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### **PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL, POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS, INCLUDING THE RIGHT TO DEVELOPMENT**

**Written statement\* submitted by MINBYUN-Lawyers for a Democratic Society,  
a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is  
circulated in accordance with Economic and Social Council resolution 1996/31.

[20 February 2008]

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- This written statement is issued, unedited, in the language(s) received from the  
submitting non-governmental organization(s).

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## **The human rights of migrants in the Republic of Korea<sup>1</sup>**

### **I. Human Rights Situation in General**

1. MINBYUN appreciates the attention of the Human Rights Council(HRC) and the Special Rapporteur on the Human Rights of Migrants to the situation of migrants in the Republic of Korea(ROK), in particular the Special Rapporteur's visit (December 2006) and report (March 2007).
2. As mentioned in the Human Rights Committee's periodic report on the ROK (October 2006), migrants in the ROK face "persistent discriminatory treatment and abuse" and are denied "equal access to social services and educational facilities as well as the right to form trade unions."
3. We share the following concerns expressed in the Special Rapporteur's report:
  - 1) The ROK has not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families(ICPRMW).
  - 2) Restrictions under the Employment Permit System(EPS) place migrant workers in a vulnerability situation and are inconsistent with international human rights treaties to which the ROK is party.
  - 3) The policy of deportation of irregular migrants is insufficient and has led to human rights violations.
  - 4) Migrant women are vulnerable to multiple violations due to gender and status including violence at home, in their communities and at their workplaces.

### **II. Issues of Special Concern**

- 1) Inadequate Revision of EPS
4. The Special Rapporteur recommends that the EPS be revised in accordance with international human rights treaties to which the ROK is party, noting this would require means for unskilled migrant workers to lodge just complaints against employers. We are concerned that no substantial revisions of EPS have been made.
5. As noted by the Special Rapporteur, the EPS binds migrant workers to employers, restricting their freedom of movement. To change employers a migrant worker must receive permission from his/her employer, register with the Labor Ministry and find new employment within two months or face becoming irregular. The chance to change employers is restricted to three times except in exceptional circumstances. Many migrant workers are therefore forced to remain in workplaces where their rights are violated.
6. As the Special Rapporteur notes, because EPS requires them to extend contracts with their employers annually, migrant workers are often fearful of lodging complaints when work conditions are inadequate.

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<sup>1</sup> The Korean Confederation of Trade Unions, the Seoul-Gyeonggi-Incheon Migrants' Trade Union and the Emergency Committee to Stop Repression against Migrants also share the views expressed in this statement.

7. As noted by the Special Rapporteur, the three-year residence period under EPS is often not sufficient due to high debts incurred in the migration process prompting many migrants to stay beyond three years. A recent revision has allowed for the extension of residences for an additional three years, but only when a worker is invited by his/her employer and he/she leave the country for one month.
8. The restrictions placed on migrant workers' freedom of movement, three-year residence terms and annual contract renewals are factors that induce irregularity among migrant workers who leave legally-registered employers or overstay residence periods.
- 2) Irregular Migrant Workers
9. The ROK Government's policy towards irregular migrants is one of forced deportation. As the Special Rapporteur notes, this policy is inconsistent with the guarantees against forced return in Article 13 of the International Convention of Civil and Political Rights (ICCPR), which the ROK has signed. We are concerned that while this policy has not solved the problem of irregular migrants it has led to severe human rights abuses.
10. The Special Rapporteur notes the 2005 opinion of the National Human Rights Commission that the rights of irregular migrants are violated during immigration operations. He also notes that issue of detention orders by immigration officials (under the Immigration Control Act) appears contradictory to the constitutional provision requiring they be issued by a judge.
11. Migrants have been injured while fleeing, handcuffed, held for hours in immigration vans and beaten in the course of crackdowns. Illegal procedures such as unwarranted building entries and the presentation of detention orders after the fact of arrest rather have also been employed.
12. The Special Rapporteur notes the poor conditions of detention. Detainees are often subject to verbal and physical abuse and deprived of legally stipulated exercise time, adequate medical treatment and adequate assistance in receiving unpaid wages and handling other workplace-related problems.
13. On 11 February 2007 a fire broke out at Yeosu Detention Center killing 10 migrants and injuring 17 others. At that time civil society expressed the opinion that the cause of this tragedy was the government's policy of detention and deportation. We are concerned that one year afterwards nothing in the government's policy has changed.
14. The case of Suwash Budathoki (born 1978, Nepalese) deserves special attention. In July 2007 Budathoki was stopped by police without reason, turned over to Immigration Authorities when found to be irregular and detained. A complaint was submitted to the National Human Rights Commission concerning the illegality of his arrest. Budathoki waited in detention for the results of the complaint.

15. Budathoki contracted severe diabetes due to poor detention-center conditions. Despite his condition the Ministry of Justice turned down an application for his temporary release in January 2008.
16. Budathoki's case drew attention from civil society. On 30 January 2008 he was taken out of the detention center gagged and bound in the back of a bread-delivery vehicle to avoid the notice of supporters and deported without receiving treatment.

C. Proposed Immigration Law Revision

17. On 8 November 2007, the Ministry of Justice announced a planned proposal for the revision of Immigration Control Law, expected to be considered in 2008. We are concerned that this proposal will further deteriorate the rights of migrants.
18. The proposal bestows immigration officers with the right to make unwarranted building-entries. It also gives them the authority to stop and question anyone who appears in violating immigration law and legalizes the presentation of detention orders after arrests, rather than before.
19. The proposal stipulates multiple conditions under which applications for refugee status can be denied before processed, limiting the rights of refugees. A stipulation that refugee status can be revoked if an individual is suspected as a threat to security or public order also has the potential to restrict refugees' freedom of expression.

D. Restrictions on Union Activities

20. The right of all workers, regardless of status, to participate in union activities is protected in ROK and international law. We are concerned that the ROK Government has taken several measures to limit this right, especially regarding irregular migrant workers.
21. On 24 April 2005 irregular migrant workers formed the Seoul-Gyeonggi-Incheon Migrants' Trade Union (MTU). The Ministry of Labor initially rejected the union's official status on the basis that its officers, as irregular migrants, were not equally protected under labor law. This decision was first upheld by a district court and then overturned by the Seoul High Court, which ruled that irregular migrant workers have the right to join and form unions. The Ministry of Labor has appealed to the Supreme Court, where a decision is pending.
22. We are concerned that the Government has targeted MTU leadership so as to stop the union's activities. Most recently, on 27 November 2007 the MTU president, vice president and general secretary were all arrested at roughly the same time at three separate locations and detained. In each case, as many as 15 immigration officers lay in waiting to make the arrest. Despite domestic and international protest, the men were removed from their cells in the middle of the night, taken out a hole in the fence at the back of the detention center to avoid supporters' notice and deported early in the morning of 13 December. The deportation occurred without trial and while a Human Rights Commission investigation was

still underway. A constitutional appeal is currently being prepared concerning the unconstitutionality of the deportation including the lack of trial before it took place.

23. MTU General Secretary Moniruzzaman ABM was accompanied by immigration officers on his flight to Bangladesh. He was kept for several hours in a Hong Kong lounge during a stop over. At this time he was forbidden to use the computers and telephones in the lounge to contact friends and family in the ROK and Bangladesh. Upon arriving in Bangladesh he was questioned by authorities, who had received written notice from the ROK Government concerning his activities in the ROK. We are concerned that the violations against irregular migrant workers engaged in lawful union activities follow them to their home countries.

### III. Recommendations

We recommend that the HRC urge the ROK Government to:

- 1) implement the recommendations made by the Human Rights Committee and the Special Rapporteur.
- 2) set up comprehensive legal framework for all migrants regardless of their status using a rights-based approach, including a comprehensive solution to the problem of irregular migrants, and to ratify the ICRMW.
- 3) allow an NGO investigation of the conditions in detention centers and consider other rights-based alternatives including the possibility of closing detention centers.
- 4) cease its efforts to stop the union activities of irregular migrant workers in accordance with the South Korean Constitution, ILO precedents and the principle of freedom of association.

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