of abusive and exploitative employers, and other instances that necessitate their changing of jobs;
29. Korean government must employ or designate women social workers to attend to cases of women marriage migrants especially victims of domestic violence and other forms of human rights violations;
30. Initiate an educational program between Korean government and country of origin of marriage migrants for the purpose of learning each other's culture, tradition and language;
31. Set-up a regulatory mechanisms intended for marriage matching agencies, churches and organizations involved in the business of matching women with Korean men. These agencies, churches and organizations shall be required to conduct cultural reorientation program and human rights education for Korean men who wish to marry foreign women.

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⁹ *Ibid.* 83

