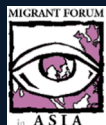


South Korea's Employment Permit System A Successful Government-to-Government Model?¹

Open Working Group on Labour Migration & Recruitment
Policy Brief #2



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Issue

South Korea's Employment Permit System (EPS), introduced in 2004, was implemented by the government in response to concerns about the treatment of migrant workers in the country. Prior to the establishment of the EPS, migrant workers were brought to South Korea as “trainees”—treated as interns who were paid only stipends for their work and who did not fall under the country's labour laws. The trainee system, which was in place from 1992 to 2006, resulted in considerable abuse and exploitation of foreign trainees who were essentially providing their labour for free.

The trainee system was originally designed such that overseas South Korean firms could provide skills training to foreign workers. But as labour shortages in South Korea intensified, the government began using the trainee system as an instrument to accept low skilled foreign workers. At its peak, South Korean employers could recruit trainees from 14 countries, with specific recruitment agencies assigned in each country of origin for the selection and deployment of the workers.²

South Korean civil society organizations, trade unions, and faith-based organizations

joined with migrant workers to call for an end to the trainee system, which was widely seen as discriminatory and unjust. The wages of trainees were extremely low — even lower than those paid to undocumented workers — and working conditions were substandard and unacceptable. During the recruitment phase, trainees were led to believe that they would receive skills training that would improve their labour market prospects, but instead they were used as substitute labourers to fill positions that local workers were unwilling to take. Recruitment agencies charged excessive fees, resulting in further exploitation.³

Across South Korea, migrant trainees and their advocates engaged in protests, sit-ins, and hunger strikes in their efforts to raise awareness, see the trainee system abolished, and achieve amnesty for undocumented workers. Organized migrants in Japan, the Philippines, and other countries across Asia sent messages of solidarity in the struggle to end the trainee system and bring worker concerns to the forefront.⁴

After a decade of advocacy, the government introduced and implemented the EPS as a new migration management system. Migrant workers and their advocates reacted strongly against the new system, as it remained

¹ This policy brief was developed based on inputs from Joint Committee with Migrants Korea (JCMK), member of the Open Working Group on Labour Migration & Recruitment

² Asia Pacific Migration Research Network, “Issues from the Republic of South Korea,” <http://www.unesco.org/most/apmrnw12.htm>

³ Asia Pacific Migration Research Network, “Issues from the Republic of South Korea,”

<http://www.unesco.org/most/apmrnw12.htm>

⁴ Base21, “Struggle Against the Korea Govt. Policy Brings the Nation Together.”

http://base21.jinbo.net/show/show.php?p_cd=0&p_dv=0&p_docnbr=23480

employer-centred and did nothing to empower workers to claim their rights. Protests and actions continued across the country. “Through these actions, migrant workers who were invisible and voiceless were finally able to have their issues to the forefront of South Korean society. More importantly, it led to the formation of the Migrant Trade Union, an independent union organized and lead by migrant workers.”⁵

The EPS—a government-to-government (G-to-G) migrant labour program—is still in place in South Korea. The system enables employers in the manufacturing, construction, fish breeding, and agriculture and livestock breeding industries⁶ to recruit workers from countries with which South Korea has signed memoranda of understanding (MOUs) under the EPS framework. To date, 15 MOUs⁷ have been signed under EPS with the expressed purpose of “preventing corruption and scandal in the sending process.”⁸

EPS Structure

Under EPS, migrant workers are granted an initial work visa for a maximum of 3 years, after which employers can apply for 1 year + 10 month extension. If the worker’s contract is renewed, employers can apply for an additional 4 years + 10 months. After two full terms, workers are no longer allowed to

⁵ MFA, “Release Anwar Hossain, President of Migrant Trade Union, KCTU! Stop the Crackdown Against Migrant Workers!” <http://www.mfasia.org/korea/97-release-anwar-hossain-president-of-migrant-trade-union-kctu-stop-the-crackdown-against-migrant-workers>

⁶EPS, “Introduction of Industries,” https://www.eps.go.kr/ph/view/view_05_01.jsp

⁷South Korea currently has labour recruitment MOUs in place with the following countries: Philippines, Mongolia, Sri Lanka, Vietnam, Thailand, Indonesia, Uzbekistan, Pakistan, Cambodia, Bangladesh, Kyrgyzstan, Nepal, Myanmar, China, and Timor Leste.

⁸ EPS, “Procedure on Selection and Introduction of Foreign Worker,” https://www.eps.go.kr/ph/view/view_02.jsp

Box 1: Process of Employment under EPS

1. Government institutions in countries of origin are tasked with selecting competent job seekers based on job sector quotas and objective qualification standards (e.g., Korean language testing, work experience). The South Korean government approves the roster of job seekers sent by the country of origin.
2. Korean employers apply for employment permits at job centres, demonstrating their efforts to fill available positions with Korean workers first. Job centres recommend qualified foreign workers from the job seekers roster. Employment permits are issued when employers choose employees from among those recommended.
3. Employers and employees sign a standard labour contract clarifying wages, working conditions, working hours, and holidays.
4. Employers apply for a Certificate of Confirmation of Visa Issuance (CCVI), issued by the South Korean government.
5. Employers send CCVIs to countries of origin. Selected foreign workers proceed to the South Korean Embassy to apply for a work visa (E-9).
6. After entering South Korea, foreign workers must complete an employment training module (minimum 20 hours)

renew their visas. However, on 2 July 2012, South Korea introduced the *Sincere Worker Re-entry Employment System*, which allows workers who have already completed two full work terms to re-enter Korea for employment after a 3-month departure period. Employers must apply for this re-entry permit, and workers must meet the following conditions:

- The employee must not have changed employers at any time during his or her first contract or subsequent extensions
- The employee must have been employed in agriculture and livestock

breeding, fish breeding, or manufacturing workplaces with fewer than 50 employees

- The employee must have a contract for more than one year upon re-entry
- The employee must leave the country voluntarily within the valid visa period
- The employer must meet the requirements for the issuance of the employment permit, including employment limits for the workplace

In addition, the South Korean government's Foreign Workforce Policy Committee, established by the Prime Minister's Office, sets annual quotas per sector for the number of EPS visas it will grant. In addition, at the time of negotiation of the MOU, the South Korean government and the country of origin also agree to country-specific quotas. These quotas are not publicly available. If the sectoral and country-based quotas have already been met, the worker will not be accepted for another term. Visa extensions and the issuance of re-entry permits is never a guarantee.

Table 1. EPS quotas by sector, 2009 to 2015

Year	Classification	No. of Persons	Manufacturing	Construction	Service	Agriculture & Livestock	Fishing
2015	General (E-9)	45,000	32,890	2,280	90	5,650	2,190
	Reentry	10,000	9,510	20	10	350	110
2014	General (E-9)	47,400	36,950	2,320	90	5,850	2,190
	Reentry	5,600	5,300	30	10	150	110
2013	General (E-9)	52,000	42,600	1,560	90	5,600	2,150
	Reentry	10,000	9,400	40	10	400	150
2012	General (E-9)	46,000	39,100	1,300	130	3,850	1,620
	Reentry	11,000	9,900	300	20	650	130
2011	General (E-9)	48,000	40,000	1,600	150	4,500	1,750
2010	General (E-9)	34,000	28,100	1,600	100	3,100	1,100
2009	General (E-9)	17,000	13,000	2,000	100	1,000	900

Analysis

The Korean EPS model is widely seen as successful in regulating migrant labour recruitment. Governments of countries of destination in the region seek to emulate this model, and governments of countries of origin look favourably upon securing MOUs under EPS for their workers.

Governments claim that the EPS is successful on the grounds that it enables labour market access by foreign workers in key sectors experiencing labour shortages, while maintaining the circularity of this generally low-skilled migration (i.e., it is argued that the system does not result in undocumented migration). In particular, the

South Korean government claims that the EPS has introduced transparency in the recruitment process and has reduced the fees that workers pay considerably—seemingly favourable outcomes for migrant workers and their families. Additionally, the government suggests that EPS benefits workers through the enforcement of minimum wage rules for all migrant workers in South Korea and access to mechanisms to address labour disputes. The government has publicly stated that the satisfaction rate among migrant workers is high.

That said, migrant communities, civil society organizations, and trade unions in South Korea raise many concerns about the impact of the EPS on migrant worker rights,

Box 2: Human Rights Concerns for Migrant Workers Under EPS

Migrant Workers in the Agro-Livestock Sector

On 14 October 2013, Cambodian migrant workers employed in South Korea's agricultural sector testified for the first time about their harsh working conditions to the National Audit of the Ministry of Employment and Labour.

These workers suffered from an array of human rights and labour rights violations, including breaches to the terms of their contracts, unsuitable working and living conditions, occupational accidents, health problems, and being required to work 320 hours per month.

A National Human Rights Commission of Korea study found that "...75% of respondents were only given two rest days a month, with a further 10% receiving either one day a month or no rest day at all. More than a quarter of respondents (26%) stated that they had their rest day deducted from their salary, in contravention of their contract" (as quoted in Amnesty International, *Bitter Harvest*, 2014).

Cambodian migrant workers were unlawfully dispatched to several farms through the interventions of labour brokers, demonstrating that G-to-G recruitment has not successfully eliminated private recruiters from the employment relationship.

According to their testimony, the Cambodian workers were subject to slave-like working conditions without any breaks or holidays.

Migrant Workers in the Fishing Sector

On 14 February 2014, an Indonesian migrant seafarer was beaten to death by his South Korean co-workers. He was new to the job, having only worked for 9 days before his death. Throughout his 9 working days, he was beaten routinely, because he suffered from seasickness and struggled to keep his balance on the ship.

To prevent such tragic incidents from happening in the future, the National Human Rights Commission of Korea conducted a study on the human rights conditions of migrant workers in the fishing sector (in Korean). The investigation validated that the migrant workforce is subject to human rights violations through the entire process of migration—from recruitment in the country of origin, to deployment to the country of destination, to termination of contract and repatriation.

The Commission recommended that government agencies improve the system such that recruitment occurs only through public organizations, that the principles of equal treatment of migrant workers and Korean nationals are upheld, and that wage discrimination be corrected through the application of standard labour contracts. Furthermore, the commission called for mid- to long-term plans to ensure that migrant workers in the fishing industry receive an appropriate level of welfare services, have improved housing, and require mandatory subscription to national health insurance schemes. Finally, the Commission recommended that in the recruitment and training stage, migrant workers be provided with work-related information and that human rights training be institutionalized for staff, ship owners, and Korean crew members, alongside the establishment of support centres with interpretation services in migrant worker enclaves.

The recommendations of the National Human Rights Commission of Korea are important to note, as they call attention to the need for a true G2G regime that does not leave space for private, non-state actors to intervene in the interests of human and labour rights protections for migrant workers. Its recommendations clearly call for governments to take full responsibility for migrant labour recruitment and rights protections.

pointing to serious problems in the program's implementation.

Uneven Recruitment Fees

The South Korean government claims that under EPS, recruitment fees have been regulated and reduced significantly for migrant workers. Recruitment fees are of concern for migrant workers, particularly when they are entering into employer tied visa arrangements, because it is imperative that they earn enough to pay back any debts they may have incurred in the recruitment process. This can result in forced labour and debt bondage.

Despite the government's claim that fees have been regulated, migrants' rights advocates in South Korea have identified significant variability in the fees incurred by workers from different countries of origin. As table 2 denotes, Filipino workers pay the least and Pakistani workers pay the most for their job placements in South Korea.

The costs of the Korean language test is set by the Human Resources Development Service, although the rest of the fees depend on counterpart agencies in countries of origin. These fees are said to reflect local market prices. The category of "other" includes items such as uniforms, but it also includes brokerage fees charged by those facilitating recruitment in countries of origin. This practice clearly contravenes the provisions of EPS and its standard labour contract.

Impact of Quotas in Countries of Origin

As indicated, the South Korean government's Foreign Workforce Policy Committee sets quotas for the number of workers recruited under the EPS. Migrants' rights advocates in South Asia report that the demand for jobs

in South Korea is far greater than the quotas set. Prospective migrant workers invest time, money, and energy learning the Korean language to meet the minimum language requirements at the expense of pursuing other educational or skills-training opportunities. Once the EPS quota has been met, those applicants who are not selected are often reluctant to pursue other opportunities, as they have already invested so much time and energy in preparing to migrate specifically to South Korea. Many of these workers reportedly remain unemployed with the intention of reapplying for EPS placements the following year.

Passport & Identity Document Confiscation

South Korean employers routinely confiscate the passports and identity documents of migrant workers on arrival, holding them until their contracts are complete. This practice, while illegal, is widely tolerated and unsupervised. The withholding of the worker's documents serves as another mechanism of control on the part of employers, making it even more difficult for workers to leave their employers should rights violations occur. The withholding of passports is a serious concern for migrant workers and is something that should be addressed by the EPS countries of origin.

Violations of Minimum Wage Laws

While migrant workers in South Korea are legally entitled to earn minimum wage, migrants' rights advocates report that employers regularly violate these rules, paying workers far less than they are owed. Combined with the tied visa regime and the recruitment fees that many incur, workers again find it difficult to bring forward complaints, even if a redress system is in place.

Table 2: Recruitment fees by country of origin under EPS (2013)

Country	Total	Language Test	Health Check	Job Application	Passport	Visa	PDO	Airfare (tax)	Other
Philippines	\$551.80	\$24.00	\$37.50	\$0.00	\$28.60	\$59.30	\$17.30	\$285.70	\$101.20
Mongolia	\$674	\$24.00	\$35.00	\$10.00	\$17.00	\$50.00	\$49.00	\$366.00	\$259.00
Sri Lanka	\$1,108	\$24.00	\$25.80	\$0.00	\$19.10	\$42.10	\$114.80	\$370.20	\$512.00
Vietnam	\$788.40	\$24.00	\$45.00	\$1.67	\$9.58	\$50.00	\$40.00	\$350.00	\$268.19
Thailand	\$685	\$24.00	\$50.00	\$0.00	\$37.00	\$0.00	\$150.00	\$407.00	\$17.00
Indonesia	\$932	\$24.00	\$52.00	\$0.00	\$13.00	\$51.00	\$129.00	\$551.00	\$112.00
Uzbekistan	\$904	\$24.00	\$30.00	\$0.00	\$0.00	\$70.00	\$167.00	\$430.00	\$183.00
Pakistan	\$1,739.70	\$24.00	\$27.30	\$10.92	\$27.30	\$54.60	\$70.98	\$841.03	\$683.61
Cambodia	\$991	\$24.00	\$67.00	\$5.00	\$30.00	\$50.00	\$120.00	\$477.00	\$218.00
Bangladesh	\$907.70	\$24.00	\$29.95	\$0.00	\$36.68	\$50.00	\$14.00	\$546.58	\$206.46
Kyrgyzstan	\$730	\$24.00	\$14.00	\$0.00	\$20.00	\$70.00	\$32.00	\$530.00	\$40.00
Nepal	\$930.70	\$24.00	\$55.64	\$5.00	\$79.49	\$63.59	\$63.00	\$541.00	\$98.95
Myanmar	\$889	\$24.00	\$50.00	\$5.00	\$0.00	\$50.00	\$60.00	\$470.00	\$230.00
China	\$787.80	\$24.00	\$55.12	\$0.00	\$31.49	\$63.00	\$315.00	\$236.23	\$62.98
Timor Leste	\$810	\$24.00	\$35.00	\$10.00	\$17.00	\$50.00	\$49.00	\$366.00	\$259.00

Source: Ministry of Labour Data submitted to the National Assembly for Audits of the Government Offices, 2014
*Fees listed in US dollars

Regression of EPS: Severance Pay

In January 2014, the South Korean government revised the legislation governing the EPS, changing the rules for severance pay for migrant workers. Whereas previously migrant workers were entitled to collect severance within 14 days of resignation, the revisions stipulate that they are now only eligible to receive severance upon return to their country of origin. The aim of this provision is to prevent visa overstays / irregular migration status, thereby discriminating against migrant workers on severance pay.

Critique

A number of countries of origin and destination in Asia and other parts of the world have turned to G-to-G agreements like EPS to regulate labour migration. Civil

society organizations and migrants' rights advocates have also called for the implementation of such agreements, recognizing their potential to eliminate the need for private recruitment agencies that are too often corrupt and that profit from a highly unregulated system. However, as the EPS experience illustrates, such agreements do not always result in favourable conditions for migrant workers. The EPS structure and underlying assumptions undermine migrants' rights.

Given the human rights concerns associated with the program, why is South Korea considered so favourably as a place of employment? Perhaps it is because, on paper, the program the EPS recognizes some rights for workers, which is an improvement over labour migration corridors that are not governed by any kind of agreement. However, if these rights are not being

respected and upheld by the South Korean government, why are countries of origin not pulling out of their agreements en masse? This speaks to significant failings on both sides.

Economic Focus vs. Human Rights Focus

The South Korean government's primary motivation for creating the EPS system was economic: to ensure a steady supply of migrant labour for industries suffering from labour shortages. Human and labour rights considerations were motivators only insofar as the previous trainee system was becoming politically unpopular and South Korean citizens were demanding a fairer system. However, the EPS is clearly employer-centred, providing ample opportunities for exploitation. The EPS was not created within a rights-based framework, and the impact on migrant workers is evident.

Employer Tied Visas

While an improvement over the former trainee system, the EPS is employer-centred, not worker-centred. Migrant workers are highly restricted and strongly discouraged from changing their employers for the duration of their contract. Article 25 of the Act on Foreign Workers' Employment, Etc. sets the conditions under which workplace change is permitted⁹:

- If the employer intends to terminate the worker's contract before the contract period ends, or if the employer intends to refuse to renew the employment contract after its expiry.

⁹Act on Foreign Workers' Employment, Etc., Act No. 6967, 16 August 2003.
<http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/67406/98332/F1224286744/KOR67406%20Eng%202013.pdf>

- If the worker is deemed unable to continue working in the workplace due to temporary shutdown, closure of the business, or the employer's violations of the terms of employment.

The Act also dictates that a worker may not change employers more than 3 times during the contract period. In some cases, labour centre officials in charge of solving the labour problems of migrant workers are not well functioning and arbitrarily reject requests for workplace change. In addition, if a migrant worker decides to quit his or her job, he or she will be sent home. Workers who intend to attempt to renew their visas or to re-enter South Korea for work in the future also recognize that switching employers makes it much less likely that their applications will be accepted.

Under such a system, migrant workers are unlikely to report exploitative labour practices or rights violations, and employers are put into a position of considerable power over their workers. As Amnesty International comments, "...the EPS work scheme requires migrant workers to establish and maintain a good relationship with their employer in order to be able to continue working in South Korea and makes it very difficult for them to challenge exploitative conditions of work and to change jobs."¹⁰

Unequal Relationship Between South Korea and Countries of Origin

As a G-to-G recruitment model, EPS is implemented with the expectation of creating equal responsibilities for South Korea and the governments with which it signs MOUs. However, most migrant countries of origin strive to satisfy South Korea to guarantee employment for their nationals.

The South Korean government routinely pressures governments of origin countries to

¹⁰ Amnesty International, "Bitter Harvest," p. 7

come up with measures to prevent migrant workers from becoming undocumented. Some such measures include: requiring that migrant workers sign a document stating that they will not overstay their visas; obliging family members to a deposit of a large sum of money to guarantee the return of the migrant worker; and promoting reporting of fellow nationals who become undocumented. For example, in 2013 the Vietnamese government introduced a new preventive measure imposing a \$5,000 US return guarantee deposit on prospective migrant workers. Migrant communities and rights advocates denounce that measure, arguing that it will result in debt bondage and further rights violations.

The quota system for EPS may well exacerbate this inequality. Are governments of countries of origin reluctant to demand better rights protections and treatment of their nationals working under EPS out of concern that their country quota will be decreased for the next year? Is the mere possibility that this could occur enough to soften diplomatic interventions on behalf of migrant workers whose rights have been violated?

Favouring Circular Migration over Permanent Settlement

As is the case with many temporary migration programs internationally, a key feature of EPS is the fixed timeframe in which workers are allowed to remain in the country and the lack of access to permanent immigration. Such systems are justified on the grounds that the demand for workers is *temporary*; however, the long-term use of EPS and other similar programs demonstrate that the demand for labour in these low-skilled sectors is long term. The

lack of access to permanent settlement under the EPS demonstrates a bias against low-skilled migrants, who are disadvantaged in accessing their labour rights and who have little in the way of political voice to advocate for changes to the system under which they are hired.

Recommendations

To guarantee human and labour rights protections of migrant workers under the EPS program in South Korea, the government should:

- Enable migrant workers to change employers, just as any other worker is permitted to do so under South Korean labour laws.
- Enforce zero-fees for workers rules under the EPS standard contract.
- Enforce rules against passport and identity document confiscation on the part of the employers of migrant workers.
- Ensure that all migrant workers are paid the mandated minimum wage by enforcing minimum wage laws.
- Ensure that MOUs with countries of origin are drafted with inputs from civil society and trade unions, and include protections for human and labour rights.
- Modify the EPS such that migrant workers have a path to permanent settlement.

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With members from civil society organizations across the world, the Open Working Group is committed to knowledge sharing and collective advocacy to reform migrant labour recruitment practices globally. Building upon years of civil society advocacy on labour migration, human rights, and recruitment reform, the Open Working Group was initiated in May 2014 by Migrant Forum in Asia and the Global Coalition on Migration (GCM) together with other civil society organizations. The Working Group is coordinated by Migrant Forum in Asia and forms part of the Migration and Development Civil Society Network (MADE).

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