

# South Korea's Policy for Low-skilled Migrant Workers: Tensions between Functional Imperatives of the State and Their Impact on Policy Coherence

Ye Young Kim and Jiyeoun Song

This article examines key tensions manifested in South Korea's policy for low-skilled migrant workers since the institutionalization of the Employment Permit System in 2003, by utilizing Boswell's (2007) theory that suggests security, accumulation, institutional legitimacy and fairness as key functional imperatives of the state embedded in migration policy. By connecting the four imperatives with the inherent principles of Korea's labor migration regime, this article finds that the tensions between the often-incompatible functional imperatives of the state substantiated in Korea's migration policy for low-skilled migrant workers during the period of 2003-2019 have produced and exacerbated policy incoherence. This showcases that it has become increasingly more difficult for the Korean government to form a unitary message on its labor migration policy.

**Keywords:** South Korea, low-skilled migrant workers, state legitimacy, functional imperatives, policy incoherence

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## INTRODUCTION

Labor migration to South Korea (hereafter, Korea) began with low-skilled migrant workers mainly from China and Southeast Asia entering the country since the 1980s. Soaring numbers of undocumented migrants illegally employed in industrial workplaces prompted the government to institutionalize a labor migration regime through establishing the Employment Permit System (EPS, hereafter) in 2003 (Han, 2017b), a labor rotation program permitting fixed-term migrant employment in certain industries suffering from severe manpower deficiencies. Ever since, Korea's temporary labor migration program has developed to be one of the largest in the OECD and contributed to the steepest rate of increase in the foreign population in the OECD between 2005 and 2015 (OECD, 2019a). However, Korea's labor migration policy centering on the EPS is generally marked by a dearth of policy coherence. It is perceived to lack a comprehensive medium-to-long-term blueprint given the prospects for rapid socio-demographic changes, labor market transformations and economic restructuring (Seol, 2010). It has rather developed around short-term considerations of labor shortages (Chung et al., 2016).

Korea's migration policy as a whole has been evaluated as lacking a holistic approach in the first place, mainly due to ministerial discordance/competition in migration policy management (Chung, 2016; Jung, 2019; OECD, 2019b) and an absence of an umbrella organization coordinating the country's migration policy with a specific long-term framework (Kim and Lee, 2020). In fact, Korea still lacks a clear conceptualization of migration policy and a systematic legal system for migration (Lee, 2019). Such administrative limitations have been perceived as reasons behind the EPS's policy incoherence, for instance, cases of ministerial disharmony between the Ministry of Justice (MOJ, hereafter) and the Ministry of Employment and Labor (MOEL, hereafter) in their management of migrant workers. Furthermore, political parties based on the liberal-conservative party structure have displayed a divided position vis-à-vis the country's foreign workforce policy where the issue of migrant rights emerged as a social issue (Seol, 2012; recited from Seol and Jeon, 2016), often leading to inconsistent policy changes. Variables such as political leadership, public opinion, civil society engagement and changing labor market conditions have also mattered to different migration policy outcomes.

However, such administrative, ideological, and social factors alone do not provide a full account of the policy incoherence manifested in Korea's policy for low-skilled migrant workers. They do not comprehensively explain the fundamental tensions embedded in the policy that the government manages to establish legitimacy. For instance, in 2003, the government announced the mass deportation of undocumented migrants and then abruptly shifted its plan to provide temporary amnesty to them, indicative of not just the government's apparent indecision but fundamentally of its strategies to secure contradicting national interests (Kim, 2011): respond to labor market demand *and* prevent the settlement of or job takeover by migrant workers. Such policy decisions showcase that the state's *conflicting imperatives to build legitimacy* also constitute a pivotal factor engendering policy incoherence, rather than simply demonstrating institutional limitations, ideological orientation, or the lack of

government control over the policy issue. In other words, incoherent policy measures may also be the outcomes of a state's "calculated flexibility" (Kim, 2011) in promoting conflicting goals, regardless of whether it had achieved the intended outcomes.

Notably, some previous works on the EPS have addressed the inherently contradictory directions within the EPS (for instance, see Lee and Ko, 2013; Han, 2017b). However, there is still a lack of research that primarily addresses the organic causes of Korea's migration policy paradox from the lenses of state legitimacy, along with their impact on policy coherence. This paper adopts Christina Boswell's (2007) theory of migration policy to understand key tensions manifested in Korea's labor migration policy from 2003 to 2019<sup>1</sup> from the perspective of expected duties of state governance. It argues that Korea's policy for low-skilled migrant workers has developed through deep-rooted, intensifying tensions between the functional imperatives of the state which have produced significant policy incoherence. This demonstrates that it has become more difficult for the government to deliver a consistent message on its labor migration policy.

The examination of Korea's labor migration policy as a country case merits attention as it sheds light on what has often been generalized as "emerging" immigration countries in migration studies literature traditionally focused on Western country cases, especially South-North migration (Boucher and Gest, 2015). As one of top destinations for labor migration in Asia with third largest migration stock in East Asia, Korea is an important case in examining the "migration transition", the process whereby a net labor-exporting country becomes a net labor importer (Kim, 2017; Shin, 2017; Hong, 2018). Korea's rapid migration transition has opened up intriguing opportunities for theoretical exploration, especially when Korea has exemplified the Asian model of migration characterized by a proactive involvement of the government and a general exclusion of low-skilled migrant workers from the country's citizenship regime and integration policies.

Due to such characteristics, the Korean case also adds a fresh perspective to the age-old puzzle of "liberal paradox" (or, "liberal dilemma") which refers to the puzzle of greater openness of borders in the age of greater securitization of migration (Hollifield, 2004). Whether the strict control of low-skilled migrant workers in Korea signifies an alternative way out of the liberal paradox has been a topic of controversy. Assessments on Korea and other NICs in Asia has diverged, as either converging to the Western path of settler societies or showcasing heterogeneous forms of migration governance (Seol and Skrentny, 2009; Lim, 2012; Castle and Ozkul, 2014; Battistella, 2014). Elements of both scenarios (success or failure of the temporary migration system) are perceived to exist in Korea (Kim and Jung, 2018), and a meticulous inquiry into the country's socioeconomic structures is required to evaluate the country's coordination of various tensions and contestations manifested in its policy implementation.

The structure of the paper is as follows. The introduction is followed by an explanation of analytical frameworks employed in this research. Then, the paper examines Korea's policy for low-skilled migrant workers since 2003 from the perspective of the functional imperatives of the state. This section finds that not only has there been

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<sup>1</sup> The scope of this work is until before the breakout of COVID-19, which has been a critical variable to international mobility.

an inherent contradiction between security and accumulation imperatives in the EPS, but the EPS centering on security and accumulation has had profound tensions with fairness and institutional legitimacy, leading to incoherent policy measures. The last section draws a conclusion based on previous chapters and makes suggestions for a more sustainable labor migration policy.

## ANALYTICAL FRAMEWORKS

### **Christina Boswell's Theory on Functional Imperatives of the State**

This paper's analytical framework is constructed by linking the functional imperatives of the state proposed by Boswell (2007) with the principles of Korea's labor migration regime. Boswell's state-centered, neo-institutionalist approach is unique in that it proposes four functional imperatives of the state as key factors embedded in migration policy, with the premise that the state's core interest lies in establishing *legitimacy*. According to Boswell, a state's "internalist" criteria for legitimacy describes a relationship between state and society, as the "function of the compatibility of political actions and practices with the expectations and values of a particular public" (Boswell, 2007). With the modern state emerging as a "migration state", migration has become a key testing ground to assess "the way in which the state is, or is not, fulfilling its ascribed functions" (Boswell, 2007).

The four functional imperatives that a liberal welfare state typically promotes to establish legitimacy through migration policy are security, accumulation, fairness and institutional legitimacy. Security refers to the state's fundamental function of maintaining territorial integrity and public safety for its citizenry – the *sine qua non* for establishing state legitimacy. While there are "pressures for closure apparently endemic in democratic and welfare state systems" (Boswell, 2007), this function is especially noted with the *securitization* of migration having become a new challenge to state potency in crisis management in the 21<sup>st</sup> century, with certain groups of migrants increasingly perceived as one of key emerging non-traditional security issues.

Accumulation refers to the state's duty to cater to its citizens' economic needs and aspirations by successfully accumulating wealth and promoting growth. The state is required to demonstrate competence in managing the economy by providing favorable business conditions and rectifying market failures. In migration policy, the state fosters the accumulative aspect of immigration, for instance, cheap foreign labor filling labor vacancies or high-skilled immigrants contributing to national competitiveness and the slowdown of population aging (Boswell, 2007).

Fairness is a broad concept that encompasses state's efforts to provide welfare to its citizens through a just distribution of benefits and costs of social interaction (Boswell, 2007). Boswell adopts a protectionist conception of fairness (exclusion of outsiders from access to socioeconomic resources), but she also notes that such a notion can be qualified due to the incorporation of ethnic minority groups within the scope of justice or the universalistic theories of justice on which the conception of fairness is founded. Indeed, when it comes to migration policy, some states (particularly multicultural ones)

consider more pluralist and inclusive conceptions of membership and entitlement (Boswell, 2007). Thus, fairness under Boswell's framework can also be understood partly as "the dimension of immigrant integration and welfare policy *for immigrants*" (Lee, 2009). This paper also adopts this approach and explains fairness mainly in terms of government's provision of migrant integration measures.

Institutional legitimacy inheres from inviolable basic liberties and rights of a democratically accountable state, such as its judicial powers, the power of the constitution and an appreciation of fundamental human rights, which function to prevent rollback into illiberal policies (Boswell, 2007). International trends toward greater recognition of human rights mean that liberal states are faced with increasing tension between national interests that prioritize nationals and commitments to universal equality that eschews discrimination based on ascriptive criteria such as nationality, gender, skills, race, and ethnicity (Joppke, 2005; recited from Kim, 2008). Lack of basic rights for migrants would mean their tenuous presence in the host country with their vulnerable position outside proper legal protection.

While these imperatives do not always contradict one another, it is extremely difficult – almost impossible – to achieve all functions simultaneously; in Habermas' language, there exists a "legitimation crisis" whereby the capacity of the state to coordinate its functions is inherently limited (Boswell, 2007). For instance, stronger border controls may lead to reduced economic output generated from migrant labor, or an overemphasis on the accumulative aspect of migrants may lead to violations of their human rights. Such limitations render the state to strategically choose how to effectively allocate its power and resources for national development, often promoted through devising various categories of "strategic differentiation" between "legal/illegal, more/less than four years, manufacturing/service sector, and Korean blood or not" in its migration policymaking (Kim, 2011). For Boswell, these state imperatives are central to any political theory since the state "continues to be the focus of expectations concerning delivery of security, justice and prosperity – even if this responsibility is difficult (some would argue impossible) to fulfill" (Boswell, 2007). Precisely because each function is challenged within the sphere of migration policy, understanding their tensions is "key to explaining immigration policies" (Boswell, 2007).

This paper employs Boswell's theory for several reasons. First, Boswell gives a complex theoretical background through which international variations and multiple aspects of migration policy not thoroughly covered by other theories can be understood. Comparative political scientists have mainly advanced three main approaches to explaining the liberal dilemma in migration policy: the political economy approach, the rights-centered approach and the neo-institutionalist approach (see Lee, 2009; Lee, 2017; Lee, 2019 for detailed analyses of different migration policy theories). Approaches that focus on economic elements (political economy approach) or institutional legitimacy (rights-centered approach) are insufficient to appropriately explicate the growing parallel trends of securitization of migration on the one hand (security) and attempts at social incorporation of migration on the other (fairness) (Cornelius et al., 2004; recited from Lee, 2009), tendencies that have also been selectively manifested in Korea. By positing security and fairness alongside accumulation and institutional legitimacy as four preconditions for state legitimacy, Boswell's theory comprehensively illustrates that

the different functional orientations of the state lead to disparities between and within countries vis-à-vis state decisions on international migration.

Moreover, unlike theories that either portray the state as a monolithic entity brokering between interest groups (political economy approach) or emphasize the liberal forces of the global human rights regime over state sovereignty (rights-centered approach), Boswell's state-centered approach stressing the role of the state in actively defining its policy choices for the sake of legitimacy elucidates the various dilemmas that emerge in the sphere of migration policy, and shows how interests of different stakeholders are selectively incorporated in light of their resonance with the functional imperatives of the state (Boswell, 2007). Plus, such central subjectivity of the state along with institutional complexity within the state apparatus aptly applies to Korea's case known for its history of developmental statism, strong presidential system and inter-ministerial dynamism. While international migration is inherently a globally embedded phenomenon, the history of Korea's labor migration politics shows that the state's unilateral decisions have played an integral role (Lee and Park, 2019), with the strong political leadership of the president identified as a critical factor behind the immigration policy reforms in Korea in the 2000s (Yoon, 2009). Cohen and Kennedy (2000; recited from Kim, 2017) point out that "migration shopping' can be found anywhere to a varying degree, but the Korean government's strategic and pragmatic approach to migrants has been more conspicuous and it will continue to be pivotal in determining the future scale and patterns of migration transition in Korea."

Indeed, the heavy-handed government intervention has been alluded to as a major factor behind the successful operation of Korea's state-enforced migration circulation program characterized by highly controlled mobility (Kim and Jung, 2018). Notably, Korea's EPS approximates Boswell's characterization of temporary labor programs strictly implemented to promote security and accumulation, which she claims will not be a sustainable policy response for a *liberal* welfare state since serious degradations of institutional legitimacy would render the policy untenable (Boswell, 2007). As a country generally regarded as a liberal democracy with a long history of a strong state, Korea's case may add to Boswell's theory and the discussion of migration policy by examining whether its temporary program could remain sustainable given the inherent tensions embedded in its labor migration policy. This paper finds that Korea may constitute a non-Western, late-immigration country example demonstrating Boswell's point that liberal states cannot strictly maintain a short-term labor migration program.

### **Linking Functional Imperatives to the Principles of Korea's Labor Migration Regime**

Boswell does not provide specific barometers to gauge a state's level of engagement with the imperatives, leaving to rigorous empirical analyses of country cases. This paper extends the discussion of the imperatives by illuminating the *tensions* between the conflicting imperatives. The four imperatives are linked to the principles of Korea's labor migration regime (Figure 1), typified by the *Act on Employment of Foreign Workers* on which the EPS is based (Seol, 2010; Shin, 2017), and this paper shows how certain policies have either strengthened or weakened certain principles that often contradict



Functional Imperatives of the State	Principle Underlying Korea's Labor Migration Regime	Policy Areas
Security	<ul style="list-style-type: none"> <li>● Principle of non-settlement</li> <li>● Principle of short-term rotation</li> <li>● Principle of forbidding employment and residence of undocumented migrant workers</li> <li>● Principle of complementation of domestic labor</li> </ul>	<ul style="list-style-type: none"> <li>✓ Fixed-term employment</li> <li>✓ Sector-based quotas</li> <li>✓ Provisions to seek native labor</li> <li>✓ Policy to reduce undocumented migrant workers</li> <li>✓ Workplace change restrictions</li> </ul>
Accumulation	<ul style="list-style-type: none"> <li>● Principle of market demand responsiveness</li> <li>● (+Principle of non-interference with economic restructuring)</li> </ul>	<ul style="list-style-type: none"> <li>✓ Increasing quotas &amp; sectors for migrant employment</li> <li>✓ Easier/facilitated migrant employment</li> <li>✓ Extending employment duration</li> <li>✓ Policy of re-entry &amp; re-employment</li> <li>✓ Workplace change restrictions</li> </ul>
Institutional Legitimacy	<ul style="list-style-type: none"> <li>● Principle of protection of rights or principle of non-discrimination</li> <li>● (+Principle of transparency)</li> </ul>	<ul style="list-style-type: none"> <li>✓ Guaranteeing basic rights to migrate workers, including undocumented migrants</li> <li>✓ Equal treatment of migrant and native workers</li> <li>✓ Alleviating workplace change limit</li> </ul>
Fairness	<ul style="list-style-type: none"> <li>● N/A</li> </ul>	<ul style="list-style-type: none"> <li>✓ Social integration policy for migrant workers</li> <li>✓ Access to permanent residency &amp; citizenship</li> <li>✓ Right to family reunion</li> </ul>

**Figure 1** Analytical Framework of the Thesis

Note: The principle of non-interference with economic restructuring and the principle of transparency are not included in the scope of the paper's analysis.

one another. While the four imperatives and corresponding principles are not logically identical propositions, the boundary of the functional imperatives is roughly confined to the following principles in discussing key tensions in Korea's policy for low-skilled migrant workers.

The principles of Korea's labor migration regime embedded in *the Act on Employment of Foreign Workers* are as follows (Seol, 2010; Lee and Ko, 2013; Shin, 2017; Han, 2018). First, migrant workers are viewed only as complements to, not as substitutes for, native workers ("principle of complementation"). To protect the domestic labor market, sector-based quota for each industry is predetermined and the employment areas are confined to industries natives generally avoid. Migrant workers are also in principle prohibited from changing their workplaces. Employers are obligated to make efforts to hire native workers before using the EPS.

Second, low-skilled migrant workers are regarded fundamentally as *temporary* workers ("principle of short-term rotation"). The aim is to prevent their settlement through acquiring permanent residence or citizenship ("principle of non-settlement"). The government puts a limit to the length of stay for low-skilled migrant workers and utilizes diverse regulatory means to ensure the departure of migrant workers.

Third, as a corollary to the principle of non-settlement, migrant workers without legitimate visa status are banned from staying or working in Korea ("principle of forbidding employment and residence of undocumented migrant workers"). The government has enforced regulatory measures to prevent migrant workers from becoming undocumented and reduce the number of undocumented migrants.

Fourth, the recruitment of migrant workers should adequately respond to the

demands of the labor market (“principle of labor market demand responsiveness”). Migrant workers must pass a language test and skills evaluation to be eligible for the EPS and are admitted to Korea with the explicit purpose of working in certain industries with labor shortages such as manufacturing, construction and agriculture. The government has sought to enhance the accumulative effects of the EPS by admitting greater numbers of migrant workers, making them work for longer periods of time, and allowing fewer restrictions to employing migrant workers. Restriction on changing workplaces also functions to cater to this economic principle.

Fifth, the employment of migrant workers should not interfere with the economic restructuring necessary to enhance the competitiveness and productivity of the country’s macroeconomy (“principle of non-interference with economic restructuring”). While not stipulated under law, this is a basic principle implicitly agreed upon in Korea (Lee, 2010).

Sixth, the EPS in principle guarantees equal rights to migrant workers and Korean nationals (“principle of protection of rights” or “principle of non-discrimination”). Employers are required to use the standard labor contract and treat migrants equally with natives in terms of remuneration and working conditions. Migrant workers are entitled to basic labor rights under key legislations such as the *Labor Standards Act*, *Industrial Safety Act*, the *Minimum Wages Act* and the *Industrial Accident Compensation Insurance Act* and are guaranteed access to the major social insurance systems.

Lastly, the process of employment of migrant workers should be transparent (“principle of transparency”). To prevent rent-seeking, illegal brokerages and other corruptive practices, the government takes charge of the employment processes by signing MOUs with governments of migrant-sending countries.

The function of fairness is not positively captured in the principles of the EPS because Korea has separated its foreign workforce policy from its immigration policy targeting social integration of foreigners; while the EPS is a state-produced institution promising security, accumulation and institutional legitimacy, EPS workers are regarded only as sojourners based on the transiency of their employment. As signifiers of fairness, government efforts and intentions to incorporate migrants to the Korean society including the opportunities for permanent residence, citizenship acquisition, and the right to family reunion are examined.

The concept of coherence refers to the quality of being logically consistent in a way of forming a unified whole. In policy terms, OECD defines *policy coherence* as the promotion of different policy measures in a mutually reinforcing manner towards achieving their agreed goals (NAP, n.d.). With the functional imperatives perceived as the agreed objectives of a country’s migration policy, policy coherence can be gauged by examining whether certain policies create synergistic or inverse effects on these functional imperatives. If various policy measures are aligned in a way that efforts to promote one imperative undermine other imperatives, it becomes difficult for the government to promote all its proclaimed goals.



## KOREA'S LABOR MIGRATION POLICY FROM THE PERSPECTIVE OF FUNCTIONAL IMPERATIVES OF THE STATE (2003-2019)

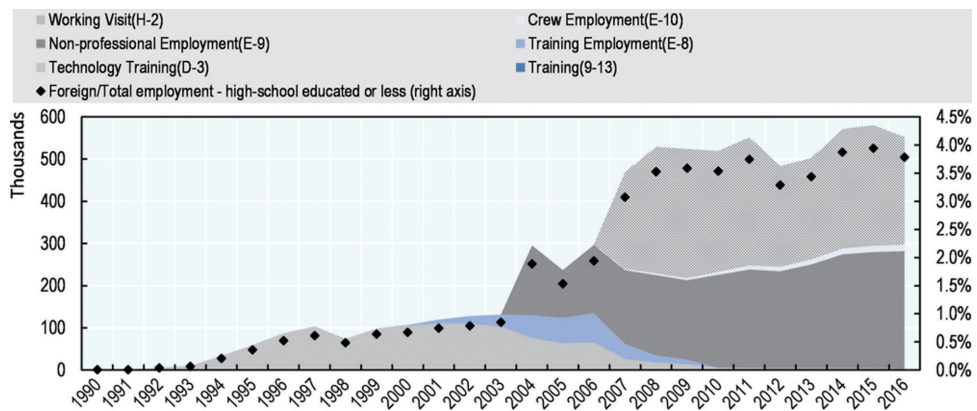
This section elucidates key tensions between the state imperatives substantiated profoundly in Korea's labor migration policy since 2003. Such contradictions demonstrate the government's ambiguous attitudes toward low-skilled migrant workers and show there has been greater incoherence in its labor migration policy.

### Security vs. Accumulation

The promotion of both security and accumulation imperatives has led the country to face a “policy dilemma” between “the necessity of open borders due to economic dynamics versus the need for border control due to national security and public safety” (Jung, 2019). Such *liberal paradox* which has put the state in a catch-22 situation can be read along the conflict between the security and accumulation functions of the state. The collision fundamentally arises because while *more* migrant workers that work *longer* in the country are required to boost accumulation, this is perceived as a security problem as it leads to not only greater likelihood of their permanent residence (which leads to concerns over increased social costs and conflict with native citizens), but also enhanced possibilities of job competition with native workers. The following section elaborates on these two policy areas.

### Increasing Long-term Residence of Low-skilled Migrant Workers

The number of low-skilled migrant workers in Korea has jumped since the introduction of the EPS (Figure 2) and the increasing polarization and segmentation of Korea's labor market is structured to have greater demand for migrant labor (Chung et al., 2016; Lee, 2018). Besides promoting their numerical expansion, measures allowing for longer



**Figure 2:** An Increase in the Number of Temporary Foreign Workers in Korea  
 Source: OECD (2019b)

employment of workers bolsters accumulation since employers can save costs of labor matching and skills training (greater labor productivity).

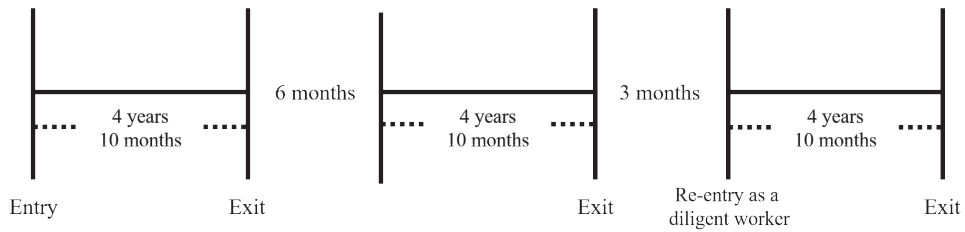
Despite the principle of short-term rotation, the move towards re-entry and/or re-employment of migrant workers has been manifest since the initial stages of the EPS. In less than a year since its enforcement, the one-year minimum entry restriction for workers with expired visas was shortened to 6 months in May 2005. Under the same revision, migrant workers whose initial contract period of 3 years was completed could re-enter Korea after minimum one month of departure in case the employers requested their re-employment. Further in 2009, re-employment without any in-between entry restriction was introduced for the first time; their employment contract could be extended for another year and 10 months. This revision constituted the government's abrupt self-alteration of its ambitiously promulgated First Basic Plan for Immigration Policy in 2008 (Lee and Park, 2019).

Subsequent changes further diluted the principles of short-term rotation and non-settlement. The Special Return Employment Program for Diligent Workers (later changed to "Special Return Employment Program for Foreign Workers") introduced in 2012 was an extension of the 2009 revision. The law was revised so that workers with the E-9(Non-professional employment), E-10(Vessel Crew) visas<sup>2</sup> who worked in certain industries for 4 years and 10 months (6 years for those re-employed before the 2009 revision) could renew their contract at the same workplace for another 4 years and 10 months by re-entering Korea after 3 months of entry restriction, on the condition that the employer recommended them as "diligent workers" (MOEL, 2012). Moreover, starting in December 2011, the Special Korean Language Test was created to give another employment opportunity to E-9, E-10 workers (ages 18 to 39) after returning to their country of origin. Unlike the General Korean Language Test conducted non-periodically with extricate requirements such as pre-work training, the special test is conducted once every quarter with much simpler procedures for application; the waiting period is only 3 months and migrant workers directly return to their previous workplaces (MOEL, 2021).

Notably, however, this period of 4 years and 10 months constituted the government's attempt to still adhere to the principle of non-settlement, given that the minimum period required for migrants to be eligible for permanent residence and naturalization is 5 years. Indeed, such expansionary tendency of the maximum EPS term was abruptly disrupted at a time when the contract for re-employed migrant workers under the two special programs was coming to an end. In early 2017, without any prior notice, the MOEL and the MOJ halted the Special Korean Language Test and the Special Return Employment Program for Diligent Workers respectively, only to resume them after making a legal revision to limit the maximum term of stay as less than 10 years.

These measures implemented amid a disorganized bureaucracy were introduced to prevent "diligent" migrant workers from taking the Special Korean Language Test or vice versa, which allowed migrants to stay in the country for 14 years and 6 months (Figure

<sup>2</sup> Migration workers under the EPS are given the E-9 and E-10 visas, while workers under the Work Visit System (WVS), a special form of EPS for overseas Koreans, enter Korea with the H-2(Work Visit) visa.



**Figure 3:** A Way to Extend the Non-Professional Employment (E-9) Visa beyond 10 Years

Source: Lee and Park (2019) (translated by authors)

3). Before 2017, there was no institutional mechanism banning migrant workers from taking both programs and given that the age requirement for taking the Special Korean Language Test was 18-39 years, a migrant worker who began to work at the age of 20 for a total of 14 years and 6 months could apply again for the test and work for almost 20 years in the country (Lee and Park, 2019). The new measures were thus taken to uphold the principle of non-settlement, with security concerns rising from longer-term residence of migrant workers (YTN, 2017).

Nevertheless, even with the ten-year ceiling, the government continued to strengthen the accumulation outcomes of its labor migration policy<sup>3</sup>. In response to employers' increasing complaint that departures of migrant workers who have become *de facto* "skilled workers" have led to employment gaps and declined productivity, the "Skilled Worker Points System Visa" (E-7-4 visa) was introduced as a pilot system in August 2017 and fully implemented since January 2018. This allows migrant workers legally employed in certain root or manufacturing industries for 5 years or more with E-9, E-10 or H-2 visas within the last decade to apply for extension of stays by changing the visa status to E-7(Specially Designated Profession) granted they meet certain conditions such as work skills, financial standing, language abilities, employment history, education, etc. Albeit introduced as a miniscule quota, this meant that an institutional path has been paved for low-skilled migrant workers to attain permanent residency in Korea.<sup>4</sup>

Due to the increasing quota for low-skilled workers and institutional changes drastically extending their total possible employment, the number of EPS workers staying in Korea for *five years or more* has constantly increased; according to Statistics Korea, it reached more than 10% of the total EPS workforce by 2014 (Lee and Park, 2019). Table 1 shows the increasing number of re-employed migrant workers and Table 2 demonstrates a substantial increase (282% in 2018) by the number of migrant workers

<sup>3</sup> For instance, the period required for the re-entry of migrants as "diligent workers" was reduced from 3 to 1 month in April 2021.

<sup>4</sup> There were routes by which migrant workers could alter their visa status to the E-7 level even before the E-7-4 visa (the F-2-6 and E-7-1 visas), albeit with high barriers that made such a transition almost impossible (Chung and Kim, 2020). They were later incorporated to the E-7-4 system.

**Table 1:** The Extension of Employment Duration by E-9 Visa Holders.

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019.11
Re-employed migrant worker	20,914	33,265	15,376	26,727	39,581	43,109	45,903	42,637	42,371	46,374

Source: Ministry of Employment and Labor (December 19, 2019; recited from Chung and Kim, 2020: 74, Table 3).

**Table 2:** Number of E-9 Visa Holders Entering and Re-entering Korea since 2012

Type	Category	2012	2013	2014	2015	2016	2017	2018	Since 2012
First Entry	Total	50,285	44,395	43,276	40,615	42,327	35,059	41,039	▼18%
Re-entry*	Total	3,355	14,117	8,282	10,407	17,552	15,808	12,817	▲282%

\*Special Korean Language Test + Special Return Employment Program for Diligent Workers

Source: Korean Employment Information Service (2018; reorganized from Chung and Kim, 2020: 75, Table 4).

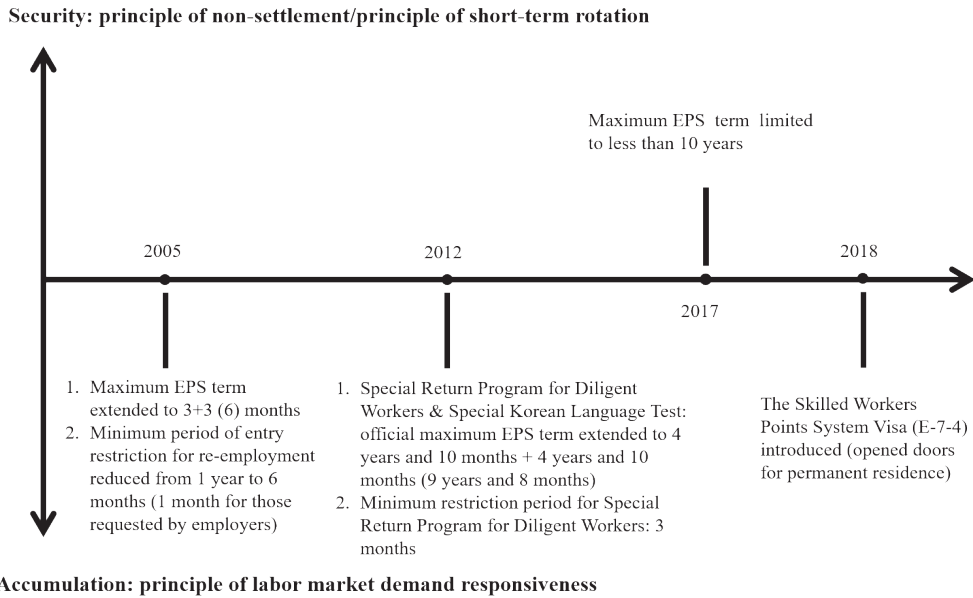
re-entering Korea through two programs introduced in 2012.

The state promoted a continued and diversified use of migrant workers through enlarging quotas (creation of new ones) and extending employment duration under the EPS to reinforce the accumulation imperative. However, cumulative changes made to the maximum EPS term led to the *de facto* failure of the principle of short-term rotation and significantly compromised the principle of non-settlement, while bolstering the accumulation imperative to maximize economic output through a more cost-effective accommodation of migrant labor (Figure 4). Nevertheless, this in no way indicates that the government has neglected its security imperative. With the state's responsibility lying in its effective control over migrant population flows, the government simultaneously endeavored to abide by the security principles through various measures, leading to other policy inconsistencies (discussed in the following sections).

#### *Tension between protecting domestic labor and responding to labor market demand*

Security concerns based on a competitive national/non-national distinction posit that more rights and privileges conferred to non-national workers may lead to lesser rights and privileges for native workers and/or citizens. The principle of complementation to ensure migrant employment does not encroach on job opportunities for native workers is one key example. However, this principle is inherently at odds with the accumulation imperative which requires greater numbers of migrant workers to ameliorate labor shortages.

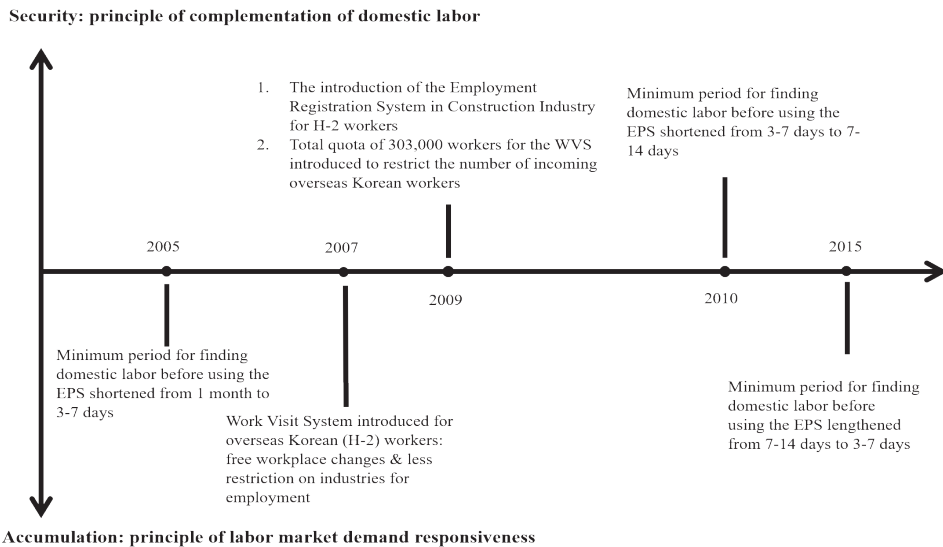
This tension has been manifested in several contradictory changes made to the minimum period required for employers to make efforts to seek native labor



**Figure 4:** Tension between Security and Accumulation: Maximum Limit of Stay Under the EPS

before utilizing the EPS, which has been a major device operating the principle of complementation. In 2003 the period was initially set at 1 month but was quickly altered to 3 to 7 days in March 2005 (MOJ, 2005a), making it a nominal procedure. The change was made to accommodate employer interests by facilitating the timely recruitment of workers, along with other similar policy measures such as abolishing the employment ceiling for foreign labor set at 50%. But in 2010, with the declared purpose of protecting Korean workers, the labor test period was re-lengthened to 7 to 14 days depending on the industry and level of efforts, at a time when more controversies on the effect of EPS on the labor market emerged (Choi and Lee, 2015). In 2015, however, the government reversed this policy again by shortening the period back to 3 to 7 days.

The establishment of the Work Visit System (hereafter, WVS) in 2007 which expanded the employment of overseas Korean workers from China or Commonwealth of Independent States indicated another divergence in Korea's labor migration policy. The WVS (special EPS) gives more freedom to workers than the general EPS as it provides greater range of employment areas and the right to choose and change workplaces. They are also exempt from the minimum entry restriction period of 6 months. While the WVS was prompted by efforts to quell protests from political liberals that demanded equal treatment of all overseas Koreans regardless of skill levels and nationality (Kim, 2008), when read as a labor migration policy, it was an accumulation-centered policy to raise Korea's competitiveness, stabilize the EPS, and further alleviate labor shortages in Korean industries (Han, 2017a). The WVS dramatically increased the number of overseas Koreans working in Korea with H-2(Work Visit) visas from 50,043



**Figure 5: Tension between Security and Accumulation: Protection of Domestic Labor**

in 2003 to 226,322 in 2019 (peaking at 306,283 in 2009).

However, there are inherently conflicting goals within the WVS as it attempts to give privilege to overseas Koreans over non-Korean workers while considering job competition with domestic labor. Because overseas Korean workers are mostly employed in industries perceived as especially susceptible to foreign labor substitution such as construction and service, concerns escalated over increased presence of overseas Koreans particularly after the 2008 Global Financial Crisis. To bolster the security imperative, the government added restrictions such as the introduction of an aggregate quota of 303,000 overseas Korean workers in 2009 and limiting the maximum number of overseas Koreans that can be invited to Korea to three individuals per person (Kwak, 2012). Further, the Employment Registration System in Construction Industry was created in May 2009, which installed an annual sectoral quota of 55,000 H-2 workers and required them to acquire a certificate of employment recognition valid for a year. The government even halted the allocation of annual quotas for H-2 visas in 2010 and 2011, which blocked around 90,000 overseas Koreans in China on the waiting list for the WVS from entering Korea (Kwak, 2012). Such a series of abrupt measures introduced after the establishment of the WVS indicate government attempts to strengthen the principle of complementation. Inconsistent policy shifts regarding the protection of domestic labor market are the outcome of the ongoing security-accumulation tension<sup>5</sup> (Figure 5).

<sup>5</sup> For instance, in 2023, the upper limit on issuing employment certificates in the construction industry and the limit on issuing employment permits per each workplace (E-9 visa) were abolished.



### Security-cum-accumulation vs. Institutional Legitimacy

The introduction of the EPS has been hailed as a great improvement of migrant workers' status when compared to the previous Industrial and Technical Trainee Program (ITTP, hereafter) that received the opprobrium as the "modern slavery system" (Kim, 2009) for its absence of migrant rights protection. Nonetheless, the main objective of the EPS was to promote economic utility (accumulation) via strong control over the rotating system (security). As a result, not only the crackdown on undocumented migrant workers (security) but also the market-friendliness (accumulation) of the policy worsened the "rights deficit" of the country's labor migration regime (Han, 2017b), with the government generally lacking enthusiasm in monitoring workplaces and protecting migrant rights (Lee and Ko, 2013). Such policy centering on security and accumulation imperatives ("security-cum-accumulation") produced fundamental tension with another key functional imperative, i.e., institutional legitimacy.

The age-old contestation regarding the institutional legitimacy of the EPS mainly stems from the ban on workplace changes and the infringement of rights of undocumented migrant workers. The restriction on changing workplaces is perceived as the major cause of various human rights problems, given the danger of forced labor implicit in the restriction (Lee and Ko, 2013; Kim and Lee, 2017). Article 25 of the *Act on Employment of Foreign Workers* banning migrant workers from transferring to another workplace (with exceptions) has been often regarded as the "poisonous clause" that critically compromises the principles of rights protection and non-discrimination stipulated under Article 22, demonstrating not only the law's inherent paradox<sup>6</sup> (Cho, 2019) but the fundamental hierarchy among the principles underlying the EPS. With the regime not inherently conducive to protecting migrant workers' rights, problems such as exploitation, poor housing and working conditions, wage disparity, and other violations of the *Labor Standards Act* could continue under the EPS (Yun, 2015).

The conflict between stakeholders of the EPS is especially prominent with regards to this workplace change limit. The government officially justifies this regulation with its declared purpose of protecting jobs (security). But for employers, frequent workplace changes cause setbacks in supplying manpower and costs spent for securing substitute labor (accumulation). However, migrant advocates contend that the restriction significantly violates the labor and human rights of migrant workers in a way that does not conform to international standards (institutional legitimacy). They stress the empirical vagueness of its effectiveness while pointing to the asymmetry of power between employers and workers and practical issues that make it extremely difficult for migrants to change workplaces or seek rights relief. Hence, the security and accumulation imperatives validate the workplace limit while considerations for institutional legitimacy demand its abolishment; this is a policy area in which the state is faced with inherent tension between security and accumulation imperatives and the imperative for institutional legitimacy ("security-cum-accumulation vs. institutional

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<sup>6</sup> The law was enacted more for the effective regulation of low-skilled migrant workers than the protection of their rights, with high-skilled migrant workers not subject to its regulations (Cho, 2019).

legitimacy”).

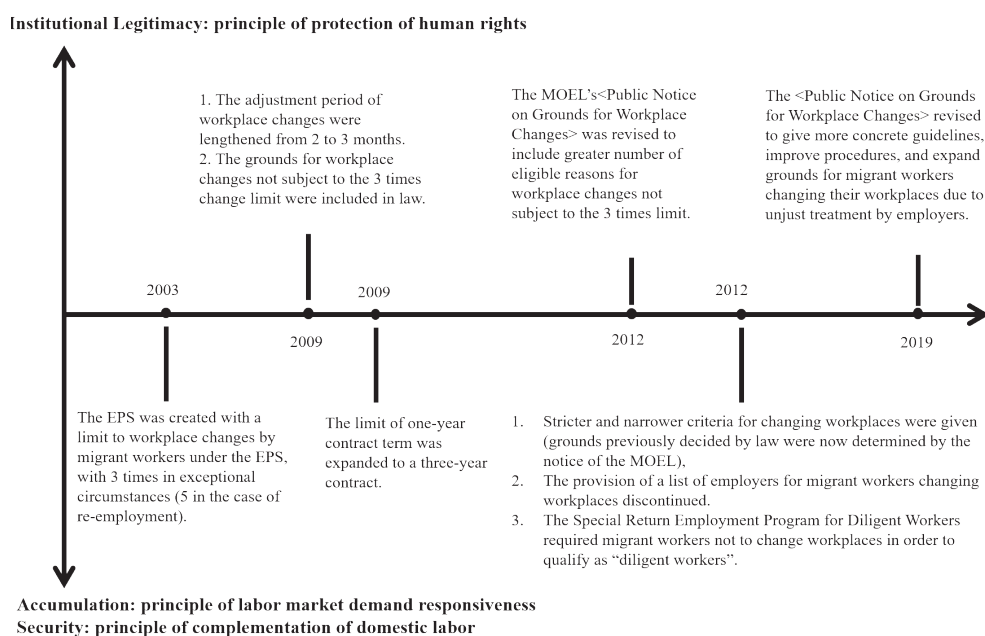
The demand for its abolition often galvanized by migrant protests or suicides/deaths has led to incremental changes in the number of grounds that constitute legitimate reasons for changing workplaces. In October 2009, the *Act on Employment of Foreign Workers* was revised to not only lengthen the period of workplace change from 2 to 3 months, but for the first time include grounds not subject to the initial change limit under certain conditions<sup>7</sup>. In 2012, such legitimate grounds were further expanded to include employer violations of labor conditions, physical/verbal violence, overdue wages, and the cancellation of the employment permit. In January 2019, the MOEL revised the “Public Notice on Grounds for Workplace Changes” to improve procedures for migrant workers changing their workplaces. Major revisions included the introduction of emergency workplace changes, permitting workplace change when the employer fails to provide proper housing, and the provision of clear conditions on wages and working hours (MOEL, 2019a).

However, there were also moves that made it practically more difficult for migrant workers to change workplaces. In the first place, limiting the *period* of changing workplaces was a restriction that did not exist under the ITTP, and even after the 2009 revision, the Committee on Economic, Social and Cultural Rights advised that three-months of workplace change period were still extremely insufficient. In October 2009, the limit of one-year contract term was revised so that labor contracts could be signed and/or renewed through negotiations between the employer and the worker within the 3 years of employment; consequently, most migrant workers come to Korea with a three-year contract (Lee and Ko, 2013). While the revision was made to enhance efficiency, it in effect further limited the right to change workplaces because migrant workers now must stay in the same workplace for at least 3 years. The law also did not recognize the right for migrant workers to freely terminate their contracts or resist their contract renewal when employers had the power to do so (Choi and Lee, 2015).

Second, the *Act on Employment of Foreign Workers* was revised in February 2012 so that the grounds for workplace changes are determined by the notice of the MOEL (No. 2012-52), whose criteria are stricter and narrower than those of the *Act on Employment of Foreign Workers* (Yun, 2015). Furthermore, there was another policy change in August 2012 that discontinued the practice of providing a list of employers to migrant workers eligible to change workplaces, with the official purpose of preventing illegal brokerages (Lee and Ko, 2013; Kim and Lee, 2017). Since the migrant worker has no other choice but to leave Korea if the three-month job searching period expires without success, the revision rendered migrant workers more reluctant to change workplaces even if they were under unjust conditions. Further, the Special Return Employment Program for Diligent Workers introduced in 2012 included regulations that indirectly discouraged changing workplaces as only those who did *not* change their workplace could qualify as

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<sup>7</sup> Under Article 25(1), migrant workers can change workplaces up to three times within their three-year term (two more times if their contract is extended by 1 year and 10 months) if: 1) the contract must be terminated, 2) the employer cancels the contract, or 3) there is official government recognition that the migrant worker cannot continue to work at the workplace due to reasons that do not rise from the worker.



**Figure 6: Tension between Security-Cum-Accumulation and Institutional Legitimacy: Workplace Change Limit**

“diligent workers”<sup>8</sup>. These measures were perceived as contributing to the retrogression of migrant rights.

The workplace change limit epitomizes another significant tension between the imperatives of the state (Figure 6). There has been growing controversy surrounding the human rights of long-term EPS workers who stay in Korea for almost 10 years, when the employment of low-skilled migrant workers for more than 5 years constitutes an anomaly even under international standards (Chung et al., 2016). A series of measures that lengthened migrant workers’ employment duration from 3 years to almost 10 years without granting them the freedom of workplace mobility has raised new questions for the institutional legitimacy of the EPS which has transformed into a *de facto* long-term program. With concerns over migrant rights, Korea’s National Human Rights Commission or international organizations have often advised the reexamining and/or alleviating the restriction (e.g. OECD, 2019a). While measures such as allowing workplace changes after 3 years of employment have been suggested (Chung et al., 2016), such measures have yet not been introduced.<sup>9</sup>

<sup>8</sup> It was only in April 2021 that those who change workplaces within the same sector could qualify.

<sup>9</sup> The government instead strengthened the restriction by allowing workplace changes (permitted under exceptional conditions) to take place only within designated regions from September 2023.

### **Policy for Undocumented Migrants: Mixed implications for security, accumulation, and institutional legitimacy**

While not all undocumented migrants are migrant *workers*, policy for undocumented migrants shares strong affinity with the foreign workforce policy with the government running patrols in industrial workplaces, imposing penalties/incentives on employers and migrant workers and putting pressure on the migrant-sending governments by connecting the rate of undocumented migrants to the annual quotas for the EPS. Indeed, the violation of the *Immigration Control Act* stems mostly from the illegal employment of migrants in small enterprises suffering from labor shortages (MOJ, 2021), and the success of the EPS is perceived to depend upon the effective management of undocumented migrant workers. Given that the strongest rationale behind the EPS has been to reduce the undocumented migrant population, the government has particularly stressed the principle of forbidding employment and residence of undocumented migrant workers (Han, 2017a). Table 3 summarizes government measures employed on either a constant or sporadic basis to deal with undocumented migrants, such as strong regulatory measures, voluntary departure programs, provision of substitute labor, or even acquiescing certain levels of undocumented migrants (temporary deferment of deportation).

First, partial legalization methods were used. Just before the enforcement of the EPS, the government allowed 220,000 undocumented migrants who stayed in Korea for less than 4 years to legally stay in the country (based on 2003.03.31) by allowing them to apply for the new employment permit, while banishing those who stayed over 4 years (MOJ, 2003). Likewise, before the implementation of the WVS, overseas Koreans who moved to Korea for less than 3 years and illegally residing in the country for less than a year were incorporated to the WVS system (MOJ, 2007). Notably, such one-off legalization measures (not lasting measures granting access to permanent residence) were used to guarantee the effectiveness of the newly introduced programs<sup>10</sup>; they were exceptions rather than the norm.

Second, the government cracked down on undocumented migrants while punishing employers hiring them. Given the illiberal nature of forced deportations, it is “the most extreme immigration control method that liberal states can adopt” (Kim, 2008). However, with the institutionalization of a rotating migration policy in Korea, the government was determined to deport all undocumented migrants opposing the new labor migration regime and tighten regulatory measures against the undocumented migrants once the EPS was in effect. With its enforcement, the number of forced deportations jumped from 5,861 in 2003 to 19,307 in 2004 and 38,019 in 2005 (KIS, 2010), which were followed by repeated recommendations by the National Human Rights Commission that the government observe due legal process and respect the human rights of migrants. The commitment to crack down on undocumented migrants was manifested through government plans such as the “Five Year Plan on Reduction

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<sup>10</sup> For the same purpose, overseas Koreans were exceptionally granted amnesty in 2005 and 2006, with their re-employment after a year of minimum entry restriction period guaranteed (MOJ, 2005b; MOJ, 2006).

Table 3: Various Policy Measures Addressing Undocumented Migrants

Measures for undocumented migrants	Time (~2019)
Crackdown on undocumented migrants (joint regulation, investigations, forced deportation)	2003 ~ present
Tacit toleration of certain levels of undocumented migrants in the country's critical industrial workplaces	2003 ~ present
Punishment for employers hiring undocumented migrant workers	2003 ~ present
Legalization of undocumented migrants (no need to depart the country)	2003 – Partial legalization of undocumented migrant workers who stayed in Korea for less than 4 years. 2007 – Partial legalization of overseas Korean workers who stayed in Korea for less than 3 years.
Special voluntary return programs for undocumented migrants (with guarantees to their re-entry/re-employment): a low-level legalization measure	2005 – overseas Koreans 2006 – overseas Koreans 2011 – overseas Koreans 2019 – all migrants
Special voluntary return programs for undocumented migrants (without guarantees to their re-entry/re-employment)	2005, 2008 – targeting countries damaged from tsunamis 2010, 2016, 2017, 2018

of Illegal Migrants (2008-2013)” and the “Three Year Plan on the Reduction of Illegal Foreigners (2016-2018)” which were accompanied by explicit numerical goals, for instance, reducing the rate of undocumented migrants to 10% (MOJ, 2016).

Third, programs to encourage the voluntary departure of undocumented migrants were intermittently implemented. For instance, “Temporary Special Measures for Countries Damaged by Tsunamis” were introduced in 2005 so that undocumented migrants from Southeast Asian countries damaged by natural disasters could voluntarily leave Korea with their penalty exempted and entry ban lifted. More recently, when the rate of undocumented migrants which constantly declined since 2004 began to voluminously increase from 210,000 in 2016 to 380,000 in October 2019 especially after the 2018 Pyeongchang Winter Olympics, the government introduced the “Virtuous Cycle Management Plan for Illegal Foreign Residents” in 2019 which for a certain period exempted penalty for undocumented migrants and allowed them to re-enter Korea through acquiring a legitimate visa (C-3) 3 to 6 months after their voluntary departure<sup>11</sup> (MOJ, MOEL, 2019).

<sup>11</sup> This was an unprecedented measure that guaranteed rights to re-entry, an option previously offered only to overseas Koreans. Such measures function as low-level legalization measures.

Such a mixture of policy measures targeting undocumented migrants exhibits tensions between and within the state imperatives. First, not only harsh crackdown measures based on the state's unequivocal commitment to security but tacit toleration of large numbers of undocumented migrant workers (accumulation) have led to human rights problems for undocumented migrants, such as safety accidents, lower wages, longer working hours, and lack of rights relief, which constitute policy blind spots (institutional legitimacy). The illegality of undocumented migrants' status is used to justify extreme regulatory practices as administrative mechanisms and makes it easier for employers to engage in labor exploitation of undocumented migrants whose dependency on their employers is strengthened out of fear of deportation (De Genova 2002; recited from Han, 2017b).

Second, the policy reflects the government's vacillating concerns over the liberal dilemma; "labor vacuums" in workplaces (accumulation) and "social conflict from foreign settlement" and "encroaching of domestic jobs" (security) as often announced by the government (e.g., MOJ, 2004). For instance, when the government commenced the crackdown on undocumented migrants in November 2003 after partially legalizing undocumented migrants, it proceeded with strategic discrimination by excluding its prioritized manufacturing industry with concerns for labor shortages.

Third, while the government enforced various measures targeting undocumented migrants in the name of security, lack of predictability and coherence in the policy compromises security in the long-term. In the first place, condoning the presence of large numbers of undocumented migrants raises concerns for the state's capacity in enforcing effective immigration control (security). Furthermore, while there is generally a five-year ban on re-entry when undocumented migrant workers are caught, this ban is usually alleviated (to 1 or 6 months) or even exempted under voluntary return programs. Also, while sanctions are imposed on employers hiring undocumented workers, return assistance programs are usually accompanied by exemption of penalty and/or quick provision of substitute labor. Such policy inconsistencies produce uncertainty for migrant workers and employers and diminished trust in the government and its policy standards, negatively impacting long-term policy success.

### **Security-cum-accumulation vs. Fairness**

Social integration of migrants is a multifaceted concept that entails an interactive process of adaptive efforts of both the host country and the migrant as well as recognizing diversity of migrant groups (Shin, 2017). In policy terms, it involves processes through which migrants are incorporated into the social structure of the host country through political, sociocultural, labor and citizenship rights along with social security measures for migrants (Kim, 2013). During a period when methods to create a social integration policy for foreigners began to be actively explored, the introduction of the EPS was followed by attempts to create a comprehensive policy for migration, such as the Immigration Policy Committee created under the Prime Minister's Office in 2006. This led to the formation of key migration laws, such as the *Act on the Treatment of Foreigners in Korea* (2007) as an umbrella law for foreigner policies, and the *Multicultural Families Support Act* (2008) as the ground for socially integrating marriage migrants and their



children to the Korean society.

However, despite efforts to standardize the country's social integration policy, Korea's policy of multiculturalism as a new governance rhetoric has been put under fire as a half-baked approach that applies almost exclusively to marriage migrants and their families (90%), while marginalizing migrant workers (Chung and Kim, 2020). It has rather limited the social base for enhancing rights of low-skilled migrant workers, with preponderant concentration of budget<sup>12</sup> and policy for multicultural families, functioning to enervate the inner solidarity and outer expansion of migrant worker movements (Han, 2017b).

This is because EPS workers are still treated as "short-term" workers expected to leave when their fixed-term visas expire, while more stay in the country to contribute to its economy for almost (or even over) a decade with the government increasingly expanding target businesses and countries for its re-employment programs. The administration system for low-skilled migrant workers managed dually by the MOJ maintaining the principle of non-settlement (security) and the MOEL stressing the principle of labor market demand responsiveness (accumulation) has led to a lack of policy initiatives for the social integration of low-skilled migrant workers (Chung and Kim, 2020). Hence, such security-cum-accumulation lens has led to a general policy vacuum for socially integrating low-skilled migrant workers (Han, 2017b), with policies still disproportionately concentrated at the levels of selection of workers and their entry to Korea (Jung, 2019). Low-skilled migrant workers in Korea are essentially regarded as targets of relief rather than incorporation (Seol, 2012).

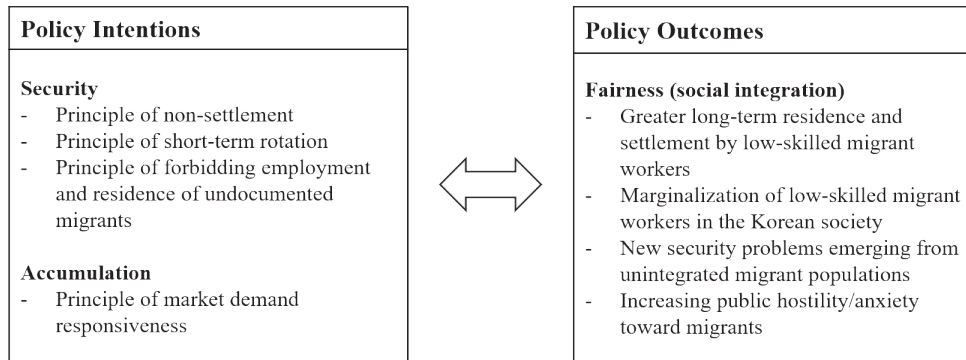
The prohibition on the accompanying of family members for E-9, E-10 workers (general EPS) has been one of the biggest hurdles to their integration to the Korean society. In fact, Korea still has not ratified the International Convention on the Protection of Rights of All Migrant Workers and Members of Their Families with fears that granting family reunion rights will lead to permanent settlement of migrant workers (Kim, 2008). Given that family reunification is considered a precursor to migrant settlement, East Asia's stringent control of family reunion and the relative lack of supranational institutions that demand this right is contrasted to the European experience where even the immigration late-comers have family reunification as a right taken for granted (Seol and Skrentny, 2009).

While the quota for the E-7-4 visa has incrementally increased, it has still been a rare chance given the aggregate number of low-skilled migrant workers in Korea until recently<sup>13</sup>. The increasing focus on migrant labor amid the country's demographic transformation has been geared toward the utilization of migrant labor as an economic solution to the lack of skilled workers and the population decline, with political, social, and cultural aspects of migration relatively left out (Han, 2018). This showcases a significant lag given their undeniable and amplifying socioeconomic presence in Korea.

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<sup>12</sup> For instance, while 54% of total migration policy budget was used for social integration of foreigners since 2009 to 2012, this budget was concentrated on marriage migrants, 75% in 2011 and 95% in 2012 (IPC, 2013).

<sup>13</sup> The quota was initially set at 600 in 2018, later enlarged to 1,000 in 2019, 1250 in 2021 and 2,000 in 2022.



**Figure 7:** Intensions and Outcomes of Policy for Low-skilled Migrant Workers

Indeed, there is a clear transformation of residence patterns of low-skilled migrant workers in Korea with increasingly more workers seeking ways to shift their residence status (Lee, 2018; Chung and Kim, 2020). For instance, according to a survey conducted by the National Statistics Office in 2015, 91.7% and 80.1% of H-2 and E-9 holders respectively showed desires to stay even after expiration of visas, which implies their intention to stay long-term in the country (recited from Chung et al., 2016). Simultaneously, their greater presence as an unintegrated population in the Korean society is perceived as an emerging problem as they have formed migrant settlements nearby key industrial complexes prone to ghettoization (Kim and Jung, 2018). Increasing presence of foreigners and foreigner-related crimes in Korea has led to escalating apathy, anxiety or hostility among citizens especially over the 2010s (Yoon, 2016). Korea's policy for low-skilled migrant workers seems to have gradually produced a substantial discrepancy between its intentions and outcomes (Figure 7).

Castle and Miller (2003) perceive migration as a fundamentally *social* process; while it starts off with predominantly economic motives, the social networks, ethnic enclaves, and migrant industries enmeshed in the country's local economy produce *de facto* permanent residents. Whether Korea's strict rotation system is immune from this process has been a topic of prolonged debate. However, there have been increasing claims for envisaging sustainable social integration measures for Korea's low-skilled migrant workers based on a re-examination of their changing patterns of residence so that side-effects of an unprepared policy may be prevented (Lee, 2018; Chung and Kim, 2020).

### Implications for State Legitimacy

With the state increasingly challenged by the diverging demands of capital, labor and the society, the built-in tensions within the security-cum-accumulation management of labor migration have aggravated since the inception of the EPS to produce greater incoherence in the policy for migrant workers. Table 4 summarizes how government's coordination of different functional imperatives has produced numerous challenges

which make it more difficult for the government to form a coherent message. Such exacerbating policy incoherence along with soaring numbers of undocumented migrants in the country reinforces Boswell's (2007) claim that strict temporary migration programs centering on security and accumulation cannot be both liberal and sustainable in the long-term. As a liberal state, the pragmatic rationale for putting restrictions to the various rights of migrant workers in Korea is increasingly challenged with calls for alignment with international standards exemplified by the conventions of the ILO. Simultaneously, the government is confronted with an intensifying dilemma where it must effectively deal with both exacerbating manpower shortages and expanding undocumented migrant workers.

**Table 4: Policy Incoherence and Challenges to State Legitimacy**

Functional Imperative	Principle	Challenges to State Legitimacy
Security	Principles of short-term rotation & non-settlement	<ul style="list-style-type: none"> <li>• <i>De facto</i> failure of the principle of short-term rotation</li> <li>• Greater long-term residence and settlement of migrant workers</li> </ul>
	Principle of complementation of domestic labor	<ul style="list-style-type: none"> <li>• Increasing skepticism on the effectiveness of mechanisms to protect domestic labor market</li> <li>• Increasing numbers of illegally employed migrant workers</li> <li>• Greater employer demand for migrant workers</li> </ul>
	Principle of forbidding employment and residence of undocumented migrant workers	<ul style="list-style-type: none"> <li>• Inconsistent measures against undocumented migrants leading to diminished trust in the government</li> <li>• Reduced validity of forceful measures</li> <li>• Soaring numbers of undocumented migrants</li> </ul>
Accumulation	Principle of labor market demand responsiveness	<ul style="list-style-type: none"> <li>• Issue of worsening dependency of migrant workers to their employers</li> <li>• Market-oriented policies leading to concerns over their impact on domestic jobs and working conditions, long-term consequences for national competitiveness and the labor market</li> </ul>
Institutional Legitimacy	Principle of rights protection	<ul style="list-style-type: none"> <li>• Questions to the legitimacy of the workplace change limit and related regulations; perennial problems such as overdue wages, labor exploitation, industrial accidents</li> <li>• Vulnerable human rights situations of undocumented migrant workers</li> </ul>
Fairness		<ul style="list-style-type: none"> <li>• Changing residence patterns: greater long-term residence and settlement by low-skilled migrant workers</li> <li>• New security problems emerging from unintegrated migrant populations</li> <li>• Increasing public hostility/anxiety toward migrants</li> </ul>

## CONCLUSION

While immigration policy has become a litmus test of the sovereignty of the modern state (Hollifield, 2004), the escalating tensions between the need to promote accumulation amid worsening labor shortages and security concerns stemming from the greater presence of (documented/undocumented) migrant workers have been coupled by increasing pressure to enhance their rights and address the issue of socially integrating migrant workers given more are becoming long-term, if not permanent residents in the country. Such diverging policy needs have not only produced confusion for relevant stakeholders but also interfered with the configuring of long-term policy directions, affecting the efficiency and sustainability of Korea's labor migration policy.

However, concentrating on short-term provision of foreign labor without a robust long-term policy framework may weaken another key principle of the EPS, the principle of non-interference with economic restructuring, by perpetuating employers' dependency on migrant labor (Lee and Ko, 2013). Indeed, the problem of undocumented migrants may be indicative of systemic policy limitations whereby undocumented migrants have become a permanent structural reality of Korea's dichotomized labor market. Amid the lack of a clear long-term consensus on a national migration policy paradigm (Lee, 2019), the current government's ambitious initiative to create an immigration control tower may be a timely chance to reorganize and rebuild key principles of the country's labor migration regime to provide a more systematic and cogent migration policy to guarantee its long-term feasibility.

Notably, the government has recently begun to make sweeping changes to Korea's foreign labor employment system. In December 2022, it announced plans to establish a special route for long-term employment of migrant workers, and in August 2023, it proposed to significantly enlarge the E-7-4 quota from 2,000 in 2022 to 35,000 this year. The government also reduced the minimum working period for E-7-4 visa application from 5 to 4 years, and almost doubled the E-9 quota from 69,000 to 120,000 for 2023, scheduled for another increase to 165,000 in 2024. Such drastic, unconventional measures (which can be observed across industrialized parts of Asia) indeed seem to signal a critical shift in the country's policy direction for low-skilled migrant workers, while suggesting greater possibilities of Korea becoming a country of immigration. However, the success of such abrupt policy measures introduced amid the country's double challenges of population decline and labor market polarization would hinge on whether they go hand in hand with not only efforts to address structural causes of labor shortages but also enhanced conditions for more sustainable migrant employment. Any long-term considerations of the EPS and the country's labor migration policy would involve deep appreciation of migrant workers not just as a labor force but also as unneglected members of society.

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