



Online Series

2016. 2. 19. | CO 16-06

Measures to Improve Human Rights Conditions of North Korean Workers Abroad

Rim Ye Joon

(Research Fellow, Center for North Korean Human Rights Studies)

There are growing concerns over the human rights situation of North Korean workers abroad in the international community. As the issues of harsh working conditions, exploitation of wages, and workers' lives being controlled by the authorities have been consistently raised, UN Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea (hereinafter, Special Rapporteur) expressed that he will scrutinize this issue in future reports, noting that the workers may be subject to forced labor. Based on KINU's research, the following paper attempts to illustrate the conditions of North Korean migrant workers and their human rights situation, examines whether their work counts as forced labor from the viewpoint of international law, and seeks measures to improve their human rights conditions through international cooperation.

Overview of Workers Abroad and Their Human Rights Conditions

There are no official reports or statistics that contain accurate information on the number of North Korean workers abroad and their destination countries. The Special Rapporteur's Report transmitted by the UN Secretary-General to the General Assembly in September 2015 cited various research results indicating that more than fifty thousand North Korean workers have been sent to Russia, China, Mongolia, Qatar, Kuwait, etc. The number of workers abroad seems to have increased in the recent years. After requesting assignment to state organs, state enterprises, or social groups that send workers overseas, they are selected by the authorities once they pass through some procedures such as physical examination and interviews. It is surveyed that their labor contract mainly lasts from three to five years, and some extend the contract during the assignment period in the host country.

The majority of North Korean migrant workers are known to work in construction sites, light industry factories, logging camps, etc. with the wage less than the local workers. Generally, they are assigned to work for North Korean recruitment agencies, which sign labor service supply contract with local companies. In the case of construction industry in which the service is generally provided in subcontract-basis, the laborers toil excessive over time under the control of North Korean agencies, not the local company. The lives of the workers are kept under the surveillance of the minders whom the North Korean authorities (mainly the Ministry of State Security) dispatch. They live a group life in dormitories near the place of work, they have to move in groups of two or more with approval, and laborers may face punishment or repatriation in case of aberration. Through weekly evaluation meetings, the workers are taught that they are working for the party funds and not for individual gains. In fact, the North Korean authorities commandeer a considerable sum of salary in the name of party fund, loyalty fund or planned payment as well as company management expenses, accommodation costs, insurance fee, etc., leaving the individual workers with a fraction of the original

amount.

As such, most of the North Korean workers abroad suffer appalling working conditions, deprived of basic labor rights. Their freedom of movement is strictly restricted and they do not receive adequate remuneration for their work because of the exorbitant appropriation. Despite all this, internally, North Koreans aspire to work abroad. This is because a job overseas could earn more than the "stipend for living expenses" paid by the domestic enterprise due to the collapse of the public distribution system and provides other opportunities to make additional income by carrying out "favors" requested individually outside the assigned workplace. For the individuals to be hired as migrant workers, they should have a good background (*songbun*, North Korea's social classification system), and they are chiefly chosen among the party members. While the individuals are required to have family members (children) in North Korea and not to have relatives abroad in order to prevent defection, bribery is more important in the recruitment procedures. As these people pour in substantial efforts and money (as bribes) in this process in order to work abroad, this calls for a more thorough investigation of whether the migrant workers are actually subject to "forced labor."

Risk of Being Forced Laborers

International human rights law prohibits all forms of forced labor (Article 4 of the Universal Declaration of Human Rights, etc.). Article 8 clause 3 (a) of the International Covenant on Civil and Political Rights (ICCPR) which North Korea ratified, prescribes, no one shall be required to perform forced or compulsory labour. Forced or compulsory labor is defined as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered voluntarily" (Article 2 clause 1 and 2 of the ILO Convention No. 29, Forced Labour Convention) and "penalty" here not only is limited to physical punishment but also includes the loss of rights or privileges. The identification of

forced labor depends not on the form or nature of the labor but on the relationship between the employer and the employee. It could also be a forced labor case when it is against the laborer's freedom of choice even if the State either controls laborers within the scope of its economic design or regulates the labor market.

Given that volition serves as the primary criterion in determining whether North Korean workers abroad are trapped in a forced labor situation, it is difficult to view that all workers forcibly and involuntarily labor under the menace of penalty. However, even though the labor is voluntary, International Labour Organization (ILO) considers that it could transpire to forced labor in the ensuing procedures due to several elements and addresses relevant indicators such as debt bondage, withholding of wages, retention of passport and abuse of vulnerability. As the paper mentioned earlier, North Korean overseas workers live in groups, denied contact with the outside world and the state-appointed supervisor seizes the workers' identity documents (passports and the likes). Almost all workers begin their lives abroad with debt incurred by costs such as transport costs and visa fees, and they work unpaid for several months to reimburse these costs. To sum up, practices such as restriction of movement enforced by supervisors, confiscation of identity documents, and the debt automatically imposed upon arrival may force workers to continue to work against their will even if they have volunteered to work abroad in the first place.

Root Causes and the Necessity for a Constructive Approach

The issue of North Korean overseas workers' human rights is different from the discussions that the international community had on ensuring accountability of the North Korean leadership for the systematic, widespread, and grave violation of human rights in North Korea. Fundamentally, the human rights of these workers relate to the social nature of labor which connotes the "duty to work" according

to the human resource allocation by the authorities under the North Korea's socialist planned economy, and the issue in overall labor system in which the authorities have direct control and employment rights over the labor force under such structure. On specific labor environment of workers, the issue of each host country's protection of migrant worker's labor rights and human rights could be addressed. These are the issue associated with the host countries' institutions on protecting migrant workers and the issue of overall labor structure under the North Korean regime, thus, demanding structural improvement and positive protection instead of mere elimination of the malpractices.

ILO noted that the case where the state mobilizes and uses labor for purposes of economic development also falls under the form of forced labor that needs to be abolished (ILO Convention No. 105, Abolition of Forced Labour Convention). Pursuant to the international labor standards, "duty to work" under the North Korea's socialist planned economy could be seen as the institutionalization of forced labor exacted by the State. Moreover, the fact that volition in the process of overseas labor might be structurally coerced by the downfall of the public distribution system may lead to the interpretation that the issue of North Korean migrant workers' human rights originates from the issue of North Korean economic system overall. Whereas the overwhelming amount of appropriation by the North Korean authorities in the name of planned economy might not be illegal in North Korea's planned economy, this clearly infringes individual's rights to receive fair and adequate share of wage, pursuant to the international human rights law.

Meanwhile, the infringement of human rights of North Korean overseas workers raises the issue of extraterritorial application of international human rights norms as this occurred within the jurisdiction of a third country. As for the human rights violation related to the civil and political rights, the international community may request North Korea to abide by the ICCPR that North Korea acceded to depending on interpretation since these are de facto under the effective control of the North

Korean authorities though the violations have been committed outside North Korean territory. Nevertheless, with regard to economic, social, and cultural rights, since the International Covenant on Economic, Social, and Cultural Rights (ICESCR) is difficult to be applied extraterritorially, the human rights of North Korean workers could lie outside the legal protection. In relation to the labor rights, because the State as well as the enterprise that employs them has the responsibility to respect, protect, and fulfill these rights, the violation by non-state actors and the omission of the States should be examined. Likewise, response to the North Korean overseas workers' human rights issue could be designed in line with each specific case, and it is essential to multidimensionally review the agents that are responsible to ensure the human rights of these workers.

Measures of Cooperation with the International Community

In order to prevent the possibility of North Korean overseas workers being subjected to forced labor, active cooperation is needed from the host countries. In "Declaration on Fundamental Principles and Rights at Work" (1998), ILO designated eight conventions as "fundamental"—these deal with "the freedom of association and the effective recognition of the right of collective labor; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; the elimination of discrimination in respect of employment and occupation"—and "declares that all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote, and to realize, in good faith in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions." Furthermore, through the resolution in 2004, ILO member States confirmed that "all migrant workers also benefit from the protection offered by the ILO Declaration (1998)··· regardless of the status." Whereas North Korea is not a member of the ILO, most countries hosting North Korean workers are ILO member

States, and in particular, Russia has ratified both Conventions embodying fundamental principles on forced labor (ILO Convention No. 29 and 105). Where there are circumstantial evidences or feasibility that the situation of North Korean workers are being amount to forced labour, host States are obliged to take active measures in order to prevent such conducts.

The ROK government should urge North Korea to join the ILO in collaboration with the international community to fundamentally solve the issue of North Korean workers' human rights, and assert that North Korea should overhaul its labor structure in compliance with international labor standards. The UN General Assembly have also made a step forward, from the wordings of previous resolutions recommending North Korea to engage in cooperation with the ILO to directly urging it to accede to the ILO. Both the host countries and the business enterprise have responsibility to protect the labor rights of North Korean workers. The companies hiring North Korean workers have the obligation to respect, protect, and fulfill their labor rights, and the countries concerned should ensure that the companies that employ North Korean workforce to comply with corporate responsibility. To this end, one approach is to encourage more States to ratify the "International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families." Accordingly, it seems orderly for many countries to amend their domestic labor laws, to expand the application of basic rights of workers to migrant workers, and to establish an effective mechanism for protecting human rights.

©KINU 2016

※ The views expressed in this paper are entirely those of the author and are not to be construed as representing those of the Korea Institute for National Unification (KINU).