

# **NGO Report under ICERD**

## *Republic of Korea*

71<sup>st</sup> Session of the Committee on the Elimination of Racial  
Discrimination  
on the 14<sup>th</sup> Periodic Report submitted by the Republic of Korea  
under Article 9 of the International Convention  
on the Elimination of all Forms of Racial Discrimination

June 2007

# MINBYUN-Lawyers for a Democratic Society

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## **Chapter 1. Introduction**

1. In July of 2006, the Korean government submitted the 13th and 14th periodic reports under Article 9 (hereinafter the State Report) of the International Convention on the Elimination of all Forms of Racial Discrimination (hereinafter the Convention) to the Committee on the Elimination of Racial Discrimination (hereinafter the Committee). This NGO Report was written to point out the problems of the State Report and explain the issues which have been insufficiently considered or entirely excluded, and thus assist the Committee to accurately understand and review the present situation of racial discrimination in Korea.
2. MINBYUN-Lawyers for a Democratic Society, in cooperate with Migrants Trade Union(MTU), Joint Committee with Migrants in Korea(JCMK), GONGGAM-Korean Public Interest Lawyers Group(KPILG), hopes that the Committee will take notice of the issues presented in this counter report, and reflect them in the coming 71<sup>st</sup> Session through making inquiries to the Korean government in order to effectively convey our main concerns and anxieties about racial discrimination in Korea.
3. This counter report chose to focus on the most crucial issues rather than list every issue mentioned in the Government Report. Thus some issues are not included in this report, but this does not indicate oblivion to the importance of these excluded issues.

## **Chapter 2. Evaluation of the Reports in General**

4. The Committee, in its Concluding Observations released after considering the 11th and 12th periodic reports at the 63rd Session(hereinafter the Concluding Observations), ‘takes note of the view of the State party as to the homogeneity of its population’ in Paragraph 7, and ‘in light of the absence of specific statistical data ..., recommends that the State party provide an estimate of the ethnic composition of the population in subsequent reports’ as requested in the ‘General Guidelines Regarding the Form and Contents of Reports to be Submitted by States Parties’. Nevertheless, the Government Report states in Paragraph 4 that there is no specific data on the ethnic composition because ‘the Republic of Korea is an ethnically homogeneous country’ and ‘does not conduct a census on ethnicity’.
5. Such attitude of the Korean government shows that it is not fully aware of the

graveness of the racial discrimination existing in the Korean society in various forms, and acts as a great impediment in facilitating the fundamental spirit of the Convention to eradicate and prevent racial discrimination. As the Korean government itself has stated, it does not compile accurate data or statistics on naturalized migrants or children of international marriage, and does not properly perform basic monitoring on the tendencies and results of various kinds of discrimination, such as uneven distribution of jobs, discrepancy of income, varying level of education, difference in housing based on race, color, descent, or national or ethnic origin, etc.

6. The Committee, in relation to ‘the lack of specific information in the State party's report on acts of racial discrimination and complaints and legal action by victims’, indicates in Paragraphs 8 and 9 of the Concluding Observations that this ‘may be the result of the absence of relevant specific legislation, or of a lack of awareness of the availability of legal remedies, or of insufficient will on the part of the authorities to prosecute’ and requests the Korean government that ‘statistical information, disaggregated by gender, on investigations and prosecutions launched and penalties imposed in cases of offences which relate to racial discrimination and where the relevant provisions of the existing domestic legislation have been applied’ be included in the subsequent reports. In addition, despite ‘ongoing discussions ... concerning the drafting of a Discrimination Prohibition Law, the Committee expresses concern ‘that the legislation of the State party does not seem to respond fully to the requirements of article 4 of the Convention’ and recommends ‘that the State party review its domestic legislation in the light of general recommendation XV concerning the implementation of article 4 of the Convention and that it adopt specific legislation on the offence of racial discrimination and incitement of racial hatred in accordance with article 4’.
7. However, Paragraphs 9, 10, 59 and 60 of the Government Report only present Article 11, Paragraph 1 of Article 37 and Paragraph 1 of Article 6 of the Constitution, or Articles 307, 309 and 311 of the Penal Code; they do not include data on investigated and prosecuted cases related to racial discrimination nor sufficient review results of the Korean legislation. Such attitude of the Korean government is the result of either lack of awareness of the purpose of the Convention or lack of consideration for the severity of the racial discrimination problem.
8. In conclusion, the Government Report is merely a conventional report that lists the relevant laws and legal institutions of Korea, and does not sufficiently present specific

results, problems, or relevant data of the implementation of the Convention. As a result, it does not accurately reflect the situation of the Korean society in terms of racial discrimination. Besides, the Government Report does not thoroughly review the problematic laws and institutions, and as a result, cannot suggest specific plans or programs to address the problems.

□ Conclusion and Recommendation

9. The Korean government, in order to identify and improve the various situations of racial discrimination, should accurately and thoroughly monitor the tendencies and results of various forms and acts of discrimination, explicitly prohibit racial discrimination, and prepare legal measures to ban and prosecute such acts of discrimination.

### **Chapter 3. Undocumented Migrant Workers**

10. The Committee, in Paragraph 10 of the Concluding Observations, expresses concern about the reality in which migrant workers in the Industrial Trainee System and undocumented migrants do not fully enjoy their rights as provided by Article 5 of the Convention. Then the Committee recommends that information on the implementation of relevant provisions of Article 5 for all migrant be included in the subsequent reports. In this regard, this counter report will present the reality of undocumented migrant workers in Korea, who constitute half of all migrant workers even after the introduction of the Employment Permit System. In particular, this report will mention the human rights issues and the rights infringement of undocumented migrant workers, revealed by the fire tragedy at Yeosu Migrant Control Office on February 11, 2007. Adding to that, this report will explain the problems in all migrant workers' enjoyment of rights in relation to the implementation of Article 5 of the Convention.

#### **A. The General Situation**

11. On February 11th of this year, a shocking tragedy took place. A fire at a foreigner detention center inside Yeosu Migrant Control Office took the lives of 10 and injured 17 detainees. It was a tragedy resulting from a persistent policy that involves problematic regulations and practices from arrests to deportation of undocumented

migrants. The Korean government has confined undocumented migrants in jail-like detention facilities even though they are not criminals. Because foreigner detention facilities confine foreigners in rooms like jail cells with steel bars, their freedom of movement is completely disregarded. Yeosu Detention Center was one of them. When the fire broke out, the exit doors were not opened quickly enough because of 'concern for runaways' and it resulted in augmented losses. The field research of the National Human Rights Commission conducted in 2005 shows that the average detention period of detained foreigners is 24.9 days, but there is also a case in which one was detained for more than ten months. The primary reasons for long-term detention were lack of money for plane tickets, delay in wage payment, trials in process, application for refugee status while in detention, etc. Very often even the most basic rights, such as receiving delayed wage payments or discharge allowances, are not aided by detention centers. As a result, most of the detainees at Yeosu Detention Center at the time of the fire were also long-term detainees. According to the investigation of the National Human Rights Commission on the fire incident, the average detention period of the detainees at that time is eleven months.

12. The survey on the 14 injured detainees conducted and compiled by the 'Committee on the Fire Tragedy at Yeosu Foreigner Detention Center' consisting of approximately 40 labor or social organizations, clearly shows the human rights infringement that took place during their arrests.
  - i. The authorities did not present identification at the time of arrest, or cannot remember: 10 (71%)
  - ii. The Miranda Rule was not observed during the arrest process: 11 (79%)
  - iii. Urgent detention Orders were not presented at the time of arrest: 8 (58%)
  - iv. Weapons were used at the time of arrest: 11 (79%)
  
13. According to the Ministry of Justice, as of February of 2007 there are 208,271 undocumented migrant workers. After the introduction of the Voluntary Return Program in 2003, the number decreased from 298,000 in September to as low as 138,000 that year, but has been steadily increasing since then. The Korean government

relies mainly on compulsory arrests, detention, and deportation policies to solve the problem of undocumented migrant workers. The government has arrested 97,736 undocumented migrants from 2004 till March 2007.

14. The Korean government has actively initiated measures on collaborative arrests and compulsory deportation since November 2003. The large-scale arrests and deportation policy drove a Sri Lankan migrant to commit suicide by jumping into a subway train on the 11th of the same month. The case in which an Indonesian migrant died in spring of 2006 when he fell from the third floor of a factory building while trying to escape being arrested and the Yeosu Foreigner Detention Center fire incident are the most drastic examples of the destructive nature of the present arrests, detention and deportation policies. As of December 2006, despite the strict deportation enforcement policy, 187,000 people are of 'illegal aliens' status. Moreover, if aged people and children not in employment are included, the number of 'illegal aliens' reaches 211,988, and if migrants of Korean ethnicity who are 'illegally employed' (86,440) are included, it can be assessed that the government's deportation enforcement policy is a failure.
15. As of March 31, 2006, out of the total of 185,550 undocumented migrant workers, 30% were employed under the Act on Foreign Workers Employment. As of April 2007, 20% of all undocumented migrant workers are employed under the Act according to the statistical data provided by the Ministry of Justice.

## **B. Foreigner Detention Center**

16. The Government Report does not mention human rights infringement in foreigner detention centers. However, as can be seen through the result of the 2005 " Survey on the Arrest, Detention and Deportation of Undocumented Migrants in Korea" carried out by the National Human Rights Commission, and the fire incident at Yeosu Detention Center, the human rights situation in foreigner detention centers are very grave.
17. The National Human Rights Commission that investigated the Yeosu fire incident on its authority, confirmed that the structure and administration of the detention center was like that of an imprisonment facility, and that the exit doors were double locked. They presented an opinion to the Minister of Justice and the National Assembly



Speaker that the basic rights of the detained foreigners can only be restricted to the necessary and minimum extent. The Commission has also recommended that kinds of basic rights that can be restricted during detention be named, and the general rights that a detained foreigner can exercise during detention, such as rights to visits and communication, right to petition, restriction on the use of physical force during detention, rights related to health, fasting, and medical services, etc, be specifically established.

18. In relation to the Yeosu Detention Center fire incident, the secretary general of Amnesty International said in his public letter to the president of Korea, "about the detention facilities that keep foreigners in custody... we are consistently receiving reports that point out the poor conditions....", and has expressed concern. Furthermore, he requested the Korean government that the situations of the detention centers be improved according to international laws or standards such as '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'.
19. The Immigration Control Act states that in case a person subject to compulsory deportation cannot immediately be deported, he is to be detained till the deportation is possible, and when it is evident that he cannot be deported, that his discharge will be left to the discretion of the chief of the detention center. In case of detention based on general detention orders, the period of detention is, in principle, less than ten days, maximum twenty. Consequently, in case of detention for the execution of compulsory deportation, the person can be "infinitely" detained without constraint of time.
20. Although detention of foreigners is said to be an administrative measure, in reality, it is no less than 'imprisonment'. Thus, freely allowing detention orders that place a person under custody that restrains that person's rights and freedom is an act that threatens the foundation of warrant procedures. Also, based on the fact that there is no method to file complaints or petitions against such 'long-term' detention, such regulations and long-term detention contradict the rule of warrant in the Constitution. Furthermore, it is noteworthy mentioning that the General Recommendation XXX on Discrimination Against Non Citizens of the Committee, with regard to arbitrary detention of non-citizens, recommends the state parties to ensure their security and that conditions in facilities for refugees and asylum-seekers meet international standards.

21. Paragraph 81 of the Government Report explains that migrant workers can receive assistance through government and public organizations such as the Immigration Control Office. Because it is practically impossible for migrants in detention centers to solve problems such as delay in wage payment on their own, active efforts from relevant agencies such as the Immigration Control Office and the Labor Office are crucial. However, in the case of Yeosu Foreigners Detention Center last year, there was not even a single consultation visit from Yeosu local labor office. This is only a recent example that shows the absence of rights of the detained migrant workers. Meanwhile, such negligence of relevant agencies is the main reason of long-term detention of migrant workers.
22. Among the 27 that were killed or injured in the Yeosu fire incident, 10 workers had the problem of delay in wage payment. One Uzbekistani worker (male, 45) died in the fire while having been detained for 11 months and 20 days in the center because the delay in wage payment had not been solved. One Chinese worker (male, 45) had been detained for approximately one year and two months because of the same problem.
23. In relation to the administration and functioning of the criminal justice system, the Committee's General Recommendation XXXI recommends that 'as regards persons placed in administrative holding centres or in holding areas in airports, States parties should ensure that they enjoy sufficiently decent living conditions'. However, according to the 2005 research by the National Human Rights Commission, 68.1% of those subjected to the survey had experience of being handcuffed inside the facilities, and 4.8% experienced isolated detention. Besides, 54.0% replied that exercise is not permitted at all inside the facilities, 27.7% replied that it is permitted 1~2 times a week, and in respect to religious activities, 45.5% replied it is not possible. When asked whether they have experienced human rights infringement from Immigration Control Office officials, 70.6% said they have. More specifically, they experienced: swearwords or insulting language(19.9%) beating or assault(5.1%) being prohibited from watching television(41.9%) being commanded not to lie down(29.9%) being prohibited from talking with other foreigners(26.5%) being prohibited from writing(24.8%).

**C. Labor Policy - Issues Concerning Change of Workplaces and Period of Employment Activities**

24. Paragraph 39 of the Government Report introduces the Employment Permit System and states that “the endorsement of the Act on Foreign Workers Employment on 16 August 2003 allowed for the equal application of all labor-related laws, including the Labor Standard Act, to foreign laborers and native workers.” However, the Act defines the supply of human resources more from the standpoint of 'hiring' rather than from that of 'labor', and its purpose lies not in improvement of conditions or protection of rights, but in control of migrant workers.
  
25. The Employment Permit System promotes violation of human rights by strictly limiting change of workplaces, leading to possible enforcement of dominance-subordination relationship, deterioration of labor conditions, and even forced labor. The Act grants the right to cancel the employment contract during employment, or to refuse renewal of contract after expiration only to the employers. Thus, unless the migrant worker gets the consent of the employer, except for extreme cases such as the administration's cancellation of employment due to the employer's violation of labor laws, or suspension or closure of the company, it is nearly impossible for the migrant worker to change workplaces. Thus, even if the employer commits a severely discriminating and insulting act, or violates the employment contract or the labor laws, the employee cannot request for improvements or change of workplaces out of fear for the employer refusing to renew the employment contract. Even if the migrant worker cancels the employment contract because of the employer's unjust treatment, since it is not a valid reason to request for a change of workplaces, the worker has to become an 'illegal' alien or leave the country. Even worse, if employment assistance centers deny a migrant worker's request to change workplaces, there is no appropriate complaint procedure.
  
26. The Employment Permit System strictly limits the employment of migrant workers to three years. But for migrant workers who spent as much as ten million won (more ten thousand US dollars), and who receive on average only 40% of the domestic workers' wage, the policy of three-year short-term employment very often ends up producing 'illegal aliens'. As of August, 2007, the first expiration for the 3 year employment will come, and a large number of migrant workers are expected to become illegal aliens after exceeding the expiration. The Korean government plans to revise the Immigrant Control Act this year and incorporate migrant workers who are employed as industrial trainees into the Employment Permit System. Thus, the vicious cycle of producing

'illegal aliens' will continue.

27. The Employment Permit System also strictly limits the waiting period of the change of workplaces to 2 months. However, enforcing a 2 month limit uniformly even if there is no fault on the migrant worker is an excessive legal constraint that deprives the worker of his intention to stay and expectation of employment. Moreover, because of such restraints, even if the employee is under the employment insurance, there is a possibility that he can be excluded from discharge allowances or job training for re-employment.
28. The Employment Permit System, in principle, limits the change of workplaces to 3 times, and allows an additional change if there is no fault on the migrant worker in all three previous changes. This is a measure that excessively limits the number of changes even though the characteristic of the work such as seasonal work, or personal reasons of the worker might require a change of workplace.

#### **D. Arrests and Deportation**

29. The Government Report does not mention human rights issues at all during arrests and deportation processes against 'illegal aliens'. While the Immigrant Control Act's provisions for arrests and deportation of undocumented aliens are ambiguous and wide-ranged, there is no means to appropriately supervise Immigrant Control officials, who are the main performers of such arrests and deportation. Moreover, not only does the Act restrict the alien's right to petition by defining the petitioner as a detainee or a legal representative, it also does not even have the petition process for temporary detention. In reality, 'detention' that is very much a physical imprisonment is left to the arbitrary discretion of the Immigrant Control officials, and countermeasures and supervision are limited. During the arrests process, far from recounting the Miranda rights, appropriate legal documents are not presented, and the legal procedure of entering detention facilities is not defined. Although there was a recommendation from the National Human Rights Commission to follow the appropriate legal principles and procedures, the Korean government has continuously disregarded them.
30. The extensive crackdown on undocumented migrants, prompted by the policy of illegalizing undocumented migrant workers, has greatly deteriorated the general living

and working conditions of the migrant workers. For example, business owners coax the migrant workers to work all night, under the excuse of avoiding arrests. When comparing 2002 when the extensive arrests began to operate to 2005, real wage has decreased by more than 10% and work hours have increased. There have been cases where: employers report undocumented workers they employed for the purpose of not paying their wages; immigration officials arrest migrant workers receiving treatment from industrial accidents; and migrant workers run away from their homes in their underwear to escape arrests much like rabbit-hunts. Such cases show the situation in Korea in which the most basic rights entitled to human beings regardless of citizenship are being threatened.

### **E. Remedies and the Notification Responsibility**

31. Paragraphs 75 and 78 of the Government Report states that foreigners are entitled to receive protection, remedies and compensation in cases of acts of discrimination. However, Korea limits foreigners' right to remedies by adopting the principle of reciprocity in state compensation, and this principle is being applied widely also in the area of social security.
32. The restraint on foreigners' rights to request compensation from the state, etc, based on the idea of reciprocity is unjust from the viewpoint that the relevant provisions of Korean Constitution do not indicate reciprocity. It is also in conflict with Article 9 Paragraph 1 and Article 5 (right to liberty and security of person), Article 2 (equal rights), Article 26 (equality before the law) and Article 2 Paragraph 3 (right to an effective remedy) of the International Covenant in Civil and Political Rights. The Human Rights Committee has stressed that applying the principle of reciprocity in the guarantee of rights to aliens under the provisions of the laws of the State Party to the Covenant is clearly opposed to Articles 2 and 26 of the Covenant.
33. The Korean government's execution of compulsory deportation always comes before the right to remedies of undocumented migrant workers. In other words, to a foreigner, the Korean law for the right to remedies has no effect as long as he or she is an 'illegal alien.' The Immigrant Control Law virtually overrides all other laws.

Case Example: Deportation of a Migrant Worker in Treatment of a Car Accident.
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On July 12, 2005, two migrant workers, J from Indonesia and D from the Philippines, collided with a car driven by a Korean while riding a motorcycle. The two migrant workers fractured their legs, etc, and were being treated in a hospital, but the police, after identifying their undocumented status, transferred them to the Immigration Control Office. D was deported to his home country on August 19, J on August 24. While the deportation decision of the Immigration Control Office is also problematic, the action of the police is also unacceptable. The police did not perform the most basic investigation on the accident, and the migrant workers were deported without any compensation because they could not even proceed with the damages compensation process.

34. Paragraph 75 of the Reports state that the Constitution and the relevant laws of the Republic of Korea ensure everyone within its jurisdiction effective protection and remedies against any acts of racial discrimination through competent national tribunals and other State institutions. Nevertheless, under the current Immigrant Control Act, an official of the state or a local office who finds an undocumented migrant worker while fulfilling his duties is obligated to immediately report to the Chief of an Immigration Control Office or branch office, or that of a Foreigner Detention Center. Accordingly, those notified arrest the undocumented migrant worker and deliver him or her to the Immigration Control Office, etc. This severely constrains the right to remedies of an undocumented worker who is victimized by acts of human rights violation, such as sexual assault, delay in wage payment, battery, etc.

35. The rule of notification responsibility prioritizes the administrative purpose of immigration control over human rights protection. Because of this regulation, undocumented migrant workers victimized by sexual assault, delay in wage payment, battery, etc, often cannot practice their right to remedies out of fear for deportation. Incidents where an undocumented migrant worker who was assaulted by an employer getting detained when the employer reported to the police, and an undocumented worker who petitioned a delay in wage payment also getting detained are frequent, and this reflects how the notification responsibility system facilitates infringement of human rights.

Case Example: Transfer of a Victimized Migrant Worker to the Immigration Control Office by the Police

In February, 2006, at Chungnam Asan police station, an migrant worker 'John' from Uzbekistan sought help from the police to retrieve two million won that he entrusted to his

employer, but was instead arrested and transferred to the Immigration Control Office. In this case, John was discharged through a temporary release from detention when human rights organizations notified the Ministry of Justice and urged for a settlement. However, many other migrant workers' rights are unknowingly being infringed by the notification responsibility.

## **F. Legalization**

36. The Korean government recently announced a plan to grant permanent resident status to some skilled workers among the basic skill labor population of migrant workers. But when the contents are examined, it can only be applied to few people. Under the Employment Permit System, it is nearly impossible for a migrant worker to fulfill the requirements that the Korean government presented - an income level that exceeds the average income of domestic citizens, and a bank account that holds more than 30 million won (more than 30 thousand US dollars). Moreover, this plan does not even include undocumented migrant workers.

### Conclusions and Recommendations

37. Detention of foreigners should be limited to the minimum restriction on the freedom of residence and physical freedom to fulfill the purpose of deliberation or execution of compulsory deportation, and detention due to illegal sojourn, etc, and should not have disciplinary characteristics in any situation. The 2002 Report of the UN Special Rapporteur on the Rights of Migrants recommended all governments to consider the possibility of abolishing all kinds of administrative detentions, and if such was not immediately possible, to take measures to respect the rights of migrants. Addressing the current 'confinement' system, the restraint on physical freedom should be reduced to the minimum, and various alternative systems should be sought. The government should present plans to improve the administration of the detention centers looking back at the fire incident of Yeosu Foreigner Detention Center.

38. After the Yeosu Foreigner Detention Center fire incident, the government announced its policy to quickly deal with the migrant workers' grievances if labor-related problems such as delay in wage payment were found while consulting and investigating detained foreigners. But such policy alone cannot prevent long-term

detention of foreigners in detention centers. Efforts on the system level should be made, such as improvement on the systematic causes for frequent delay in wage payment to migrant workers (guarantee of labor rights, abolition of the notification responsibility), introduction of a system that guarantees payment of delayed wages, improvement on the system of temporary release from detention that requires payment of security deposit, active use of the temporary release from detention system for the right to remedies, the courts' supervision on long-term detention, etc.

39. The notification responsibility of government officials that practically obstructs access to the right to remedies should be abolished, and a system should be established to facilitate redress and remedies for an individual whose rights have been violated, even when he or she is subject to arrest and deportation. Provisions that hold the principle of reciprocity should be revoked if they act against the international law or even the spirit and written rule of the Constitution.
40. The three-year short-term employment policy for migrant workers is a policy that produces undocumented migrant workers, and migrant workers who are thus degenerated into illegal aliens are exposed to severe discrimination. The Korean government announced in April 2007 that it will grant residence or permanent residence to few migrants who meet high income and financial requirements. However, this plan does not apply to most migrant workers. It instead creates an even greater feeling of estrangement. Only when the opportunity to residence and permanent residence - the foundation for long-term employment - is granted more widely, can the discrimination against migrant workers and problems of human rights infringement be solved more effectively.
41. Arrests and deportation of migrant workers should be stopped immediately. Before the Industrial Trainee System was established in 1994, the Korean government has relaxed its regulation on entry and has overlooked migrant workers entering the country with travel visas and being illegally employed. Then, because the Industrial Trainee System and Employment Permit System both do not recognize or practically disable the labor rights of migrant workers, a large number of undocumented migrant workers were produced. Thus, today's undocumented migrant workers are a result of the government policy, and the government should take responsibility accordingly. Arrests and deportation must be stopped, and appropriate rights and decent life should be guaranteed to the migrant workers. Legalization or amnesty of the existing



undocumented migrant workers can be a starting point.

42. Legalization policy can solve both the human rights problem of migrant workers and the problem of lack of labor. Because Korea is already a second home country to them, granting permanent residence to migrant workers who have stayed for an extended period is a rightful act from a humanistic perspective. The biggest obstacle to undocumented migrant workers' rights and one of the systematic reasons of the Yeosu fire incident is the issue of the requirements of sojourn status. There should be a wide-scale changeover that legalizes all undocumented migrant workers and newly grants sojourn status.

## **Chapter 4. Migrant Women**

43. The General Recommendation XXV on Gender-related dimensions of racial discrimination of the Committee emphasizes that policies and programs adopted to abolish and prevent racial discrimination should be based on gender perspectives. However, the Government Report does not reflect such gender perspectives, and in particular, does not mention at all the multi-faceted discrimination that migrant women face.

### **A. Women Migrant Workers**

44. According to the research by 'the Study Group of the Members of the National Assembly on the Realization of Basic Labor Rights' done in 2005, women migrant workers had longer labor hours and lower wages than Korean workers, and much lower wages than men migrant workers.
45. If a woman worker becomes pregnant, the current Labor Standard Act guarantees maternity leave and child care leave, bans extended work hours, and limits nighttime and weekend labor in order to protect the health of the woman worker. However, in reality, women migrant workers are not in the position to demand that the same standard be applied to them. Many experience miscarriage or premature birth after hiding pregnancy and continuing to work. Some decide to get abortion, because they are likely to lose work when they become pregnant. In addition, women migrant workers who are employed as domestic workers or at a business of four or less

employees (restaurants and shops) where the Labor Standard Act does not apply, and undocumented women migrant workers receive practically no protection.

46. Women migrant workers are subject to frequent sexual harassment and assault at workplaces, and high percentage of these victims give up seeking legal assistance. Because the Employment Permit System strictly regulates change of workplaces, if the victim cannot prove that she was victimized, she must continue to bear the situation or leave the workplace without permit, and thus become an undocumented worker.
47. Especially in the case of undocumented migrant women, with reporting sexual assault to the authorities, she faces danger of arrest or deportation because of the authorities' notification responsibility rule. Thus, the undocumented migrant, even after being sexually assaulted, cannot report this fact due to fear of forced deportation.

## **B. Migrant Women's Influx into Sex Industry and Trafficked Migrant Women**

48. Statistical data on human traffickers' indictment rate and protection measures on trafficked migrant women are absent on the Government Report. In the current Korean legal system, there is no separate law that regulates human trafficking on its own. Narrow provisions of individual laws such as the 'Penal Code' or the 'Act on the Punishment of Intermediating in the Sex Trade and Associated Acts' do not cover crimes related to international human trafficking, and thus are limited in their ability to effectively regulate and punish international human trafficking.
49. As mentioned in the government report clause 87, the government stopped issuing 'dancer' entertainer visa (E-6), which was reported to cause human rights infringement such as sex trafficking as a preventive measure for sex trafficking of foreign women. Afterwards, however, foreign women have instead acquired the entertainer visa as 'singers', and have substituted the previous migrant women with dancer visas in foreigner-only entertainment clubs, continuing to work in sex industries.
50. Paragraph 86 of the Government Report explains that the government has created a provision in the Immigration Control Act that penalizes agents and employers who confiscate passports or certificates of inscription as a means of securing foreign females' financial obligations under the contract and payment of debt. However, under

the same Immigration Control Act, if a migrant woman in the sex industry flees from the employer's unjust demands and human rights infringement, the employer will simply report that the migrant worker abandoned her workplace, and her stay will become illegal regardless of the circumstances. There is no legal procedure in which a woman migrant can complaint against her illegal status. Such an immigration control system incapacitates women migrants from defying the employers' unjust demands to prostitution and human rights infringement.

51. Currently at foreigners-only entertainment clubs near U.S. army bases in Korea, migrant women from the Philippines, etc with E-6 visas are employed as waitresses, and are being forced by employers to solicit and entertain guests (ex. lap-dance, selling juice), and to engage in prostitution. Nonetheless, because they are foreigners-only entertainment clubs, the government is passive in its regulation of sex trafficking, and thus neglects the migrant women being victimized by sex trafficking.
  
52. Paragraph 87 of the Government Report states that a migrant woman who violates the Act on the Punishment of Intermediating in the Sex Trade and Associated Acts be deported to her home country. Thus, in reality, a migrant woman involved in sex trafficking investigation has difficulty gaining access to human rights information that can protect her, and cannot help but be passive in defending herself. Because of such circumstances, trafficked migrant women are sometimes deported even when investigations are insufficient. Moreover, although employers' demand for prostitution constitutes a serious crime, it is sometimes only lightly punished as simply 'procuring prostitution'. Very often the migrant women, the actual victims of sex trafficking, unjustly receive criminal punishment.
  
53. Paragraphs 87 and 88 of the Government Report state that if a witness is needed or a lawsuit is being filed, or humanitarian assistance is required, the victim's departure from the country can be postponed until her rights have been reclaimed and that it runs 24-hour shelters for victims of sex trafficking. However, because of restrictions such as having to return to their home country as soon as the lawsuit is complete, and having to stay at the shelter without pay during the lawsuit, many victimized women avoid filing lawsuits. Such limited security for extension of sojourn is insufficient for victims of human trafficking to report their infringement of rights and seek legal help.

### **C. Internationally Married Migrant Women**

54. As mentioned in Paragraph 43 of the Government Report, international marriages are increasing, and the ratio of foreign wives married to Korean husbands is also increasing.
55. According to the 2005 survey by the Ministry of Health and Welfare, among internationally married families, 52.9% fell under the absolute poverty line with the income under 100% of the minimum cost of living. Besides, the income of up to 44.2% of the families did not even reach 50% of the minimum cost of living.
56. While Paragraph 67 of the Government Report says that it has strengthened its support for low-income migrant families, there seems to be no security net for internationally married women migrants with more than half of the families are under absolute poverty. Among the 66,912 internationally married families, 35,359 families, more than half, have income of less than the minimum cost of living., while the recipients of social security are only 13.7%, 4,849 families.
57. Unnaturalized internationally married women are not guaranteed the minimum standard of living security rights in principle. The National Basic Living Security Act revised in December 2006, exceptionally extends the right to internationally married foreigners with Korean children, and it has been criticized that this is discriminatory to women who are infertile or have been divorced or abandoned.
58. It has been shown that internationally married women migrants have low accessibility to medical services and high motherhood health risks. 23.6% of internationally married migrant women are not included in practical medical security systems (health insurance, medical allowances). Furthermore, the main reason they did not receive medial treatment when needed was because of costs (countryside: limited accessibility). Among those residing in the countryside, 25% (11.4% in total) were infertile, and 13% (9.1% in total) experienced miscarriage. In particular, 20.2% got abortion. The main reason of abortion for most migrant women, except for Chinese-Koreans, was their concern for “mixed-blood” children, reflecting the Korean society's discrimination against children of international marriages.

59. According to the above 2005 survey by the Ministry of Health and Welfare, 13~14% of internationally married women have experienced physical violence from husbands, such as violent shoving or beating. Those that have been coerced by husbands to engage in sex and in perverted sexual conducts were 14% and 15% respectively. In other words, at least one out of ten internationally married women has been subject to physical abuse or coercion for sex by husbands.
60. Out of the migrant women who experienced domestic violence, only 10% reported to the authorities and 10~13% used the women migrants counseling offices or hotlines. Among the reasons they did not report, 14% replied that they did not know how to, while 10% was due to fear for uncertainty of sojourn status.
61. Migrant women who are not familiar with the Korean language or cannot prepare the evidence documents necessary to prove the partners' faults find it difficult to seek free legal assistance. Thus, they often give up legal remedies and run away from home, or end up as 'illegal migrants' after their husbands cancel her identity certification.

#### □ Conclusions and Recommendations

62. In order to improve the multi-faceted discrimination that women migrant workers face, the government must incorporate gender perspectives into relevant policies or projects, protect women migrant workers from discrimination based on pregnancy and childbirth, and develop supportive measures to guarantee protection of their motherhood and health as well as comprehensive programs such as medical centers and workplace education.
63. Relevant provisions of the Immigration Control Act should be revised so that sexually victimized women migrants' rights of access to legal procedure are protected regardless of their sojourn status. During the period of their recovery, their sojourn should be secured, and a stable and comprehensive aid system that includes guarantee of livelihood and medical services should be provided.
64. The government should be strict in its screening for the E-6 visa, examining whether hosting companies and performance clubs have prior histories of sex trafficking or human trafficking, and whether they have the necessary capacities to hold actual performances, thereby preventing foreign women with E-6 visas from being diverted to

purposes other than the original purpose of performance (ex. entertainment maid, prostitution).

65. The government should revise its laws to provide measures within the Migrant Bureau through which a woman migrant can refute an employer's report of abandonment of workplace. Otherwise, women migrants with E-6 visas cannot protest against an employer's unjust demand to prostitution and human rights infringement.
66. The government should strengthen its regulation of prostitution in foreigner-only clubs, thereby exterminating the sexual exploitation of migrant women with E-6 visas in foreigner-only clubs. Investigation authorities should notify related NGOs or persons designated by victimized migrant women about their investigation and proceed the investigation only with the presence of the notified NGO officials or designated persons.
67. In case of migrant women who have been confirmed as victims of human trafficking and have been of assistance in arresting the traffickers, the government should guarantee their opportunity of labor, and enable them to be employed at other performance workplaces or in other industries. A measure should be prepared to secure their stable sojourn during their recovery and to provide living expenses and medical services during their stay at the shelters for victims of sex trafficking.
68. The current National Basic Living Security Act extends the rights provided only to internationally married foreigners with Korean children. This is discriminatory to women who are infertile or were divorced or abandoned without fault on her side, and it is also a form of racial discrimination. The government should provide measures for the social security of internationally married unnaturalized migrants. In particular, for the families that need to receive the minimum standard of living social security, the government should include all internationally married foreigners as official members of the family, and extend protection to them as well.
69. The government should provide active support and programs through education and public relations, to increase migrant women's membership in medical insurance and their accessibility to medical services. Because up to 18.6% of migrant women residing in the countryside, except for Chinese-Koreans, chose to get abortion out of 'concern

for “mixed-blood” children', policies should take into consideration such grave and sensitive issue of protecting motherhood.

70. The already existing programs run by the government for victims of domestic violence should also be actively applied to internationally married foreigners. In order for them to approach these programs without difficulties due to language and culture differences, shelters exclusive for migrant women victimized by domestic violence and measures to ensure their safe sojourn should be provided. In addition, during their stay at shelters, supportive services that provide living expenses and guarantee employment opportunities should be rendered.

## **Chapter 5. Other Issues**

### **A. The National Action Plan for the Promotion and Protection of Human Rights (NAP)**

71. The Government Report, in Paragraph 25, mentions the NAP in a very positive light. However, in the process of finalizing the NAP, the Korean government did not go through sufficient discussions with NGOs, the National Human Rights Commission, and even amongst government agencies. As a result, the contents of the NAP are passive and unsatisfactory.
72. The National Human Rights Commission, through a release of its opinions, first criticized that discussion with the National Human Rights Commission and NGOs, publicity to citizens and survey of their opinions were insufficient during the process of establishing the NAP. The Commission continued its criticism by pointing out problems such as: not presenting a futuristic principle and vision; not setting up specific schedules; still leaving unanswered crucially disputed issues such as the National Security Act, death penalty, and conscientious objection of military service and alternative public service; not establishing plans for problems related to minorities and the socially disadvantaged, such as insurance for the persons with disabilities, discrimination of employment in the private field, health and medical system of deprived children, human rights protection in welfare facilities, human rights protection for sexual minorities, etc.

73. The Korean Human Rights Organizations Network expressed its intention to object the NAP, making criticisms such as: not having a long-term purpose and plan to improve human rights; merely changing the name of the various short-term policies performed by the government agencies; maintaining silence or ascribing to the National Assembly for human rights issues such as the National Security Act, death penalty, conscientious objection of military service, the Security Surveillance Act, and the Act on Assembly and Demonstration; masking deleterious laws related to irregular workers that produce a huge number of irregular laborers and worsen their labor rights and impoverishment; completely excluding soldiers, auxiliary police, residents of welfare facilities from the definition of minorities, thereby lacking a comprehensive NAP for them.
74. Paragraph 26 of the Government Report states that the National Human Rights Commission is planning to enact a Discrimination Prohibition Act within 2006. However, the National Human Rights Commission does not hold the power to initiate legislation on its own, and thus in July 2006, prepared a comprehensive draft of a Discrimination Prohibition Act and recommended the government to make an effort for its enactment. Till today, the government, after having received the recommendation of the National Human Rights Commission, has not shown any specific efforts to enact the Act.

## **B. Refugees**

75. Among the 1,087 asylum seekers who applied for refugee status to the Korean government as of December 2006, 52 were recognized as refugees, and only 44 acquired humanitarian statuses. The number of asylum seekers who applied for refugee status after 2003 has greatly increased, but the Korean government is still stringent in granting refugee status.
76. The first interview and investigation results of refugee status applicants are crucial references in deciding the approval of the application afterwards. The Korean government insists that it offers translation at the Immigrant Control Office but the offered languages are limited, and the government does not hold enough translators and investigators allegedly due to fiscal reasons.



77. A lawyer's participation during the interview process of the refugee claimant should be guaranteed and legal support and information about the rights and the procedures should be offered to the applicant, but in reality, this is not the case. Especially during the interview process, habitual routines take place in which statements are written in Korean and the signature of the applicant is demanded without confirming that it was appropriately written out.
78. Paragraph 49 of the Government Report says that the application procedure for refugee recognition has been made easier and more applicant-friendly by the amendment of the operation rules. However, the Refugee Recognition Council, in terms of its composition, is still more of an administrative body centered on government agencies rather than a professional council. It is also merely an advisory agency to the Ministry of Justice, and cannot be viewed as an agency that has independence and professionalism.
79. Merely relieving from compulsory deportation by recognizing refugee status is not complete in the protection of refugees. Furthermore, the Refugee Convention establishes that refugees should be provided the necessary treatments in fields of welfare, labor, etc. Nevertheless, Korea still has not systematized treatment issues for refugees, and thus the reality is that refugees are not provided sufficient protection even after being granted refugee status.

### **C. "Mixed-bloods"**

80. Paragraph 43 of the Government Report states that while Korea has long been an ethnically homogeneous State and rarely had the problems of ethnic minorities, the dynamic exchange of human resources between countries and an increase in the number of interracial marriages have recently raised a range of concerns involving ethnic minorities. Such attitude of the Korean government is an impediment to accurately understand and solve various issues of racial discrimination that the Korean society faces, because it neglects cases of naturalized foreigners and children of international marriage so called "mixed-bloods" easily found in Korean history, and distorts the reality as if racial discrimination problems have arose just recently.
81. Paragraph 45 of the Government Report provides that the government is formulating

a comprehensive and integral set of measures including an institutional reform to remedy sources of discrimination arising from the country's social structure by analyzing the ways in which "mixed-bloods" come to be and the status of each type of "mixed-blood" citizen. Such attitude of the government should be appreciated, but the current government is unable to perform an accurate survey on "racially mixed" people in Korea, because it focuses its policy only on internationally married migrant women and their integration into the Korean 'nation'.

82. The comprehensive plan for their welfare and safety mentioned in Paragraph 46 of the Government Report limits its subjects to "racially mixed" people in Korea, and the government's consideration does not extend to "racially mixed" people of Korean descent overseas.

#### □ Conclusions and Recommendations

83. The Korean government should address and improve the weaknesses of the NAP through sufficient discussions amongst NGOs, the National Human Rights Commission, and government agencies, prepare long-term plans of human rights policies, and establish a plan that also includes social minority issues. In particular, a specific and systematic solution to racial discrimination, such as enacting a comprehensive Discrimination Prohibition Act, should be prepared.
84. During interviews of a refugee status applicant, the Korean government should provide translators of the language closest to the one requested by the applicant, and also provide participation of lawyers and legal support. The government should prepare a refugee approval procedure that meets the international standard, such as establishing an agency for refugee approval and appeal that is more professional and independent than the Refugee Recognition Council Committee. It should also adopt legal measures for the social treatment of refugees, and establish an inclusive agency whose main function is to protect refugees (for example, a refugee support center), so that the agency can provide information, basic necessary medical services, educational support, etc, to the refugee status applicants.
85. The Korean government must make efforts to establish policies for "mixed-bloods", and research on their history, birth routes and current situation. To relieve biases against these children of international marriages, the constituents of a new generation,

their social and familial structures should be researched and examined and necessary policies should be formulated.