

Labour Migration Branch

*The Republic of Korea's Employment Permit System (EPS):
Background and Rapid Assessment*

Min Ji Kim

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First published 2015

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ILO Cataloguing in Publication Data

Kim, Min Ji

The Republic of Korea's employment permit system (EPS) : background and rapid assessment / Min Ji Kim ; International Labour Office, Conditions of Work and Equality Department, Labour Migration Branch. - Geneva: ILO, 2015 (International migration papers ; No. 119, ISSN: 1020-2668 ; 1564-4838 (web pdf))

International Labour Office. Conditions of Work and Equality Dept

labour migration / migrant worker / migration policy / work permit / social integration / good practices / role of ILO / Korea R

14.09.1

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INTRODUCTION

For the majority of the 20th century, the Republic of Korea (hereinafter, “South Korea” or “Korea”) was a country of net emigration, but it has entered the 21st century as a clear country of destination, in particular for workers from other Asian countries, who come to Korea to work mainly in small-and-medium sized enterprises and in agriculture. There were an estimated 547,000 migrant workers legally in Korea in 2011, representing 92 per cent of the entire foreigner population in Korea that year (MOJ 2013). Notwithstanding Korea’s late entry into the circle of developed countries hosting foreigners, the country was an early starter in the region in installing an official temporary labour migration programme. It remains one of the few Asian countries to formally acknowledge its need for low-skilled migrant labour and to have extended domestic labour law protections to foreign workers at the same level as those accorded to national workers. The ultimate consequence and manifestation of these developments is officially known as the Employment Permit System (EPS).

The EPS is an example of a non-seasonal temporary labour migration programme that operates through bilateral government-to-government memoranda of understanding (MOU) at the complete exclusion—in principle—of private sector recruiters or agencies, which is relatively rare, as much in the global context as in the Asian context. These MOU stipulate the respective duties and responsibilities of the governments involved – South Korea and the government of sending countries – and coordinates the actions of both sides regarding recruitment, selection, placement, protection and work-related benefits of migrant workers bound for Korea. While non-governmental actors and even some private service-providers are often involved in preparing potential EPS workers ahead of the selection process or in facilitating the workers’ adjustment to life in Korean society after entry (in the area of Korean language lessons, for example), the selection process itself is the prerogative of the Korean government and its counterpart in the sending countries. This exclusive governmental control was intentional from the outset. The EPS was designed to stem the corruption, extortion, and consequent human rights abuses characteristic of private sector-based recruitment in the region. This is perhaps the most important and most promoted merit of the EPS. On June 23, 2011, the scheme was awarded the UN Public Service Award for its contribution to increasing transparency and combatting corruption,¹ due mostly to this exclusive government-to-government arrangement.

First adopted into South Korean legislation via the *Law concerning the Employment Permit for Migrant Workers* of 31 July, 2003—more widely known as the “EPS Act”—and entering into force almost exactly a year later, the EPS is approaching its tenth anniversary. Considering that the present moment represents an apt opportunity to do a rapid assessment of the system’s performance thus far, identify its successes and explore possibilities for its improvement, the objective of this paper is to determine if and in what manner the EPS satisfies its stated objective of achieving “the smooth supply and demand of manpower and the balanced development of the national economy by systematically introducing and managing foreign workers”² in a transparent and sustainable way. At its broadest level, the EPS is organised into three stages—pre-admission, post-admission, and return and reintegration. Therefore, this paper will also evaluate to what extent the EPS satisfies the exigencies of Korea’s labour and immigration policies at each of these stages.

¹ For the complete list of winners of the 2011 UN Public Service Award, see <http://unpan1.un.org/intradoc/groups/public/documents/un-dpadm/unpan045540.pdf>

² EPS Act, Article 1

Since the focus of this paper will be the EPS as a scheme and structure, it will not dwell extensively on the individual actions or behaviour of the actors within it, except where they are a direct effect of or directly affect the structure of the system and its application.³ Two types of visas are issued through the EPS: H-2 visas for ethnic Koreans with foreign citizenship (e.g.: ethnic Koreans in China) and E-9 visas for non-ethnic Korean foreign workers. This paper will only examine the EPS as it relates to the E-9 category of workers. It is based mainly on existing desk-research as well as interviews with stakeholder representatives.

³ Local and international NGOs have been active in documenting information of this nature, detailing specific incidences of concern in relation to human rights and labour standards. See, in particular, Amnesty International's 2009 report, "Disposable Labour: Rights of Migrant Workers in South Korea", Amnesty International, October 2009.

BACKGROUND

I. From the ITS to the EPS

From the 1980s, the Korean economy began to experience consistent labour shortages as a result of rapid industrialisation, economic development and emigration of Korean nationals to the West starting from the 1960s.⁴ Small and medium-sized enterprises (SME) in the manufacturing sector were hit particularly hard. Furthermore, the country was undergoing a major demographic shift that was negatively impacting on available workforce size. The country was transitioning from a growing population marked by youth to one that was ageing and with a declining birth rate. Korea's birth rate is well below the OECD average and reputed to be the lowest in the world (MOJ 2008).⁵ With Korea's growing prosperity and the rising educational attainments of its population, Korean workers were less and less likely to occupy the low-paying, physically strenuous or hazardous jobs often deemed in the local parlance as dirty, dangerous, and degrading—the so-called “3D jobs”—that typically characterize jobs in local SMEs. That this labour shortage was structural and not a momentary phenomenon became evident with the arrival of the Asian financial crisis in 1997. Between 1997 and 1999, the national unemployment rate in Korea rose from 2.1 per cent in October 1997 to 8.6 per cent in 1999 as two million people were rendered jobless. Yet, few local workers were willing to take up available 3-D jobs and the sectors offering such jobs still suffered chronic manpower shortages (Park 2008:7).

As Korea approached the new millennium, it became increasingly difficult to ignore the fact that the country had developed a long-term need for a low-skilled foreign workforce. In response, the Korean government launched the Industrial Trainee Scheme (ITS), a migration-for-training programme, in 1994. The scheme borrowed heavily from Japan's own Training Programme and reflected that programme's policy position of not acknowledging entrenched demand for low-skilled migrant labour, instead opting to manage the entry and residence of low-skilled foreign nationals under a non-worker status. The ITS allowed SMEs with less than 300 employees to take on foreign nationals strictly as “trainees” for two years (Amnesty 2009:7). The recruitment and placement of trainees was overseen by the Korean Federation of Small Businesses (KFSB, also known as KBiz) and carried out mostly by private agencies, both in origin countries and at destination in Korea, or smaller employers' associations. Initially, trainees were contracted for one year, but the training duration was later extended to two years as domestic labour shortages became entrenched and the sectors covered by the programme expanded (Park 2008:7). However, since under the ITS foreign participants were not legally recognized as workers and attributed instead the precarious and unclear status of “trainee”, it became clear that the ITS was propagating human and labour rights violations: employers began to take liberties with their trainees' wages, working hours and social and occupational protections. The ITS was also seen as perpetuating a pattern of legal trainees becoming irregular migrant workers, as trainees fled exploitative working conditions and employers. Moreover, since the ITS produced the perverse effect of irregular migrant workers being paid higher wages than legal ITS trainees (Park 2008:16), many trainees made the rational decision to become irregular. Many ITS trainees simply felt compelled to overstay their

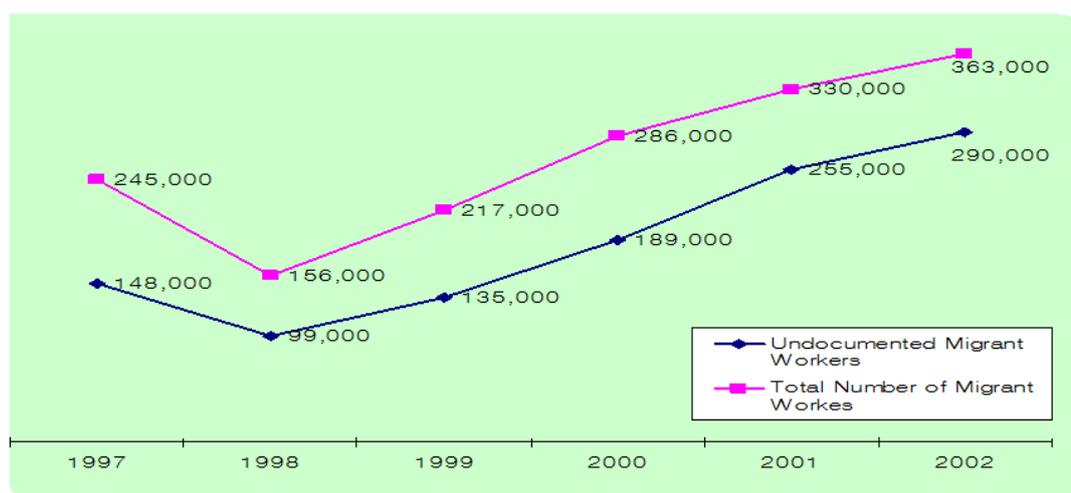
⁴ For more information on the migration history of the Republic of Korea up to the present day, see *Journal of Ethnic and Migration Studies*, Vol. 38 No. 3, 2012

⁵ See Korea Ministry of Justice, “The First Basic Plan for Immigration Policy: 2008-2012”, Ministry of Justice of Korea, 2008, p. 14

trainee visas in order to be able to repay the debts they had incurred as a result of paying exorbitant fees to their private recruitment agencies, either at home or in Korea, for the purposes of participating in the ITS. Some foreign trainees had dispensed as much as 10,000 USD (Park 2008:15).

With calls for reform to Korea's labour migration policy mounting, the Korean Government started installing several modifications to the ITS. In the first round of changes, trainees had the possibility of transitioning to full worker status for one year after two years as a trainee. Then, in June 2002, trainees could gain worker status and a valid work contract for two years after one year as a trainee. However, these measures did little to bring down the alarming numbers of undocumented foreign workers; if anything, the ranks of the undocumented grew. By 2002, the year of the latest round of reforms, undocumented migrants accounted for a staggering 80 per cent of all foreign workers in Korea, and the ITS was identified as the biggest contributor to this undesirable state of affairs (Park 2008:8). As far back as 1994, when the ITS was first launched, critics had already identified that the main problem with the scheme lay in its inability to grant the participating migrants a stable and recognized legal status as workers: "The problem with the trainee system is its false pretensions. It is employment in undesirable jobs, not training, that is the real purpose....". (Abella, Park and Bohning 1994: 36).⁶

Fig. 1: Numbers of undocumented workers under ITS relative to total numbers of migrant workers



Source: MOEL 2010

Finally recognizing that the fundamentals of the ITS were deficient and that the entire scheme was unsustainable, the Korean Ministry of Labour (now the Ministry of Employment and Labour, MOEL) introduced the Employment Permit System (EPS), Korea's current temporary labour migration scheme for lower-skilled professions, in 2004. The EPS completely replaced the ITS in 2007. As a result, now all lower-skilled migrant workers coming into Korea come through the EPS and are granted the legal status of worker, in theory benefiting from all the national labour laws, regulations and protections to which Korean workers are entitled.

⁶ Cited in Park, Young-bum, "Admission of Foreign Workers as Trainees in Korea," ILO Asian Regional Programme on Governance of Labour Migration Working Paper no. 9, ILO regional office for Asia and the Pacific, Bangkok: ILO, 2008, p.19

II. The EPS – What it is and how it works

The EPS Act of 2003 codifies the main policy thrusts and procedural aspects of the EPS. The scheme is quite ambitious in its sectoral scope, the time allotment it grants to participating migrant workers, and the different nationalities it has incorporated into the scheme over time. As previously highlighted, it is built on government-to-government bilateral agreements between the government of Korea and the governments of selected origin countries. These agreements stipulate that the recruitment, selection and placement of workers under the scheme would be managed entirely by government ministries in charge of labour migration—or entities affiliated with the relevant ministry—of the two countries.⁷ So far, Korea has signed MOUs with 15 origin countries in the framework of the EPS: Bangladesh, Cambodia, China, Indonesia, Kyrgyzstan, Mongolia, Myanmar, Nepal, Pakistan, the Philippines, Sri Lanka, Thailand, Timor-Leste, Viet Nam and Uzbekistan. As of August 2012, there were a total of 188,000 workers from these 15 countries formally working in Korea as EPS E-9 visa-holders (MOEL, 2012).

Pre-Admission

The recruitment process for the EPS begins each year with the Korean government issuing quotas for that year on the number of migrant workers that will be accepted from each of the fifteen EPS sending countries and for each sector (manufacturing, construction, agriculture, services, and fisheries). The quotas are set by the Foreign Workforce Policy Committee (FWPC), a high-level inter-ministerial body under the Office of the Prime Minister whose members include the vice ministers from the Ministry of Finance and Economy, the Ministry of Justice, the Ministry of Commerce, the Ministry of Industry and Energy, and the Ministry of Employment and Labour. The agenda of the FWPC is set, in principle, by the Foreign Workforce Employment Committee (FWEC), a tripartite-plus body set up under the MOEL chaired by the Vice Minister of Labour and with representatives of the Korean government, workers, employers and civil society as members. The FWPC also deliberates on which countries to add to—or, on rare occasions, to suspend from⁸—the list of EPS origin countries (Yoo 2007:69-70). The quota for E-9 workers peaked at 72,000 in 2008 but is generally kept below 50,000. It was vastly reduced to 17,000 in 2009 following the 2008 financial crisis (Table 1). For 2012, the

⁷ China is the one exception to this policy. The Korean government was unable to conclude a MOU with the Chinese governmental organ that deals with labour migration and instead signed a bilateral agreement with China's Ministry of Commerce. Park, Hyeong-ki, HRD Korea, "RE: RE: RE: EPS질문 몇가지..." 2 April 2012. Email interview.

⁸ Countries participating in the EPS can be suspended if they violate any part of the MOU signed with the Korean government, such as allowing, in any way, infiltration of the EPS recruitment process by private agents or if a noticeably high percentage of their nationals become irregular migrants in Korea. The participation of Viet Nam was suspended temporarily following a decision by the FWPC that there were too many Vietnamese irregular migrants in Korea. See <http://www.nhandan.org.vn/cmlink/nhandan-online/homepage/economics/current/rok-continues-recruiting-vietnamese-workers-1.319619>

Korean Government raised the quota for E-9 workers to 57,000,⁹ and the quota for 2013 was set at 62,000¹⁰ (Table 1).

Table 1: Foreign workers quotas by status and year

Classification	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Total	79 000	18 000	105 000	109 600	132 000	34 000	34 000	48 000	57 000	62 000
Foreigner (E-9)	25 000	14 300	34 750	49 600	72 000	17 000	34 000	48 000	57 000	62 000
Ethnic Korean (H-2)	-	3 700	38 050	60 000	60 000	17 000	-	-	-	-
ITS	38 000	-	32 200	-	-	-	-	-	-	-

Source: MOEL, 2013 et al.

The majority of the quotas each year, roughly 83 per cent, are allocated to the manufacturing sector¹¹ as demonstrated in Table 2.

⁹ Lee, Sun-Young, "South Korea raises quota for foreign laborers in 2012", The Korea Herald, 12/30/2011. Published in the The Jakarta Post.

<http://www.thejakartapost.com/news/2011/12/30/south-korea-raises-quota-foreign-laborers-2012.html>

¹⁰ Baruah, Nilim. "Trends and Outlook for Labour Migration in Asia". ILO presentation given at the 3rd ADBI-OECD-ILO Roundtable on Labour Migration in Asia: Assessing Labour Market Requirements for Foreign Workers and Developing Policies for Regional Skills Mobility. 23-25 January 2013, Bangkok, Thailand.

¹¹ Jang, Jungseo. MOEL presentation given 12 December 2011, "Employment Permit System in Korea: Recent performance and challenge for the future". ILO-Korea Destination Countries Meeting on the Effective Governance of Labour Migration. 12-13 December 2011, Seoul, Republic of Korea.

Table 2: Numbers of EPS workers by sector and visa category (2007 – 2011)

Year	Sector	Manufacturing	Construction	Service	Agriculture	Fisheries	Total
2011	E-9	40 000	1 600	150	4 500	1 750	48 000
	H-2	0	0	0	0	0	0
	Total	40 000	1 600	150	4 500	1 750	48 000
2010 (latter half)	E-9	28 100	1 600	100	3 100	1 100	34 000
	H-2	0	0	0	0	0	0
	Total	28 100	1 600	100	3 100	1 100	34 000
2010 (early half)	E-9	19 500	1 600	100	2 000	800	24 000
	H-2	–	–	–	–	–	–
	Total	19 500	1 600	100	2 000	800	24 000
2009	E-9	13 000	2 000	100	1 000	900	17 000
	H-2	10 000	–	5 900	1 000	100	17 000
	Total	23 000	2 000	6 000	2 000	1 000	34 000
2008	E-9	60 800	6 000	400	4 000	800	72 000
	H-2	16 000	12 000	30 600	1 000	400	60 000
	Total	76 800	18 000	31 000	5 000	1 200	132 000
2007	E-9	42 100	4 400	200	1 900	1 000	49 600
	H-2	27 200	10 500	20 400	1 700	200	60 000
	Total	69 300	14 900	20 600	3 600	1 200	109 600

Source: MOEL cited in Yoo 2011

After the quotas are decided and issued, the sending governments organise the application process for candidate EPS workers whilst the Korean MOEL handles the application process for eligible Korean employers. In order to be considered for the EPS, all potential migrant workers are required to pass a Korean language proficiency test (TOPIK), in addition to satisfying other country-specific criteria, such as age or education requirements.¹² The testing and the processing of the test results take place in the sending countries under the control of that country's labour migration authorities. The governments of the origin countries then each compile a roster of candidates that have met all the requirements for employment in Korea. These lists are transmitted to the MOEL. Access to the rosters is only granted by the Korean authorities to employers or companies in Korea that have received the employment permit from which the entire system derives its name. As of 2010, candidates on the list can present themselves and their Korean speaking abilities to potential employers through a video that is also transmitted to the MOEL and then employment centres in Korea. Human Resources Development Korea (HRD Korea), a public recruitment agency within the MOEL that is mandated to manage the EPS at the level of on-the-ground implementation, maintains a physical presence in each of the EPS sending countries through a liaison office, in order to monitor the recruitment process and

¹² In all EPS sending countries, applicants are required to have at least a high school diploma. A few sending countries require applicants to possess a tertiary education certificate or degree in order to qualify for the EPS.

prevent fraud as well as to offer technical assistance to sending governments where needed.¹³

Table 3: E-9 workers by sector of employment and country of origin (2004 – May 2011 cumulative)

Country of origin \ Sector	Manufacturing	Construction	Agriculture	Service	Fisheries	Total
Bangladesh	6 341	67	88	9	122	6 627
Myanmar	3 416	–	61	1	44	3 522
Cambodia	6 502	67	3 092	–	257	9 918
Sri Lanka	24 982	1	518	19	46	25 566
China	5 224	1 042	480	–	482	7 228
Indonesia	30 421	541	340	12	2 298	33 612
Kyrgyzstan	1 050	–	32	13	10	1 105
Mongolia	22 414	363	779	216	386	24 158
Nepal	8 057	–	678	18	413	9 166
Pakistan	5 306	60	40	1	378	5 785
Philippines	39 327	1 178	207	2	–	40 714
Thailand	36 958	4 157	2 127	3	26	43 271
Uzbekistan	12 610	20	158	34	16	12 838
Viet Nam	63 547	5 034	7 768	16	701	77 066
Total	266 299	12 530	16 449	344	5 444	301 066

Source: Ministry of Justice Korea and MOEL, cited in Yoo 2011

Meanwhile, in Korea, local public employment service agencies administer and collect applications for the employment permit from eligible Korean employers and small businesses before forwarding them to the MOEL. The MOEL will then process the applications, make the final decisions and issue the employment permits to the selected employers. In order to qualify for the employment permit, the applicant employer or company must have no more than 300 employees (although it appears that on rare occasion this requirement is waived) and demonstrate that he or the company has attempted to fill vacancies with domestic workers for seven days and failed.¹⁴ Employers that are granted the permit can then examine the qualifications of individual workers, consult any auxiliary information on the workers, such as the video clips, and select workers from the rosters. Once employers select their future employees, an employment contract is drafted. The terms of the contract are inspected by the MOEL to verify compliance with Korean labour laws before being delivered for signature to the worker(s) through the HRD Korea liaison

¹³ MOEL interview, 11 December, 2013, Seoul, Republic of Korea.

¹⁴ For employers or companies that have also advertised vacancies through print or radio broadcast media, the requisite time to look for domestic workers is 3 days. For employers or companies that have neither advertised nor received a notification from the MOEL, they must search at least 1 month for domestic workers before resorting to the EPS application process. Usually, the MOEL notifies companies likely to need an employment permit for hiring migrant workers. Yoo, Kil-sang, "Evaluation on the First Three Years' Performance of Korea's Employment Permit System," Korea University of Technology and Education, 2007, p. 73

office in the country of origin.¹⁵ Governments of EPS sending countries are responsible for organising pre-departure training for the accepted EPS workers before their departure to Korea. The Korean Ministry of Justice handles all matters related to immigration regulations and the issuing of the requisite visa to each selected worker. Workers only arrive in Korea after each step of this rigorous recruitment and selection process has been satisfied.

Post-Admission

Before the workers are formally received by their respective employers, they are further trained by employers' associations representing the various sectors covered by the EPS. For example, KBiz provides training for three days for EPS workers selected for manufacturing jobs; the National Agricultural Cooperatives Federations (NSCF) does likewise for agricultural EPS workers.¹⁶ The Construction Association of Korea (CAK) and the National Federation of Fisheries Cooperatives (NFFC) are also involved in pre-job training as well as in post-placement follow-up of EPS workers (Yoo, 2007). Post-admission training is mandatory and covers an additional two hours on Korean language, two hours on Korean culture and customs, six hours on Korean immigration, labour and grievance procedure laws, and six hours on industrial safety and skills.¹⁷

The MOUs that form the basis of the EPS commit the Korean government to protecting the rights of EPS workers "in accordance with the related labour laws of Korea".¹⁸ In addition, Article 22 of the EPS Act and Article 5 of the Labour Standards Act prohibit discrimination against migrant workers and protect their basic human and labour rights. The human rights institutions and channels enjoyed by Korean nationals, such as the National Human Rights Commission (NHRC) and its complaints mechanisms, are also accessible to migrant workers according to the terms of the EPS.¹⁹ In order to ensure that these legal protections effectively cover EPS workers, HRD Korea maintains 36 Foreign Workforce Support Centres throughout Korea where EPS workers can lodge complaints or grievances against employers, receive labour consulting services free of charge, and enrol in Korean language and culture classes. HRD Korea opened a Foreign Workforce Counselling Centre in July 2011 to provide counselling services to EPS workers through

¹⁵ To the extent possible, the contracts that are communicated to the selected EPS workers are drafted in the workers' native languages as well as in English and Korean. Government staff of sending countries are responsible for verbally explaining the terms of the employment contracts to each migrant worker before he or she leaves the country of origin. Park, Hyeong-ki, HRD Korea, "RE: RE: EPS질문 몇가지...", 21 Feb. 2012.

¹⁶ Korea Federation of Small Businesses (KBiz) presentation. "The Present Status of Foreign Worker EPS Employment Training", 13 December 2011

¹⁷ Of note, this arrangement may only apply to KBiz's training module for manufacturing workers. The author was unable to retrieve similar data for the other two major post-admission training programmes.

¹⁸ Taken from MOU signed between the Ministry of Labor of Korea and Ministry of Labour and Transport of Nepal, para. 13 subpara. 1: "The MOLTM and the sending agency will ensure that all workers observe all laws of Korea including the Foreign Employment Act and the Immigration Control Act. The MOL and receiving agency will protect foreign workers' rights in accordance with the related labor laws of Korea".

¹⁹ Park, Hyeong-ki, HRD Korea, "RE: RE: EPS질문 몇가지...", 21 Feb. 2012.

either telephone or in-person visits with interpretation provided in 10 different languages.²⁰ The public agency also organises regular cultural events, often in collaboration with civil society organisations and local governments or bodies, in order to facilitate migrant workers' integration and adjustment into Korean society as well as to educate the wider Korean public of the cultural backgrounds of the EPS workers. HRD Korea gives each EPS worker a "Help Call" within three days of the worker's arrival to Korea and is responsible for monitoring and labour inspections of workers' workplaces and for generally following-up with the worker in all matters related to social protection and industrial relations.²¹

Workers and employers participating in the EPS are required to subscribe to an insurance package particular to the programme. The package consists of four different types of insurances—Departure Guarantee Insurance, Return Cost Insurance, Casualty Insurance, and Wage Guarantee Insurance. The insurances are operated by private insurance providers but not completely independent from HRD Korea.²² Employers must subscribe to the Departure Guarantee Insurance and the Wage Guarantee Insurance while EPS workers must subscribe to the Return Cost Insurance and the Casualty Insurance. Employers make a monthly deposit amounting to 8.3 per cent of the worker's salary into the Departure Guarantee Insurance, and, as its name suggests, it can only be claimed by the worker just prior to his departure from Korea or when changing his workplace. The Wage Guarantee Insurance guards against overdue wages up to two million Korean won (approximately USD 2,000); the worker can have access to the sum accrued under this insurance by filing a claim for unpaid wages and once that claim has been verified by the MOEL. The Return Cost Insurance covers the cost of return and readjustment back to the worker's home country and represents an incentive for the workers to go back upon completion of the EPS instead of overstaying his or her work permit in Korea. As such, it is meant to be claimed by the worker when she leaves Korea at the expiry of her visa (or before). The worker is eligible to claim this insurance even if he or she is deported. Finally, the Casualty Insurance covers non-work related injuries, disease, disability or death and can be claimed by either the worker or her family after the insurer validates the claim through an investigation.²³

As part of the EPS, all migrant workers qualify for coverage under the Korean national health insurance, occupational accident insurance, employment insurance and the pension scheme at the same level as Korean workers. All EPS workers are obligated to purchase the national health insurance and the occupational accident compensation insurance. However, they may opt out of participating in the national pension scheme, and

²⁰ Jang, Jungseo. MOEL presentation given 12 December 2011, "Employment Permit System in Korea: Recent performance and challenge for the future". ILO-Korea Destination Countries Meeting on the Effective Governance of Labour Migration. 12-13 December 2011, Seoul, Republic of Korea.

²¹ HRD Korea presentation. "Protection of Migrant Workers in Korea". 12 December 2011. ILO-Korea Destination Countries Meeting on the Effective Governance of Labour Migration. 12-13 December 2011, Seoul, Republic of Korea.

²² There is a branch within HRD Korea which follows the implementation of the insurance scheme and staff from the private insurance providers are seconded to the HRD Korea office in Seoul.

²³ HRD Korea presentation. "Protection of Migrant Workers in Korea". 12 December 2011. ILO-Korea Destination Countries Meeting on the Effective Governance of Labour Migration. 12-13 December 2011, Seoul, Republic of Korea.

the purchase of the employment insurance, which covers for periods of unemployment, is also left to their choice.²⁴

Workers are able to change their workplace and employer if they encounter poor or exploitative working conditions or abuse. When the EPS was first launched, migrant workers were permitted to change workplaces or employers up to three times in three years, and only after receiving the permission of the Minister of Justice²⁵ and their employer.²⁶ Upon leaving a workplace, a worker had two months to find another job. If the EPS worker changes workplace beyond the permitted three times, leaves the workplace without the permission of the employer, or fails to find new employment within the allotted two-month period, his or her status would become irregular and liable to arrest, detention, and deportation. This policy was heavily criticised by human rights organisations and civic groups, all of whom evaluated it to cause unnecessary harm to both migrant workers and Korean society: EPS workers fell into irregularity or tolerated poor working conditions to the detriment of their health, at which point civil society or local governments would often be forced to bear the financial and non-financial burdens related to the workers' care. As a result, the Korean government extended the time permitted for foreign workers to search for a new position after leaving a workplace to three months and announced that from June 2012, the policy limiting workplace changes will be dropped. EPS workers are now, in principle, allowed to change their workplace however many number of times needed without the permission of the employer if they experience discrimination at work or if their employer violated domestic labour laws or breached terms of the employment contract and work conditions.²⁷

The EPS permits migrant workers to work in Korea for three years. At the same time, employers may renew workers' contracts two more times beyond the three-year limit, so that, in effect, migrant workers can reside in Korea for up to four years and ten months (why this is not rounded up to a full five years will be explained in greater detail further on). After this length of time, migrant workers are expected to return permanently to their home countries, unless the employer makes a special request to have the same worker, in which case EPS workers can re-enter Korea after spending six months in their home countries. Nevertheless, they are required to undergo the recruitment process again. However, like the rules related to job change restrictions, the requirements for rehiring migrant workers and the ability of migrant workers to circulate have been eased. From July 2012, migrant workers who have returned home upon expiry of their E-9 visa and whom employers wish to rehire may return to Korea after only three months away and without needing to undergo the application and testing process for new EPS hires.²⁸ At the same time, only EPS workers who have worked continuously with the same employer for at least one year, and thereby considered a "diligent worker", are eligible for this option, and, as

²⁴ Park, Hyeong-ki, HRD Korea, "RE: RE: EPS질문 몇가지..." 21 Feb. 2012. Email interview.

²⁵ See Article 25 of the EPS Act and Article 21 of the Immigration Control Act.

²⁶ Only in cases where the reason for the worker's inability to stay at a designated workplace was beyond his control—for example, if the company undergoes bankruptcy or factory closure, or suffers damages as a result of force majeure—was the worker permitted to change workplaces without the permission of the employer and without having that change count against his three chances.

²⁷ Lee, Tae-hoon, The Korea Times, "Korea to ease visa rules for migrant workers", Jan. 2, 2012. http://www.koreatimes.co.kr/www/news/biz/2012/01/116_102082.html

²⁸ Kim, Rahn, The Korean Times, "Rules on rehiring migrant workers eased". Jan. 2, 2012. http://www.koreatimes.co.kr/www/news/nation/2012/02/117_103962.html

already mentioned, the right of initiative lies with the employer, even if it is generally understood that the employer must have the consent of the worker to bring him back to Korea. In principle, if the worker would rather return permanently back to her home country, the Korean employer must acquiesce to this decision.²⁹

Costs and arrangements for EPS workers' housing and meals are meant to be negotiated between individual workers and their employers. There is no obligation under the EPS for employers to provide accommodation or food to workers free of charge. However, in the understanding of HRD Korea, in practice, most employers provide for their foreign workers' housing and at least one meal each day and absorb the associated costs.³⁰

Return, reintegration and co-development

Originally, the migration trajectory of the EPS was considered complete after the migrant worker returned back to his or her home country. In order to prepare EPS workers for their eventual and inevitable departure, HRD Korea corresponds with both the foreign worker and his or her employer from six months prior to the departure date. Migrant workers are provided with information on how best to resettle in their home countries, the available resources to re-enter the labour market upon return, as well as seminars and educational programmes organised by HRD Korea on the subject.³¹ Three months prior to the worker's official last day in Korea, HRD Korea reaches out again to the worker and his employer to check that everything is in order ahead of the worker's return.

In a recent development, however, the Korean government has added a reintegration and co-development component to the EPS, which is reflective of the country's recent formal transition to an OECD-member donor country and, therefore, its heightened interest in issues of migration and development. The "Happy Return Program" facilitates the long-term employment or business start-up plans of EPS workers upon their return. Migrant workers who decide to participate in the programme receive training and consultation services even before their departure at the various support and counselling centres operated by HRD Korea. MOEL Employment Centres provide various educational and training programmes to returning migrant workers. The programmes are organised by EPS origin country – i.e., the participants in each organised session are from the same country – and give participants information on how to successfully reintegrate in the particular context of their countries. Programme organisers from the MOEL try to feature former EPS migrant workers who have successfully reintegrated to share their stories. HRD Korea also publicises information about the proper return and reintegration procedures on public transport in areas with high-concentrations of EPS migrant workers.³²

HRD Korea has signed agreements with 34 vocational training institutes throughout the country to provide courses to EPS workers in the professions of beauty care, computer maintenance, automobile maintenance, welding, excavation operations and Korean language interpretation. Currently, all the courses are held on Sunday to accommodate migrants' work schedules. In addition to these vocational courses migrant workers can also receive consultations on how to start and operate their own business. HRD Korea is

²⁹ Park, Hyeong-ki, HRD Korea, "RE: RE: RE: EPS질문 몇가지..." 2 April 2012. Email interview.

³⁰ Park, Hyeong-ki, HRD Korea, "RE: RE: RE: EPS질문 몇가지..." 21 Feb. 2012. Email interview.

³¹ Interview with MOEL, 11 December 2013, Seoul, Republic of Korea.

³² Ibid.

managing a pilot version of this aspect of the Happy Return Program in Vietnam to explore the possibility of implementing it in EPS origin countries for migrant workers who have already returned.

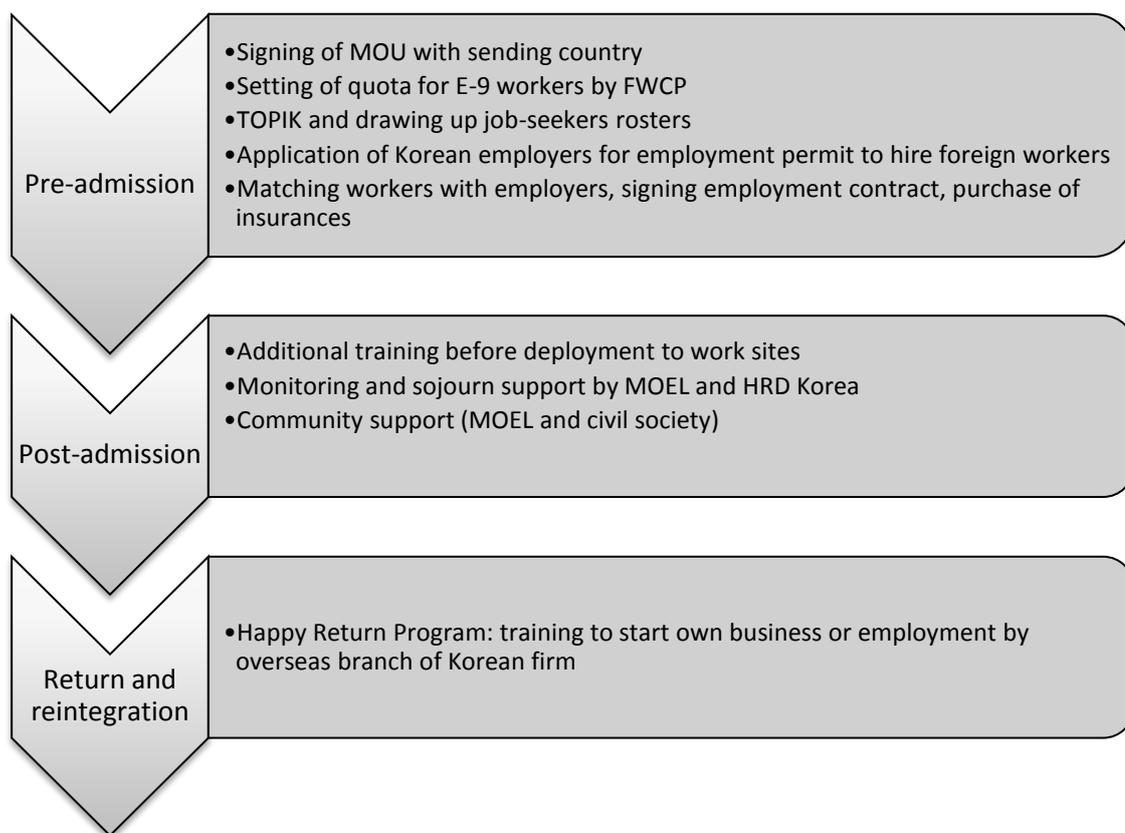
The Happy Return Program also comprises activities undertaken in sending countries in cooperation with national government counterparts in these countries and with support from relevant international organisations, such as ILO and IOM. Most significantly, the MOEL and HRD Korea assist returning EPS workers in finding employment in their home countries through an online job-matching platform that connects former EPS workers with Korean employers or companies operating in the worker's home country.³³ The service allows EPS workers to apply for, receive and print out a career certificate verifying their work experience in Korea and then to apply as a job seeker on the platform. Likewise, Korean employers and companies can upload job offers, and HRD Korea facilitates contact by both parties. As the numbers of returning EPS workers grow, HRD Korea is also taking an increasingly proactive approach in organising them into returnee communities and encouraging networking amongst and within returnee communities for the benefit of newly returning former EPS workers.³⁴ And, as previously mentioned, HRD Korea has launched and is expanding job fairs in various sending countries targeting returned migrant workers from Korea.

The EPS has evidently evolved since its inception ten years ago. It has gone from a closed labour migration system with a defined beginning and end (as far as Korean government involvement in the process is concerned) that is centred on domestic labour dynamics and policies to a more open-ended, flexible instrument that extends Korean government involvement into the reintegration of migrant workers and responds to the prescriptive elements of the migration and development discourse. Figure 2 below summarizes the EPS in its current form.

³³ The online service is called *Operation Returnjob* and can be accessed at : <http://eps.hrdkorea.or.kr>

³⁴ HRD Korea presentation. "Happy Return Program". 13 December 2011. ILO-Korea Destination Countries Meeting on the Effective Governance of Labour Migration. 12-13 December 2011, Seoul, Republic of Korea

Fig.2 Main steps in the EPS process



STRENGTHS

For a relatively young labour migration scheme implemented by a country with almost no prior experience in this area, the EPS displays some impressive characteristics and makes valuable contributions to the global debate on migration governance, in particular where the system aligns with and promotes the principles, values and/or recommendations of the ILO. In addition to the binding international standards in this area issued through the Organisation, the ILO's approach and prescriptions on labour migration policy have been compiled in the ILO Multilateral Framework on Labour Migration (2006). The Multilateral Framework is a non-binding collection of principles, and set of recommendations therefrom derived, meant to provide effective practical guidance to policymakers for the construction of labour migration policies and systems compatible with the ILO's labour standards and the broader international human rights regime. The Framework is, in particular, based on and largely incorporates the two ILO Conventions on migrant workers, the ILO Migration for Employment Convention, 1949 (No. 97) and the ILO Convention on Migrant Workers, 1975 (No. 143). The Framework propounds on and develops a wide range of topics relevant to migrant workers and labour migration, including decent working conditions, international cooperation on labour migration, research and data collection, effective management of labour migration, protection of migrant workers, prevention of and protection against abusive migration practices, social integration, and migration and development.

I. Alignment with the ILO Multilateral Framework on Labour Migration

It is important to note that Korea has ratified neither the two ILO conventions on migrant workers nor the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990), otherwise known as the UN Migrant Workers Convention. Therefore, this paper will use the Multilateral Framework as the main standard to assess the EPS.

The EPS is relatively strong on the principles in the Multilateral Framework that deal with the effective management of labour migration (Principles 4-7). As recommended by the guidelines under Principle 4—"All States have the sovereign right to develop their own policies to manage labour migration. International labour standards and other international instruments, as well as guidelines, as appropriate, should play an important role to make these policies coherent, effective and fair"—the EPS was designed to give greater transparency and clearer structure to the policies governing the mobility of foreign workers coming in and going out of Korea, and, since the system attributes the rights held by Korean workers to migrant workers, it generally does so in a way that benefits the migrant workers themselves (Guideline 4.1). The EPS makes an effort to implement mechanisms that ensure coherence between Korea's migration and employment policies, most notably in the form of the FWEC and the FWPC (Guideline 4.2 and Guideline 4.7). Through the FWEC, the EPS also reflects Guideline 4.10, which calls for the establishment of tripartite procedures. The EPS provides Korea's labour authorities active responsibilities and "a role in policy formulation, elaboration, management and administration" as recommended by Guideline 4.6. And HRD Korea constitutes the "special unit for issues involving migrant workers" encouraged in Guideline 4.8. Principle 5 supports that "Expanding avenues for regular labour migration should be considered, taking into account labour market needs and demographic trends"; the EPS responds relatively well to this principle. In particular, the bilateral MOUs between the Korean government and the governments of origin countries that form the basis of the EPS satisfies Guideline 5.3, and the MOUs' content

satisfies Guidelines 5.2 and 5.5. Principles 6³⁵ and 7³⁶ relate to fruitful dialogue and collaboration between Governments, the social partners and other extra-governmental organisations and strongly supports the incorporation and institutionalisation of such processes within the labour migration policy itself. The EPS largely aligns itself to these Principles through the FWEC as well as the various activities undertaken by civil society organisations and migrants' associations, sometimes in collaboration with HRD Korea, local governments or the social partners.

In recognizing that there might be space for improvement, the MOEL and HRD Korea are investing resources and efforts into regularly researching the impact of the EPS and collecting and sharing the migration or labour market-related data generated by the system, in effect implementing Principle 3 of the Multilateral Framework—"Knowledge and information are critical to formulate, implement and evaluate labour migration policy and practice, and therefore its collection and application should be given priority". The data collected by the Korean government on the EPS is disaggregated by sex, age, nationality, economic sector and more (Guideline 3.1).

The EPS also meets particularly well the recommendations under Principle 12, which encourages that "An orderly and equitable process of labour migration should be promoted in both origin and destination countries to guide men and women migrant workers through all stages of migration, in particular, planning and preparing for labour migration, transit, arrival and reception, return and reintegration". The EPS does indeed facilitate migrant workers' safe departure from their home countries and adjustment into working life in Korea through provision of information, assistance and training as called for in Guideline 12.1, and it also facilitates their return and reintegration through similar means as recommended in Guideline 12.3. Compared to its predecessor, the ITS, the EPS represents a simplification of administrative procedures and a reduction of processing costs (Guideline 12.3). The system has incorporated and institutionalised the participation of workers' and employers' organisations reasonably well, not simply in terms of permitting them to work with and influence government actors but also at the level of providing training, information and services to migrant workers (Guideline 12.4). In recent years, the Korean government has been moving towards establishing a mechanism within the EPS for the purpose of recognising any special skills or qualifications migrant worker candidates may have³⁷ as encouraged in Guideline 12.6.

Also noteworthy is the integration of human rights, labour rights and social protection concerns into the EPS. On the basis of the clause in the MOUs guaranteeing rights at the same level as Korean workers, the EPS effectively gives migrant workers access to legal recognition and the protections of Korea's major labour legislation, such as the Labor Standards Act, Minimum Wage Act and Industrial Safety and Health Act. The normative coverage under the EPS additionally confers to migrant workers all the major instruments of the Korean social protection system—national health insurance, industrial accident compensation insurance, employment insurance (optional), and national pension (in cases where the principle of reciprocity is applicable) (Yoo 2007). Principle 8 of the Multilateral

³⁵ "Social dialogue is essential to the development of sound labour migration policy and should be promoted and implemented."

³⁶ "Governments and social partners should consult with civil society and migrant associations on labour migration policy."

³⁷ Ducanes, Geoffrey. Presentation, "Labour Shortages, Migrant Recruitment, and Portability of Qualifications in East and Southeast Asia", 12 December 2011. ILO-Korea Destination Countries Meeting on the Effective Governance of Labour Migration, 12-13 December 2011, Seoul, Republic of Korea

Framework states, “The human rights of all migrant workers, regardless of their status, should be promoted and protected. In particular, all migrant workers should benefit from the principles and rights in the 1998 ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, which are reflected in the eight fundamental ILO Conventions, and the relevant United Nations human rights Conventions.” And Principle 9³⁸ recommends that any national labour migration policy or programme should be guided by and incorporate all relevant and fundamental international labour standards, in particular the Conventions of the ILO. Therefore, the EPS is relatively strong in relation to human rights, and it has succeeded in integrating human and labour rights into its architecture.

II. Increased transparency and reduction in undocumented migration and work

As previously noted, the defining characteristic of the EPS is its insistence on managing labour migration solely through government-to-government arrangements, a rarity in the region. This promotes transparency in the recruitment process and has been shown to significantly lower costs, since the exorbitant fees charged by recruitment brokers and agencies in source countries are irrelevant to cost calculations under the EPS. It was found that in 2007, three years after the introduction of the EPS, the cost to the migrant worker had decreased significantly from an average cost of USD 3,509 under the ITS to an average USD 1,097 (Yoo 2007:101-102). Data gathered in 2011 revealed that the average cost to migrate under the EPS had decreased further to USD 927 (Table 4).

Table 4: Average cost to migrate under ITS and EPS

System	Average migration cost (USD)
ITS	3 509
EPS	927 ^{a)}

Source: MOEL 2011

^{a)} average cost from May 2011

³⁸ “(a) All international labour standards apply to migrant workers, unless otherwise stated. National laws and regulations concerning labour migration and the protection of migrant workers should be guided by relevant international labour standards and other relevant international and regional instruments.

(b) The protection of migrant workers requires a sound legal foundation based on international law. In formulating national law and policies concerning the protection of migrant workers, governments should be guided by the underlying principles of the Migration for Employment Convention (Revised), 1949 (No.97), the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), and their accompanying Recommendations Nos. 86 and 151, particularly those concerning equality of treatment between nationals and migrant workers in a regular situation and minimum standards of protection for all migrant workers. The principles contained in the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families should also be taken into account. If these Conventions have been ratified, they should be fully implemented.

(c) National law and policies should also be guided by other relevant ILO standards in the areas of employment, labour inspections, social security, maternity protection, protection of wages, occupational safety and health, as well as in such sectors as agriculture, construction and hotels and restaurants.”

It was the hope of the designers of the EPS that increased transparency in the system, complete independence from private recruitment agencies, and the resulting lower participation costs to the migrant would lead to a decrease in irregular migration. According to research supported by HRD Korea, the EPS has successfully contributed to reducing the rate of irregularity amongst migrant workers in Korea (Table 5). However, it's important to note that any figures in the area of irregular migration can only be estimates at best.

Table 5: Rate irregular stay under ITS and EPS

System	Rate of irregular stay (%)
ITS	60 – 70
EPS	7.7

Source: MOEL 2011

The Korean government regularly provides technical support to governments of origin countries and assists in trainings and workshops to build their capacities to satisfy the conditions of the EPS at the pre-admission stage and actively monitors the pre-admission procedures implemented in origin countries through HRD Korea liaison offices in order to make sure there is no compromise or corruption—namely that the ‘no private recruitment agency’ rule is not broken. It appears this strategy of prioritising the successful implementation of the pre-admission procedures and allocating resources accordingly—even beyond Korea’s borders—has paid off.

Although as of yet it is too early to evaluate their effectiveness, the recent change to the system that allows migrant workers an unlimited number of times to leave workplaces where their rights are being infringed will likely contribute to strengthening the EPS. The ability of the worker to change workplaces should improve the protection of migrant workers whilst also contributing to the Korean government’s efforts against forced labour.

III. Supporting the skills development and mobility of migrant workers

The scheme’s emphasis on training is also particularly noteworthy. Korea’s Second Basic Plan for Immigration Policy 2013-2017, much more than the First Basic Plan, gives basis for the Korean government to implement policies to upgrade EPS migrant workers’ skills as part of its strategy to “Attract In-Demand Human Resources from Overseas” (MOJ 2013). It explicitly paves the way for the Korean government to support employers of EPS workers to upgrade the skills of low-skilled foreign workers (i.e., E-9 visa holders) and socially integrate enough to qualify and obtain the E-7 visa for mid-to-high skilled foreign workers. The E-7 visa gives greater residency and immigration status security. The Second Basic Plan also envisions implementing vocational training programmes for EPS workers with the express intent of giving them an avenue to upgrade their skillset.

EPS workers not only take Korean lessons in preparation for the Korean language test but are also given further lessons after arrival in Korea as part of the post-admission training administered by various employers’ associations and are encouraged to continue with Korean language training during their stay in the country through the free language lessons offered at HRD Korea’s support centres or by civil society organisations. This degree of attention to improving the communication skills of migrant workers was not present under the previous system, the ITS. As a result, a study of EPS workers commissioned by HRD Korea in 2010 found that almost 90 per cent of migrant workers in Korea communicated in Korean at their workplaces, and the Korean language skills of EPS workers in 2010 were, overall, better than those of ITS trainees in 1998 (Lee and Kim

2010). While a better command of the Korean language does not necessarily lead to better communication with employers and colleagues or to improved working and wage conditions, it is without a doubt an important asset for workers should they ever need to claim the rights and working conditions to which they are entitled. Likewise, an equally rigorous attention to occupation-specific training—e.g. use of machinery, occupational safety, etc.—is incorporated into the EPS. Migrant workers are required to undergo this kind of training both prior to departure and after arrival in Korea. Adopting such a policy stance is not only important but also pragmatic for a labour migration scheme that channels its workers into mostly 3D professions with an elevated likelihood of industrial accidents.

The introduction of the Happy Return Programme into the EPS represents an expansion of the scheme beyond meeting the immediate concerns of domestic labour trends into the domains of migration and development. This opens up the potential for the EPS to also serve as a vehicle for regional co-development and as the intersection of Korea's labour migration and foreign development aid policies. Although the Happy Return Program is still in an early stage and still evolving, it brings the EPS closer to satisfying Principle 15 of the Multilateral Framework on Labour Migration: "The contribution of labour migration to employment, economic growth, development and the alleviation of poverty should be recognized and maximized for the benefit of both origin and destination countries".

IV. Inclusive dialogue space

The EPS creates space for the involvement of concerned civil society organisations or NGOs and local governments. Diverse NGOs, religiously-affiliated groups and organisations that champion migrants' rights work with the MOEL to protect the rights of the EPS workers, monitor workplaces and working conditions, and bring accountability to the system. In general, NGOs and local governments supplement the efforts of the MOEL at the post-admission stage, offering services and practical education to migrants, such as extra Korean language lessons or free medical check-ups. This burden-sharing arrangement appears to first have been implemented in 2007: "From the latter half of 2007, NGOs that have been dedicated to protecting migrant workers' human rights will be designated as supporter organizations and will provide services related to employment and sojourn of foreign workers such as labour counselling, language support, medical assistance and education counselling". (Yoo 2007).

WEAKNESSES

In spite of its many significant strengths, the EPS nonetheless exhibits major flaws. Without being exhaustive, this section will elucidate the main weaknesses of the system's design, deemed to reduce the efficacy of the EPS. Outright threats to the future of the system or its existence will be discussed subsequently.

I. Responding to labour shortages

One of the main objectives of the EPS, as well as a major justification for its establishment, is to adequately address significant structural labour and skills shortages in certain sectors of the Korean economy. However, the emerging consensus appears to be that the system falls short in this regard. In spite of the labour market testing undertaken by the FWPC each year, the quotas do not successfully fulfil the demands encountered by Korean employers. For the year 2012, the FWPC set the quota for incoming E-9 workers at 57,000,³⁹ an increase from 2011's 48,000 but a figure that still fell short of the 98,000 foreign workers estimated to be needed. Domestic labour shortages in 2012 were further exacerbated by the fact that the working visas of some 67,111 E-9 workers were set to expire sometime during this year.⁴⁰

Consequently, Korean employers are, on the whole, rather ambivalent in their evaluation of the EPS and do not consider it to be a vast improvement to the ITS. For all its faults, the ITS bestowed greater control to Korean employers and employers' associations in determining the extent of shortages in their industries and the strategies to meet them. A survey of Korean employers undertaken in 2011 under the auspices of HRD Korea revealed the main drawbacks of the EPS from the perspective of the employers. Korean employers were asked to rate key aspects of the EPS or issues the EPS is meant to address on a scale of 1 to 5, with 1 indicating the lowest rating/dissatisfaction and 5 indicating the highest rating/high satisfaction (Table 6 and Table 7).

³⁹ "57,000 Migrant Workers to Enter Korea Next Year". Mael Labour News, 30 December 2011 (in Korean), see <http://www.labortoday.co.kr/news/articleView.html?idxno=108506>

⁴⁰ "Korean society ambivalent about foreign labor". Korea Herald. 17 April 2012. <http://www.koreaherald.com/national/Detail.jsp?newsMLId=20120417001007>

Table 6: Employers' evaluation of the EPS relative to the ITS

	1	2	3	4	5	No response	Total	Average score
	Very bad	Generally bad	Similar to before	Generally good	Very good			
1) Transparency in recruitment and reduction of corruption in sending process	0.1	0.9	16.8	19.4	4.9	57.9	100	4.7
2) Protection of migrant workers' rights	0.0	0.7	15.3	20.8	8.0	55.2	100	4.7
3) Migrant workers' wages and other employment costs	1.6	4.4	17.7	16.6	4.4	55.2	100	4.3
4) Reducing illegal employment and work of foreigners	0.7	2.8	18.0	15.0	5.4	58.0	100	4.6
5) Korean language skills of migrant workers	1.5	1.6	28.4	12.4	1.5	54.6	100	4.1
6) Migrant workers' professional skills	1.6	3.5	27.5	11.5	0.9	54.9	100	4.0
7) Preventing job loss of local workers	0.3	1.8	33.3	7.1	0.9	56.7	100	4.2
8) Reliability of human resources management	1.5	5.4	26.1	10.3	0.6	56.1	100	4.1

Source: Yoo, 2011:26

It is important to note that over half of the employers surveyed did not respond in the evaluation that compared the EPS to the ITS (Table 6). However, those that did respond generally gave favourable scores to the distinguishable features of the EPS. At the same time, the majority of respondents fell on either 3 or 4 of the 5-point scale, evaluating the components of the EPS as either generally good or much the same as the ITS, once again indicating that Korean employers are by and large unimpressed by the EPS.

Table 7: Employers' satisfaction level with the EPS

	1	2	3	4	5	No response	Total	Average score
	Very bad	Generally bad	Similar to before	Generally good	Very good			
1) Documents and administrative processing	8.7	25.5	41.8	12.7	4.3	7.1	100	2.8
2) Transparency of recruitment process	1.5	8.8	53.3	20.5	6.9	9.0	100	3.4
3) Selecting the desired and appropriate workers	6.9	19.4	43.9	16.8	5.7	7.2	100	3.0
4) Information disseminated by the MOEL/HRD on hiring foreign workers	4.7	19.7	46.2	14.9	5.4	9.0	100	3.1
5) Getting the desired employment conditions from the standard employment contract	1.3	6.6	50.5	25.5	8.1	8.0	100	3.4
6) Content of pre-employment training	3.8	12.4	52.1	16.5	4.3	10.9	100	3.3
7) Services dispensed by the MOEL/HRD	1.6	7.8	44.8	26.1	10.6	9.1	100	3.5
8) Saving labour costs on migrant workers' wage	3.4	11.9	55.7	15.9	2.9	10.2	100	3.2
9) Protection of migrant workers' rights	0.6	5.4	53.8	23.6	6.6	10.0	100	3.5
10) Reducing the likelihood of illegal employment of migrant workers	1.9	7.7	47.7	24.9	6.8	11.0	100	3.5
11) Follow-up services for migrant workers	2.2	9.9	51.7	21.1	4.6	10.6	100	3.5

Source: Yoo 2011:27

Korean employers that participated in the survey were in particular dissatisfied with the perceived inefficiency and lengthy waiting period of the EPS' administrative processes as well as the system's labour-matching capacity as Table 7 demonstrates. Given the regularly underestimated quotas, the application process for the employment permit becomes a veritable battleground as Korean employers compete for the few migrant workers that will be allowed into the country and in their sector. It is not uncommon for prospective Korean employers to start waiting outside the local Employment Centre 48 hours in advance of the official application date, and the line usually stretches over 100 metres.⁴¹

The failure of the EPS to meet the real level of demand for foreign labour in the Korean economy compounded by the difficulty of securing foreign workers and the perceived long processing time are consequently incentivising Korean employers to hold on to their EPS employees for as long as possible, using any means possible. Sometimes their methods come dangerously close to violating labour standards. Many employers are not aware of the impending expiry of their migrant workers' visa, while others conspire to

⁴¹ "Farms in all-out war to 'host foreign labourers' ", Yonhap News, 10 January 2012.

keep their migrant workers working for them even after the E-9 visa expiry date.⁴² Even for regular migrant workers in Korea, it appears that the full extent of the EPS' protections and oversight mechanisms are underutilised, and, since in many cases, few workers or employers are even aware of these protections, there is usually an incomplete enforcement or a lack of enforcement entirely of the labour standards central to the EPS in spite of legal authorisation and the requisite grounds to do so. For example, the EPS Act gives the Korean labour authorities the ability to revoke the permits of Korean employers who repeatedly violate the terms of the EPS and place them on a blacklist for three years (Articles 19 and 20), but, given reports of cases of repeated and consistent infringements on the part of employers, it is doubtful such a prerogative is being used to full effectiveness, if at all. The situation is further exacerbated by the fact that few migrant workers report the abuse encountered at the workplace or lodge an official complaint, preferring to put up with workplace pressures and continue working or attempt to change workplaces (Table 8).

Table 8: EPS workers' response to unfair treatment or abuse in the workplace (%)

	Percentage of migrant workers ⁴³
Have never experienced unfair treatment or abuse at the workplace	5.6
Silently put up with bad treatment and continued to work	38.0
Officially complained to the company/employer	18.2
Informed home country embassy	2.3
Reached out to Korean civil society/religious group	2.8
Reached out to MOEL/HRD Korea	6.8
Lodged an official complaint	2.3
Tried to change workplace	8.5
Worked harder to gain better treatment	14.6
Other	0.9
Total (%)	100.0
Total (number of participants)	752

Source: adapted from HRD Korea 2010:45

A survey of EPS workers working in the Gyeongin region—a region just outside Seoul—from Vietnam, Thailand, the Philippines, Indonesia, Sri Lanka and Mongolia commissioned by HRD Korea and taken in 2010 found that a significant proportion of workers experience verbal abuse from Korean employers and colleagues (Table 9). Cases of physical abuse were relatively few but exist nonetheless. What is also worrying are the persisting cases of employers withholding workers' passports, which was a major problem under the ITS and appears to not have disappeared completely with the transition to the EPS.

⁴² Aung Tinh Tung (22 December 2011). Personal interview.

⁴³ The nationalities represented by the figures in this column are Vietnam, Thailand, the Philippines, Indonesia, Sri Lanka and Mongolia.

Table 9: EPS workers that experienced ill treatment from Korean colleagues or employer (%)

Nationality of workers Type of abuse	Viet Nam	Thailand	Philippines	Indonesia	Sri Lanka	Mongolia	Total
Physical abuse or assault	5.9	4.2	2.1	3.6	10.2	2.6	3.8
Verbal abuse and abusive language	51.0	39.4	33.6	29.4	30.6	29.9	33.1
Body search	–	1.4	1.4	0.4	–	0.9	0.7
Restriction of movement	–	2.8	2.1	4.8	–	1.7	2.8
Sexual harassment or assault	–	–	–	0.4	–	1.7	0.4
Occupational injury	11.8	18.3	18.2	10.7	10.2	12.0	13.3
Work-related illness	9.8	23.9	15.4	12.3	6.1	14.5	13.9
Confiscation of passport	2.0	5.6	6.3	12.3	6.1	14.5	8.9
Non-payment of overdue wage	7.8	7.0	12.6	4.0	–	6.0	6.4
Total (participants)	124	134	143	136	119	96	683

Source: HRD Korea 2010:46

The data from HRD Korea arranged in Table 9 above shows that after verbal abuse, the next most frequent injurious treatment experienced by EPS workers at Korean workplaces comes in the form of occupational accidents and diseases. The prevalence of a far higher risk among migrant workers of suffering occupational safety and health (OSH) hazards compared to their Korean counterparts has already been documented by the ILO. Lee, McGuinness and Kawakami (2011) found in a study on the state of migrant workers' OSH in five countries in the Asia-Pacific region, including Korea,⁴⁴ that migrant workers had higher blood-lead levels than Korean workers as well as greater exposure to urinary methylhippuric acid, a known cancer-causing agent—0.5 per cent of migrant workers compared to no reported case for Korean workers. The number of reported injuries amongst migrant workers in Korea has been steadily rising in Korea year-on-year since the EPS was implemented. In 2004, there were a total of 2,737 reported injuries; in 2009, this figure had jumped to 5,233 (Lee, McGuinness and Kawakami 2011:12). The 2009 figure also includes three deaths due to disease and 25 due to accidents at the workplace (Lee, McGuinness and Kawakami 2011:13).

Apart from the dangerous nature of the jobs in which the EPS places migrant workers—for the most part, labour-intensive and risky positions in the low-skilled manufacturing sector—another plausible reason for the high instances of occupational accidents amongst foreign EPS workers is the mismatch between workers' qualifications or capacities and the demands of the job they are given. There are reports of workers from landlocked countries being assigned to jobs aboard fishing vessels and Muslim workers put

⁴⁴ These countries are Australia, Republic of Korea, Malaysia, Singapore, Thailand.

in jobs at pork processing plants.⁴⁵ Migrant workers who may already be in a hazardous work environment are at even greater risk if that environment is also an unfamiliar or culturally inappropriate one, and such cases also highlight a shortcoming in the EPS in regards to skills matching and skills recognition. In a way, this is inevitable in the present structure of the EPS: Korean employers in the system are not overly interested in the qualifications of their workers since the majority of the positions they offer are those where special skills are not particularly important (Table 10), whereas the criteria used to select migrant workers at the pre-admission stage require a relatively high level of education in many sending countries.

Moreover, the costs associated with participating in the EPS for the migration, while much reduced from the ITS, are such that it's not usually the poorer or unskilled who become migrant workers to Korea. According to a survey undertaken in 2007, the typical profile of an EPS worker is a young, unmarried male with at least a high school diploma (Yoo 2007). The average age of an EPS worker was 29.7 years old. 59.1 per cent had finished high school, and a further 20.9 per cent had received a tertiary education, meaning that 80 per cent of all migrant workers in Korea in 2007 are highly educated (Yoo 2007:87-88). These findings were supported by a later study carried out by the Kyeongnam Migrant Worker Support Centre in 2011 on the conditions of migrant workers employed in the Kyeongnam province, which found that 66.5 per cent of them were below the age of 34 and the majority held above-average educational certifications. Nonetheless, EPS workers in Kyeongnam earned only half of what their (usually less educated) Korean counterparts made in wages.⁴⁶ All of this suggests that there is significant brain-waste, and perhaps even de-skilling, taking place within the EPS and that the system itself is effectively fomenting it. In the long-term, if the system is receiving healthy, young and well-educated workers and sending them back irrevocably injured or no longer able to apply their qualifications or education back home, this would negatively impact the EPS as a tool for regional economic development.

Table 10: Character of the jobs of foreign workers (%)

	Light industry	Heavy industry	Construction	Food service	Total
Professional jobs requiring more than university degree	0.0	0.8	2.0	0.0	0.7
Skilled jobs requiring vocational certification	7.4	15.2	14.0	4.0	11.3
Simple and repetitive jobs requiring no training	92.6	84.0	84.0	96.0	88.0
Total	100	100	100	100	100

Source: Yoo 2007

⁴⁵ See Lee, Woo-young. "Foreign workers given unsuitable jobs". *Korea Herald*, 15 April 2012, <http://view.koreaherald.com/kh/view.php?ud=20120415000378&cpv=0>

⁴⁶ Choi, Sang-woon. "Low-skilled migrant workers found to be young and highly educated", *Hankyoreh*, 27 December 2011 (in Korean).

Table 11: Profile of EPS workers

		E-9 (Foreign) Workers	
		Number	Rate (%)
Sex	Male	64 168	87.9
	Female	8 868	12.1
Age	Below 25	21 161	29.0
	25 – 29	20 772	28.4
	30 – 34	18 015	24.7
	35 – 39	11 013	15.1
	40 – 49	2 017	2.8
	50 – 59	58	0.1
	Average age	29.7	
Marital status	Single	48 040	65.8
	Married	24 996	34.2
Educational background	Elementary school	5 011	6.9
	Middle school	9 612	13.2
	High school	43 142	59.1
	University	7 719	10.6
	Graduate school and higher	7 552	10.3
Total		73 036	100.0

Source: Yoo 2007

The brain-waste and de-skilling that is occurring within the EPS also represents a considerable opportunity cost to Korea as a whole. Given the qualifications and education of the majority of EPS migrant workers, clearly these workers could contribute more to the Korean economy and Korean society if given the opportunity. Moreover, the Ministry of Justice (MOJ) of Korea is actively pursuing a policy of recruiting foreigners with high educational achievements and skills into the country (MOJ 2008). Many of Korea's migrant workers under the EPS are already at the level of education desired by the MOJ and many more can reach that level relatively easily with additional education or training in Korea. Unfortunately, the EPS is not flexible enough at this point to fulfil this potential. It is extremely difficult, if not impossible, for migrant workers under the EPS to change their status after completion of the EPS, whether to that of a student, investor or business owner, or to pursue other professions for which they are qualified. This limited labour and professional mobility essentially constitutes a socio-economic inefficiency—due to the waste of skills—and therefore a weakness in the EPS.

Moreover, the MOJ, which oversees matters related to immigration policy in Korea, indirectly admits that the Korean labour market is characterised by a shortage of mid and high-skilled labour due to the continuing departure of mostly skilled and educated Koreans from both the country and their Korean citizenship (MOJ 2008:4). One can infer from this that the EPS struggles to meet its full calling precisely because those who operate or benefit from the system do not even consider using it to answer Korea's labour shortages in mid-level skilled occupations and sectors. Up until present, the main agents and parties have used the EPS to cater exclusively to low-skilled occupations and sectors in Korea, but as the Korean labour market has evolved over the years, with labour shortages no longer uniform or limited, this inflexible approach has made the system itself unresponsive to these changes in domestic labour demand.

II. Enforcement of national norms and effective governance

A HRD Korea-commissioned survey from 2010 has exposed evidence of violations of contractual terms within the EPS. The study suggests this is not an uncommon or isolated problem. As Table 12 below illustrates, these violations cover terms related to working time, wages, recess, payment for meals, accommodation arrangements and the specific duties to be undertaken by the worker. Here, once again, there is little indication that the enforcement mechanisms provided by HRD Korea and the MOEL for the precise purpose of preventing these kinds of infringements and abuses are being sufficiently applied.

Table 12: Infringement of contract terms encountered by EPS workers

Workers' nationality		Viet Nam	Thailand	Philippines	Indonesia	Sri Lanka	Mongolia	Total (%)
Cases of contract violations	Yes	22.8	40.9	26.2	27.2	24.4	32.3	29.0
	No	77.2	59.1	73.8	72.8	75.6	67.7	71.0
Total (participants)		114	132	141	136	119	96	738
Infringement	Working hours	34.8	49.1	19.4	25.7	20.7	37.9	32.7
	Wages	47.8	35.8	30.6	40.0	37.9	44.8	38.5
	Overtime pay	21.7	50.9	33.3	31.4	37.9	55.2	40.0
	Day of payment	17.4	22.6	8.3	25.7	–	20.7	16.6
	Rest time	13.0	35.8	22.2	14.3	34.5	34.5	26.8
	Meal pay	8.7	13.2	13.9	11.4	34.5	10.3	15.1
	Lodging	8.7	17.0	11.1	5.7	24.1	17.2	14.1
	Workplace location	–	5.7	–	–	3.4	3.4	2.4
Total participants		23	53	36	35	29	29	205

Source: HRD Korea 2010:47

In effect, this lack of enforcement and monitoring of the relevant laws included in the EPS' structure, manifest in the lack of sufficiently strong or sufficiently frequent sanctions against violating employers, diminishes the effectiveness of the EPS and is bringing about the unintended consequence of channelling migrant workers into workplaces that are uncompetitive in relation to OSH standards and into the hands of unqualified or incompetent business managers and employers. Ultimately, a continuation of this trend would bring greater burden to the EPS bureaucracy as the number of workers needing to or having grounds to change workplaces increases. Perhaps in response to this prospect ahead of implementing the new policy allowing for an unlimited number of requests for workplace change by the migrant worker, the MOEL announced that starting from August 2012 its Employment Centres would no longer give information to migrant workers on available positions and employers from which workers could choose to switch, as was the practice in the past. Instead, an EPS worker seeking to change his workplace would have his name and information put into a large pool of other migrant jobseekers, from which Korean employers would be making the selection(s).⁴⁷ This arrangement would effectively diminish the ability of the migrant worker to choose as well as his protections from sub-par working conditions, thereby increasing his vulnerability. The modification of the policy

⁴⁷ Interview with a representative of the Korea Trade Union Confederation (KTUC), 10 December 2013, Seoul, Republic of Korea.

limiting workplace changes is exemplary, both for the protection of migrant workers' rights as well as for the health of the EPS as a whole, but the accommodation made for the employers and the government bureaucracy may have introduced yet another weakness to the system. Such patterns of taking one step forward only to fall two steps back could only prove to be detrimental in the long-term.

III. Lack of awareness among migrant workers

The international community often lauds the EPS, and rightly so, for its conferment of key rights, benefits and social protection to foreign workers at the same level as domestic Korean workers. However, these rights, as well as the international praise for their recognition, mean little in so long as they remain confined to paper and unrealised on the ground. A study conducted by the NGO the Ebert Friedrich Stiftung in 2011 of 931 migrant workers (both regular and undocumented) working in various regions of the Republic of Korea (Seoul, Incheon, Gyeonggi, Chungcheong, and Gyeongsang) found that a significant number of migrant workers in Korea were unable to realise their rights or claim their rightful benefits. The report determined that rather than due to intentional obstruction on the part of government or other parties, the main reason for this situation lay in the lack of awareness amongst EPS workers. In spite of the pre-departure and pre-employment training on their labour rights and benefits the foreign workers undergo, too many migrant workers in Korea are unaware of how to use the various insurances and national social coverage systems that are part of the EPS or that they are eligible to do so. Thirty-six per cent of the migrant workers involved in the Ebert Friedrich Stiftung study declared they didn't know if they had the Return Guarantee Insurance, 52 per cent did not know where to go if they encountered problems regarding this insurance, and 63 per cent were unaware of the process for claiming the benefits under this insurance.

This situation appears to be the case across the board for all four of the EPS-specific insurances. Sixty per cent of migrant workers did not know if they were subscribed to the Wage Guarantee Insurance, 73 per cent were unsure where to go if they wanted to claim this insurance, and 71 per cent did not know the procedure to follow. What is even more worrying is that, while 73 per cent of foreign workers in Korea are aware that they are subscribed to national health insurance, 63 per cent do not know how to utilise it. Therefore, in effect the EPS is struggling to sufficiently raise awareness among foreign workers in Korea of the rights they have by mere virtue of being accepted into the scheme and/or being on Korean territory. This is not a minor problem, considering that one of the system's prominent strengths and the high regard it receives hinges on its progressive approach in the area of social protections and rights.

IV. Uneven distribution of resources

However, perhaps the greatest shortcoming of the EPS, from which all the other weaknesses originate, is the imbalanced distribution of resources and focus among the three stages (pre-admission, post-admission, return and reintegration) in which the social partners—in particular the labour unions—are largely absent. It is clear that the Korean government invests the majority of its efforts, resources and staff into the pre-admission stage of the EPS to ensure transparency and lack of recruitment corruption in the process. However, once the migrant worker is admitted into the EPS and arrives in Korea, the MOEL and HRD Korea are noticeably less active in following up with the migrant workers in relation to the terms of the MOUs that reference the guarantee of working conditions, labour rights, industrial relations and social protection. There is some coordination between the Korean government and local NGOs and religious organisations, but it is unclear whether these non-governmental organs are involved as partners to the government in the operation of the EPS. In general, this does not seem to be the case and

could reflect a potentially worrying situation where higher NGO and private individuals' involvement indicates a failure of Korean public services and MOEL to fill protection or service-provision gaps in the EPS.

The gaps that the system is experiencing in the post-admission stage could be easily and appropriately remedied through the incorporation of workers' and employers' organisations as partners. Since these organisations have members and constituents who are directly involved with the economy and labour market, they are in a better position than the majority of NGOs to support the Korean government in implementing the necessary post-admission policies and requirements of the EPS. However, beyond their role in the FWEC in the pre-admission stage, the social partners are currently not involved or consulted at the key level of implementation of post-admission policies. As a result, while the EPS can be held in high regard in regards to migration governance and commitment to migrants' protection according to the Multilateral Framework, it scores relatively poorly vis-à-vis the Multilateral Framework's recommendations on social dialogue and cooperation with the social partners (Principles 6, 7, 11, and 14).

THREATS

I. Lack of buy-in and alienation of key stakeholders

The alienation of key social partners and even representatives of the migrants themselves, such as migrant associations and the Migrants' Trade Union (MTU), could be seriously damaging to the continuity of the system. There is simply no buy-in from the Korean labour movement, and, while employer organisations like Kbiz regularly lobby for changes to the EPS and are sometimes heard, most Korean employers remain frustrated at the lack of openness and responsiveness of the scheme to their positions or interests. The Korean Trade Union Confederation (KTUC), one of the largest agglomerations of labour unions in the country, are fundamentally opposed to the EPS, with many of its migrant worker members calling for its demise altogether. The government-restricted MTU, which best represents the EPS migrant workers in Korea, are also in favour of dismantling the scheme.⁴⁸ Evidently, this lack of endorsement—in fact, outright opposition—from workers' organisations and from the migrant workers themselves is a result of the absence of official channels for consultation and meaningful cooperation between the government and these important stakeholders. It certainly does not help that the Korean government refuses to recognise the MTU, frequently arrests and deports members of the MTU's leadership, and undermines the right of migrant workers to organise into labour unions, a right formally protected under the EPS.⁴⁹ The situation, on the whole, is only breeding more ill-will against the EPS among the very people that need to perceive themselves as stakeholders and beneficiaries in order for it to be sustainable and credible.

II. Gaps in national labour legislation

As detailed in the previous section, the EPS struggles to elicit compliance to national labour legislation from employers and to promote healthy industrial relations. Cases of delayed or unpaid wages, misrepresented contracts or contract violations, and verbal and physical abuse have been extensively recorded by civil society organisations, both domestic and international.⁵⁰ Since the commitment to implement these laws for the protection of EPS migrant workers is an important element of the MOUs on which the entire scheme is based, a lack of improvement in this area would eventually bring the EPS into question.

At the same time, the EPS is endangered at a more fundamental level because Korea's national labour legislation, the very laws the scheme is designed to implement, has gaps of its own. For example, the Labour Standards Act, the cornerstone labour legislation in Korea, only applies to workplaces with five or more workers (Article 10). However, the

⁴⁸ Interview with KTUC, 10 December 2013, Seoul, Republic of Korea.

⁴⁹ Ibid.

⁵⁰ The Ebert Friedrich Stiftung found, in a survey on migrant workers in Korea conducted in preparation for a conference commemorating 7 years of the EPS, that 58.3 per cent of the respondents indicated that the content of their contracts were violated in some way : 14.5 percent of the workers on the terms of their wages, 15.7 per cent of workers on working time limits, 10 per cent of workers experienced a different set of working conditions than was originally written in their contracts, 8.1 per cent of the workers on the provision of housing, 11.4 per cent of the workers on the provision of meals, and 14.5 per cent of the workers on the terms relating to recess and rest days (Ebert Friedrich Stiftung 2011).

majority of employers and companies that are approved to participate in the EPS have less than four employees (Table 13). The majority of companies that hire migrant workers, therefore, are not obligated to observe the most basic labour standards in relation to workers' protections or working conditions. Consequently, there is a correlation between the number of employees at a company participating in the EPS and the rate of injuries and occupational accidents that befall its migrant workers; the larger the size of the firm (in terms of number of employees) the lower the rate of occupational injuries among migrant workers (ILO 2011).

Table 13: Size of firms employing EPS workers (as of May 2011)

Number of employees	Number (and %) of firms	
4 or less	12 375	(35.3)
5 – 10	8 740	(24.9)
11 – 30	9 230	(26.3)
31 – 50	2 356	(6.7)
51 – 100	1 505	(4.3)
101 – 200	673	(1.9)
201 – 300	156	(0.4)
301 – 500	53	(0.2)
More than 501	8	(0.0)

Source: Yoo 2011:10

Neither the Labor Standards Act nor Korea's minimum wage laws covers the agriculture, fisheries and livestock breeding sectors (Article 61), and the EPS Act explicitly excludes migrant workers in the fisheries sector from labour law protections (Article 3), which is problematic considering that the EPS includes these sectors and these sectors employ the largest number of migrant workers after manufacturing. As a result, the EPS is characterised by double standards and contradictions in its implementation.

III. Post-admission gaps

Incentivising compliance from employers becomes even more complicated in light of the fact that the EPS does not require employers to undergo orientation or training in order to receive the permit. It is only the admitted migrant workers who are required to complete a training regimen. It is hardly surprising then that EPS workers report being frequently subject to abusive language and cultural insensitivity by their Korean employers and co-workers.

The lack of attention given to monitoring the scheme at the post-admission phase in an environment of little to no tripartite dialogue has led to arbitrary additions and modifications to the EPS that usually aggravate the vulnerability of the migrant workers. For example, since its inception, migrant workers employed in Korea through the EPS were issued one-year contracts that could be renewed. This gave both the employer and the worker flexibility and a degree of autonomy in regards to continuing or discontinuing their working relationship. However, recently Korean employers have started issuing their migrant workers 3-year contracts—in other words, contracts that cover the entire duration of the EPS and make it almost impossible for migrant workers to invoke their right to job-change (Kumara 2011). The incentive for employers to comply with EPS regulations and labour laws is even further diminished as a result. Moreover, this specific practice of compelling workers to sign 3-year contracts possibly violates Article 23 of the Labor

Standards Act—which provides that contracts shall be for one year if not for permanent or project-specific positions—as well as Article 9 of the EPS Act.

IV. Curtailed residency and their effects on the labour market and social integration

While, as previously mentioned, the EPS has contributed to bringing down the rate of undocumented migration in the overall migrant population in Korea, there is evidence suggesting that the number of undocumented migrants among EPS workers is gradually increasing. Research undertaken by the Samsung Economic Research Institute (SERI) in 2011 found that the number of undocumented migrant workers among those admitted into Korea on the E-9 visa rose 50 per cent from 9,153 individuals to 13,725 between the beginning of 2008 and the end of 2010. Approximately 70,000 EPS workers' E-9 visa expired by the beginning of 2013, possibly adding an additional 32,000 to 45,000 migrant workers to the ranks of the undocumented workforce (SERI 2011).

The SERI paper observed a correlation between the increase in undocumented migrant workers and the 4-year 10-month limit of the EPS workers' visa. The rationale behind limiting the legal residence of migrant workers to that duration is to render it almost impossible for EPS workers to obtain permanent legal residence in Korea, for which they would be eligible after a minimum of five continuous years of living in the country. However, this restriction is also contributing to a steady increase in undocumented migrant workers, a trend which is aggravated by the fact that the EPS is silent on any facilitated process through which EPS workers can transition to another visa type (i.e., student, business-owner) in Korea after the expiry of their E-9 visa.⁵¹ It remains to be seen whether the new policy promoting circulation and re-employment after the expiry of a worker's first E-9 visa is effective in curbing this rise in irregular residence and work, but if not, the EPS would suffer a severe blow to its long-term prospects since the system was supposed to represent a definite solution to irregular migration in Korea.

The temporary nature of the migrant workers' stay in Korea defines the EPS, since at its very outset it was devised and designed as a temporary labour migration scheme. However, this very essential and defining characteristic of the scheme threatens to render it untenable and perhaps even unviable in the near future. In reality, EPS migrant workers are not guaranteed the same treatment and wages as Korean workers largely because of the temporariness of the scheme and because they are intentionally blocked from accessing any kind of more permanent status. Since migrant workers are only allowed to work in a position for 4 years 10 months at a time, there is very little chance that they will be promoted to a higher paying position during that short duration and little incentive for employers to upgrade their foreign workers above minimum-wage jobs. Consequently, most EPS migrant workers in any given workplace in Korea will be earning less than their Korean colleagues – often even working overtime more often than their Korean counterparts – since they occupy lower positions. Arguably, in this manner, the EPS has created situations of inequality in outcomes, which is problematic since a major comparative advantage and *raison d'être* of the scheme was its guarantee of equal treatment and non-discrimination for its participating workers.⁵² If this deficiency in the scheme – its lack of avenues for migrant workers to obtain longer term immigration status

⁵¹ The EPS allows for particularly skilled migrant workers to be given the E-7 visa, which extends their period of residence in Korea beyond the expiry of their E-9 visas. However, this practice is not sufficiently widespread or institutionalized to stem the effects of mass E-9 visa expiration.

⁵² Interview with a representative of the Migrant Workers Movement Supporters Group, 11 December 2013, Seoul, Republic of Korea.

in Korea – is not addressed, the EPS, much like the ITS, could be seen as the main contributor to rising irregular migration and racial segregation of the Korean labour market and society and thus a target for calls to dismantle the scheme altogether.

V. Hidden costs

The EPS was meant to successfully address the financial burden experienced by migrant workers in the form of exorbitant fees they would be obliged to pay, most often to private recruitment agents or similar middlemen, in order to gain employment in Korea. While the official figures recorded by the Korean government indicate that the EPS has largely succeeded on this front, an independent survey carried out by the Ebert Friedrich Stiftung of migrant workers in Korea who had entered the country through the EPS revealed that a significant proportion of EPS workers had paid more than the Korean government's official figures on average costs and had waited over a year before being admitted to Korea. The study found that at least 30 per cent of the migrant workers approved to work in Korea were made to wait one year before they could depart for Korea, and 27.4 per cent were made to wait up to 2 years (Ebert Friedrich Stiftung 2011:9). An average of 24.3 per cent of the surveyed migrant workers paid 500-1,000 USD in costs associated with the EPS, about 1-in-4 paid 1,001-1,500 USD, and, quite shockingly, 21.3 per cent of the workers interviewed had paid over 2,000 USD in order to participate in the EPS (Ebert Friedrich Stiftung 2011:10). These findings may be an indication that somewhere somehow there is involvement of unwanted actors and corrupt behaviour, the very kind of situations that the EPS was set up to invalidate as far as labour migration to Korea is concerned.

VI. Mixed messages and policy incoherence

As a strictly labour migration programme, the MOEL is the appropriate government ministry to handle the EPS. While this doesn't necessarily preclude the participation of the Ministry of Justice (MOJ) and other key ministries, where the MOJ is involved it is characterised by a lack of coordination with the MOEL and other government stakeholders as well as by a negative interaction between the EPS and Korean immigration laws. Needless to say, the approach taken by the MOJ to migration is not the same as that taken by the MOEL, creating challenges for coherent cooperation with the MOEL in the context of the EPS. The MOJ's strategic and policy view of migration, which is summarised in its First and Second Basic Plan for Immigration Policy, considers the presence of low-skilled foreigners as potential threats to social cohesion and internal security (MOJ 2008:4). And while the MOJ recognises, "The policy line on foreigners needs to be changed into a "strategic opening" to tap into the talent and capital of the rest of the world" (MOJ 2008:9), there is little indication that the MOJ is aware of the above-average education and skills levels of EPS workers or that it is considering adopting this "strategic opening" approach to low-skilled migrant workers. As a result, the most visible manifestation of the MOJ's involvement in the EPS is crackdowns on factories and neighbourhoods in search of irregular migrants in application of the Immigration Control Act. These raids have long been criticized for their disproportionate use of force and disruption of business. Since most migrant workers and employers don't differentiate between different government ministries, the MOJ crackdowns are naturally being associated with the EPS, leading migrant workers as well as employers to question the motivations of the Korean government and engendering much distrust of the EPS, especially amongst migrant workers. This can only make it less and less likely that EPS workers would seek the assistance of the MOEL or any other official actor of the system, thereby threatening the efficacy of the EPS.

VII. Sectoral specifics

As demonstrated previously, the EPS is programmatically ambitious in the number and diversity of sectors and industries it covers. Most temporary labour migration schemes of comparable design in the region and on the global level are limited to one sector, but the EPS attempts to secure workers for SMEs in manufacturing, construction, agriculture, fisheries and some select service sectors. Moreover, as explained in the previous section, these sectors are not unified by the same laws, standards or even contractual practices or content. Contracts in agriculture and fisheries don't guarantee minimum wage or holidays while contracts in the construction sector are usually relayed to subcontractors. Yet, the EPS tries to apply a one-size-fits-all framework to them all and struggles to monitor the practices and working conditions in all five sectors.

This is leaving certain sectors susceptible to abuse of the system and the reintroduction of the most criticised aspects of the ITS. For example, private recruitment agencies and brokers are once more operating in the agriculture and fisheries sectors.⁵³ Unlike in the manufacturing sector, work in agriculture and fishing is predominantly seasonal with periods where labour demand is low or non-existent and other periods where demand spikes significantly. However, due to the architecture of the EPS, EPS workers assigned to these sectors cannot transition, even temporarily, to another sector during downtimes and, much like a worker that has decided to change workplaces, must find another job in three months in order to avoid irregular status. Unlike a migrant worker employed in manufacturing, however, the agricultural or fisheries EPS worker is usually far from any urban centre where most of MOEL or HRD Korea's help services and resources are located. Consequently, private service-providers are moving in to fill the vacuum, bringing with them the real risk that the corrupt practices of the ITS will establish themselves again, this time at the heart of the EPS. Given the relative physical isolation of most agricultural workplaces and fishing vessels, government officials, for the most part, seem to be unaware of this trend. However, if the infiltration of private brokers into the EPS becomes widespread, it would be understandably untenable to justify a scheme that was introduced precisely to counter the effects of rampant private-sector agencies in labour migration.

⁵³ Kim, Ichan. Interview, 11 December 2011, Seoul, Republic of Korea.

OPPORTUNITIES

I. Recognizing and incentivizing compliance

In spite of the many challenges and real threats facing the EPS at this critical juncture in its development, there is plenty of room in the scheme to capitalise on the opportunities presented by the Korean migration context to improve it. The EPS itself received an award from the UN that recognized the gains made under the system and appears to have spurred improvements to its design, and the Korean authorities could transfer this same model into the scheme itself by introducing an award or recognition for outstanding firms and employers that hire migrant workers through the EPS. The award could either be a monetary prize or benefits to the firms' business operations, such as tax breaks or credits, or to the EPS application process, such as being given higher priority in the queue for the employment permit, automatic renewal of the permit, and/or faster access to rosters of the eligible migrant workers. The criteria should include the firm's treatment of migrant workers, its compliance to the terms of the MOUs that tie the labour rights and workplace benefits of migrant workers to national legislation in the relevant areas, its compliance to Korean legal standards of occupational safety and health, its commitment to not employ undocumented workers, etc., and the final selection should be based on reports from labour inspections, instances of complaints lodged by the foreign employees, instances of worker hospitalisation, etc.

II. Inter-ministerial exchange of information and good practices

The MOEL and HRD Korea could partner with and learn from entities, both within the Korean government and non-governmental, involved in multiculturalism and multicultural family issues in Korea, whether in the capacity of policy formulation, protection or provision of services. This should be done with the objective of explicitly including migrant workers and migrant worker issues in the national discourse on multiculturalism and in the process of defining the concept in the Korean context. The Ministry of Gender Equality of Family (MOGEF), the leading Korean government ministry on matters of international marriages and multicultural families, is already involved in the EPS at the level of the FWPC as one of the government ministries consulted, but there is plenty of room to expand its role and involvement in EPS policymaking or implementation. In addition, many civil society organisations that collaborate with the Korean government in the framework of the EPS to provide services like language training to migrant workers in Korea also work with foreign wives and multicultural families. This is not surprising given that the majority of foreign women who migrate to Korea for the purposes of marriage are nationals of the same countries from which Korea welcomes foreign workers. The statistics between the two groups in terms of their numbers in Korea by country of origin appear to coincide almost perfectly, with the majority of the foreign brides coming from China (34.1 per cent), Viet Nam (21.8 per cent), followed by the Philippines and Cambodia.⁵⁴

It is unreasonable to think that the long-term social integration of migrant workers in Korea won't become a pressing item in the very near future or to assume that the existence of the EPS somehow negates the necessity to deliberate on the topic, especially in light of

⁵⁴ Lankov, Andrei. "International Marriages." Korea Times, July 7, 2011. http://www.koreatimes.co.kr/www/news/opinion/2012/10/165_90454.html

the experiences of the European guestworker programmes, which share key similarities to the EPS, and the demographic profile of the average migrant worker admitted into Korea (young, male, and single). Therefore, it would be to the benefit of the MOEL to engage in fruitful exchanges of information and experiences with these civil society groups on how to incorporate family reunification rights and transition into family life into the EPS as the scheme matures.

III. Tripartite cooperation and partnerships

While the network of local NGOs that the Korean government retains in the EPS is quite impressive, it could always be expanded and better coordinated. Examples of local NGOs implementing exemplary programmes and services for the foreign workers that reside in Korea abound.

Cooperation with trade unions could also be expanded. The role of trade unions in the current operation of the EPS is even more limited than that of the employers' associations; it is almost entirely limited to consultations with the FWPC in the process of deciding on quotas of migrant workers. Cooperation with trade unions and worker organisations will prove difficult, given the Korean government's current position of refusing to recognise the Migrants' Trade Union (MTU) and the fact that the Korean Trade Union Confederation (KTUC) seems to endorse MTU's position on the EPS. If these strained relations and trust deficits can be overcome, there is plenty of room in the current structure of the EPS to allow for greater participation of trade unions in ways that will advance the scheme as a whole and contribute toward guaranteeing its longevity. Korean trade unions, including the MTU, have launched and are operating services and programmes for migrant workers that are in demand but are not being adequately met by the EPS. MTU is offering reintegration assistance, especially for migrant workers forcibly deported from Korea, and is harnessing the development potential of labour migration to Korea by setting up community-improvement projects and mobilising migrants in Korea around these projects. In particular, MTU has been working toward building a school in Bangladesh.⁵⁵ If such projects could be brought under the EPS and streamlined through closer cooperation with the MTU and other trade unions, the EPS would be all the better for it, becoming a more comprehensive and efficient labour migration programme as a result.

In this regard, inspiration could be taken from the Spanish experience with its seasonal agricultural migration programme covering the Spanish regions of Catalonia, Valencia and Mallorca. The agricultural employers' association, Unio de Pagesos de Catalunya, recruits migrant workers directly from Colombia, Morocco, Romania, Moldova, Senegal and Mauritania, according to quotas issued by the Spanish government and working closely with the governments of these countries of origin.⁵⁶ Unio de Pagesos also collaborates with national trade unions, and the trade unions built and manage housing for the migrant workers in the receiving villages and are proving pivotal in successfully integrating the foreign workers into their host villages and cultivating goodwill between them and the local population through various social integration activities and events. This willingness to involve trade unions to such a large degree in the scheme and the willingness on the part of both trade unions and the farmers' association to work together has lowered costs for employers whilst ensuring that the migrant workers' human rights are protected. This participatory, tripartite nature of the Unio de Pagesos scheme in Spain has made it possible to evolve the programme into an effective conduit for co-

⁵⁵ Interview with Migrants' Trade Union (MTU), 12 December 2011, Seoul, Republic of Korea.

⁵⁶ ILO-Korea Destination Countries Meeting on the Effective Governance of Labour Migration, 12-13 December 2011, Seoul, Republic of Korea.

development. The social partners involved in the scheme provide vocational, professional and entrepreneurship training to interested migrant workers and support development projects in the countries of the participating migrant workers, often in collaboration with the migrant workers themselves.⁵⁷ While the Spanish seasonal migration scheme operates on a seasonal basis, as opposed to the 3-year minimum period of the EPS, and covers only certain regions and one sector rather than the whole country and multiple sectors, there is clearly still much that Korean policy makers could learn from this Spanish experience and can adapt and apply for the EPS.

Moreover, there is sufficient policy space within the EPS to explore introducing or expanding existing vocational training and orientation components. Currently, major employers' associations representing each of the sectors for which the EPS recruits migrant workers provide and administer training to the workers after their arrival and before they are deployed to their worksites. In the case of agricultural workers, the National Agricultural Cooperative Federation (NACF) would be interested in providing migrant workers employed in the Korean agricultural sector further vocational training or orientation during off-season periods. It appears the NACF would also be open to developing and administering an in-depth orientation programme for employers, at least those in the agricultural sector, in order to alleviate the many cultural misunderstandings and conflicts that arise between the migrant workers and their employers.⁵⁸

⁵⁷ ILO. Good practices in labour migration database. Information retrieved 2 Feb. 2013. http://www.ilo.org/dyn/migpractice/migmain.showPractice?p_lang=en&p_practice_id=46

⁵⁸ Hong, Gwangseong (2012, January 11). Personal interview. Geneva, Switzerland

CONCLUSION

The fact that the EPS has been in existence for 10 years represents a milestone for the scheme. Given that it was devised and designed at the outset to be the Republic of Korea's first labour migration programme for low-skilled workers and to explicitly replace the Industrial Trainee Scheme (ITS), its mere existence also marks 10 years since Korea has accepted that migrant workers – and not trainees – would have to be an integral part of the country's economy and society. Key low-skilled sectors were suffering chronic manpower shortages and the national population was declining. With the launch of the EPS, Korea embarked a decade ago on a near irrevocable policy and societal shift.

In many ways, the EPS has considerable strengths that merit its decade-long existence; it has contributed many positive practices and improvements to labour migration governance in the Asia region. It resuscitated government-to-government arrangements, offering a viable alternative to the abuse-ridden private recruitment agencies that so often determine the labour migration dynamics in the region. It has significantly reduced instances of migrant workers being trapped in fraud and debt. Instead, it has been widely acknowledged that the scheme has promoted transparent and accountable labour migration mechanisms and institutions.

At the same time, the scheme's 10-year experience has exposed serious weaknesses in its design and/or implementation, some of which may be serious enough to threaten its long-term viability. Among them: the lack of compliance on the part of employers; the lack of awareness of their rights and privileges under the EPS on the part of the workers; the Korean government's uneven focus and concentration of resources and coordination efforts in favour of the pre-admission stage of the programme; and the lack of buy-in or sense of ownership of the EPS among the implicated stakeholders, in particular the tripartite partners. However, perhaps the greatest threats to the EPS is directly linked to the scheme's core identity as a temporary migration programme meant to address labour market gaps that are long-term and structural. The temporary nature of the EPS seems to be disincentivizing policies on social integration, much as it did the European guest-worker programmes that preceded it. Korean policymakers would do well to study the case of the guest-worker programmes since the EPS exhibit more than a few similarities with these programmes. If Korean policymakers continue to neglect integrating social integration mechanisms or avenues for longer residency in Korea, there is a real danger that the EPS might reproduce the same scenario that became the unfortunate but avoidable legacy of Europe's guest-worker schemes: social exclusion and labour market segregation. In this sense, the greatest threat to the inevitable multicultural Korean society of the future is not the presence of low-skilled migrants but the absence of integration policies that accept, as a starting point, that migrants desire and have full potential to become assets to mainstream, domestic society.

Nevertheless, the good news and conclusion of this paper is that the EPS is built on sufficiently sound principles, mechanisms and institutions for there to be plenty of opportunities to improve the scheme for the benefit of all involved. There is no reason why tripartite and inter-ministerial mechanisms as well as other kinds of partnerships in the EPS can't be expanded to exchange information and good practices between all the actors engaged in migration or multicultural issues in Korea. But perhaps the greatest opportunity that the EPS brings is to include labour migration in Korea's maturing debate and policies multiculturalism and seriously consider how the EPS can contribute to a truly healthy multicultural society in Korea.

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