

Regulating Labor and Protecting Lives: Legal Safeguards and Vulnerabilities of Vietnamese Migrant Workers in South Korea

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Abstract

Vietnamese migrant workers constitute the second-largest group of foreign nationals employed in South Korea, yet they remain disproportionately exposed to labour rights violations, structural exploitation, and, at the extreme end, labour trafficking. This article examines the legal architecture governing Vietnamese migrant workers in South Korea, focusing on the Employment Permit System (EPS) as the primary regulatory mechanism, and analyses the structural vulnerabilities embedded within it. Drawing on Shamir's (2017) "paradox of legality" framework, the article argues that temporary worker programmes simultaneously confer legal status and constrain workers' exit capacity, generating a vulnerability continuum from ordinary rights violations to conditions satisfying international definitions of forced labour. The article reviews the relevant statutory frameworks — the Act on Foreign Workers' Employment, the Labour Standards Act, and the Act on the Prevention of Human Trafficking — and documents how enforcement gaps, employer-tied visa conditions, workplace transfer restrictions, pre-departure debt bondage, and sector-specific exclusions combine to erode formal protections in practice. It further identifies critical structural failures in South Korea's anti-trafficking legislation, particularly its historical orientation towards sexual exploitation, which renders male victims of labour trafficking in agriculture, construction, and fisheries largely invisible to the identification and support system. Civil society organisations provide compensatory functions but face chronic resource and geographic constraints. The article proposes evidence-based policy reforms: decoupling residence status from employer identity; extending robust labour inspection to agriculture and fisheries; adopting a victim-centred identification protocol aligned with the Palermo Protocol; reducing pre-departure costs through binding recruitment regulation; and establishing a dedicated labour trafficking prosecution unit. The analysis contributes to comparative migration law scholarship by demonstrating that formal legal parity does not translate into substantive worker protection and that reform must address structural incentives rather than expanding nominal rights.

Introduction

The Republic of Korea hosts approximately two million registered foreign workers, with Vietnamese nationals consistently ranking among the top three source-country nationalities (Korea Immigration Service, 2022). As of 2022, approximately 228,000 Vietnamese nationals held long-term residency or employment visas in South Korea, employed primarily in manufacturing, construction, agriculture, and domestic services (Korea Ministry of Employment and Labour, 2023). This demographic reality makes the legal and institutional treatment of Vietnamese migrant workers a matter of significant public policy importance — not only for the bilateral Korea–Vietnam relationship, but for the broader normative project of labour rights governance in a highly globalised migration system.

South Korea's approach to labour migration is anchored in the Employment Permit System (EPS), introduced in 2004 under the Act on Foreign Workers' Employment. The EPS replaced the earlier Industrial Trainee System, which had been widely criticised for facilitating systematic exploitation by classifying workers as "trainees" rather than employees, thereby denying them the full protections of the

Labour Standards Act (Choi, 2001; Kim JK, 2005; Gray, 2006; Park S-H, 2017). In design, the EPS represents a genuine regulatory improvement: workers are formally designated as employees, entitled to minimum wage, social insurance contributions, and access to dispute resolution mechanisms. The system operates through government-to-government bilateral agreements — a form of 'state brokerage' in which receiving-state bureaucracies assume the intermediary functions previously performed by private actors (Park W, 2025) — designed to eliminate private employer-driven recruitment as the formal channel for admission (Cho et al., 2018; Goh et al., 2017). Yet the system's architecture — premised on employer-tied visas, limited mobility rights, fixed-term contracts without settlement pathways, and mandatory return — generates structural vulnerabilities that formal rights protections have consistently failed to remedy.

The theoretical framework that best illuminates this tension is Shamir's (2017) concept of the "paradox of legality." Shamir argues that temporary migrant worker programmes embody a structural contradiction: they render workers legally present and formally protected while simultaneously constraining their exit options from exploitative employment relationships in ways that expose them to conditions amounting, at the extreme, to forced labour. The paradox is not incidental to the design of such programmes but intrinsic to their purpose — the provision of controllable, flexible, and non-permanent labour to receiving-country industries. The present analysis applies this framework to the South Korean EPS and, more specifically, to the particular vulnerability profile of Vietnamese workers within it.

The article also draws on Castles's (2004) foundational analysis of why guestworker programmes systematically fail to achieve their stated objectives — the provision of temporary labour without permanent settlement. Castles demonstrates, through a comparative historical analysis of European and Australian programmes, that the social and economic forces unleashed by migration are not amenable to administrative timetabling: migrants who invest in social relationships, skills, and community belonging do not exit on schedule, and the political and institutional responses to this reality — enforcement, detention, irregular status — consistently generate worse outcomes than managed settlement would have produced. Applied to the Korean–Vietnamese context, this analytical lens reveals the predictability of the overstay phenomenon and the inadequacy of enforcement-based responses to it.

Standing's (2011) concept of the "precariat" — a social stratum characterised not by poverty per se but by chronic insecurity of tenure, residence status, and legal rights — provides a further complementary framework. Vietnamese E-9 workers in South Korea are quintessential members of a transnational precariat: they hold temporary legal status, lack collective bargaining infrastructure, face constant threat of deportation, and are embedded in employment relationships that structurally disadvantage complaint-making. Their precarity is not incidental to their individual characteristics but systematically produced by the legal and institutional architecture within which they operate.

This article also engages substantively with the anti-trafficking literature and its relationship to labour migration governance. South Korea is a State Party to the UN Protocol to Prevent, Suppress and Punish

Trafficking in Persons (UN, 2000), and its domestic legislation has been progressively reformed. Yet, as the ILO's (2021) global estimates of modern slavery reveal, forced labour in private-sector supply chains – not commercial sex work – constitutes the overwhelming numerical majority of contemporary trafficking globally. In South Korea, the legal definition of trafficking has historically emphasised sexual exploitation, with the institutional apparatus for victim identification and support structured around female victims in the commercial sex industry.

The article proceeds in six sections: Section I surveys the demographic and historical context; Section II examines the statutory framework; Section III analyses structural vulnerabilities (Fig. 1); Section IV addresses labour trafficking and the limits of anti-trafficking law (Fig. 2); Section V reviews civil society and oversight gaps; and Section VI advances a policy reform agenda.

I. Vietnamese labour migration to South Korea: historical and demographic context

Vietnam and South Korea share an intricate bilateral relationship shaped by Cold War military history, postwar economic divergence, and a rapid convergence since the 1990s driven by trade, foreign direct investment, and labour mobility. The two countries normalised diplomatic relations in 1992, and South Korean investment in Vietnam has grown substantially across manufacturing, electronics, and retail, making South Korea one of Vietnam's most significant economic partners (IOM, 2022; Nguyen et al., 2023). This economic interdependence provides the context for understanding labour migration as one component of a broader bilateral relationship rather than a purely immigration-management phenomenon.

South Korea's rapid industrialisation from the 1960s onward created persistent demand for unskilled and semi-skilled labour that the domestic workforce, increasingly urban, credentialled, and oriented towards white-collar employment, was unwilling to supply at prevailing wages (Lim, 1999). The structural labour shortfall in small and medium-sized manufacturing enterprises, in seasonal agriculture, and in construction became a chronic feature of the Korean economy from the late 1980s, coinciding with the democratisation process and the rapid rise of Korean wages. The government's initial response – the Industrial Trainee System introduced in 1991 – used the fiction of vocational training to fill labour shortfalls while denying workers the legal protections of full employee status, generating pervasive exploitation and irregular migration (Kim JK, 2005).

Vietnam, for its part, has pursued labour export as an explicit instrument of economic development and foreign exchange earnings since the Đổi Mới reform era of the late 1980s (Trần and Crinis, 2018). The Vietnamese government institutionalised emigration through the Vietnam Association of Manpower Supply (VAMAS) and subsequently through bilateral memoranda of understanding with receiving countries, establishing a state-managed framework for organising and monetising outward migration (Korea Ministry of Employment and Labour, 2023). The civil society landscape surrounding this system – including the role of NGOs and migrant support organisations in Korean receiving communities – has

been documented by Gray (2006), who traces the development of advocacy networks responding to the structural position of migrant labour. Labour remittances constitute a significant share of Vietnamese GDP, and the government's political investment in maintaining labour export flows has created structural incentives to downplay sending-country-side exploitation risks in order to preserve the migration corridor.

The scale of Korean-bound Vietnamese migration has grown substantially since the mid-2000s. Between 2005 and 2019, the number of Vietnamese E-9 visa holders in South Korea increased from approximately 22,000 to over 60,000, before the COVID-19 pandemic disrupted flows (Korea Immigration Service, 2022). Vietnamese nationals have also participated in the H-2 working visit programme, available to overseas Koreans (Koryo-in), though a comparatively small proportion of Vietnamese qualify under the ethnic eligibility criteria applicable to that category. The bulk of Korean-bound Vietnamese migrants therefore enter under the E-9 category, which imposes the most stringent employer-tied conditions of all available visa pathways – a structural feature characteristic of state-managed guestwork programmes across East Asia (Surak, 2018).

Sectorally, Vietnamese workers are concentrated in occupations that Korean labour economists characterise as "3-D" (dirty, dangerous, difficult): small and medium-sized manufacturing enterprises, construction, agriculture, animal husbandry, and increasingly, care and domestic work in informal arrangements (Kim MK, 2023). These sectors share characteristics directly relevant to vulnerability analysis: they are physically hazardous, geographically dispersed (particularly agriculture and fisheries), weakly unionised, and subject to intermittent or structurally incomplete labour inspection. Agriculture and fisheries are, moreover, partially exempted from key provisions of the Labour Standards Act, creating statutory gaps that employers have historically utilised to their advantage (Kaur, 2010; Seol, 2004).

An important demographic subgroup is women engaged in manufacturing, domestic and care work, and entertainment. Gender-disaggregated data remain scarce within official Korean immigration statistics, but qualitative evidence consistently indicates that female Vietnamese workers face compounded vulnerabilities: gendered wage gaps, sexual harassment within workplaces, and limited access to gender-appropriate legal aid services (Peng, 2018). Marriage migration – Vietnamese women entering South Korea as spouses of Korean nationals through the international marriage brokerage industry – constitutes a related but analytically distinct population, though the two streams share overlapping risk profiles when marriages dissolve and women enter informal labour markets without independent visa status. The governance frameworks structuring both streams in East and Southeast Asia – including their capacity gaps and enforcement limitations – have been systematically examined by Chung et al. (2024).

Vietnam's position as a labour-sending state also means that structural pressures at the origin – high pre-departure costs, broker intermediation, family debt taken on to finance migration – shape the risk profile of workers before they arrive in Korea. Unlike some EPS-sending countries, Vietnam has been placed under temporary suspension from the EPS on multiple occasions precisely because of the

persistently high overstay rate of Vietnamese workers, a pattern that itself reflects the inadequacy of legal exit options and the conditions driving irregular stay (Korea Immigration Service, 2022). As of 2022, Vietnamese nationals constituted the single largest nationality group among irregular migrants in South Korea, accounting for an estimated forty per cent of the total undocumented population — a figure that demands structural explanation rather than merely administrative response (Korea Immigration Service, 2022; Massey et al., 1993; Torneo, 2016).

II. The legal architecture governing migrant workers in South Korea

South Korea's legal framework for migrant workers is multi-layered, combining constitutional guarantees, general labour legislation, immigration law, social insurance law, and sector-specific regulation. Understanding this architecture — and, crucially, the gaps within and between its components — is essential to any rigorous evaluation of the relationship between formal legal protection and substantive worker vulnerability.

II.a. Constitutional and general labour law protections

The Constitution of the Republic of Korea (1987) guarantees the right to work and the right to organise in trade unions to "all citizens." Constitutional jurisprudence has extended certain fundamental rights to foreign nationals residing in Korea, but the scope of these extensions remains contested in both doctrine and practice (Chan J, 2014). The Constitutional Court has held that foreign workers possess the right to form and join trade unions, a ruling that established an important precedent, but the practical exercise of trade union rights by migrant workers remains constrained by fear of visa cancellation and employer retaliation.

The Labour Standards Act (1953, as amended) establishes minimum wage obligations, maximum working-hours ceilings, paid leave entitlements, prohibition of forced labour, and basic workplace safety standards. The Act formally applies to all workers regardless of nationality, provided the employment relationship is legally established in Korea. In principle, a Vietnamese E-9 worker is therefore entitled to the same minimum wage protection as a Korean national employee — an apparent formal equality that is central to the EPS's legitimating claim as an improvement over the trainee system it replaced.

However, the Labour Standards Act contains a critical structural carve-out: enterprises employing fewer than five workers are substantially exempt from several of its key provisions, including the maximum working-hours ceiling, dismissal protection rules, and certain provisions of the Occupational Safety and Health Act. Given that a substantial proportion of Vietnamese E-9 workers are placed in small agricultural operations, livestock farms, fisheries, and micro-manufacturing units that fall below the five-worker threshold, this exemption structurally excludes a significant fraction of the target population from basic statutory protections. The exemption is not ethnicity-specific in its formal design, but its distributional effect falls disproportionately on migrant workers precisely because the employers of migrant workers are systematically concentrated in small-scale enterprises (Seol, 2004; Kim and Koo,

2016). This formal-substantive gap illustrates a well-documented pattern in comparative labour law: that ostensibly neutral legal rules can produce systematically unequal outcomes when applied to structurally unequal social groups.

II.b. The Act on Foreign Workers' Employment (EPS Act)

The Employment Permit System, established by the Act on Foreign Workers' Employment (Law No. 6967, 2003, effective 2004), is the central statutory mechanism for managing non-skilled labour immigration. Under the EPS, South Korea issues E-9 visas through government-to-government agreements with sixteen designated sending countries, including Vietnam. Workers are matched to employers through HRD Korea, which operates in formal coordination with VAMAS on the Vietnamese side. The government-to-government matching process is designed to eliminate domestic private-broker intermediation — a principal source of exploitation under the industrial trainee system — though it does not, as discussed further below, eliminate pre-departure fee extraction in Vietnam itself.

The EPS Act specifies the rights and obligations of both workers and employers in considerable detail. Employers are required to conclude formal written employment contracts, to register employment relationships with HRD Korea, to pay wages no lower than the statutory minimum, and to enrol workers in the mandatory social insurance schemes. Workers are required to remain employed with their registered employer, to comply with the terms of the employment contract, and to depart Korea upon the expiry of the maximum permitted stay. The asymmetry of these obligations — extensive constraints on workers, more modest monitoring of employer compliance — reflects the programme's administrative priority of labour supply management over worker protection.

II.c. Employer-tied visa conditions and workplace transfer rules

The employer-tied nature of the E-9 visa is a definitional feature of the EPS and its most consequential characteristic from a rights perspective. An E-9 worker is legally authorised to work only for the employer identified in the employment permit. Unauthorised employment — including work for a second employer during off-hours — constitutes a visa violation that can trigger permit cancellation and deportation. This condition creates an absolute legal dependency of the worker's residence status on the continuation of the named employment relationship.

Workers may transfer employers, but only under tightly specified circumstances. The first two transfers require the consent of the original employer; only from the third transfer onward can a worker apply for relocation without consent — and a total of only three transfers are ordinarily permitted over the entire stay. The conditions permitting non-consensual transfer are limited: non-payment of wages, a workplace accident, employer closure, or a finding of "unreasonable" employer behaviour. Each condition requires formal documentation demanding linguistic competence, procedural knowledge, and willingness to confront a more powerful party (Roh, 2014). The design of the transfer mechanism thus systematically

disadvantages the workers who most need its protections: those in the most exploitative situations are precisely those with the least capacity to navigate formal documentation processes.

II.d. Social insurance, departure guarantees, and wage protections

Vietnamese EPS workers are formally enrolled in South Korea's four major social insurance programmes: National Health Insurance, National Pension, Employment Insurance, and Industrial Accident Compensation Insurance. The EPS Act additionally mandates Departure Guarantee Insurance — a terminal payment upon departure — and Return Cost Insurance, which funds the repatriation travel of workers whose employers default. These instruments represent a significant formal social protection infrastructure, distinguishing the EPS from the entirely unprotected industrial trainee system (Kim JK, 2005).

In practice, however, programme enrolment and contribution compliance are uneven. Agricultural and fishery employers are not always required to enrol seasonal workers in Employment Insurance. Pension contributions in small enterprises — precisely those most likely to employ E-9 workers — are subject to the least intensive monitoring. The practical inaccessibility of the Departure Guarantee Insurance for workers who depart under irregular circumstances — having overstayed rather than received a formal departure clearance — means that the workers in the most precarious situations are systematically excluded from the insurance protection notionally available to them (Roh, 2014).

II.e. The anti-trafficking legislative framework

South Korea's anti-trafficking statutory architecture comprises two principal instruments. The Act on the Punishment of Arrangement of Commercial Sex Acts (2004) addresses sex trafficking within the context of the commercial sex industry; its focus, drafting history, and implementing infrastructure are oriented almost exclusively towards female victims of sexual exploitation (Kotiswaran, 2012). The Act on the Prevention of and Protection of Victims of Human Trafficking (2012) provides a formally broader framework: it criminalises trafficking for labour exploitation as well as sexual purposes, establishes a victim support system comprising government-certified shelters and legal aid services, and adopts a definitional structure broadly consistent with the Palermo Protocol's three-element model — act, means, and purpose.

However, the institutional infrastructure that implements the 2012 Act has not evolved at pace with its formal scope. The Ministry of Gender Equality and Family, which oversees victim identification and support, has historically prioritised female victims of commercial sexual exploitation. Labour trafficking cases — disproportionately involving male migrants in industrial settings — fall more naturally within the mandate of the Ministry of Employment and Labour, but there is no systematic coordination protocol between the two ministries for mixed-mode cases or for cases identified through labour inspections rather than police operations. This institutional silo generates a protection gap for a large population of

potential labour trafficking victims, including Vietnamese workers in the fishing, construction, and agricultural sectors (Song, 2015).

II.f. Judicial and quasi-judicial remedies

Vietnamese workers have formal access to the Labour Relations Commission for wage dispute resolution and collective bargaining recognition cases, the national court system for civil claims (including unpaid wage suits and workplace injury damages), and the National Human Rights Commission for discrimination and abuse complaints. Legal aid is available through the Korean Legal Aid Corporation. These mechanisms represent a genuine institutional infrastructure for rights vindication — considerably more robust than that available to migrant workers in many comparator migration systems in the region.

In practice, however, uptake is severely constrained. Language barriers, unfamiliarity with legal procedure, dependence on the employer for accommodation as well as employment, fear of visa cancellation triggered by administrative contact with authorities, and economic pressure to resolve disputes quickly and informally rather than engaging multi-year litigation all substantially reduce the effective accessibility of formal remedies. The chilling effect of immigration enforcement on labour rights complaints — documented extensively in civil society advocacy (Kim D, 2011) — represents a structural design flaw that fundamentally undermines the protection system's stated purpose.

III. Structural vulnerabilities in the EPS

Despite the relatively comprehensive formal legal framework described in Section II, Vietnamese migrant workers experience pervasive and systematic structural vulnerabilities. This section maps those vulnerabilities across the phases of the EPS process cycle, as illustrated in Fig. 1.

III.a. Pre-departure debt bondage and broker intermediation

The EPS is structurally designed as a state-to-state system intended to eliminate broker intermediation, yet informal broker networks remain deeply embedded in Vietnamese migrant labour flows (Chan SKL, 2023; Nguyen et al., 2023). Prospective migrants frequently pay unofficial fees to brokers who facilitate access to the official application process — providing examination coaching, processing documentation, facilitating medical certifications, or simply exploiting information asymmetries about the application timeline. Total pre-departure costs — including official processing fees charged by VAMAS, travel expenses to examination and medical centres, language training costs, and informal broker payments — have been documented at between USD 1,000 and USD 3,000 per worker (Alowais and Suliman, 2025; ElDidi et al., 2023). For a rural Vietnamese household, this sum may represent between six months and one year of total household income, requiring borrowing at interest rates that further compound the debt burden.

This pre-departure debt constitutes the foundational vulnerability in the EPS cycle. A worker who has borrowed heavily to finance migration cannot afford to leave an abusive employer, because debt repayment would become impossible – an economic coercive mechanism operating without physical restraint or explicit threat. As Shamir (2017) argues, this is precisely the mechanism of the "paradox of legality": the legal pathway to migration simultaneously enables and intensifies exploitation by eliminating workers' effective exit options through economic rather than physical means. ElDidi et al. (2023) document this pattern across multiple Southeast Asian migration corridors, finding that elevated pre-departure financial burdens are consistently associated with reduced willingness to exit exploitative employer placements.

III.b. Employer-tied visa and transfer restriction vulnerabilities

The employer-tied nature of the E-9 visa is, as argued in Section II, the primary structural mechanism of vulnerability at the in-country employment phase. When an employer engages in wage theft, failure to pay overtime, imposition of unsafe working conditions, provision of substandard accommodation, or psychological harassment, the worker faces a structurally constrained choice-set: endure the conditions, attempt to initiate a formal transfer process that requires employer consent and administrative documentation, or abandon the workplace and enter irregular status with the consequent loss of all formal legal protections.

The employer consent requirement for the first two transfers effectively gives abusive employers a legal veto over workers' attempts to exit exploitative situations. Even where consent is not formally required – in cases of documented wage non-payment or safety violations – workers must first establish the documentary record through formal channels, which requires confronting the employer openly and accepting the heightened retaliation risk that accompanies a formal complaint. Roh (2014) characterises this dynamic as "bounded agency": formally available choices that are practically inaccessible to structurally disempowered actors. The result is that the workers in the most exploitative situations are those least able to access the transfer rights that the legal system formally provides.

III.c. Sectoral exclusions and enforcement gaps

The partial statutory exemption of agricultural enterprises employing fewer than five workers from key Labour Standards Act provisions, and the practical difficulties of inspecting geographically isolated workplaces, create substantial sectoral enforcement gaps. Labour inspectors from the Ministry of Employment and Labour conduct periodic workplace inspections, but the frequency and depth of inspections in the agricultural sector fall well below the ILO's (2021) recommended standards. Vietnamese workers in agriculture and livestock farming typically reside on the employer's premises, are geographically distant from urban labour offices and civil society support organisations, lack the linguistic and social resources to initiate complaints, and are entirely dependent on the employer for

housing as well as income — a multi-dimensional dependency that structurally precludes exit even where formal transfer rights formally exist.

The fishing sector presents conditions of particularly acute risk. Vietnamese workers employed on deep-sea fishing vessels operate under conditions of near-total geographic and social isolation for months at a time. The application of Korean labour law to vessels operating in international waters involves complex jurisdictional questions that reduce the practical reach of enforcement. Documented cases involving Vietnamese fishing workers have included non-payment of wages, extreme working hours without adequate rest periods, physical abuse, passport confiscation, and threats against workers' families (Liu et al., 2025). The National Human Rights Commission's investigations into fishing vessel labour conditions have consistently documented violations consistent with the forced labour criteria established by the ILO — indicators including debt bondage, restriction of movement, and intimidation — yet the rate of formal prosecutions remains negligible relative to the documented prevalence of violations.

III.d. Overstay, irregular status, and compounded vulnerability

The mandatory return requirement at the end of the maximum EPS stay period — combined with the absence of any pathway to long-term residency or naturalisation, and the structural economic incentives created by pre-departure debt — generates a predictable pattern of overstay. Vietnamese workers who overstay their visas lose all formal legal protections of EPS status. They cannot file wage complaints without risk of detection and deportation, cannot access government-funded support services, cannot contact labour inspectors, and cannot seek medical care through the national health insurance system. They become entirely dependent on informal networks, employer discretion, and co-ethnic community support.

This pathway from legal EPS worker to irregular migrant is a predictable structural outcome of the programme's design, not a marginal aberration produced by individual deviance. The pattern mirrors Castles's (2004) broader argument that temporary guestworker programmes systematically reproduce the conditions for irregular migration by failing to provide legal status that corresponds to the social realities of worker integration and the economic realities of debt repayment timelines. The Vietnamese government's suspension from the EPS, imposed periodically as a penalty for high overstay rates, further illustrates the perversity of penalising workers — and the sending-country government — for structural outcomes generated by the receiving-country's legal architecture (Korea Ministry of Employment and Labour, 2023).

III.e. Accommodation dependency and compound precarity

The provision of employer-supplied accommodation — standard practice in agricultural, livestock, and fishing placements — creates a further dimension of dependency that compounds the structural

vulnerabilities documented above. Workers who reside in employer-provided housing face a multi-dimensional form of leverage that extends beyond employment: dismissal or attempted transfer means simultaneous loss of income, housing, and valid immigration status. This triple dependency significantly raises the effective cost of complaint and thereby suppresses the exercise of formal rights even among workers suffering serious violations (Roh, 2014; Song, 2015). The physical quality of employer-provided accommodation in agricultural and livestock sectors has been repeatedly criticised by the National Human Rights Commission, which has documented conditions including unheated container housing, overcrowding, and inadequate sanitation – violations of the Minimum Housing Standards Act as well as workplace welfare provisions of the Occupational Safety and Health Act, yet enforcement has been episodic. The accommodation dimension of EPS vulnerability reveals the extent to which the programme confers what might be called "bundled dependency" – a cluster of interrelated dependencies on the employer that are individually and collectively difficult to disentangle through the exercise of any single formal legal right (Standing, 2011).

IV. Human trafficking, labour exploitation, and the limits of anti-trafficking law

The vulnerability pathways documented in Section III do not uniformly culminate in trafficking as defined under international law. The majority of Vietnamese EPS workers experience rights violations and structural disadvantage without reaching the threshold of the Palermo Protocol's three-element definition. However, a significant minority experience conditions that satisfy that definition, particularly in sectors characterised by geographic isolation, employer-controlled accommodation, passport retention, and pre-departure debt. This section traces the continuum from labour rights violations to labour trafficking, drawing on Fig. 2.

IV.a. The trafficking–exploitation continuum

The Palermo Protocol defines trafficking as the recruitment, transportation, transfer, harbouring, or receipt of persons by means of threat or use of force, deception, abuse of power, or abuse of a position of vulnerability, for the purpose of exploitation, including forced labour, servitude, or sexual exploitation (UN, 2000). For adult victims, the means element is definitionally essential: exploitation alone – without one of the enumerated coercive means – does not constitute trafficking. This definitional structure creates a legal threshold that many exploited Vietnamese workers in South Korea do not formally satisfy, even when their conditions objectively preclude free exit.

The ILO's (2021) global estimates place approximately 27.6 million people in situations of forced labour at any given time, with private-sector forced labour in agriculture, manufacturing, domestic work, and fishing constituting 86% of the total. The East Asia and Pacific region contributes disproportionately to forced labour in manufacturing and construction, and South Korea – as a destination country with a large temporary migrant workforce concentrated in precisely these sectors – is epidemiologically

significant in this distribution. Systematic national-level data on labour trafficking prevalence in South Korea, disaggregated by nationality and sector, remain unavailable; the absence of such data is itself a governance failure, as it precludes evidence-based resource allocation (Song, 2015). Bélanger (2014), examining Vietnamese migrants across Asia, demonstrates that labour migration and trafficking are structurally intertwined within Vietnamese-source corridors, with debt-financed recruitment and employer-controlled status creating conditions in which ordinary migration regularly transitions into exploitation satisfying international trafficking definitions.

IV.b. Passport retention and debt as means of trafficking

Among the ILO's operational forced-labour indicators, two are particularly documented in the Vietnamese migrant worker context: employer retention of passports and debt bondage (ILO, 2021). Passport confiscation by employers, while formally unlawful under Korean law, has been documented in the fishing, agriculture, and domestic service sectors. Its practical function is to create a barrier to the physical movement of workers residing on remote sites — not a legal barrier, since a worker may in theory file a complaint and request the return of their document, but a practical barrier that exploits the worker's unfamiliarity with legal remedies and dependence on the employer for shelter and income.

Pre-departure debt, as described in Section III, creates the economic analog to physical confinement: the worker's rational calculation is that departure from the exploitative employment forecloses the only means of debt repayment, rendering exit effectively impossible without the support of an external enabling institution. Combined, passport retention and debt bondage satisfy the "means" element of the Palermo Protocol — specifically the "abuse of a position of vulnerability" criterion — for workers who subjectively experience the impossibility of free exit. The concept of "position of vulnerability" has been developed in international trafficking jurisprudence to encompass situations of dependency and limited alternatives, rather than requiring physical force (UN, 2000; Shamir, 2017).

The relationship between formal legal rights and substantive protection in precisely this kind of structurally asymmetric situation is a concern that runs through the comparative law literature. Chan J (2014), analysing the evolution of constitutional protections in Hong Kong, observes that the formal articulation of rights without the institutional apparatus to make them effective provides incomplete protection at best — a principle that applies directly to the formal equal entitlements of E-9 workers under Korean labour law, which in practice are rendered inaccessible by the structural architecture of the EPS.

IV.c. Legislative limitations of the anti-trafficking framework

South Korea's anti-trafficking legislative framework exhibits two principal structural limitations in the context of Vietnamese labour migrants.

First, the institutional architecture for victim identification and support is skewed towards female victims of sexual exploitation and is poorly designed to identify or serve male labour trafficking victims in industrial settings. The Ministry of Gender Equality and Family oversees the designated shelters and legal aid services under the 2012 Act, with a mandate that reflects the ministry's gender equality brief rather than a comprehensive anti-trafficking function. Referral pathways from labour inspectors and police officers investigating industrial workplaces to anti-trafficking identification protocols are under-formalised and rarely activated in practice. The result is that male Vietnamese workers who satisfy the Palermo Protocol definition are not identified as trafficking victims, do not access victim protection measures, and are typically processed as immigration violators subject to deportation rather than as victims entitled to protection (Song, 2015; Kotiswaran, 2012).

Second, the threat of immigration enforcement creates a systemic deterrent against victim self-identification. Workers in irregular status — including those overstaying EPS visas precisely because of exploitative conditions from which they have fled — face immediate deportation if they approach law enforcement or immigration authorities. South Korea's victim protection mechanism includes a formal provision for a "reflection period" and temporary residence permit for identified trafficking victims, but this protection is conditional on identification, and identification is conditional on approaching authorities — a circularity that structurally disadvantages irregular migrants. The formal victim protection system thus fails the population it most urgently needs to serve.

IV.d. Intersections with gender and care work

Female Vietnamese migrants, including those in manufacturing, domestic service, care facilities, and the entertainment sector, face compounded vulnerabilities at the intersection of gender, immigration status, and labour sector. Peng (2018), examining how citizenship is decentred through gender and labour rights frameworks in South Korea, identifies the structural mechanisms through which immigration status and gender interact to produce heightened exploitation risk. The analysis highlights how formal rights frameworks are systematically undermined for women migrants in the entertainment and service sectors. The E-6 entertainment visa category has been documented as a trafficking recruitment pathway for female migrants, and institutional responses have tended towards criminal enforcement within the commercial sex industry rather than proactive, victim-centred support. The conflation of trafficking with commercial sex work in Korean law and practice means that female victims of exploitation are more likely to be identified than male labour trafficking victims, but even female identification is often mediated by police contact in criminalised environments rather than proactive, victim-centred outreach.

The broader governance architecture in East and Southeast Asia systematically privileges economic objectives over rights protection, leaving significant enforcement gaps (Chung et al., 2024). Within this context, Vietnamese women workers navigate intersecting structures of gender subordination and immigration precarity through co-ethnic networks and informal dispute mediation — coping strategies that do not substitute for formal legal protection.

IV.e. Supply chain accountability and corporate complicity

An emerging dimension of anti-trafficking governance relevant to Vietnamese workers in South Korea concerns corporate supply chain accountability. Several major Korean electronics, automotive, and food-processing companies source components or inputs from small-scale subcontracted manufacturers that employ E-9 workers, creating supply chain relationships in which the principal company benefits indirectly from the structural vulnerabilities of the subcontractor's workforce. International developments in business and human rights — including the UN Guiding Principles on Business and Human Rights and emerging mandatory due diligence legislation in France, Germany, and the European Union — are progressively establishing the expectation that principal contractors conduct due diligence on their supply chains for forced labour and trafficking risk. Liu et al. (2025), examining the legal frameworks governing distant-water fisheries labour across three major East Asian fishing nations, demonstrate that existing frameworks fall substantially short of protecting migrant workers in complex supply chain arrangements — a finding with direct implications for Korean seafood procurement chains. South Korea has not enacted mandatory supply chain due diligence legislation applicable to domestic supply chains, and existing voluntary Corporate Social Responsibility guidelines do not extend to the labour conditions of subcontracted workers employing EPS visa holders. Closing this regulatory gap would create market incentives for improved labour practices at the subcontractor level and align Korean law with the international trajectory of mandatory supply chain due diligence.

V. Civil society responses and institutional protection gaps

The deficiencies in formal state protection for Vietnamese migrant workers in South Korea are partially compensated — but not systematically remedied — by a network of civil society organisations and community-based support structures. This section maps those responses and analyses their structural limitations.

V.a. Civil society organisations and migrant support services

The Korea Migrants Centre, the network of Foreign Workers' Support Centres established under the EPS Act, the Joint Committee for Migrant Workers in Korea (JCMK), and various faith-based organisations active in manufacturing hubs such as Ansan, Suwon, and Uijeongbu collectively provide a range of services to Vietnamese migrant workers: legal consultancy and representation, interpretation and translation, emergency shelter, medical referral, wage dispute assistance, and repatriation support (Roh, 2014). Vietnamese-language community organisations and churches have grown significantly since the 2010s, providing cultural and linguistic mediation that government-funded services rarely achieve.

The civil society ecosystem thus functions as a partial, and structurally insufficient, compensatory layer for the gaps in formal state protection. In documented cases, civil society organisations have played a critical role in identifying workers in conditions consistent with forced labour, facilitating transfer or escape from abusive employers, filing labour complaints on behalf of workers unable to do so directly,

and providing emergency accommodation for workers who have fled employment without alternative housing (Song, 2015). The system of informal support is, however, entirely contingent on geographic proximity – workers on remote agricultural sites or fishing vessels have no access to it – and on workers' awareness of available services, which is inconsistently communicated through EPS orientation programmes. Research on migration choices has emphasised that access to timely and accurate information is a foundational condition for effective migrant agency (Addeo et al., 2023); when orientation programmes fail to convey this information, workers in remote placements remain structurally isolated from the support system that nominally serves them.

V.b. Structural limitations of civil society provision

Civil society provision faces several structural limitations that preclude its functioning as a systematic substitute for state legal protection. Geographic concentration in urban and peri-urban areas leaves the most isolated and vulnerable workers – precisely those in agriculture and fisheries – entirely without civil society support. Resource constraints prevent most organisations from accepting labour trafficking cases, which require intensive case management over extended periods and specialist legal expertise that far exceeds the capacity of generalist migrant support services. The funding architecture – combining government grants with private donations – creates incentives to report numerically high service delivery (information provision, translation) rather than resource-intensive advocacy and litigation on behalf of individual trafficking victims.

Legal uncertainty also constrains civil society action. Organisations that house undocumented migrants risk accusations of facilitating illegal stay; those that refer workers to employment outside the EPS framework risk facilitating unauthorised employment. The ambiguity of the legal environment generates institutional risk-aversion that limits the boldness of civil society engagement precisely in the cases where boldness is most needed (Kim and Koo, 2016).

V.c. Institutional oversight: the National Human Rights Commission

The National Human Rights Commission of Korea (NHRC) has conducted several significant investigations into migrant worker conditions, including a 2019 investigation into fishing vessel labour conditions and a series of reports on agricultural worker housing and working hours. The Commission's findings have documented systematic violations consistent with forced labour indicators, and its recommendations to the Ministry of Employment and Labour and the Ministry of Ocean and Fisheries have addressed specific enforcement gaps. However, NHRC recommendations are not legally binding, and the record of ministerial compliance has been inconsistent. The Commission's institutional design – advisory rather than regulatory – limits its capacity to drive structural reform without sustained political support from the executive, which has been episodic rather than sustained in its commitment to migrant worker rights (Lee, 2022; Korea Ministry of Employment and Labour, 2023).

V.d. Trade union rights: formal access and practical barriers

Vietnamese migrant workers in South Korea possess the formal right to join and organise trade unions, as confirmed by Constitutional Court jurisprudence affirming trade union registration for irregular migrant workers (Korea Ministry of Employment and Labour, 2023). The Migrants' Trade Union (MTU), established in 2005, represents an important precedent for organised migrant labour advocacy in Korea, and has historically campaigned for EPS reform and against deportation during labour disputes. However, union participation exposes E-9 workers to employer retaliation and visa cancellation risks that structurally chill collective action. MTU membership is drawn disproportionately from irregular migrants — those who have already lost EPS status and have correspondingly less to lose from employer displeasure — while workers in valid E-9 status, most dependent on employer goodwill for the continuation of their visa, remain substantially outside organised labour's reach (Kim and Koo, 2016). The structural incentives against union participation among active EPS workers represent a further dimension of the bounded-agency problem: the legal right to organise exists, but its exercise is practically foreclosed by the visa dependency that the EPS architecture imposes. Reforming this dynamic requires not only strengthening formal union rights but structurally reducing the cost of their exercise — which ultimately returns to the argument for decoupling residence status from employer identity advanced in Section VI.

VI. Policy implications and reform pathways

The analysis in Sections II through V identifies a set of mutually reinforcing structural failures that cannot be addressed through isolated amendments to individual statutory provisions. The following reform agenda is organised around five strategic priorities that collectively address the systemic architecture of vulnerability rather than its surface manifestations.

VI.a. Decouple residence status from employer identity

The single most consequential structural reform is the decoupling of legal residence status from the identity of a specific named employer. The current employer-tied visa architecture transforms every employment dispute into a potential threat to a worker's legal status, and every abusive employer into an agent with near-complete leverage over the worker's decision to remain or complain. An alternative model — in which E-9 workers hold an occupational or sectoral visa permitting employment within a defined skill category or industrial sector, subject to registration with HRD Korea — would substantially reduce employer leverage without eliminating the state's capacity to manage labour supply or monitor compliance.

Several comparator jurisdictions have moved in this direction. Canada's Temporary Foreign Worker Programme, while carrying its own well-documented problems, has progressively expanded open-work permit provisions for workers who report abuse. New Zealand's Recognised Seasonal Employer scheme has experimented with portable housing and mobility rights within the agricultural sector. Hong Kong's

domestic worker visa conditions — themselves subject to critique for employer-tied features — have nonetheless generated extensive comparative jurisprudence on the rights of foreign domestic workers that is relevant to the Korean debate (Chan J, 2014). These comparative experiences demonstrate that incremental structural reform of employer-tied systems is technically feasible within managed migration frameworks.

VI.b. Extend labour inspection to agriculture and fisheries

The partial statutory exemption of small agricultural enterprises and the chronic under-inspection of the fishing sector must be addressed through comprehensive enforcement reform. The ILO Labour Inspection Convention (No. 81) establishes that inspection coverage should be proportional to the workplace risk profile; South Korea's current allocation of inspection resources inverts this principle, providing intensive inspection of medium and large manufacturing establishments while leaving high-risk sectors with geographically isolated workplaces essentially unmonitored (ILO, 2021). Reforms should include: dedicated mobile inspection teams with Vietnamese-language interpreters for rural and maritime workers; joint inspection protocols coordinating the Ministry of Employment and Labour and the Ministry of Ocean and Fisheries; elimination of advance notification for inspections; and statutory extension of the full Labour Standards Act to agricultural enterprises of all sizes.

VI.c. Reform anti-trafficking identification to cover labour trafficking

South Korea's anti-trafficking victim identification and support protocols should be substantially reformed to achieve genuine gender-neutrality and sector-neutrality. This requires targeted training of police officers, labour inspectors, coast guard officials, and immigration officers in the ILO's operational forced labour indicators as applied to manufacturing, agriculture, fishing, and domestic work contexts; adoption of a standardised identification tool that explicitly covers male victims in industrial settings; and unconditional access to a reflection period and temporary residence status for all persons referred as potential trafficking victims, regardless of immigration status. These reforms are consistent with South Korea's obligations under the Palermo Protocol and would align domestic practice with international standards (UN, 2000; ILO, 2021).

VI.d. Regulate pre-departure costs through binding recruitment standards

The Vietnamese government and South Korean authorities should establish and enforce binding caps on total pre-departure costs through a formal bilateral agreement enforceable in both jurisdictions. The current situation — in which VAMAS nominally monopolises official recruitment while informal brokers extract fees with near-total impunity — is inconsistent with the ILO's General Principles and Operational Guidelines for Fair Recruitment and with the well-documented evidence on the debt-generating

consequences of unregulated pre-departure cost structures across Asian migration corridors (ElDidi et al., 2023; Farbenblum, 2017; ILO, 2021). An employer-pays recruitment model, in which receiving-country employers bear the administrative costs of recruitment, would directly address the debt-bondage mechanism identified in Section III.a as the foundational vulnerability of the EPS cycle.

VI.e. Establish a dedicated labour trafficking prosecution unit

Effective criminal accountability for labour trafficking requires dedicated investigative and prosecutorial capacity within a single institutional home. The current jurisdictional fragmentation — between the Ministry of Employment and Labour (labour violations), the National Police Agency (criminal trafficking), and the Ministry of Justice (immigration) — allows perpetrators to exploit inter-agency coordination failures and creates perverse incentives for each agency to refer cases rather than prosecute them. A joint task force with dedicated Vietnamese-language interpretation capacity, embedded within the Prosecutors' Office and empowered to conduct parallel immigration and criminal investigations, would substantially improve detection and prosecution of trafficking networks in the Korea–Vietnam corridor.

Conclusion

This article has examined the legal safeguards and structural vulnerabilities of Vietnamese migrant workers in South Korea, tracing the pathway from formal legal protection to substantive precarity and, at the extreme end of a documented continuum, labour trafficking. The analysis has demonstrated that the Employment Permit System — while representing a genuine regulatory advance over the industrial trainee regime it replaced — embeds structural vulnerabilities that undermine the formal legal rights it confers: employer-tied visas, workplace transfer restrictions, sectoral enforcement gaps, pre-departure debt, and the absence of any settlement pathway collectively generate conditions in which formal rights are inaccessible to those who most need them.

The "paradox of legality" identified by Shamir (2017) aptly describes the EPS: a system in which legal presence and formal equality coexist with constrained agency and heightened exploitation risk, because the structural architecture removes the exit options that formal rights require in order to function as effective protections. The anti-trafficking framework, while nominally comprehensive, fails in practice to protect the majority of Vietnamese workers experiencing conditions consistent with forced labour, because its institutional architecture is oriented towards female victims of sexual exploitation and fails to reach male workers in agriculture, construction, and fisheries. Civil society organisations provide valuable but structurally insufficient compensation for these state failures, and the National Human Rights Commission's advisory role is insufficient, without binding enforcement power, to drive systemic change.

The reform agenda proposed in Section VI addresses the structural foundations of vulnerability rather than its surface manifestations. Decoupling residence from employer identity, extending enforcement to high-risk sectors, reforming trafficking identification, regulating recruitment costs, and building dedicated

prosecutorial capacity are mutually reinforcing interventions whose common logic is the restoration of effective agency to workers whom the current legal architecture formally protects but structurally disempowers. As Chan J (2014) observed, formal articulation of rights without institutional apparatus to make them effective provides incomplete protection — a principle that demands structural redesign, not merely textual expansion, of the present legal framework.

The broader contribution of this analysis is the demonstration that employer-tied temporary worker programmes systematically produce vulnerability even in states with elaborate formal labour law. South Korea's experience confirms Castles's (2004) prediction that guestworker architectures generate irregular migration as a structural outcome, and illustrates the human costs of governance systems that prioritise labour-supply management over the legal security of migrant workers. The lesson is that structural architecture must be redesigned around workers' rights and agency rather than administrative convenience.

The comparative implications extend beyond the Korea–Vietnam bilateral relationship. The structural features generating vulnerability in the EPS — employer-tied visas, transfer restrictions, absent settlement pathways, and sector-specific enforcement gaps — are shared by Japan's Technical Intern Training Programme, Singapore's Work Permit scheme, and Gulf Cooperation Council frameworks, each embedding analogous paradoxes of legality. The present analysis contributes to the comparative migration law literature by demonstrating that meaningful reform of employer-tied temporary worker programmes requires structural redesign rather than incremental amendment.

Declarations

Competing interests

The author declares no competing interests.

Ethics declaration

This research involves no human subjects, no collection of personal data, and no animal experimentation. No ethics review was required for the completion of this study.

Author Contribution

J.P. drafted the main manuscript text and prepared all figures. J.L. reviewed, corrected, and edited the manuscript. All authors reviewed the manuscript.

Data availability

This article draws on publicly available statutory instruments, government statistical publications, and peer-reviewed academic literature. No original empirical datasets were generated or analysed during this study.

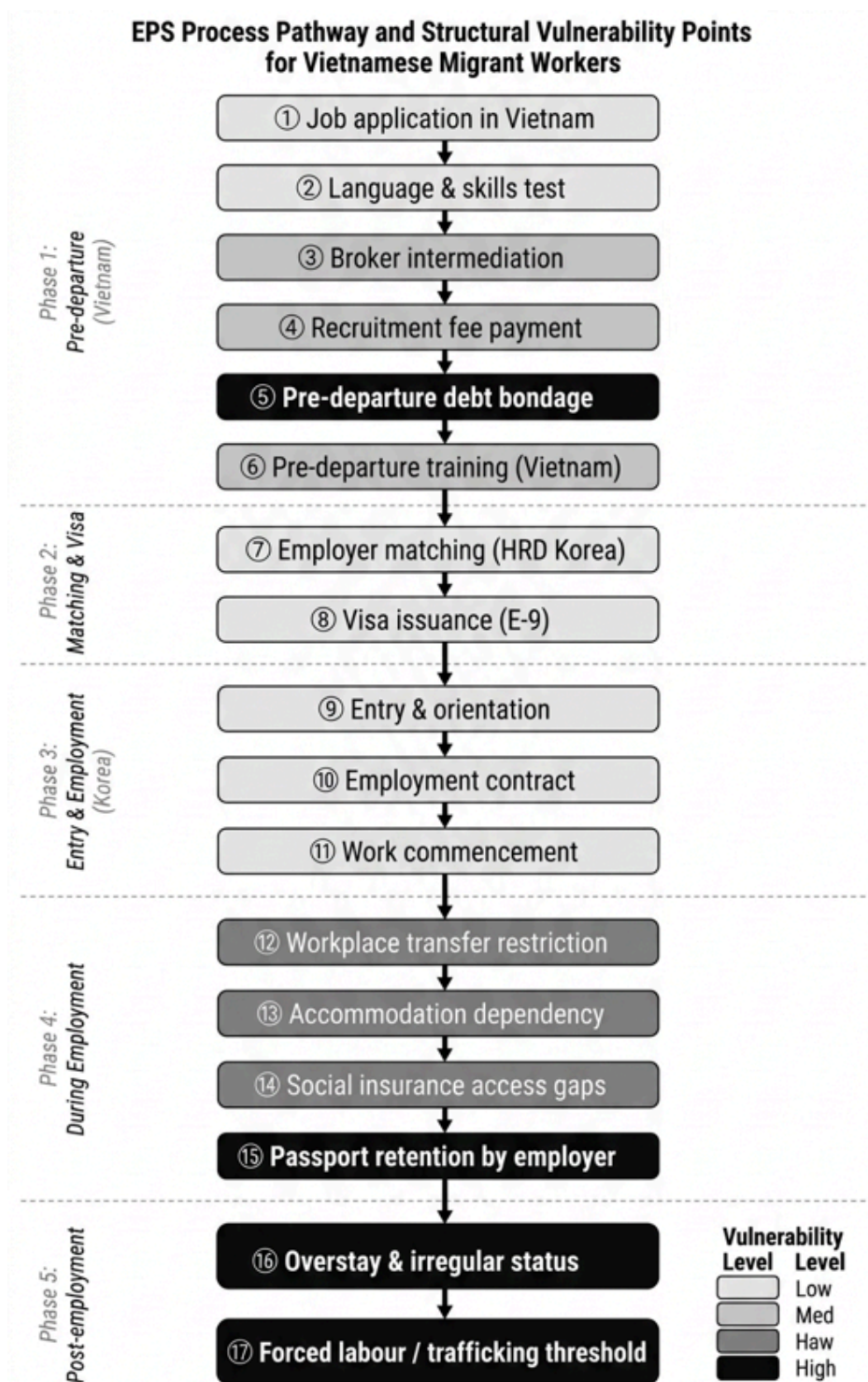
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Figures



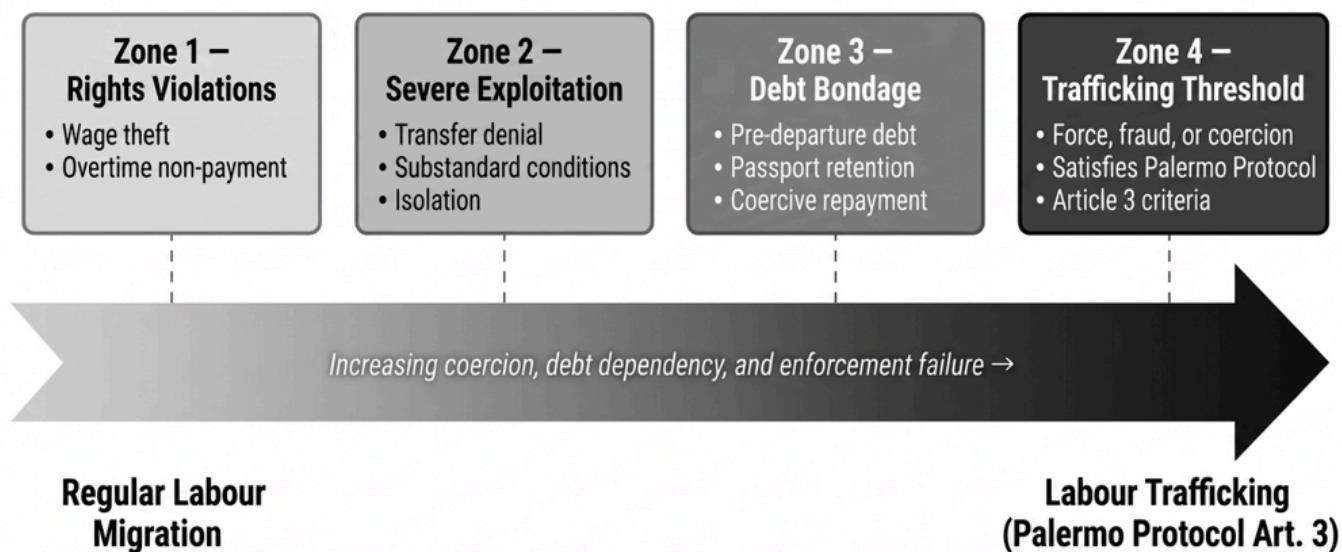
Source: Author's own elaboration based on the Act on Foreign Workers' Employment (Republic of Korea, 2003, as amended) and HRD Korea EPS operational guidelines.

Figure 1

The Employment Permit System (EPS) Process Pathway and Structural Vulnerability Points for Vietnamese Migrant Workers. Blue boxes indicate standard administrative processes; amber boxes indicate moderate vulnerability; orange boxes indicate high vulnerability; red boxes indicate critical vulnerability.

Vulnerability Continuum: From Regular Labour Migration to Labour Trafficking

Based on Shamir's (2017) 'Paradox of Legality' Framework



Source: Author's own elaboration based on Shamir (2017) and UN (2000).

Figure 2

Vulnerability Continuum: From Regular Labour Migration to Labour Trafficking (Based on Shamir's (2017) "Paradox of Legality" Framework). Zone 1: rights violations (wage theft, overtime non-payment). Zone 2: severe exploitation (transfer denial, substandard conditions, isolation). Zone 3: debt bondage (pre-departure debt, passport retention, coercive repayment). Zone 4: trafficking threshold (force, fraud, or coercion satisfying Palermo Protocol Article 3 criteria).