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Panel 1: Promotion of the rule of law

Ensuring implementation of international human rights norms*

* The views expressed in this paper do not necessarily reflect those of the OHCHR or UNDP.

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Policy Recommendation for the Protection of Human Rights of Migrant Workers – National Human Rights Commission of Korea

Presentation Abstract

Summary

1. One of the major missions of the National Human Rights Commission of Korea is presenting policy recommendations to the government for protection and promotion of human rights. A successful example of such recommendations was recently made in the case of human rights protection of migrant workers.
2. The controversial Industrial Trainee System had produced severe exploitation of migrant workers in Korea due to its inadequate supervision of wages and labor conditions and short sojourn period of one year, and eventually turned many of them into illegal residents. Migrant workers illegally residing in Korea were exposed to severe human rights violation. For an example, female workers holding Arts and Entertainment visas were exposed to prostitution and sexual violence in many incidences, which had surfaced as a critical issue. Also there were too many authorized or unauthorized recruiting agencies operated in many sending countries. Many of them took advantage of desperate job seekers while the government supervision was not efficient yet, and made the recruiting and admission process corrupted.
3. An initial recommendation by the Commission was presented in August 2002 for the protection of human rights of migrant workers in Korea. However, the Government challenged that recommendation, arguing that it was based on insufficient data and unsubstantiated claims.
4. With that in mind, the second recommendation was prepared, based on the findings of a nation-wide survey and research on the human rights conditions of migrant workers. Not like previous researches focused on some specific labor conditions of migrant workers, the research conducted by the Commission covered the entire spectrum of human rights defined in international human rights laws, offering detailed data on the human rights conditions of migrant workers.
5. The second recommendation proposed introduction of Employment Permit System. It also included integrating labor recruiting system overseas and making the government of sending country the sole channel of recruitment, granting foreigners the legal status and rights recognized by the Labor Standard Act of Korea, applying health insurance and workers compensation insurance, and guaranteeing the same level of wages as Korean workers.
6. It was also recommended that migrant workers be granted the same legal rights as guaranteed to Korean nationals when arrested or investigated by the law enforcement, even if they reside in Korea illegally. Questioning or investigating an illegal migrant worker, a law enforcement official should disclose his identity and the purpose of investigation. If arrested, he should be informed where he should be taken into and given the opportunity to call his acquaintances.

7. For the female workers holding Arts and Entertainment visas, a complete overhaul of this visa system was recommended that the issuance of these visas be stringently controlled and severe punitive measures be enforced when the Arts and Entertainment visas are used for purposes other than originally intended.

8. Also, in order to provide migrant workers with basic information about their legal rights, documents for admission and exit services and basic human rights guidelines are to be translated into over 10 languages for distribution.

Results

9. As the result of the recommendation, the “Act on the Foreign Workers Employment” was passed on August 2003. Details of this act, which will enter into force as of August, 2004, include implementation of the Employment Permit System in parallel with the Industrial Trainee System, sojourn limit of five years and working permit of three years maximum, obligatory subscription to employment insurance and workers compensation insurance, additional 2 year working permit for foreign workers staying in Korea for less than 4 years by March 31, 2003, and establishing the Foreign Workforce Policy Committee under the Office of Prime Minister. Through this Act, over 200,000 of the estimated 320,000 illegal migrant workers will be able to work legally in Korea and a considerable amount of human rights violation on them will be resolved.

Lessons Learned

10. The fact-finding, nation-wide research enabled compilation of objective evidences which helped establish concrete and persuasive policy. For the efficacy and feasibility of human right policies, it is necessary to collect hard data and devise policies based on them.

11. Based on international human right conventions and guidelines, the research focused on human right issues of migrant workers, rather than usual labor factor analysis, which made the research do such a useful and important role in implementing the policy recommendation.

12. When a recommendation was not accepted by the government, it is desirable not to call it off but to keep up the efforts and make reinforced recommendations as the situation develops.
