

LABOUR MIGRATION TO SOUTH KOREA: POLICIES AND PROBLEMS RELATED TO
ILLEGAL WORKERS

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ABSTRACT

Labor migrations revolve around push and pull factors between labor-sending and labor-receiving countries. In the case of South Korea, reasons behind the increase in labor migration include rapid industrialization and demographic features. Despite intense efforts, a shortage of labor has persisted. Since the 1990s, various policies have been introduced to bring in and manage migrant workers. This paper argues that despite increased legislative reforms in the fields of labor and immigration, issues such as the increase in illegal migrant workers and the vulnerability of these workers to human rights abuses have been left untackled. The paper highlights how these policies have in fact, further divided 'illegal workers' from 'legal workers'. The paper reviews labor immigration policies and points out loopholes in them.

Key words: labor migration, legal/illegal migrant workers, skilled/unskilled migrant workers, human rights, employment permit system, South Korea

1 INTRODUCTION

The role of the state is central in discussions of migration. With the emergence of sizeable migratory flows throughout the world, policies governing the numbers, characteristics and terms under which foreign laborers enter nation-states have become controversial and politically divisive.

The gradual dependence of the Republic of Korea (South Korea—henceforth Korea) on migrant workers has transformed itself into a permanent feature and a daunting challenge in terms of policy-making, policy goals and policy outcomes. According to a UN report, Korea will need to import 100,000 workers every year and a total of 1.5 million migrant workers between 2030 and 2050 to maintain a similar economic structure and to support senior populations (Seol and Han 2004: 46). It means that the number of migrant workers will continue to grow and hence will have a huge impact on Korean society not only economically, but also socially, politically and culturally.

Many scholars have pointed out that any country's legitimacy depends on its respect for its own laws and rights (Sassen 1996: 64). When we look at Korea's case with respect to migration, its ever-evolving policy therefore warrants careful examination and analysis. The paper has five sections: the first deals with the background to labor migration in Korea; the second section provides a brief overview of migrant-related policies from 1991 to 2003 with emphasis on the Employment Permit System; the third and fourth section analyses the effects of these policies and pays particular attention to the dilemmas and contradictions that underlie them and which have led to the creation of a category of 'illegal' workers¹ and human rights abuses. The final section will put forward suggestions and concluding remarks.

2 BACKGROUND TO LABOUR MIGRATION IN KOREA

Korea, as a labor-exporting country, sent its first batch of laborers to what was then West Germany to work in mining and nursing. Later they sent workers to the Middle East on construction projects. However, Korea's rapid economic growth since the late 1980s, there appeared unwillingness to work in the 3-D job sector (dirty, difficult and dangerous jobs) which in turn created room for a steady increase in the foreign workforce in Korea.

The Industrial Training Program for Joint Ventures (JVTP) was the first scheme of its kind and was introduced in 1991. It was originally intended to upgrade the skills of foreign workers employed by overseas subsidiaries of Korean corporations who were brought in through the Korean Federation of Small Businesses (KFSB). Korea later introduced Industrial and Technical Training Program (ITTP) to import labor in 1993.

Though not recognized as workers, these 'trainees' performed 3-D jobs under the harsh condition and chose to become illegal workers, who - through high demand - were able to find work easily. At one point, the illegal workers reached a rate as high as 87 percent of the total foreign workforce (Athukorala 2006: 21; Seol 2000: 8; Park 2002: 75).

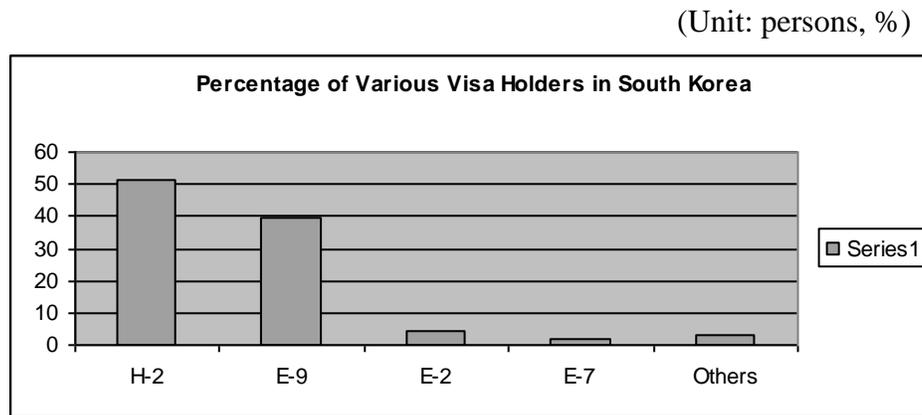
Civil society groups such as Non-Governmental Organizations (NGOs), church-related groups and labor activists later banded together to form an organization, the Joint Committee for

¹ To minimize confusion, the term 'illegal' worker will be used throughout this paper instead of 'unauthorized', 'undocumented' or 'irregular' worker, the terms preferred by the United Nations and the International Labor Organization, etc., because this term is the officially accepted term in South Korea. The author, however, wishes to make clear her strong disagreement with the use of the term 'illegal' with respect to migrant workers.

Migrants in Korea (JCMK), to lobby on behalf of migrant workers. The EPS and ITTP worked in parallel with each other until early 2007, when the EPS became the sole program to import workers into Korea.

Data obtained from the Korean immigration office show that foreign workers in Korea include the highly-skilled, the low or unskilled, and illegal workers. These migrants can be further divided into those who fall under the EPS, the Visitor Employment System (VES), marriage migrants, short-term employees and illegal foreign workers (Lee 2010: 2). See Graph 1.

Graph 1 Employment classification by visa status



Source: Ministry of Justice (2010)²

The definition of a migrant (foreign) ‘worker’, according to Article 2 of the Act on Foreign Workers’ Employment, Etc.,³ is a person who does not have Korean nationality and who works or intends to work in a business or workplace located in Korea for the purpose of earning wages. Definition under Article 2(1) of the Labor Standards Act (LSA)⁴ stipulates that the term ‘workers’ refers to anyone who works for a business or at a business site for the purpose of obtaining a wage, regardless of the job category. Here it is important to note that the LSA is applicable to migrant workers.

Korea has signed a memorandum of understanding (MOU) with 15 partner countries from where labor is imported.⁵ The five countries sending the greatest numbers of EPS workers in 2011 to Korea are shown at Table 2.

Table 1 Top five countries in 2011 with the highest number of EPS workers (E-9 visa)

(Unit: persons)

Nationality	Total sojourners	Legal sojourners	Illegal sojourners
Sum total	231,471	188,968	42,503
Vietnam	61,058	52,480	8,578

² http://www.moj.go.kr/HP/TIMM/imm_06/imm_2010_12.jsp (accessed 23 May 2011).

³ Act on Foreign Workers’ Employment, ETC., Act No. 9798, 9 October 2009.

⁴ Labor Standard Act, Act No. 10366, 10 June 2010.

⁵ See Appendix for the list of MOU countries.

Philippines	26,646	21,700	4,946
Indonesia	24,962	21,255	3,707
Thailand	24,102	20,927	3,175
Sri Lanka	17,923	16,852	1,071

Source: Ministry of Justice⁶

3 MIGRANT-RELATED LAWS IN KOREA (1993–2011)

The policy approach on migrant workers follows a strategy of selectively introducing low-skilled workers, giving consideration to their impact on the labor market (Lee 2010). Since 2003, the Korean government has changed its policies and now offers almost the same rights to foreign workers as to their local counterparts, but it is significant that the rights are different for those of different status. Some of the main legal instruments related to foreigners include the Immigration Control Act, Act No.7006, Mar.24, 2005⁷ (ICA); Act on the Treatment of Foreigners in Korea, Act No. 21214, Dec.31, 2008⁸ (ATFWK); Act on Foreign Workers' Employment, ETC., Act No. 9798, Oct.9, 2009⁹ (AFWE); Labor Standard Act, Act No. 10366, Jun. 10, 2010¹⁰ (LSA); The Minimum Wage Act, Act No. 8964, Mar.21, 2008¹¹ (MWA); [Occupational Safety and Health] Industrial Accident Compensation Insurance Act, Act No. 9988, Jan.27, 2010¹² (IACIA). The continuous increase in inflows of migrant workers resulted in constant changes to immigration and labor policies. The four different administrations in the past two decades have tackled this issue time and again.

3.1 *Kim Young-sam (1993 –1998)*

Under Kim Young-sam, the two issues of importing labor and dealing with undocumented workers had to be dealt with simultaneously. In 1993, the ITTP was introduced as a modified version of the JVTP. Under this programme, trainees were allowed to stay in Korea for only a year, but the period was extended to two years and more sectors were introduced (Yoo and Uh: 2001). In 1995, a rally was organized against ITTP by a group of fifteen Nepalese migrant workers in front of Myōngdong Cathedral in central Seoul, which drew nationwide attention. This event was the beginning of the involvement of civil society groups seeking to give voice to the migrant workers' deplorable conditions (Seol and Han 2004; Galang 2001; Park 2004; Lim 2005).

3.2 *Kim Dae-jung (1998 –2003)*

Kim Dae-jung's government made more decisive changes, such as overhauling the ITTP and introducing the Work after Training Program (WATP), which was implemented in 1998.¹³ The main difference brought about by the WATP was the change in the duration of stay of foreign workers-one year as a trainee, followed by two years of employment. Under the WATP, their permit incorporated restrictions to changing their workplace and hence their fate was left to the

⁶ See References for details of this source and the sources for Tables 4 and 5.

⁷ First promulgated in 1964 and was wholly amended in Dec. 1992, since then has been amended 9 times until March, 2005.

⁸ First promulgated in May 17, 2007 and has been amended 1 times on December, 2008.

⁹ First promulgated in Aug.16, 2003 and has been amended 7 times until October, 2009.

¹⁰ First promulgated in Mar.13, 1997 and has been amended 22 times until June, 2010.

¹¹ First promulgated in Dec.31, 1986 and has been amended 11 times until March, 2008.

¹² First promulgated in Dec.22, 1994 and has been amended 20 times until January, 2010.

¹³ In May 1999, Kim Dae-jung in a message to his cabinet said: 'Discrimination against foreign workers in Korea and violations of their rights are a serious and shameful problem from a point that we are aiming to become a nation that respects human rights' (*Korea Times*, 25 May 2000).

discretion of their employers leading to several problems. WATP still fell short of critically reducing human rights abuses.

3.3 Roh Moo-hyun (2003–2008)

The EPS came into effect on 17 August 2004. It entitled foreign workers to bonus allowances, retirement pay and the three basic labor rights of unionizing, collective bargaining and collective action; in addition, it restricted workers from being joined by their families (KCTU 2004; Park 2004).

Under the EPS a migrant worker was allowed to work for a Korean SME in the designated sectors where employers were unable to find a Korean worker (Yoo 2005: 9). Another purpose of the EPS was to grant legal status to 227,000 illegal workers through restricted regularization (Yoo 2005: 2–3).

The EPS has undergone several revisions since its promulgation. A revision to EPS, made in April 2010, stipulates that the right to rehire migrant workers rests solely with the employer. This element of immobility is one of the most criticized features within the EPS (AI 2010; NHRCK 2009).

3.4 Lee Myung-bak (2008 – present)

When Lee Myung-bak came to power, changes were made in the EPS during 2009 and were promulgated in 2010. Under the Ministry of Justice (MoJ), the First Basic Plan for Immigration Policy¹⁴ (FBPI) 2008–2012 laid the foundation for implementing a long-term and consistent immigration policy (FBPI: 11). The FBPI explicitly states that national-level protection against discrimination will be ensured and human rights will be respected (FBPI: 12). It also offers specific provisions on the improvement of detention facilities. However, there are a few factors that need urgent attention, including a one-step employment application procedure at the employment support centre; improved methods of re-employment; a loosening in some of the conditions stipulated in employment contracts; and employer surveillance. The FBPI clearly articulates a strategy for controlling illegal workers through crackdowns twice a year for a period of four months for the next five years. Within the EPS, stronger punishments for employers have been proposed (FBPI: 75–76).

4 EFFECTS OF POLICIES ON MIGRANT WORKERS

The brief overview of the policies mentioned above during the different administrations shows that various shortcomings have motivated foreign workers to leave the programme and work illegally.

Although these workers are protected under the AFWE and the LSA, their reliance on a particular employer effectively prevents them from seeking redress in the courts. Exploitation at the hands of an employer means that legal employment can be counterproductive. In contrast, illegal migrants are not tied to their employer. This is evidenced by the high rate of job mobility among illegal migrants (interview with Michel Catuira, MTU president, 8 January 2011).

In his interview of 8 January 2011 with the author, Michel Catuira mentioned that even if workers are allowed to change workplace under the EPS (three times for genuine reasons), finding a job within the initial two months is very difficult and failure results in cancellation of their visas and their becoming illegal. The impossibility of improving their working conditions by legal means drives many legal migrant workers to leave their employers and therefore become

¹⁴ Under Article 5 of the Act on Treatment of Foreigners in Korea, the MoJ shall re-formulate the FBPI every five years.

illegal.

The following discussion will highlight how a category of illegal worker has been created out of legal workers through successive policies and how governments will have a harder time administering and managing labor migration.

4.1 Illegal migrant workers

The construction of 'illegal' and the meaning of illegality are different in each country, depending on its legal, political, historical and national context. The migrant-related policies that have been introduced in Korea have created illegal workers, and their presence, despite increasing internal control, shows that these policies are not working. Coutin characterizes such policies as ineffective and powerless; she asserts that these policies serve the interests of powerful businesses (in this case, during the ITTP, the KFSB or the political groups) and are involved in the legal production of illegal migrants (Coutin 2000, 2005). She goes on to ask, what is illegality? To her, it means exclusion, subjugation and repression (Coutin 2000: 30). Taking it further, De Genova (2002: 438–39) says that illegality creates a sense of deportability and hence a condition of being racialized socially that would exacerbate vulnerability.

Migrant worker conditions are deplorable on almost all fronts—they are exploited, marginalized and severely discriminated against (AI 2006). Their situation is therefore a constant reminder of the failure of the ITTP and the vagaries of the EPS. According to research by Samsung Economic and Research Institute, the E-9 visa (EPS workers) is producing more illegal workers than in any other case (*Korea Times*, 16 Feb 2011). This perceived failure of migration policies is explained by referring to the high cost of enforcement, the economic role of illegal labor, public unwillingness to punish the illegal behaviour of migrants, or the strength of the macro-structural forces of migration (Cornelius and Tsuda 2004: 9). In order to see how Korea deals with managing illegal workers, the regularization programs, crackdowns and deportation campaigns will be examined.

4.1.1 Regularization schemes

The term 'regularization schemes' refers to any legal process (by law or in practice, explicitly or implicitly) that turns illegal migrants into legal migrants. Attempts to regularize overstayers and deserters under the prevalent immigration policy on foreign labor was first adopted by Kim Young-sam's administration, during the introduction of the ITTP. Almost 80 percent of migrant workers were illegal at the time and most of them were either regularized or deported depending on the number of years they had spent in Korea as overstayers (Seol and Han 2004).

The second regularization drive was conducted during the Asian financial crisis in 1997 during Kim Dae-jung's administration, when unauthorized migrants were given an option of voluntary repatriation; amnesties as well as waivers of fines were given for voluntary repatriation, with an additional one-year grace period (Lim 2005:12).

The third regularization was conducted when the EPS was implemented in 2004. The government announced plans to deport all illegal workers, but as a result of vehement protests by pro-immigrant activists, they conceded to a proposal to grant an amnesty and a one-year visa to undocumented workers (Chung 2010).

4.1.2 Crackdowns and deportations

According to Ruhs and Chang (2004), labor migration policies focus on the bundle of rights that

are granted to these migrant workers once they enter a country and also address the scope and number of rights for each foreign category. Unfortunately, the rights of illegal migrant workers are usually minimal. The authors argue that this shows that the failure to consider these rights is equal to the failure to address a core component of migrant policy (Ruhs and Chang 2004: 72).

Crackdowns in the Korean labor migration context are a decade-old phenomenon and can be seen as the defining feature of controlling the increase in the numbers of illegal workers. These workers go into hiding, and it has been noted that, even though people are rounded up in large numbers, the situation has never improved and numbers as such continue to increase. The figures corresponding to the illegal sojourners in Table 3 below would, therefore, also correspond to the number of workers subject to crackdowns by the government and the same number would automatically become susceptible to human rights abuses.

Table 3 Employment status of unskilled foreign workers at April 2011

(Unit: Persons)

Classification	Total sojourners	Legal sojourners	Illegal sojourners
Unskilled workers (total)	539,935	491,196	48,739
E-9 (EPS workers)	231,471	188,968	42,503
E-10 (Ship's crew)	7,764	5,539	2,225
H-2 (Korean diaspora)	300,700	296,689	4,011

Source: Ministry of Justice.

When the EPS was implemented in 2004, the administration conducted at least five major crackdowns in the construction, manufacturing, and video game parlor industries, during which hundreds of undocumented workers were arrested. Resulting in detention, these measures have over the course of time threatened human rights (Liem 2007a)

Since Lee Myung-bak took office, the severity of crackdowns has increased. This has also been the main strategy of the government under the FBPI, which explicitly emphasizes the importance of crackdowns in controlling the presence of unauthorized workers, with additional powers given to immigration officers to carry out investigations (FBPI: 75). Such procedures, more often than not, result in the gross violation of human rights (AI 2006; 2008; 2009). The most recent crackdowns were conducted in 2010 just before the fifth G20 summit was held in Korea in November. The situation was alarming. The MoJ offered amnesties, during which foreigners staying in the country illegally could leave and then return with a visa without getting punished. The campaign started in May and was extended up until October 2010 (*Korea Times*, 31 August 2010).

There have been numerous cases in which crackdown officers have made surprise attacks on factories without legal warrants, and the breaking-down of doors and windows in dormitories and residences was reported by the Asian Human Rights Commission (AHRC 2009). Lee Myung-bak's administration has set a monthly quota for regional immigration offices to round up illegal workers, in the process breaching both the EPS and the FBPI. (FBPI: 94, 95).

4.1.3 Detention

In contradiction to Article 12 of the Korean Constitution, which stipulates that restriction on bodily freedom can only be ordered by a judge, immigration law allows detention orders to be issued by immigration officers, a process which legalizes unwarranted entry into factories and residences in the course of immigration raids, and authorizes officers to stop and search anyone suspected of being ‘in violation of immigration law’. It also allows for the presentation of detention orders after the arrest has been made rather than before. This contradiction was noted in the Special Rapporteur’s report presented in 2007 by Kajiman Khapung¹⁵, a former MTU president, along with other human rights violations that occur in the detention of irregular migrants (Khapung 2007).

Korea’s detention centers are sometimes referred to as the migrant’s last hell (Seol: 2000). Most of the shelter-rooms do not satisfy the minimum conditions required by the UN Standard Minimum Rules for the Treatment of Prisoners. Furthermore, the rooms are frequently overcrowded (NHRCK 2007¹⁶, *Hanhyoreh*, 9 February 2011). The only way to redress the problem is to strictly follow up the duration of stay at the detention centers and the temporary release of inmates in special cases to prevent overcrowding.

A report by the JCMK stated that the standard area for the accommodation of detained foreigners was about four sq m per person, which is even smaller than the 6.6 sq m of other correctional facilities (JCMK 2009: 22). Other problems include a lack of assistance in reaching embassies, lack of notification to a lawyer or acquaintance about detention, body searches, use of handcuffs, overcrowding, and the fact that detainees spend the majority of their time locked in their cells.

5 Human rights of migrant workers

If we look at the policy level, Korea seems to be keen in addressing the core issue of the protection of the human rights of migrant workers, and in fact one aim of the EPS was to eliminate labor rights violations (Yoon 2009). Article 5 of the LSA explicitly prohibits discrimination based on nationality in relation to employment conditions. Concrete steps were taken by Roh Moo-hyun’s government with the establishment of the National Human Rights Commission of Korea¹⁷ in 2001, which was created to address employers’ mistreatment of foreign workers, such as beatings, forced detention, withheld wages, and seizure of passports. Since its establishment, the Commission has played an important role in discussing inter-agency methods to protect foreign workers. Another significant point is how the governments, trade unions and civil society groups are taking measures to insure that migrant rights are protected. Trade unions and civil society groups that have campaigned for migrants rights are in the forefront of organizing workers, including ‘illegal’ workers. When it comes to illegal workers, their situation is much worse with very few rights, even though their numbers are substantial (Abella 2003; Yoon 2010: 75).

¹⁵ Khapung, Kajiman is commonly referred to in reports and newspapers etc. as Kajiman (Kajiman is the given name and Khapung is the family name of a former MTU president from Nepal who was arrested and deported for his role in MTU in 2007 – for details).

¹⁶ The said NHRCK Report 2007 is no longer available on its website but can be cross-referenced from an Amnesty International Report published in September, 2009 and is available online: http://www2.ohchr.org/english/bodies/cescr/docs/ngos/AI_Republic_of_Korea43.pdf

¹⁷ See footnote 20.

6 CONCLUSION

The above review of immigration and labor policies shows that despite some changes, they have not achieved their goals. In light of the developments outlined above it is clear that despite government claims of initiating progress in terms of policies regarding the rights of foreigners residing in Korea, managing the growing number of illegal workers through periodic regularization, detention, crackdowns and repatriation tactics has not been able to bear fruitful results. Despite a series of policy changes, the number of illegal migrant workers has gone up, and their vulnerability to discrimination and violations of individual rights has increased. Incorporating these illegal workers through regularization schemes can turn out to be the most humane way to bring them within the sphere of legality and easy management. More attention to mobility in changing workplaces and to an employer's consent for extension of a work permit must be reconsidered. Migrants deserve a common standard of dignity, security and respect regardless of the reason for their dislocation and regardless of their status and their categories.

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INTERVIEWS

Interviews with Michel Catuira, President of the Migrant Worker's Trade Union-Seoul, Gyeonggi, and Incheon, Seoul, 28 December 2010 and 8 January 2011

APPENDIX

South Korea has concluded MOUs on the Entry Permit System with the following 15 countries:

1. Vietnam
2. Philippines
3. Indonesia
4. Thailand
5. Sri Lanka
6. Mongolia
7. Uzbekistan
8. Bangladesh
9. Cambodia
10. Nepal
11. Pakistan
12. Myanmar
13. East Timor
14. Kyrgyzstan
15. China