Asian Conference

on Globalization and Labour Administration:

Cross-Border Labour Mobility, Social Security and Regional Integration
November 19-21 2014, University of the Philippines

Country Report

The Legal Protection of Migrant Workers in Korea

By Kwang-Taek Lee,

Professor, Kookmin University, Seoul, Korea
Vice President, International Society for Labour and Social Security Law
I. From Labor-Export Country to Labor-Import Country - the Background

Korea used to be one of the labor-export countries in 1960s and 1970s, sending farmers, miners, nurses, and construction workers to the U.S., Germany, and the Middle East. The Korean diaspora population around the world numbers 7.01 million as of 2012, including 2.57 million (36.7%) in China, 2.1 million (29.8%) in the United States and 0.89 million (12.7%) in Japan.

Korea experienced rapid economic growth since 1960s which has been called ‘the Miracle on the Han River’. Until the end of the 1980s, Korea was able to sustain its development without foreign workers.

The early Korean economic development model, which had mainly emphasized quantitative growth, began to face difficulties after the emergence of an active labor movement in the process of democratization struggles in 1987. Drastic changes in industrial relations with strong unions challenged the Korean labor market. Although most companies had to contend with workers’ demands for higher wages and improved working conditions, Small and Medium Businesses (SMB) began to find labor substitutes from abroad, because they could not afford to meet the needs of domestic workers.

In the meantime, most native Koreans had already escaped from absolute poverty and started to be interested in the quality of work life. The so-called three-D syndrome, or the aversion to ‘difficult’, ‘dangerous’ or ‘dirty’ jobs, began to spread out among the people of Korea in the late 1980s. The successful hosting of the 1986 Asian Games and the 1988 Olympic Games also caused Koreans to believe in the economic affluence of the country. As a result, migrant workers gradually filled up the big hole where the natives hesitated.

Also, the portion of blue-collar workers in the overall workforce has also declined and thereby hindered a secure labor supply to SMBs, while the number of highly educated people increased. Furthermore, the boom in housing construction in the early 1990s drew the Korean workers out of low-paying three-D jobs in manufacturing into the relatively higher-paying construction industry, and it caused SMBs distress as they encountered an ever increasing shortage of manpower.

Just before the fiscal crisis of 1997, the Korean economy had been maintaining an annual gross national product (GNP) growth of 7–8 percent, with unemployment rates at around 2–3 percent (World Bank, 1995). While Korean conglomerates attracted the general workforce, the SMBs across industries experienced a severe shortage of unskilled production workers since the middle of 1980s.

In 1991, the overall deficiency of manufacturing workers was up to 9.6 percent. The shortage in labor-intensive industries was particularly serious, for example the shortfall of 12.5 percent in the textile industry. Employers who suffered from a severe manpower shortage but could not afford to move their production lines overseas pressured the government to legalize the employment of foreigners. Business associations like the Korea Federation of Small and Medium Business (KFSMB) had frequently asked the government to import foreign laborers and, as a result, Korea finally decided
to open its labor market in October 1991.

As the economy grew, ranking the world’s 10th in terms of GDP in 2004, Korea became one of the most attractive destinations for immigrants (World Bank, 2005). Corresponding to neoclassical macroeconomics theory, wage differences forced workers from low-wage countries to move to high-wage countries like Korea.

Nevertheless, Korea could not be definitely categorized into the immigration countries, because not a few Koreans are still seeking jobs in abroad, mostly in Japan. It is therefore to say that Korea is situated in a turning point from emigration to immigration country. The UN, however, declared Korea as an official receiving country in 2007.

The participants of this Conference represent a dozen number of countries. Some countries like Japan and Korea belong to the host countries, while the Philippines are one of the big emigration countries.

II. The Industrial and Technical Training Program (ITTP)

Based on visa status, migrant workers in Korea can be divided into three categories: the legally employed, industrial and technical trainees, and undocumented workers. The first includes expatriate employees who work for multinational corporations or international organizations but are currently assigned to Korea, such as international businessmen, journalists and ministers of religion. Skilled foreign workers hired by Korean companies or organizations also belong to the same category. Academics, foreign language instructors, artists and engineers fall into this category.

The Korean government maintains a strict immigration policy to regulate the employment of foreigners. Theoretically, unskilled aliens could not acquire work permits. To make up the labor shortage in SMBs, the government allowed them to enter only as industrial and technical trainees, which belongs to the second division.

At the beginning hundreds of thousand workers mostly from Asian countries had been admitted to Korea as the so-called “vocational trainees” and later “industrial trainees.” Since 1991, Korea experienced a large influx of foreign workers, and the government utilized trainee programs since 1992. About 10,000 Asian workers came to Korea under this program in 1992, and there were about 57,000 trainees in Korea in June 1996.

The question is whether the “vocational trainees” or “industrial trainees” admitted to Korea fell under the category of “the persons coming specially for purposes of training or education”, as defined in Art. 11, Para. 2(d) of the ILO Convention 143 of 1973, which came into force on December 9, 1978 in supplement to the Convention No. 97 of 1949.
Unfortunately, the answer to this question was negative. Most of the “trainees” admitted to Korea were sent directly to undertakings which were not prepared to give ordinary vocational training. The trainees became undocumented workers due to the difference in wages and since they were not classified as workers in terms of labor law, they were not protected by the Labor Standards Act.

According to the Korea Federation of Small and Medium Business (KFSMB), between 1994 and 2002 China sent the largest number of workers to Korea and their 41,287 trainees constituted 24.0 percent of the total; the next largest number was 40,303 Indonesian trainees (23.4 percent), followed by 26,615 Vietnamese (15.4 percent). These three countries accounted for 62.8 percent of the entire foreign workforce (KFSMB, 2002). The trainees’ residentship was very tentative and their legal status was also unsecured. Although they work illegally, the basic right to organize, to bargain collectively and to strike was denied because they were not ‘workers’ but ‘trainees’. Staying in the country became illegal, if they failed to maintain the trainee status, as they quit designated jobs, or they stayed longer than the permitted period.

Although the trainees who completed the obligatory one-year training were able to work for another two years as regular employees after 2002, the majority of the former trainees became undocumented, belonging to the third category. It was estimated that 35,016 trainees or about 44 percent of the total number of trainees had abandoned the legal trainee status. The total number of undocumented migrant workers, including those having escaped from the Industrial and Technical Training Program (ITTP), former tourists and smugglers, dramatically increased from 18,402 in 1990 to 165,898 in 2000 (Ministry of Justice, 2000). In other words, more than 64 percent of the total foreign workforce in Korea would be undocumented.

Rather than the first group who enjoy all the benefits attaining from high social and economic status, the second and third groups were suffering from various discriminations, not only in the workplace but also in society at large.

The discussion for the change of this situation was launched after a group of Nepalese workers staged a sit-in strike at Myongdong Cathedral, in downtown Seoul early 1995. The 13 Nepalese demanded minimum wages, industrial accident compensation, eight-hour-day, and other protection under Korean labor law. After days of sit-in, an agreement between the Nepalese trainees and the KFSMB, which was responsible for recruitment services of the “vocational trainees”, was reached with the support of the labor organizations, religious and human rights groups.

Among the main points of the agreement were following:

- The KFSB immediately pay to the Nepalese trainees the full amount of their allowances which, they claim, have not been paid. However, the Nepalese trainees shall return to the KFSB the portion of the amount, if it is confirmed on checking to have already been paid.
- The Nepalese trainees shall receive their allowances in time directly from their employers.
- The passports which have been kept by the Korean employers shall be immediately returned to the Nepalese trainees, and shall be kept by them. The KFSMB shall ask Korean authority to give the
Nepalese trainees favourable consideration that they can stay legally in Korea.

- The KFSMB shall make sure that the Nepalese trainees shall not be forced to work against their will after regular work under the contract without mutual consent, and that working and living conditions will be free of hostilities and violences against the Nepalese trainees, and that freedom after work will be ensured.

- In case of sickness and accidents while at work, the Nepalese trainees shall receive the benefit of medical treatment and due compensation in case of dismemberment or death.

The sit-in strike of the Nepalese workers in January 1995 triggered a series of discussions to better the situation of the migrant workers in Korea.

### III. The Employment Permit System”(EPS)

The labor-import countries represent different policies in terms of migrant workers. In the course of discussion, it was suggested that the Korean model, which had followed the Japanese “training-and-employment” model, should be reformed in consideration of the German “work permit” model.

In August 2003 the Act Concerning Employment of Foreign Workers which induced the “employment permit system”(EPS) was promulgated. The EPS was designed in order to reduce the abuses of the “Industrial Trainee System”(ITS) as well as mitigate the difficulties of the SMB, which depended heavily on the alien manual workers, especially in the field of manufacturing, construction and agriculture.

In the process of preparing for the new EPS, which became affective in August 2004, the Government of Korea took a measure in the Autumn 2003 to legalize 184,000 aliens, or 81 percent of the 227,000 illegal residents, who were staying in Korea for less than 4 years. The others were to be expelled out of Korean territory.

The selective legalization process for undocumented migrants who had been in Korea (as of March 31, 2003) was as follows:

- less than 3 years were eligible for sojourn status;
- between 3 years and less than 4 years: eligible for visa issuance certificate then leave the country by November 15. Afterwards within 3 months return to Korea for legal employment;
- more than 4 years: there is no way to legalize (the Korean government had warned that they had to leave the country by November 15, otherwise arrest and forcible deportation would be implemented). Expulsion, heavy fines, and ban on reentry were to be the consequences of all undocumented migrant workers who did not leave voluntarily.

Between January 16 and 21, 2004 the protest group participated in the World Social Forum 2004 in Mumbai, India in order to make public the ongoing migrants’ struggle in Korea and strengthen the network and solidarity with migrant rights groups.
On January 20 the Office for Government Policy Coordination released measures to extend grace period for undocumented migrants again. On February 6 the migrants and Korean Chinese groups concluded 84-day sit-in protest declaring the 2nd round of their struggle. The decision was made after the Government agreed on extention of grace period to voluntarily leave the country in exchange for a guarantee they could return legally later.

I remember that the theme “migrant workers” already became one of three main topics discussed in the XIV World Congress of Labour Law and Social Security, which was held in Seoul from September 26 through 30, 1994.

The Employment Permit Program(EPP) for foreigners (the government’s foreign-labor policy since 2004) was a product achieved by a decade of collaboration between Korean civic society and migrant workers. However, these issues have more details to be resolved.

IV. The Present Situation of Migrant Workers

The number of foreigners in Korea grew from 0.39 million (1997) to 1 million (2007) in 10 years. Among these are 0.63 million temporary workers, as well as 0.10 million foreigners married to Korean nationals. Furthermore, there are 0.23 million illegal immigrants. The main export countries are mostly Asian countries such as China, Vietnam, Mongolia, the Philippines, Pakistan and Bangladesh; however, other migrants also come from Nigeria, Ghana, Russia, and the United States for various purposes.

The number of foreigners residing in Korea was increased up to more than 740,000 in 2004 from more than 670,000 in 2003. The number 1 million exceeded in 2007 and 1.5 million in 2013. Among them were 61.8% of long-term sojourners staying more than 90 days, 22.2% of short-term sojourners and 16% of Koreans with foreign nationality residing permanently.

As of August 2014 over 1.7 mill. foreigners are working in this land. Among them more than 11% or 180,000 are supposed to reside here illegally. As of the beginning of 2014, there are more than 1.57 million people with foreign citizenship in Korea, most of them from Asia, including foreign brides and international students. That accounts for more than 3 percent of the country’s population.

Among them are 865,875 Chinese(578,758 Korean origin), 137,282 U.S. Americans, 120,449 Vietnamese, 76,670 Thais, 50,506 Philippines, 43,557 Uzbek, 40,724 Japanese, 40,695 Indonesians. One of the main points specific in Korea is that about 33.8% of the migrant workers are Chinese of Korean origin.

Many migrant workers live particularly in the industrial suburbs of Gyeonggi province such as Ansan City and Siheung City.
According to Statistics Korea, seven out of 10 foreign workers in Korea were paid less than 2 million won ($1,800) a month in 2014. About 525,000 foreign workers were paid less than 2 million won in 2013. They took up 71.4 percent of the total 735,000 salaried non-Korean employees on all visas. Of them, the monthly wage for 42,000 workers was below 1 million won, accounting for more than 5 percent of all foreign workers.

About 159,000 non-Koreans were paid between 2 million won and 3 million won, while the number of foreign workers whose wages exceeded 3 million won came to 51,000. By gender, 84.6 percent of the 241,000 female foreign employees were paid less than 2 million won.

Meanwhile, the MOEL plans to bring in about 53,000 migrant workers on the non-professional employment (E-9) visa by the end of 2014, an increase of 3,000 from a year earlier. The figure includes about 5,600 workers with a reentry visa under the EPS. They are being assigned largely to the manufacturing, construction, agriculture and fishing industries.

Rep. Jasmine Lee, a naturalized member of Korean National Assembly from the Philippines, cited the figures on breaches of the Act on the Employment etc. of Foreign Workers, which affects migrant workers on E-9 and H-2(Working Visit) visas, during the parliamentary audit on the MOEL in October. The percentage of firms in violation of the law came to 31.3 percent in 2012, 31.2 percent in 2013 and 32.9 percent in the first half of 2014.

Lee said that a large portion of violations related to unfair treatment of migrant workers. During the first half of 2014, 569 of 1,728 companies that were subject to investigations failed to abide by stipulations set by the law.

Further, the proportion of firms who violate the Labor Standards Act has continued to increase — from 10.4 percent in 2012 to 15.4 percent in 2013 and 19.8 percent in the first half 2014. Some companies were found to have paid less than the minimum wage, with 4.2 percent doing so in 2012, 6.8 percent in 2013 and 4.4 percent in the first half of 2014.

An expert from U.N. Human Rights Council found out in October 2014 that many of the migrant workers in Korea face extremely poor working conditions, especially in the greenhouses in the winters and summers, as well as wage inequality.

Amnesty International (AI) released a report titled "Bitter Harvest" in October 2014. According to the report, there are approximately 20,000 migrant agricultural workers in Korea, with many arriving from Cambodia, Nepal and Vietnam under the EPS migrant workers scheme. The majority take on huge debt equivalent to two years' salary in their home country in order to get a job in Korea. The group AI said that farm workers are frequently compelled to work in inhumane conditions and lack the means to escape their situation.

The AI report notes that the EPS as a means of better managing the increasing number of unskilled laborers coming to Korea, is heavily biased in favor of employers, leaving migrant workers vulnerable to exploitation and other forms of abuse.
V. The Social Integration for Foreigners and Their Family

1. Vocational Competency Development Training Program

The program is to carry out vocational competency development training for foreign workers entering Korea under the EPS to assist their adaptation to Korea and to attempt to improve the productivity of SMEs during their stay. The aim of the program is also to promote foreign workers’ voluntary returns by assisting them to prepare for a stable basis for settling into their home countries with vocational competency development. Vocational training is provided for legally employed foreign workers to help them to attain/improve their work performance required for the job.

Target trainees are Non-professional (E-9) foreign workers who are legally staying in Korea and foreign workers (E-9) who are referred by companies or want to receive vocational competency development training. The illegal aliens, married foreigners, and working visit visa holders (H-2), etc. are excluded.

The training sources are provided by 65 professional training institutes in 10 types of occupation: basic duties (manufacturing), basic duties (construction), welding, automobile maintenance, car driving, forklift driving, computer repair, computer utilization, cooking (Korean foods), beauty(hair)

The total training hours are 48 hrs (4 to 6 hrs every Sunday). The training course organization runs training programs emphasizing practical techniques and offers lectures in relevant languages (use interpreters).

2. The Refugee

Since 1992 the Republic of Korea is a signatory to the UN Refugee Convention relating to the Status of Refugees of 1951. The Korean Government is thus the competent authority to determine refugee status in Korea. Korea first granted refugee status in 2001 and has received 4,897 asylum claims as of Oct. 31 2012. Among them, around 300 were recognized as refugees, while another 158 were granted humanitarian status. Korea has granted citizenship to three refugees.

3. The Nationality

From June 14, 1998 he/she, whose mother or father is Korean, is automatically granted Korean nationality from birth, regardless of their decisions on whether to choose the nationality of the foreign parent or the country of birth (if born outside Korea). Requirements for general naturalization are as follows:

- Must have had domicile address in R.O.K. for more than 5 consecutive years.
- Must be legally adult according to Korean Civil Law (19 years old).
- Must have good conduct.
- Must have the ability to maintain living on his/her own assets or skills; or is a dependent member of a family capable of the feat. Applicants must have basic knowledge befitting a Korean national; such as understanding of the Korean language, customs and culture.
4. The "Kosian"

A “Kosian” is a half-breed between Korean father and mother from other Asian countries, or a family composed of Korean and other Asian cultures. The term Kosian was first coined in 1997 by intercultural families to refer to themselves. The Kosian is considered offensive by some who prefer to identify themselves or their children as Korean. In Korea there are approximately 30,000 mixed-blood children who often face discrimination.

5. International Marriage

With economic development and urbanization, many people left rural areas, heading for the city in search of better jobs and living conditions. Those who stayed behind in the countryside with their parents began to see a chronic shortage of marriageable women in rural area, thus “international marriage” started to fill the demand. Most international marriage cases are handled by dating service companies.

The number of this kind of marriages has grown rapidly since the late 1990s, especially in rural farming communities. Most brides come from China (approximately 60%, mostly ethnic Koreans in China), followed by Vietnam and other East Asian countries. In addition, a smaller number of women marry foreign husbands; with husbands from China also leading in this category, followed by Japan. In 2005, there were 31,180 marriages between Korean men and non-Korean women; compared to 11,941 marriages between Korean women and non-Korean men. Together, these account for more than 10% of the total number of marriages in 2005: However the number has dropped significantly, and now represent less than 10% of total marriages in Korea. Most foreign brides enter Korea for economic reasons and divorces between Korean men and foreign brides make up 40% of Korea's total divorce rate.

VI. The Practices of EPS

On June 4, 2012, the Korean Ministry of Employment and Labor(MOEL) adopted a new policy entitled “Measure for Improvement in Foreign Workers’ Change of Workplaces and Prevention of Broker Intervention”. This measure encountered criticism that its actual intent and effect is to further restrict migrant workers’ ability to change workplaces and further repress their right to free choice of employment.

1. Background

Under the EPS, migrant workers can work in Korea in designated sectors for a maximum of 4 years and 10 months. During this period they are technically allowed to change workplaces (staying within the same sector) a maximum of three times in the first three years and two times in the following one year and 10 months. To change workplaces, migrant workers must have the permission of their employers except in cases where the company closes down or where there is accepted proof of
If a migrant worker leaves a workplace, he/she has 3 months to find a new employer. He/she is given a list of permitted companies seeking to employ migrant workers by a MOEL job center. He/she then visits the companies on the list to apply for a new job. If he/she does not sign a new contract within this 3-month period, he/she loses his/her residence permit (visa) and must leave the country or become undocumented.

Although the EPS had been praised in international circles as a model system for regulating foreign labor. It is criticized that the limiting the times that migrant workers’ can change workplaces, and requiring the employer’s approval means that migrant workers are often stuck in highly exploitative working environments with no recourse other than to endure or leave without permission and become undocumented.

The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has recommended twice that the Korean government review the EPS with the goal of loosening the restrictions on workplaces changes (CEACR, 062008KOR111; CEACR, 062009KOR111).

Instead, the government has been taking steps to further tie workers to their workplaces. For instance, the government recently passed a revision of the EPS, which allows migrant workers who have the invitation of their employers to renew their visas for another 4 year and 10 month period after leaving Korea for 3 months only in the case that workers have no record of changing workplaces. Given that most migrant workers want to work in Korea longer in order to pay off debts and support families, this EPS revision induces workers to give up the chance to escape poor conditions in order to have the chance to be able to return to Korea after their first residence period is over.

2. The Problems of EPS

The new measure is in line with the trend towards further restrictions on migrant workers movement between workplaces. The measure ends the practice of providing migrant workers with a list of companies with job openings. Instead, a list of migrant workers seeking employment will be provided to employers, who then have the opportunity to call migrant workers they are interested in employing and ask them to come for an interview. Workers who fail to show up for an interview after being called, or refuse an offer of employment “without rational reason” will be disadvantaged by being cut off from offers of employment.

The MOEL justified this measure as a means to 1) reduce the frequency of migrant workers’ workplace changes and 2) prevent the intervention of brokers in the re-employment process. It explains the second justification by saying that giving lists of companies with openings to migrant workers raises the risk of this information getting into the hands of brokers. In fact, however, brokers – who often do meddle in the process of re-employment - obtain information, not from migrant workers, but through job fairs held by the MOEL and other individual means. It is quite clear that the real intent of the new measure is to further discourage migrant workers from leaving their original
workplaces and limit their ability to choose between employers. The result of such a policy is to tie workers to employers even more closely, as well as to remove any pressures on employers to uphold labor rights or improve working conditions.

3. Violations of Korean and International Law

The right to free choice of employment has been found by the Constitutional Court to apply to migrant workers as well as Korean citizens (Constitutional Court, Decisions in Cases 2007heonma1083, 2009heonma230-352, 29 September 2011).

The UN Universal Declaration on Human Rights Article 23.1, the UN International Covenant on Economic, Social and Cultural Rights, Article 6.1 and ILO Convention 122 (Employment Policy), Article 1 all call on member governments to enforce policies that protect the right to free choice of employment. In addition, ILO Convention 111 [Discrimination (Employment and Occupation)] obligates member governments to pursue national policy that eliminates inequality in “opportunity and treatment in respect of employment and occupation” based on “race, color, sex, religion, political opinion, national extraction or social origin” (Articles 2 and 1). Korea has ratified all of these aforementioned conventions and is obligated to uphold the Universal Declaration on Human Rights as a member state of the UN.

The MOEL's new measure, however, makes it impossible for migrant workers to freely visit workplaces and assess their working condition. Moreover, it puts extreme pressure on migrant workers to conclude contracts with the first employers who contact them in order to avoid the disadvantage and the likelihood of running out of time to find a new job and losing their residence permits. As such, the new measure clearly violates the rights set out in Korean domestic and international law.

VII. Labor Conditions of Migrant Workers

1. Basic Protection of Migrant Workers

The rights and interests of migrant workers are protected according to the provisions of the national law of the Republic of Korea. Such individual labor law as the Labor Standards Act, the Minimum Wage Act and the Industrial Safety and Health Act are equally applied to the migrant workers. In principle, the collective labor law, which guarantees three basic rights of workers, right to organize, right to bargain collectively and right to strike, is applied to the migrant workers, as well. How these rights are practiced in reality is different thing.

Among the four national social insurance systems, the migrant workers enjoy the benefits of the Employment Insurance, the Industrial Accident Compensation Insurance (IACI) and the National Health Insurance(NHI). For the National Pension Scheme the reciprocity principle is applied. It means that the National Pension Scheme of Korea is not applied to the migrant workers, when their home
country's pension scheme is not applied to the Korean residents there.

To the Vietnamese workers in Korea is the National Pension Scheme excluded. The workers from Sri Lanka, Indonesia, Thailand, Mongol with non-professional employment (E-9) visa are eligible to claim the payment of a Lump-sum Refund, when they leave Korea.

The children of undocumented migrant workers are allowed to go to school. The undocumented migrant workers are also entitled to the benefit of the industrial accident compensation insurance.

Korea ratified the ILO Convention No. 19 of 1925 - Equality of Treatment(Accident Compensation in March 2001, concerning equality of treatment for national and foreign workers as regards workmen's compensation for accidents.

2. The Deficit of Legal Protection

Although general labor conditions for migrant workers have somewhat improved after the implementation of the EPS, they are still suffering from discriminatory low wages, compulsory overtime and holiday working, frequent occurrence of industrial accidents, passport seizure, prohibition from going outside the company and workplace violence. In addition, intermediary exploitation by brokerage agencies in contracting countries is critical; the agents often charge the trainees US$2000–3000 or even US$8000 for a placement in Korea (Seol, 2000).

Besides the distressing labor conditions, another problem must be the limited technology transfer or training of the migrant workers. The ITTP was originally developed to transfer more advanced technology to the trainees from the underdeveloped countries, while they provided their labor to SMBs. However, they hardly had a chance to achieve industrial techniques or systematic training goals. They seldom studied the Korean language or had cross-cultural training, both of which are essential in learning industrial techniques as well as in adaptation to the host culture.

Moreover, current labor laws and social welfare systems are not supportive towards migrant workers. Although the application of labor laws, such as the Labor Standards Act, the Industrial Safety Act, the Minimum Wage Act and social insurances expanded, the regulations and benefits have not been fully applied to migrant workers. Many items do not carry a legal obligation but rather a recommendation only. A relatively short length of stay, maximum three years, also hinders social insurance benefits such as unemployment benefits and public pensions. The employers often threaten them with dismissal if the immigrants try to receive workers’ compensation benefits. When the lack of supportive systems as well as the costs in both human suffering and serious labor turnover is considered, it is clear how important it is to redesign poor working conditions and to facilitate the immigrants’ adaptation to the host society.

According to the report of AI, significant numbers of migrant agricultural workers in Korea have been trafficked for forced labor and incidents of contractual deception were recorded in all cases investigated by Amnesty.
The report also shows that migrants are compelled to work under conditions that they did not agree to, under threat of various forms of punishment including: intimidation, violence, being assigned bad housing, forced to work an excessive numbers of hours, no days of rest in the week and denial of paid overtime.

The EPS favors employers over worker's rights. Under the system, migrants must obtain a release form signed by their employer in order to change jobs. However, employers can terminate a migrant's contract without having to justify the decision. Rather than giving a release letter, their employer tends to threaten to report them to the immigration authorities as "runaways," which would make them subject to arrest or deportation.

3. The Social Programs for Migrant Workers

The segregation at the workplace appears to vary according to the legal status of migrant workers. The industrial and technical trainees who maintain proper legal status are more likely to be advantaged in terms of National Health Insurance (NHI). They have been eligible since 1995 to join the NHI, according to the guidelines set by the MOEL, whereby trainees at workplaces with more than one full-time employees are able to apply to the NHI. Meanwhile, undocumented workers have better positions in regard to employment insurance and retirement benefits because they are not trainees but workers.

In fact, some social programs cover literally all the migrant workers, including those who are undocumented, but this does not fit in with reality. The IACI is an example. Although the IACI coverage extends to almost all the SMBs today, employers often discourage them from requesting IACI benefits. The report of an industrial accident raises the insurance premium and employers simply wish to avoid this. The situation becomes more coercive with the possibility of lay-off. Therefore, it is essential to deliver social welfare programs to the end-users, rather than simply launch a new policy.

Meanwhile, human rights for migrant workers are another issue to be rectified. Even though the newcomers’ working conditions have somewhat improved, there still exist serious incidents of threatened human rights. In particular, human rights violations occur more seriously with undocumented migrant workers. Because of the risk of being expelled, they are often forced to accept inhumane treatment from employers, and this makes them more vulnerable than job trainees under the ITTP. Since cases where human rights are violated have been uncovered through the mass media, civic organizations and coalitions for migrant workers have increasingly raised the issue of the maltreatment of the foreign workforce. Their advocacy and watching over troubled workplaces should be reinforced in order to protect the basic human rights of the vulnerable people.
VIII. Conclusion

The severe financial crisis of November 1997 which hit the Korean economy resulted in the highest unemployment rate on record. But even in such hard times, the three-D jobs were filled not by natives, since they were unwilling to bear the poor working conditions any more. Thus the position of migrant workers in Korea needs to be re-evaluated, as they are helping the host economy by accepting jobs the native workers dislike. The demand for the migrant workers will be growing not only because of the cost of labor, but also because of Korea's drastic decrease of birth rate.

As the number of migrant workers from neighboring Asian countries has dramatically increased, the social segregation they experience has become a critical issue in Korean society. Most newcomers have suffered from disadvantageous labor conditions, and their basic human rights are often violated not only in the workplace but also in society as a whole.

Without equal treatment of the migrant workers in labor law and social security, the idea of the ILO convention would remain a fair but empty phrase. In this sense, the labor administration has to find right ways to design national and international policy to promote and guarantee equal opportunity and treatment in respect of employment and to respect the basic human rights of all migrant workers.

A nationwide campaign to alleviate domestic hostility against the foreign workforce must be implemented, as well. An expert from U.N. Human Rights Council called on the Korean government in October 2014 to tackle the country’s xenophobia issue by stepping up education and legislating comprehensive anti-discrimination laws.

Mutuma Ruteere, U.N. special reporter on racism, found incidents and problems of racism and xenophobia in Korea that are serious enough to be brought to attention and said the state of migrant workers in the agriculture industry requires “serious attention” from the Korean authorities.

Korea’s EPS system, which attracted more foreign workers to the country, makes it impossible for those under the scheme to be granted permanent or long-term residency, as the program is limited to a maximum of 4 years and 10 months.

In its recently published report, "Bitter Harvest: Exploitation and Forced Labor of Migrant Agricultural Workers in South Korea, the AI claimed that when workers attempt to switch jobs, their employer tends to threaten to report them to the immigration authorities as "runaways," which would make them subject to arrest or deportation.

Amnesty staff brought up the issue of human rights and the "abusive conditions," under which workers from countries such as Cambodia and Vietnam are subject to forced labor and lack the means to escape the situation and called on the Korean government to monitor the agriculture industry more closely.
Failing to treat migrant workers properly according to their working performance is a serious problem. The MOEL should reinforce the supervision of rule violators.