

**Doctoral Thesis**

**Empowering low-skilled migrant workers to access grievance mechanisms:**

**A comparative study between Thailand and Japan**

( 苦情処理システムにアクセスするための非熟練移民労働者のエンパワーメントに関する研究

—日本とタイ王国の比較研究—)

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## ABSTRACT

A number of workers, including low-skilled migrant workers, are likely to live and spend their lives in poverty and are exposed to less formal work arrangements, and therefore lack decent working conditions. Since they are widely recognised by their inferior situations, effective grievance mechanisms play a crucial role in labour rights protections. Grievance mechanisms are channels to express workers' concerns or dissatisfaction by an individual or a group in relation to possible misconduct at work. Effective grievance mechanisms not only offer an opportunity to prevent rights violations or compensate migrant workers for those violations that occur, but also promote a more stable workforce and more preferable work climate.

The number of studies on migrant workers and grievance mechanisms is limited. A survey conducted by ILO and ARCM (2013a) in Thailand reflected inadequate protection available to migrant workers. Interestingly, among those who are forced labourers, only 8.9 per cent made grievances and the rest wanted to complain but did not do so. It evidentially identifies that a number of migrant workers facing labour rights violations do not have access to grievance mechanisms and only some of them file a grievance of any sort.

Significant challenges prevent migrant workers in accessing grievance mechanisms. The objectives of this study are to examine migrants' working conditions, their accessibility to grievance mechanisms and factors affecting migrant workers' decisions to take any actions in response to labour rights' violations. The overall objective is to encourage and empower migrant workers through promoting their labour rights in practices.

To address these issues, the author utilises Thailand and Japan, both net immigrant countries in Asia, as case studies of developing and developed countries. Between October 2012 and March 2015, a total of 150 low-skilled migrant workers were interviewed in Bangkok, Thailand and Tokyo, Japan and surrounding prefectures. These migrant workers worked in the service sector and the manufacturing sector, which contribute to the upward economic growth in Asia and account for a significant share of national income. In addition to the interview, a quantitative approach is used to analyse factors affecting migrant workers' decisions to take any action in response to labour rights' violations and problems at work. The quantitative approach, using a Binary Logistic Regression and a nested structural analysis, is to support comprehensive analysis, along with the qualitative approach.

The analysis suggests that working conditions and bad practices at the work places of both migrant and non-migrant workers are generally similar. However, a greater extent of worse working standards, relating to some issues, is found among migrant workers than that of non-migrants; for example, on average, migrants work longer hours than non-migrants. Generally the extent of vulnerability in Thailand, which is embedded by weak law enforcement and a large informal economy, is greater than that of vulnerability in Japan.

The study found that up to 24 per cent of migrant respondents in Thailand were forced to work and could not quit their jobs freely. In other words, they would face penalties if they requested to quit their jobs. In Japan, only a few migrant workers did not hold proper working visas, whereas in Thailand, less than half of them held proper work permits. This is consistent with the fact that the majority of migrant workers in Thailand did not have a written employment contract with their current employers, unlike in Japan.

Regardless of whether in Thailand and Japan, various types and levels of discrimination and harassment at work prevail. The levels of discrimination and harassment are varied due to working sectors and the working environment of receiving countries. The country-specific characteristics are discrimination on ethnicity and nationality in Thailand, and discrimination against gender and sexual orientation in Japan.

This study addresses the fact that only a small proportion of migrants who know their rights will take action to labour-related problems. The majority of migrant workers in Thailand at about 54.7 per cent do not know what to do, and 30.7 per cent know what to do but are afraid of possible trouble at work once they file a complaint. In contrast, 44 per cent of migrant workers in Japan know what to do, but do not want to take any actions because they do not believe that filing a grievance will change their situation, and 17.3 per cent are afraid of possible trouble at work. Even among migrants, who reported that they are facing bad practices and discrimination at work, know what to do and will take any action in response to such difficulties.

To observe factors influencing migrant workers' decisions to respond to labour-related problems, a quantitative analysis is also employed. Based on a theory of empowerment, key factors facilitating or obstructing people's effort to establish power are composed of two building blocks: the opportunity structure and the agency. These blocks include institutional climate, social and political structures, as well as individual and collective capabilities. In this context, the opportunity structure can be classified as legal and institutional supporting mechanisms, working environment, characteristics of working sector and labour markets flexibilities or employment opportunities. On the other hand, agency factors are composed of migrants' individual and educational background, legal status in working in the country of destination, as well as migrants' bad experiences at work due to discrimination or harassment.

The estimated results suggest that the opportunity structure, especially employment options, increase the probability of taking action as migrants with employment options availability are 20.7 times high likely to access to the grievance mechanism. The results of the interviews also support that if they can easily change to a comparable job with similar earnings, they will be less worried of the threat of dismissal from voicing complaints and possible bad practices at work whilst entering the complaint procedure. In addition, migrants who have consultation channels are likely to know about the grievance system, but it appears that having consultation channels reduces the probability that action will be taken. Positive significant effects originating with individual characteristics are holding a proper work permit and years of schooling. Holding a proper work permit enables a worker to obtain a written work contract, decreasing the likelihood of a right violation. Additional years of schooling decrease the probability of being among those who do not know and those who know but do not want to take any action.

The conclusion of the study is that well-designed grievance mechanisms are considered to be necessary, but not sufficient for a successful scheme. The accountability and transparency of the service providers and responsible organisations in a timely manner are key to generating confidence in grievance mechanisms. The right and clear understanding about the principles of human rights at work should be promoted along with national enforcement. Adequate and effective measures to eliminate employment in an irregular situation are also encouraged, but such measures should ensure that human and labour rights are not be diminished and do not establish a sphere of discrimination in the society.

Moreover, the understanding in accessing grievance mechanisms must be promoted by both employers and workers. On the worker side, they must understand that protecting their rights is not wrong. On the employer side, based on the study, action must depend on whether the establishment is of small/medium size or medium/large size. For a small establishment, where an employer does not know about labour standards, a well-designed disseminated measure is vital to promoting labour-rights standards, along with regular advice and close supervision provided by local labour inspectors. On the other hand, for a larger establishment, a representative body is an important tool to voice workers' concerns. Therefore, promotion of actual involvement of migrants in trade unions is also vital to encourage accessibility to a grievance mechanism and thus enable them to meet their minimum labour rights.

In case of a grievance filed by a worker for compensation, the investigation process of labour inspectors in the two countries is similar. Both systems are exploited by some employers to intentionally bring the case to the Labour Court or the Civil Court in order to extend the period of investigation and to delay the final decision. Therefore, it highlights the needs to ensure the timely and reliable grievance handling procedure with no retaliation. Measures must be in place to protect complainants against reprisals for their actions to encourage more migrants to denounce abuses and assert their rights including ensuring confidentiality whenever possible, providing greater flexibility in transfer of workplaces.

The accessibility to government infrastructures is a necessary condition in ensuring the accessibility throughout the grievance-handling process. Resource shortages, particularly language barriers, are key obstacles blocking the accessibility of government mechanisms. Public-public partnerships between governments of receiving and sending countries and social partners are recommended to ensure effective and productive resource utilization. The grievance mechanism should be available to migrant workers, through reflecting and harmonising with migrants' working characteristics. The support from the country of origin in the country of destination is also essential for migrant workers in accessing to the grievance mechanism. Labour sections, labour attachés and consular officials in the country of destination play crucial roles in protecting migrant workers and developing effective labour migration policies. In addition, there are many cases where migrant workers return to their country after filing a complaint, and some cases are reported to the government of the country of origin. In response to such conditions, there is a need to establish a mechanism that allows migrant workers to track the development through an official representative. The mechanism should also allow the transference of compensation at the end of the procedures to the government/organisation of the country of origin before transference back to the migrant workers.

From the analysis, the key areas to empower migrant workers are grouped into five key concerns. The factors affecting opportunity structure are: job options, networks, and legal frameworks concerning migrants' employment status. The other two factors are grouped by agent factors, including ability to understand and access useful information as well as collective capabilities.

The availability of job options is necessary to ensure that migrant workers can survive during the investigation process and after filing a complaint. The underlined recommendation is to review laws and regulations on changing employers, facilitating workplace transfer during and after the grievance-handling procedure through an employment support centre provided by the government of receiving countries. Their job opportunities in both countries of origin and country of destination should be encouraged during the grievance handling procedures,

ensuring a fair opportunity to be able to stay in the country until the end of the procedures. It is clear from the interviews that the matter is not about the migrant having or not having a network, but how the network performs. Therefore, outreach activities to ensure access to the right information is essential. In order to reduce the share of irregular migrant workers, the clear and long-term policy of legalisation of migrant workers as well as law enforcement and corruption elimination should be endorsed. This recommendation also links to the elimination of exploited labour brokers and malicious recruitment agencies.

Furthermore, the key to empowering the agent is to encourage migrants' ability to understand and enable access to useful information. The recommendations also address the language barrier, and potential use of the Information and Communication Technology (ICT). The ICT is taking a critical role in promoting knowledge on labour rights, visualising successful case studies, and at the same time, widening job options in countries of destination and their home country through easy and timely accessibility and escalating their skills which ensure better job options and increased individual bargaining power with employers. Note that an effective strategy in empowering migrant workers must be developed through their cultural background, their living community and work characteristics.

The study also suggests that migrant workers believe that they can develop working conditions through self-development, group formation and better information accessibility. To empower migrant workers to gain access to grievance mechanisms is also to promote education and provide possibilities for higher skills. The recognised skills will positively benefit the country of destination for current employment, and the country of origin in increasing human capital. Lastly, collective bargaining is recommended to ensure inclusive activities and participation with all stakeholders and public understanding.

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## **LIST OF ABBREVIATIONS**

ARCM	Asian Research Center for Migration
CBO	Community Based Organisation
COD	Country of Destination
COO	Country of Origin
FCPF	Forest Carbon Partnership Facility
ID	Identity Document
ILGA	International Lesbian, Gay, Bisexual, Trans and Intersex Association
ILO	International Labour Organisation
IOM	International Organisation for Migration
ITUC	International Trade Union Confederation
JILPT	Japan Institute for Labour Policy and Training
JITCO	Japan International Training Cooperation Organisation
MOU	Memorandum of Understanding
NESDB	National Economic and Social Development Board
NGO	Non-governmental Organisation
NPO	Non-profit Organisation
NSC	Office of the National Security Council
NV	National Verification
OECD	Organisation for Economic Co-operation and Development
TDRI	Thailand Development Research Institute
UN	United Nations
UN-REDD	United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries
UNDESA	United Nations, Department of Economic and Social Affairs
UNDP	United Nations Development Programme
UNODC	United Nations Office on Drugs and Crime

# CHAPTER 1

## Introduction

### 1.1 Background of the Study

Jobs create income, and thus generate consumption and leverage living standards. However, if the labour market fails to create decent jobs<sup>1</sup> in workers' hometowns, migration is an option for remunerative work and a better opportunity for migrants and their families. The driving factors of migration are social, economic and demographic inequalities, employment opportunities, resources, and education or human rights (IOM and UNDESA, 2012). International migration can help alleviate poverty and contribute to economic growth in the migrants' countries of origin. As the same time, a number of studies found that the migrants make vital economic contributions to the countries of destination. It is estimated that migrant contributions to Thai GDP was at approximately 0.06 to 1.25 of Thai GDP in 2005 (Pholphirul and Rukumnuyakit, 2008; Martin, 2007). Moreover, economic analyses show that an increase in temporary migration between developing and developed countries could produce gains amounting to USD 150 billion each year (Dayton-Johnson, *et al.*, 2009: 151).

Today, migration trends are continuously growing. The demand for low-skilled workers in developed countries, which are facing the reduction of total population and an aging society, is also increasing, particularly the demand for low-skilled workers in the service sector, which include domestic workers, and the home-nursing service (ILO, 2010). In the 2000s, approximately 3 per cent of the global population were international migrants (IOM, 2005; ILO, 2010). The estimate of the UNDESA (2013) showed that globally the number of international migrants increased from 154.2 million in 1990 to 231.5 million in 2013. The escalating number of immigrant workers appears not only in developed countries, but also in the developing countries. The international migration to developing countries accounted to around 41.4 per cent of total world migration, while the rest share accounts for the migration in developed countries.

However, a number of low-skilled migrant workers around the world were found to be facing human rights abuses, exploitation, and living in very vulnerable situations (IOM, 2013: 40). A total of 2.45 million workers were estimated to be forced labourers, where 1.36 million people or 55.5 per cent were in the Asia Pacific region (ILO, 2005: 14). Roughly, 20–30 million migrant workers were in an irregular situation (ILO, 2006a). The low-skilled migrant workers are widely recognised by their inferior working conditions

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1 “Decent work” is a mean for “achieving equitable, inclusive and sustainable development. The Measurement of Decent Work covers ten substantive elements corresponding to the four strategic pillars of the Decent Work Agenda (full and productive employment, rights at work, social protection and the promotion of social dialogue): (i) employment opportunities; (ii) adequate earnings and productive work; (iii) decent working time; combining work, (iv) family and personal life; (v) work that should be abolished; (vi) stability and security of work; (vii) equal opportunity and treatment in employment; (viii) safe work environment; (ix) social security; and (x) social dialogue, employers' and workers' representation”. (ILO, 2012: 15)

and multiple disadvantages. International and local evidence shows that certain groups of migrant workers are particularly vulnerable to exploitation in the workplace, including migrants who are low-skilled or unskilled workers, migrants from low-income source countries, remittance workers, women (especially those in the sex industry or domestic service), young adults (including international students and working holidaymakers), workers with precarious migrant status and undocumented or trafficked labourers (Ministry of Business, Innovation and Employment New Zealand, 2014: 1) Most of them can find employment only in sectors where wages are tightening up because producers are at the highly competitive end of global production chains. Employment is likely to be found according to their network, which is mainly located in low productive sectors, resulting in their low wages. Trends towards more flexible employment relationships, prevailing discrimination, abuses in recruitment and irregular status multiple migrants' disadvantages and have amplified the vulnerability of most migrant workers (ILO, 2010: 113). In many EU countries, non-native workers have higher unemployment rates than natives and tend to work in low-skilled occupations and low productive sectors. They are also more likely to be over-qualified for their work, because of the lack of recognition of educational credentials acquired by migrants in their country of origin (Eurofound, 2007). In many Asian countries, migrant workers tend to receive lower wages. Wage disparities between national and migrant workers, as well as a high level of segmentation in the labour market, are found in the Middle East (Sabban, 2002) and in Asian destination countries (Wickramasekara and Abella, 2003). In addition to paying migrant workers low wages, their employers may not give them their full wage payments, delay paying them, or refuse to pay them at all (ILO, 2010: 76). A number of workers, including low-skilled migrant workers, are likely to live and spend their lives in poverty and to be exposed to less formal work arrangements, and therefore lack decent working conditions (IOM, 2013).

In response to such situations, effective grievance mechanisms play a crucial role in labour rights protection. Grievance mechanisms are means to express workers' concerns or complaints by an individual or a group in relation to possible misconduct at work. Thus, the grievance mechanisms offer an opportunity to prevent rights violations or compensate migrant workers for those violations that occur. The labour-related grievance mechanisms are considered to be a "rights-based grievance mechanism" in addressing grievances in a manner that respects human rights, as labour rights cover the protection and respect of human life at work<sup>2</sup>. Effective grievance mechanisms also promote a more stable workforce and more preferable work climate.

The number of empirical studies on migrant workers and grievance (or complaints) mechanisms is limited. ILO and ARCM (2013) addressed the unknown scale of the problem though frequent reports of workers being exploited in recruitment and employment. Normally, information collected is drawn from small samples and is qualitative in nature. A large body of previous literature aimed to provide either guidelines and recommendations in establishing effective migration policy, or operational manuals for migrant-related issues. They outlined preferable scenarios and guidelines for international and national references (e.g. APF, 2012; ILO, 2013c; ILO 2014c; Sorrentino and Jokinen, 2014). Most of the empirical literature is made up of case studies and qualitative analysis (e.g. Amnesty International, 2014; Jureidini, 2014, Gardne *et al.* 2014). Some literature collects and scrutinises the complaints received through government records in the country of origin or takes a project-based approach (e.g. Paoletti *et al.*, 2014;

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<sup>2</sup> The Declaration on Fundamental Principles and Rights at Work was announced by the ILO in 1998.

ILO, 2013c; Farbenblum et al, 2013; ILO, 2014a). These studies provided comprehensive analyses, yet the analyses were made only when the migrant workers made decision in lodging their complaints, which may not necessarily reflect the actual number of accessible rates to the grievance mechanisms. In addition, in the case when the figures and information are collected in the countries of origin without a referral or support mechanism in the countries of destination, the number of complaints is likely to be smaller than the actual situation. A number of migrant workers return with determination to file a formal complaint, but later change their minds.

Previous literature empirically confirms that migrant workers have limited accessibility to grievance mechanisms and only some of them file a grievance of any sort. Only a small amount of literature evidently quantifies an actual accessible rate of migrant workers to grievance mechanisms in the field. A survey conducted by ILO and ARCM (2013a) in Thailand pointed out the inadequate protection available to migrant workers. Among those who are forced labourers, only 8.9 per cent<sup>3</sup> filed grievances and the rest indicated that more people wanted to complain but did not do so. This implies a larger share of migrant workers who lacked access to grievance mechanisms, and/or encountered obstacles in accessing such mechanisms. It also points out significant challenges related to empowering migrant workers and improving migrants' accessibility to grievance mechanisms. Empowerment will help migrants strengthen their ability to claim their rights and to challenge underlying structures, practices and mentalities that lead to marginalisation and exclusion (Global Migration Group, 2014: 4).

To my knowledge not only is there a limited number of analyses regarding migrant workers and grievance mechanisms, but also migrants' accessibility to the grievance mechanism based on their perspective has yet to be investigated. The voice of migrants is key to assessing the factors toward such decisions and provides an effective way to access grievance mechanisms and promoting accessibility to labour rights. In addition, there is a lack of understanding about factors affecting migrant workers to respond to labour-related problems and in taking any action. A comparative study will give comprehensive analysis of the effectiveness of grievance mechanisms and provide better details in their working conditions. To address these issues, this study utilised Thailand and Japan, both net immigrant countries in Asia, as case studies of developing and developed countries to examine low-skilled migrant working conditions and the analysis of the above key questions, using both qualitative and quantitative approaches.

## **1.2 Objective of the Dissertation**

The objective of this dissertation is to promote labour rights in practice by enabling migrant workers to access the minimum national working standards and be able to access grievance mechanisms, specifically:

1. To examine the current situation of low-skilled migrants' working conditions, their problems at works, and linkages to grievance mechanisms in Thailand and Japan

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<sup>3</sup> This estimated figure was based on Table 6.10 (ILO and ARCM, 2013: 75). Those in the "forced labour with nonfinancial penalty" group were most likely to complain. Forced laborers with nonfinancial penalty (n=29) filed the complaints at 20.7 percent, whereas forced laborers with financial penalty (n=72) made complaints at 4.2 percent.

2. To compare migrants' points of view in accessing grievance mechanisms in Thailand and Japan
3. To identify factors hampering or affecting migrant workers' decisions to take any actions in response to labour rights' violations and problems at work in Thailand and Japan
4. To encourage and empower migrant workers in accessing grievance mechanisms to promote labour rights in practice.

The expected contribution of this study is to prioritise and highlight key factors affecting the accessibility to grievance mechanisms using qualitative and quantitative approaches that lead to possible effective activities and policies, enabling labour rights in practice.

### **1.3 Terminology**

The terminology in this section elaborates upon three key ideas, which are related to workers, empowerment, and grievance mechanisms.

#### **1.3.1 Migrant Workers**

This study will employ the ILO definition which describes a “migrant worker” as “a person who migrates or who has migrated from one country to another with a view to being employed, otherwise, than on his own account, and includes any person regularly admitted as a migrant worker” (ILO Convention 143, Article 11<sup>4</sup>). From this definition, it is clear that the term migrant workers highlight international, not internal, migrant workers.

However, there are some exemptions due to their work characteristics, as it is stated in the C143, which the above definition excludes: “(a) frontier workers; (b) artistes and members of the liberal professions who have entered the country on a short-term basis; (c) seamen; (d) persons coming specifically for purposes of training or education; (e) employees of organisations or undertakings operating within the territory of a country who have been admitted temporarily to that country at the request of their employer to undertake specific duties or assignments, for a limited and defined period of time, and who are required to leave that country on the completion of their duties or assignments.”

#### **1.3.2 Regular and Irregular Migrant Workers**

According to the UN (1990), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) Article 5, migrant workers are considered to be in a regular situation “if they are authorised to enter, to stay and to engage in a remunerated activity in the State of employment pursuant to the law of that State and to international agreements to which that State is a party”. Or, they are considered to be non-documented or in an irregular situation. An irregular migrant can be defined as a person “who lacks legal status in a transit or host country; one who entered a state without authorisation, or entered a country legally but then lost permission to remain” (International Council on Human Rights Policy, 2010).

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<sup>4</sup> Article 11, Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers No.143 (Entry into force: 09 Dec 1978)

The term “irregular migrant work” is defined differently at the national level. In Australia, Jandl, *et al.* (2007:16) define irregular migrant work as all paid workers who are non-nationals whose work conflicts with one or more of the following laws and regulations: Foreign employment laws ( and residence law), social insurance laws, tax laws, labour legislation and trade regulations. Rukumnuaykit (2009:5) defines “irregular” migrants as those who enter and/or stay in Thailand illegally.

This study will largely rely on the international definition. Irregular migrant workers are defined as those who are unauthorised to enter and/or to stay and/or to engage in a remunerated activity.

This should not be confused with the term “illegal migrant workers”. In the 1990s, the term “illegal migrant workers” was used interchangeably with irregular migrant workers. However, illegal has a normative connotation and conveys the idea of criminality. Thus, the 1994 International Conference on Population and Development recommended the term “undocumented”; but it is criticised to exclude those who enter the host country legally, but later violate the regulations. It also left out the migrants who were trafficked or were smuggled into the host country with false/fake documents. The term “irregular” was later recommended and used in International Symposium on Migration in April 1999 (ILO 2004, 11).

### **1.3.3 Low-Skilled Workers**

Skills can be classified by various measurement and meanings. Key classifications utilised by previous studies include education, working experience and occupations. This study will employ occupational classifications using the reference to the International Standard Classification of Occupations (ISCO-08)<sup>5</sup>. The jobs are divided into ten major groups<sup>6</sup> in which each major group is composed of sub-majors. The basic criteria used to define the system are specialisations required to competently perform the tasks and duties of the occupations.

This study employed the occupational group, which is made up of the so called “elementary occupations”. The occupations in this category are composed of cleaners and

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<sup>5</sup> ISCO-08 was adopted through a resolution of a Tripartite Meeting of Experts on Labour Statistics held in December 2007. ILO Website on the International Standard Classification of Occupations <http://www.ilo.org/public/english/bureau/stat/isco/isco08/>

<sup>6</sup> The other groups are listed as follow:

Major group 0: Armed forces occupations; Major group 1: Managers are chief executives, senior officials and legislators, and managers; Major group 2: professionals science and engineering professionals, health professionals, teaching professionals, business and administration professionals, information and communications technology professionals, legal, social and cultural professionals Major group 3: Technicians and associate professionals to group 2; Major group 4: clerical support workers are general and keyboard clerks, customer services clerks, numerical and material recording clerks, and other clerical support workers; Major group 5: service and sales workers are personal service workers, sales workers, personal care workers, protective services workers; Major group 6: skilled agricultural, forestry and fishery workers are market-oriented skilled agricultural workers, market-oriented skilled forestry, fishery and hunting workers, subsistence farmers, fishers, hunters and gatherers; Major group 7: Craft and related trades workers; Major group 8: Plant and machine operators and assemblers: Stationary plant and machine operators, assemblers, drivers and mobile plant operators; Major group 9: Elementary occupations.

helpers, labourers, food preparation assistants, street and related sales and service workers, and other elementary workers.

### **1.3.4 Empowerment**

The term ‘empowerment’ is used across a wide range of disciplines, each of which brings a different understanding to the term. It obtains different terminologies and meanings in different socio-cultural and political contexts. Empowerment is relevant to individual and collective levels, and can be economic, social, or political concerns.

Empowerment is defined as “to enhance the capacity of an individual or group to make purposive choices and to transform those choices into desired actions and outcomes.” (World Bank, 2007: viii). In its broadest sense, empowerment is the expansion of freedom of choice and action and the increase in one’s authority to have control over his resources and decisions.

The term empowerment is extensively used in the context of poverty reduction. Worldbank (2002: xviii) defines empowerment as “the expansion of assets and capabilities of poor people to participate in, negotiate with, influence, control, and hold accountable institutions that affect their lives”. A study of the implication of empowerment to pro poor growth by Eyben *et al.* (2014: 5) labels empowerment similarly: “Empowerment is fundamentally about power – about the power to redefine our possibilities and options and to act on them, the power within that enables people to have the courage to do things they never thought themselves to be capable of, and the power that comes from working alongside others to claim what is rightfully theirs.”

Another area that greatly defines empowerment is in the context of gender. For example, Federal Ministry for European and International Affairs, and Austrian Development Agency, Gender and Development Unit (2010: 5) defines empowerment as “the process of gaining access and developing one’s capacities with a view to participating actively in shaping one’s own life and that of one’s community in economic, social and political terms.”

In this study, the empowerment in the labour context is defined as “the expansion of assets and capabilities of workers to redefine workers’ possibilities, options, and actions on their lives and work-related issues, acknowledge their rights, and claim what is rightfully theirs under proper and right methods and channels.”

### **1.3.5 Grievance Mechanisms**

Grievance mechanisms are those tools that allow workers to express concerns without fear of punishment or retribution. Under this definition, grievance mechanisms are similarly explainable to complaint mechanisms and feedback mechanisms. Feedback mechanisms generally cover acts of expressing concerns with or without the expectation to change the situation, whereas, complaint mechanisms are more engaged in formal arrangements. In particular, complaints and grievance mechanisms are very similarly defined and compatible.

The Scottish Public Services Ombudsman defines “complaints” as a general term that expresses “dissatisfaction by one or more members of the public about an organisation’s action or lack of action, or about the standard of service provided by or on behalf of the organisation”. On the other hand, IFC (2009:4) defines “grievances” as concerns or complaints that are raised by an individual or a group within communities affected. The FCPF and UN-REDD Programme (2013: 2) also described that “grievances,” “complaints,” “feedback,” are functionally equivalent terms, but may be different among stakeholders.

Grievance mechanisms are also widely used in humanitarian grievances. Grievance mechanisms can be used to avoid conflicts; the FCPF and UN-REDD Programme (2013: 2) outlined grievance redress mechanisms to help toward grievance resolution during conflicts over forest and natural resources. For designing and implementing grievance mechanisms for development projects, CAO (2008:1) defined “grievance” as “an issue, concern, problem, or claim (perceived or actual) that an individual or community group wants a company or contractor to address and resolve.”

In project management, grievance mechanisms are used in particular on the Cooperate Social Responsibility (CSR) business, ensuring an existence of the mechanisms for providing feedback and preserving the business’ brand and good relations to business based locations and mutually constructive relationships. Grievance mechanisms reduce risk for projects, offer communities avenues for expressing concerns, and achieving remedies. Kemp (2009: 5) provide a guideline on community complaints and grievance mechanisms for Minerals Industry. He referred to a “grievance” as “a concern, issue or problem that needs to be addressed. A grievance may be expressed (e.g. through a complaint or protest), and may be individual or collective.” Grievance mechanisms then refer to “pathways and processes for preventing and handling a range of issues along the conflict range from minor concerns to more escalated conflict”. Effective rights-compatible grievance mechanisms is outlined by Corporate Social Responsibility Initiative (2008:1 ) are “channels for those individuals or groups impacted by a company’s activities to raise concerns early, openly, on an informed basis, with due to protection and in an atmosphere of respects.”

This study defines grievance mechanisms relating to labour rights, in that such mechanisms allow workers an opportunity to seek redress and/or remedies through any channel in full confidence, and with the understanding that no retaliatory action will be taken against them. The grievance mechanisms in this study will include formal channels of complaints mechanisms (filing a complaint to authorities) and informal channels (seeking for consultation and decision in any approach) to tackle labour-related issues and labour rights’ violation. This definition is to ensure that this study will meet the objective in addressing and empowering workers to the minimum level of labour rights’ standards.

#### **1.4 Principles on Labour Rights and Migrant Rights**

This section set out to demonstrate fundamental principles of labour rights and human rights. This section will be used as the fundamental principles for the scope of the study and the analysis. The international framework of migrant rights outlines the required protection of fundamental labour rights for migrant workers as well as human rights that relate to them, their work and their families. The foundational rights and fundamental frameworks, both binding and non-binding principles, are listed as follows:

- The ILO Conventions on fundamental labour rights and migrant workers (binding to ILO Member States who ratified the Convention)
- ILO Multilateral Framework on Labour Migration for a rights-based approach to labour migration (non-binding principles)
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (binding to UN Member States who ratified the Convention).

#### **1.4.1 The ILO Conventions**

ILO Conventions and ILO recommendations are tools of international labour standards, which are legal instruments drawn up by the ILO's constituents (governments, employers and workers). Those tools set out basic principles in relation to rights at work. The conventions are legally binding international treaties that may be ratified by member states, while the recommendations are non-binding guidelines and stipulate the methods of implementation.

Both Thailand and Japan are member countries of the ILO. As one of original member countries of the International Labour Organisation (ILO), Japan has a long-standing relationship with the ILO dating back to 1919. Up to now, Thailand has ratified a total of 15 Conventions, of which 14 are in force. Japan has ratified a total of 49 Conventions, of which 38 are in force.

##### **1.4.1.1 ILO Conventions on Fundamental Principles and Rights at Work**

The ILO Declaration on Fundamental Principles and Rights at Work, adopted in 1998, is an expression of commitment by governments, employers' and workers' organisations to uphold basic human values with regards to labour rights<sup>7</sup>. The fundamental principles and rights at work cover eight conventions, include:

- Freedom of association and rights to collective bargaining (ILO Convention No. 87, Freedom of Association and Protection of the Right to Organise and ILO Convention No. 98 Right to Organise and Collective Bargaining)
- The elimination of all forms of forced and compulsory labour (ILO Convention No. 29 Forced Labour; and ILO Convention 105, Abolition of Forced Labour)
- The effective abolition of child labour (ILO Convention No. 138 Minimum Age, 1973; ILO Convention no. No 182, Worst Forms of Child Labour)
- Non-discrimination in employment (ILO Convention No. 100 Equal Remuneration; and ILO Convention no. 111 Discrimination (Employment and Occupation)).

Thailand has ratified five out of eight conventions. Two of the unratified conventions are the conventions that relate to freedom of association and rights on collective bargaining, whereas Japan ratified six out of eight conventions. One unratified convention is to abolish

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<sup>7</sup> The fundamental rights at work is under the ILO Decent Work Agenda, which promotes the accessibility for all to freely choose employment, the recognition of fundamental rights at work, an income to enable people to meet their basic economic, social and family needs and responsibilities and an adequate level of social protection workers and family members.

forced labour. Interestingly, both countries have not yet ratified the convention on discrimination.

Table 1: Ratified Conventions Under Fundamental Principles by Japan and Thailand

<b>Fundamental principles and rights at work</b>	<b>Japan</b>	<b>Thailand</b>	<b>Ratified countries</b>
ILO C87, Freedom of Association and Protection of the Right to Organise	14 Jun 1965	-	153
ILO C98 Right to Organise and Collective Bargaining	20 Oct 1953	-	164
ILO C29 Forced Labour	21 Nov 1932	26 Feb 1969	177
ILO C105, Abolition of Forced Labour	-	02 Dec 1969	174
ILO C138, Minimum Age	05 Jun 2000	11 May 2004	167
ILO C182, Worst Forms of Child Labour	18 Jun 2001	16 Feb 2001	179
ILO C100 Equal Remuneration Convention	24 Aug 1967	08 Feb 1999	171
ILO C111 Discrimination (Employment and Occupation)	-	-	172

Source: ILO, NORMLEX Information System on International Labour Standards, accessed on 12 June 2014

#### **1.4.1.2 ILO Conventions on Migrant Workers**

Three conventions, with regards to labour migration, are ILO C66, Migration for Employment Convention, ILO C97, Migration for Employment Convention (Revised) and ILO C143, Migrant Workers (Supplementary Provisions) Convention.

ILO C66, adopted by the 25th International Labour Conventions in 1939, concerns the recruitment, placing and conditions of labour of migrants for employment for equal treatment. It enacts and aims to enforce penalties for the repression of (i) misleading propaganda relating to emigration or immigration; and (ii) propaganda relating to emigration or immigration which propaganda is contrary to national laws or regulations. In addition, it also requested the ratified country to “exercise supervision over advertisements, posters, pamphlets and other forms of publicity relating to employment in one territory which is offered to persons in another territory.” Obviously, the details listed in the convention did not harmonise with national policies at that time. As a result, no country ratified, and later the Convention was withdrawn and revised to ILO C97 in the later decade.

ILO C97, revised convention of Migration for Employment, was adopted in 1949. Once a member adopted this convention, it has to “make available on request to the ILO and to other Members on (i) information on national policies, laws and regulations relating to emigration and immigration; (b) information on special provisions concerning migration for employment and the conditions of work and livelihood of migrants for employment; and (c) information concerning general agreements and special arrangements on these questions concluded by the Member.”

26 years later, ILO C143, Migrant Workers (Supplementary Provisions) Convention on abusive conditions and the promotion of equality of opportunity and treatment of migrant workers, was adopted. This convention emphasises a country's responsibility on the basic human rights of all migrant workers. It underscores that the illegal employment of migrant workers should comply with national laws or regulations for the effective detection of illegal employment, but people shall still enjoy equality of treatment for themselves and their family. It is also underlines equality of opportunity and treatment in respect of employment and occupation between migrant workers and non-migrant workers.

Only 49 countries have ratified the migration for employment conventions, whereas only 23 countries have ratified supplementary provisions on migrant workers. Most of the ratified countries are sending countries. Neither Japan nor Thailand ratifies these conventions.

Table 2: Ratified ILO Conventions Regarding Migrant Workers by Japan and Thailand

<b>Fundamental principles and rights at work</b>	<b>Japan</b>	<b>Thailand</b>	<b>Ratified countries</b>
C066 - Migration for Employment Convention, 1939	-	-	-
C097 - Migration for Employment Convention (Revised), 1949	-	-	<b>49</b>
C143 - Migrant Workers (Supplementary Provisions) Convention, 1975	-	-	<b>23</b>

Source: ILO, NORMLEX Information System on International Labour Standards, accessed on 12 June 2014

In addition to these three conventions, there are seven recommendations regarding migration issues in order to improve the statistics and data collection: protection of emigrant women and girls on board ships, setting standards on recruitment and conditions of labour of migrants for employment, equality at work, and the provision of a coherent policy on international migration for employment based upon the economic and social needs of both countries of origin and countries of employment. The recommendations are listed as follows:

- R019 - Migration Statistics Recommendation, 1922
- R026 - Migration (Protection of Females at Sea) Recommendation, 1926
- R061 - Migration for Employment Recommendation, 1939
- R062 - Migration for Employment (Co-operation between States) Recommendation, 1939
- R086 - Migration for Employment Recommendation (Revised), 1949
- R100 - Protection of Migrant Workers (Underdeveloped Countries) Recommendation, 1955
- R151 - Migrant Workers Recommendation, 1975 (No. 151).

#### **1.4.2 ILO Multilateral Framework on Labour Migration for a Rights-Based Approach to Labour Migration**

ILO Multilateral Framework on Labour Migration, non-binding principles and guidelines for a rights-based approach to labour migration, adopted by the Tripartite Meeting of

Experts on the ILO Multilateral Framework on Labour Migration (Geneva, 31 October–2 November 2005) in 2006 is a non-binding instrument that promotes a rights-based approach to labour migration and protection for migrant workers. The framework provides non-binding principles and guidelines in nine areas, which are decent work, means for international cooperation on labour migration, global knowledge base, effective management of labour migration, protection of migrant workers, prevention of and protection against abusive migration practices, migration process, social integration and inclusion, and migration and development. There are also recommended guidelines on providing information, expanding network of migrant workers' organisation; however, those recommended activities are grouped by migrant process and limited to organised workers' unions, which is a very small proportion of immigrant workers.

#### **1.4.3 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)**

In addition to the fundamental rights at work posited by the ILO, the United Nations voiced concern about the rights of migrant workers in 1972, and adopted the “International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families” on 18 December 1990 by the General Assembly and later come into force since July 2003. The Convention on Migrant Workers sets a worldwide standard in terms of migrants' access to fundamental rights. Up to 2015, only 47 countries, which are major sending countries, and have ratified this convention. Neither Thailand nor Japan has ratified this convention.

The Convention on Migrant Workers consists of non-discrimination with respect to rights, human rights and other rights of all migrant workers and members of their families. It also promotes sound, equitable, humane and lawful conditions of migrant workers. The Convention elaborates on the concept of equality of treatment of both migrant and non-migrant workers.

APF (2012, 13-14) highlights that “the inhumane living and working conditions and instances of physical and sexual abuse that migrant workers may experience are addressed by the reaffirmation of the rights to life, the prohibition against cruel, inhuman or degrading treatment or punishment and the prohibition against slavery or servitude and forced or compulsory labour.”

Regardless of their migration status, the Convention sets out a broad series of rights belonging to all migrant workers and members of their families. As it mentions in its preamble:

*“...Considering also that recourse to the employment of migrant workers who are in an irregular situation will be discouraged if the fundamental human rights of all migrant workers are more widely recognised and, moreover, that granting certain additional rights to migrant workers and members of their families in a regular situation will encourage all migrants and employers to respect and comply with the laws and procedures established by the States concerned,*

*Convinced, therefore, of the need to bring about the international protection of the rights of all migrant workers and members of their families, reaffirming and establishing basic norms in a comprehensive convention which could be applied universally...*

On the other hand, the Convention also suggests adequate and effective measures to eliminate employment in an irregular situation, taking into consideration that the rights of migrant workers shall not be reduced. It also encourages the state to take appropriate measures to ensure that an irregular situation does not persist (Article 68 and 69).

Some interesting articles relate to, but are not limited to, withholding documents or identity by employers and equal treatments on remunerations and working conditions, as follows:

- Migrant workers and their families have the right not to have their documents of identity confiscated or destroyed as stated in Article 21: *“It shall be unlawful for anyone, other than a public official duly authorised by law, to confiscate, destroy or attempt to destroy identity documents, documents authorising entry to or stay, residence or establishment in the national territory or work permits. No authorised confiscation of such documents shall take place without delivery of a detailed receipt. In no case shall it be permitted to destroy the passport or equivalent document of a migrant worker or a member of his or her family”*
- The Convention emphasises that *“migrant workers shall enjoy treatment not less favourable than that which applies to nationals of the State of employment in respect of remuneration and other conditions of work, that is to say, overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of the employment relationship and any other conditions of work which, according to national law and practice, minimum age of employment, restriction on work and any other matter, according to national law and practice.”*
- As stated in Article 43, migrant workers shall *“enjoy equality of treatment with nationals of the State of employment in relation to access to educational institutions and services, vocational guidance and placement services, to vocational training and retraining, facilities and institutions; access to housing, including social housing schemes, and protection against exploitation in respect of rents; access to social and health services, provided that the requirements for participation in the respective schemes are met; access to co-operatives and self-managed enterprises, which shall not imply a change of their migration status and shall be subject to the rules and regulations of the bodies concerned; and access to and participation in cultural life.”*
- Regarding grievance mechanisms, article 54(2) states that *“if a migrant worker claims that the terms of his or her work contract have been violated by his or her employer, he or she shall have the right to address his or her case to the competent authorities of the State of employment...”*

#### **1.4.4 Summary of the International Standards on Labour and Human Rights**

Three keys fundamental rights are (1) the ILO Conventions on fundamental labour rights and migrant workers, outlining the fundamental rights at work; (2) the framework for a rights-based approach, recommending the guideline in managing migration and (3) the UN

Convention on the protection of the rights of all migrant workers and their families, with a schedule providing the fundamental rights of migrant workers.

Notably, neither Thailand nor Japan has ratified the conventions concerning migrant workers. Regarding the fundamental principles and rights at work, Japan has not yet ratified the convention on forced labour, and discrimination. Meanwhile, Thailand has not yet ratified the conventions regarding freedom of association and rights to organise, collective bargaining, and discrimination. Though both countries have not yet ratified the conventions regarding migrant workers, the principles set out by those conventions and recommendations are a good basis for making references in this study.

Four key standards from this section are listed as follows:

- The principles of working conditions should allow workers to organise and associate in order to generate collective bargaining; no force labourers and no child labourers; as well as prevalence of equality at work and non-discrimination
- All conventions respect the country's migration management, yet they outline the understanding that all migrant workers are human and subjected to the basic human rights and labour rights
- It must be clear that all migrant workers must comply with the national laws or regulations for the effective detection of being irregular migrant workers, yet they should still enjoy equality of treatment for themselves and their family on other rights and individual properties, in particular, fundamental human rights. Otherwise, it is possible that certain employers will find an inducement to seek migrants in irregular status in order to gain the benefits from them
- At the same time, the conventions also suggest to take adequate and effective measures to eliminate employment in an irregular situation, bearing in mind that the migrants' basic human and labour rights should not be diminished.

## **1.5 Country Selection Criteria for this Dissertation**

Though there are many countries in the East and Southeast Asia region are net immigrant countries<sup>8</sup>, Thailand and Japan are ones of top four countries in this region (Thailand, Malaysia, Japan, and Hong Kong-China) (UNDESA, 2013). Thailand, in particular, hosts the largest number of international migrant stock in this region. In addition, in order to comparatively analyse labour-related issues, religion is an influential factor shaping labour market characteristics. Among these four countries Malaysia is the only country where the majority are Islamic. A comparative analysis between Malaysia and other countries is made difficult because of the unique Islamic labour market environment. For example, the female labour participation rate in 2013 globally was 50.2 per cent, while that of in Malaysia was 44.4 per cent (ILO, 2013b). In addition, the majority of migrant workers in Hong Kong (76.7 per cent) have migrated from the Chinese mainland. Consequently, Chinese mainlanders in Hong Kong are facing less language barriers and similar norms, unlike international migrants in other countries. The migration characteristics of Hong Kong cannot be considered solely as an international migration. Therefore, Thailand and Japan are used as the case study for developing and developed countries, because they are significant in both qualitative and quantitative terms regarding migrant workers in the East and Southeast Asia regions.

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<sup>8</sup> The net migration equals the total number of immigrants less the annual number of emigrants.

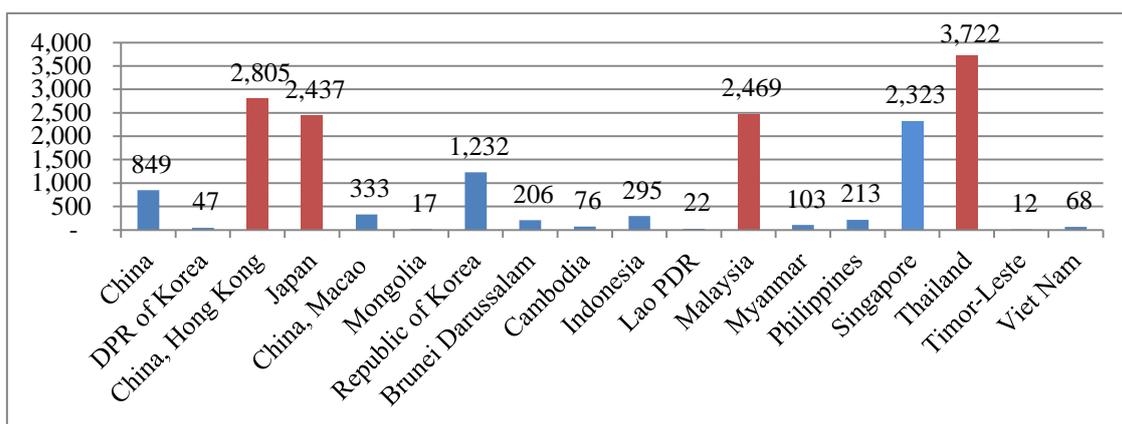


Figure 1: International Migrant Stock in East and Southeast Asia region 2013 (Thousand persons).  
Source: UNDESA (2013) Trends in International Migrant Stock: Migrants by Destination and Origin.

## 1.6 Scope of the Dissertation

- This study will focus only on low-skilled migrant workers, including cleaners and helpers, domestic workers, labourers in construction, manufacturing and transport, food preparation assistants, street and related sales and service workers, and other elementary workers. The coverage of this study includes both regular and irregular migrant workers as stated in the Section 1.4. Though irregular migrant worker are subjected to national laws or regulations of being irregular status, yet they should also be treated equally under the basic human and labour rights
- This study probes issues of inbound migrant workers with the focus on rights violations under the national and international minimum standards
- The interviews will be conducted in the metropolitan areas of Bangkok and Tokyo. The economic sectors of the targeted groups are the service sector and the manufacturing sector, which account for a significant share of national incomes of both countries. These are key economic sectors in the targeted areas and avoid the sampling variation of the agricultural sector.

## 1.7 Pattern and Trends of Migrant Workers

This section provides an overview of migrant workers in a global context, as well as a summary of the socio-economic environment of Thailand and Japan and its metropolitan areas. It aims to examine background data and information regarding migrant workers before the discussion in the following chapters.

### 1.7.1 Global Migration Trends

The estimated number of international migrant stock increased from 154.2 million in 1990 to 231.5 million in 2013 (UNDESA, 2013) (Figure 2). In the 1990s, migrant mobility moved mainly to developed countries. However, since the 2000s, converse trends have

started and the number of the international migrant stock in developing countries has continuously increased beyond the migration growth in developed countries. The high growth and higher demand for low-skilled workers in the manufacturing sector of developing countries, including China and India, has attracted a number of migrant workers from lower income countries. The increase in the number of migrants is keeping pace with global population growth. Approximately 3 per cent of the global population are migrants (ILO, 2010). Asia, together with Europe, accounts for the highest share of international migrant stock (Figure 3). Asia has a high rate for the natural rate of migration, given that Europe has a clear economic integration policy.

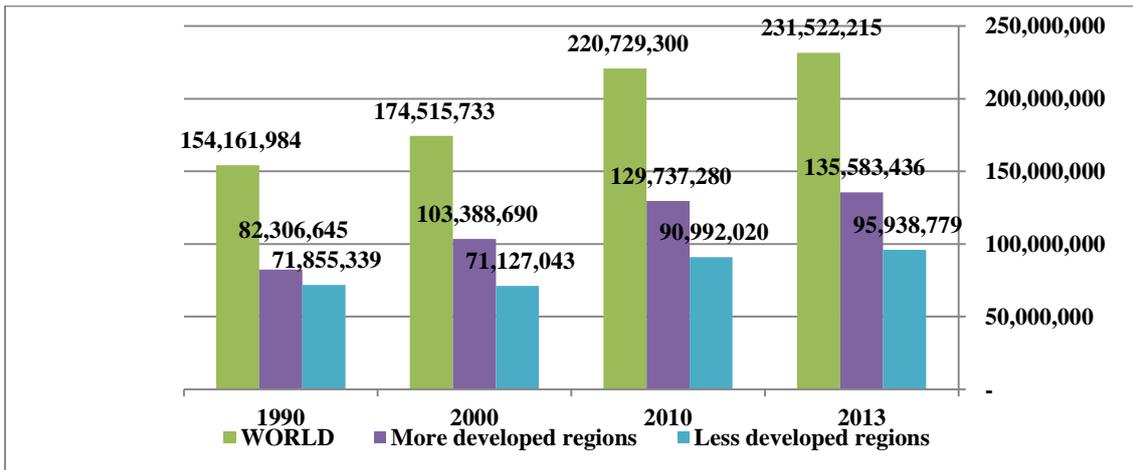


Figure 2: International Migrant Stock, from 1990 to 2013.(Persons)

Note: Less developed regions include all regions of Africa, Asia (except Japan), Latin America and the Caribbean plus Melanesia, Micronesia and Polynesia. More developed regions comprise Europe, Northern America, Australia/New Zealand and Japan.

Source: UNDESA (2013) Trends in International Migrant Stock: Migrants by Destination and Origin.

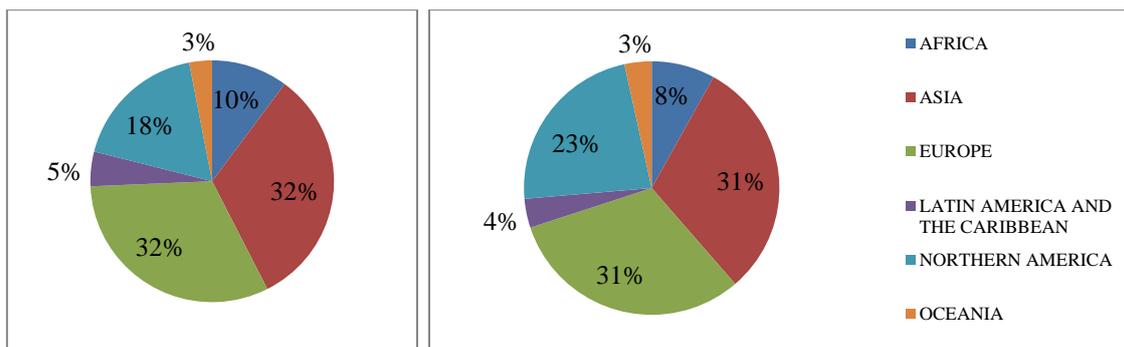


Figure 3: Share of International Migrant Stock in 1990 and 2013.

Source: UNDESA (2013) Trends in International Migrant Stock: Migrants by Destination and Origin.

## 1.7.2 Overview and Macro Economic Situation of Thailand

Thailand is a country at the centre of the Indochina peninsula in Southeast Asia. It is bordered by Burma in the northwest, Laos to the northeast and Cambodia to the southeast. It border links to Malaysia in the south (Figure 4). Thailand's economic growth became a story of economic miracles from the late 1980s to the early 1990s as the average economic growth was well above 9 per cent. The East Asian currency crisis began in Thailand in late June 1997, resulting in a low economic growth rate for a number of years, especially in 1998 with the -10.5 per cent growth rate. Political unrest started in the late 2000s and led to fluctuated economic growth during that time until 2014 (Figure 5).



Figure 4: Map of Bangkok, Thailand.

Source: CIA World Factbook 2013

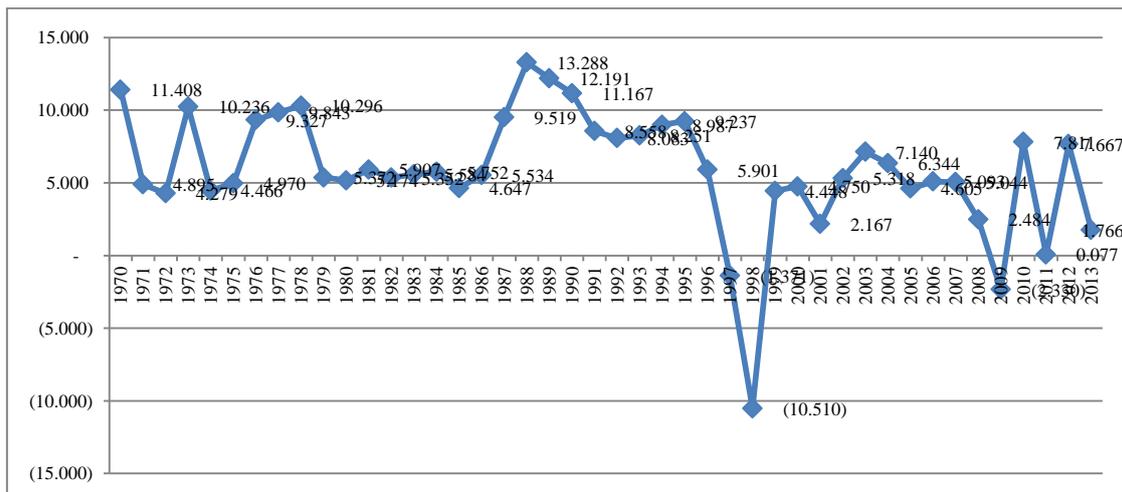


Figure 5: Economic Growth of Thailand, 1970 – 2013.

Source: World Bank (2015) World Development Indicators 2015. Washington, DC.

Table 3: Background Information in Thailand

Thailand	1980	1985	1990	1995	2000	2005	2010	2011	2012	2013
GDP growth (annual %)	5.2	4.6	11.2	9.2	4.8	4.6	7.8	0.1	7.7	1.8
GDP per capita growth (annual %)	3.0	2.8	9.7	8.3	3.5	3.9	7.6	(0.2)	7.3	1.4
Agriculture, value added (% of GDP)	23.2	15.8	12.5	9.5	9.0	10.3	12.4	13.3	12.3	12.0
Industry, value added (% of GDP)	28.7	31.8	37.2	40.7	42.0	44.0	44.7	43.0	43.6	42.5
Services, etc., value added (% of GDP)	48.1	52.3	50.3	49.7	49.0	45.8	43.0	43.7	44.2	45.5
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Source: World Bank (2015) World Development Indicators 2015. Washington, DC

### 1.7.3 Overview and Macro Economic Situation of Japan

Macro-economic situations are one of the key issues which impact on migrants' choices. Japan is an island nation in East Asia located in the Pacific Ocean (Figure 6). Japan has one of the top five largest national economies in the world. The Japanese post-war economic boom occurred during the 1960s to the 1980s, driving a high average economic growth rate in the 1960s, 1970s while the 1980s were 9.3, 4.11 and 4.37 per cent. However, in the 1990s, because of the after-effects of the Japanese asset price bubble, the average growth rate was reduced to approximately 1.5 per cent. The "hamburger crisis", the large budget deficits and large government debt in the late 2000s, reduced the growth rate to -5.53 per cent in 2009, but suddenly increased to 4.65 per cent in 2010). A tsunami in March 2011 made the growth reduce to -0.45 per cent. In 2012 and 2013, the economic growth rates bounced back to around 1.6-1.8 per cent (Figure 7).



Figure 6: Map of Tokyo, Japan.

Source: CIA World Factbook 2013

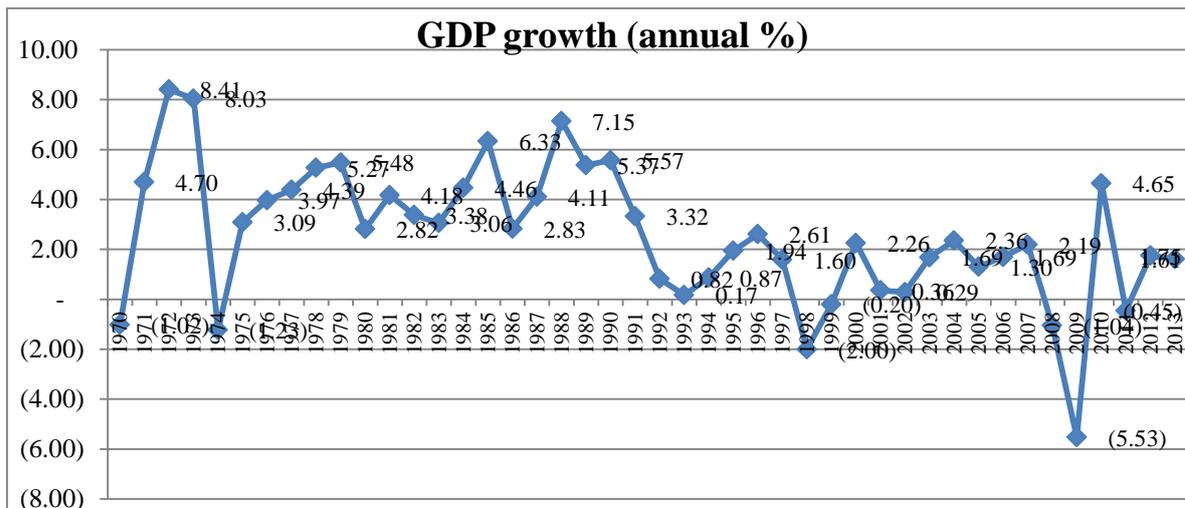


Figure 7: Economic Growth of Japan, 1970 – 2013.

Source: World Bank (2015) World Development Indicators 2015. Washington, DC.

Table 4: Background Information in Japan

Japan	1980	1985	1990	1995	2000	2005	2010	2011	2012	2013
GDP growth (annual %)	2.8	<b>6.3</b>	<b>5.6</b>	1.9	2.3	1.3	4.7	(0.5)	1.8	1.6
GDP per capita growth (annual %)	2.0	<b>5.7</b>	<b>5.2</b>	1.6	2.1	1.3	4.7	(0.7)	2.0	1.8
Agriculture, value added (% of GDP)	3.1	2.7	2.1	1.8	1.6	1.2	1.2	1.2	1.2	1.1
Industry, value added (% of GDP)	39.1	38.2	38.1	33.1	31.1	28.1	27.5	26.1	25.6	25.6
Services, etc., value added (% of GDP)	57.9	59.1	59.8	65.2	67.3	70.6	71.3	72.7	73.2	73.2
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Source: World Bank (2015) World Development Indicators 2015. Washington, DC

### 1.7.4 Overview and Macro Economic Situation of Bangkok and Tokyo

Bangkok is the capital and largest city, which is Thailand's political, commercial, industrial, and cultural hub. The total population was 8.5 million in 2011 with a total labour force of 5.33 million, of whom 5.25 million were employed (NSO, 2014). The leading sector is the service sector, which accounts for 75.59 per cent, followed by the manufacturing and transportation sector at 24.33 per cent, and agriculture at 0.08 per cent (NESDB, 2012). Whereas, Tokyo is the capital of Japan, the centre of the Greater Tokyo Area, and the most populous metropolitan area in the world. Tokyo has the largest

metropolitan economy in the world. The Tokyo urban area had a total GDP of 1.9 trillion USD in 2012. The total population was 13 million with a total of employed persons at 8.17 million. The majority of the economy is in the service sector which accounted for 88.9 per cent, followed by the manufacture and transport sector at 11.1 per cent (Bureau of Finance, Tokyo Metropolitan Government, 2010) (Table 5).

Table 5: Background Information of Bangkok and Tokyo

	<b>Bangkok</b>	<b>Tokyo</b>
Economic Boom period	The starting time for the migration to Thailand started since the economic boom in 1990s	The great deal of migration started to Japan since the economic boom in the 1970s
Area (Capital city)	1,569 square kilometres	2,104 square kilometres
Population	Approximately 8.5 million (2011) <sup>1/</sup> (12 per cent of the total population)	Approx 13.2 Million (2011) (10 per cent of the total population) <sup>3/</sup>
Employed persons	5.25 million employed persons (June, 2014) <sup>1/</sup>	8.17 million employed persons (2010) <sup>3/</sup>
Economic sectors	Agriculture (0.08%) Manufacturing and transport (24.33%) Sales and services (75.59%) (2012) <sup>2/</sup>	Manufacturing and transport 11.1% Sales, services, and others 88.9% (2010) <sup>3/</sup>

Source: <sup>1/</sup>NSO (2014) <sup>2/</sup>NESDB (2012) <sup>3/</sup>Bureau of Finance, Tokyo Metropolitan Government (2013).

## 1.8 Outline of the Dissertation

This dissertation is segregated into eight chapters. The Chapter 2 contains a review of the literature of migrant workers with the emphasis on grievance mechanisms, and empowerment. Chapter 3 provides the framework, the methodology and developed tools of this dissertation. Chapters 4 and 5 investigate and provide detailed discussions about migrant workers, and the result of the survey of migrant workers in Japan and Thailand. Chapter 6 examines factors affecting migrant workers and their response to labour rights' violations and problems at work using quantitative approaches. Chapter 7 utilises both qualitative and quantitative analyses in the previous chapters to dissect, evaluate and examine comparatively. Finally, Chapter 8 sums up and scrutinises toward the conclusion and recommendations.

## CHAPTER 2

### Literature Review

This chapter aims to explore previous and empirical studies in order to capture the key issues on grievance mechanisms and empowerment. This chapter is organised into three key sections. Section 2.1 reviews migrant workers' characteristics and working conditions that shape their vulnerable situations, because such situations affect migrant decisions to respond to labour-related problems. Section 2.2 elaborates on the accessibility of migrant workers to grievance mechanisms. Section 2.3 reviews the term empowerment, challenges in intervention, and the tools by which to empower vulnerable people with a focus on lessons learned.

#### 2.1 Low-Skilled Migrant Workers' Characteristics and Working Conditions

This section focuses on migrants characteristics, which are likely to affect migrant's vulnerability, which further impacts on decisions to respond to problems. Due to the difficult accessibility to low-skilled migrant workers, the previous literature which explores working conditions and low-skilled worker characteristics are generally case studies and case-specific reports. Though such cases studies are insightful analysis, the case studies may inconclusively represent overall characteristics of low-skilled migrants. Only a few of the previous studies conducted surveys or quantitative studies with a substantial numbers of observations.

At the national level, ILO (2006c) and ILO and ARCM (2013a) conducted studies in Thailand in different sectors. The ILO (2006c) examined the level of labour exploitation occurring in the four sectors: agriculture, domestic work, fishing and small and medium size textile manufacturing sector. The study also inspected profiles and attitudes of employers and recruiters who engaged migrants to work in these sectors. The author claimed that it is as one of the first surveys examining exploitation on migrant workers in four employment sectors and forced labourers. Field work was conducted from June to October 2005 at various geographical sites. In-depth interviews were carried out with 97 migrants, 44 employers and 10 recruiters. In addition, a total of 376 migrants were surveyed with the same questionnaire in three sectors (agriculture, fishing and manufacturing) in and around Bangkok and its vicinities. Domestic work relied on a comparison with quantitative data from a previous IPSR study interviewing 320 migrant domestic workers in Northern provinces (Chiang Mai and Tak Provinces).

While the ILO (2006c) focused on exploring exploited migrant workers in four sectors, the ILO and ARCM (2013a) targeted the employment practices and working conditions in the commercial fishing industry in Thailand. With the objective of providing a stronger evidence base for labour policies and legislation and for developing measures to improve implementation and enforcement, this study collected a large-scale quantitative survey of working conditions and employment practices within the commercial fishing sector in four coastal provinces of Thailand. The total number of observations was 596 fishers. Nevertheless, the study reveals the limitations in accessing the targeted group. For

practical reasons, the sample population was interviewed on shore, whereas those fishers in the most exploitative situations are often kept out at sea.

In Japan, Asgari *et al.* (2010) explores the living and working conditions of Iranian immigrant in Japan, using the interview approach with 60 migrants. The study notices that migrants' language ability is limited to work-related and daily life usage, not for other aspects of living in Japan. This limited language ability implies the limited accessibility to information and ability to express their problems using Japanese. Most importantly, they remarked that Iranian labourers in Japan are at risk in working environments, as shown in the high incidence of work-related injuries.

Whereas the above studies were conducted irregularly, the studies in the US on migrant workers' profiles are made available by national statistics. Studies that utilised regular national labour or population surveys with a focus on lower migrant categories (i.e. low-wage or low-skilled migrant workers) are, for example, Capps *et al.* (2003), Capps *et al.* (2007) and Hall *et al.* (2011). Capps *et al.* (2003) employed data from the March 2002 Supplement to the Current Population Survey (CPS). They defined low-wage labourers as workers earning less than 200 per cent of their state's prevailing minimum wage. Immigrants in the US make up one in five of low-wage workers. The later study, Capps *et al.* (2007), defined lower-skilled workers as those with less than a high school education. Both Capps *et al.* (2003) and Capps *et al.* (2007) highlighted the growing importance of immigrant workers in the lower-skilled U.S. labour force and in several major occupations, as well as revealing some key features of migrant workers. Hall *et al.* (2011) used key data of the US 100 largest metropolitan areas in the 2009 American Community Survey (ACS) to investigate trends in immigrant residents by skill categories and to compare characteristics of immigrant and native-born workers by skill and settlement area. This report measures immigrant skills by educational attainment, as "Low-skilled" immigrants are defined as those lacking a high school diploma and "high-skilled" immigrants are those with a college degree or more.

At the international level, the European Foundation for the Improvement of Living and Working Conditions (Eurofound) conducted a survey on employment and working conditions of migrant workers across 27 EU Member States (Eurofound, 2007)<sup>9</sup>. The study's objective of the report was to compare the employment and working conditions of non-nationals and nationals. Its coverage was not only to explore migrant profiles but also a broad extent on working conditions in general, for example, individual disputes, second jobs, trainings, career advancement, and union representatives. This study made available in-depth information on the working conditions of migrant workers that is almost lacking in international comparative data. While some of the international statistics presented gave certain indications on these internal variations, more detailed analyses would be required to capture heterogeneous composition of migrant workers, for example, legal status<sup>10</sup>, qualifications and skills and language abilities.

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<sup>9</sup> Eurofound conducts European Working Conditions Surveys (EWCS) regularly (ie 1990, 1995, 2000, 2005,2010 and 2015) with the focus on both native and non-native migrant workers. However, only the copy in 2007 provides the analysis on migrant workers.

<sup>10</sup> Irregular migration was not taken into account in the report due to high uncertainty in this group.

Based on the previous literature, I clustered and organised key classifications into four topics with an aim to capture the issues of empowerment as described in Table 6 and as follows:

- 1) Migrant profiles, i.e., age, gender. This category affects migrant workers' decisions and reflects the individual's asset and capabilities
- 2) Basic labour rights cover the principle stipulated in the ILO declaration on fundamental principles and rights at work, as discussed in Chapter 1. In particular, forced labour, child labour, and non-discrimination at work. The other principle, which is the freedom of association and collective bargaining, is a matter of openness. Therefore, the actual participation rate and opportunity access to this topic will be demonstrated in the last category
- 3) Working conditions, i.e., a written employment contract, payments and wages, working and rest hours, and safety, health and welfare
- 4) The extent to reduce vulnerability including their skills, their participation in unions and collective bargaining. Most importantly, the accessibility to complaints mechanisms is also included in this category.

Table 6: Categories of Migrant Workers Profiles and Working Conditions

	<b>ILO (2006c)1/</b>	<b>ILO &amp; ARCM (2013a) 2/</b>	<b>Asgari et al. (2010) 3/</b>	<b>Capps et al. (2003) &amp; Capps et al. (2007)</b>	<b>Hall et al. (2011)</b>	<b>Euro-found (2007) 4/</b>
	<b>Thailand</b>	<b>Thailand</b>	<b>Japan</b>	<b>US</b>	<b>US</b>	<b>EU</b>
<b>1. Migrant profile</b> (eg. gender, education, legal status, language proficiency, occupations)	/	/	/	/	/	/
<b>2. Fundamental rights at work</b>						
- Forced to work and constraints preventing a migrant from leaving their job and freedom of movement	/	/				
- Violence (Physical, Verbal), discrimination	/	/				
<b>3. Working conditions that lead to vulnerability</b>						
- Signing of employment contract (and type of contract)	/	/				/
- Payment, wages	/	/		/		/
- Working hours and rest hours	/	/				/
- Safety, health and welfare		/	/			/
<b>4. Extent to reduce vulnerability</b>						
- over-qualification and under-qualification				/	/	/

	<b>ILO (2006c)1/</b>	<b>ILO &amp; ARCM (2013a) 2/</b>	<b>Asgari et al. (2010) 3/</b>	<b>Capps et al. (2003) &amp; Capps et al. (2007)</b>	<b>Hall et al. (2011)</b>	<b>Euro-found (2007) 4/</b>
	<b>Thailand</b>	<b>Thailand</b>	<b>Japan</b>	<b>US</b>	<b>US</b>	<b>EU</b>
- Training and career advancement			/			/
- Union representation and collective bargaining			/			/
- Accessibility to complaints mechanisms		/				

Note:

1/ The questions on discrimination were asked to employers by focusing on the age dimension. For example, which age group of migrant workers do you prefer to employ and why?

2/ The only study among all previous study that provides a linkage to complaints mechanisms.

3/ This study is a quantitative analysis. However, this study is among the first study that conducted a study directly with migrant workers in Japan. The interviews include the living conditions, housing, community cultural frictions, as well as their plan to return their home country. It must be noted that the aspect on unionisation is observed through the question on community establishment.

4/ The EU Commission conducted a comparative analytical report on working conditions with the list as follows: (1) wage levels; (2) the incidence of low-paid jobs; (3) working hours; (4) exposure to risks and accidents at work; (5) health outcomes; (6) existence of information on risks, health and safety at the workplace in the national language of the migrants; (7) individual disputes at the workplace which involve migrant workers and, as a reference, nationals.

Source: categorised and compiled by the author

From the previous literature, migrants' characteristics can be summarised under the four categories, as follows:

### 2.1.1 Migrant Workers Profiles

- **Gender:** There is no significant pattern regarding differential treatment between female and male workers in agriculture and manufacturing. However, in the fish processing sector, particularly, female workers were generally lower paid than their male counterparts (ILO, 2006c: xxiii).
- **Registration (or legal) status:** In general, irregular workers suffered worse working conditions, worked longer hours and lacked freedom of mobility when compared with regular workers. Though, they are registered, it was found that employers often withhold workers' documents, ensuring that they are restricted by law. 71 per cent of fishing boats workers did not hold their original documents. To prevent workers from changing jobs, employers usually confiscate the original documents of workers (ILO, 2006c: 84). Under this concern, using fake passports is possibly found alongside an attempt to entering the country, yet it is rarely used later on for other purposes. Among 60 Iranian interviewees in Japan (Asgari et al., 2013), there was one interviewee entered that used a fake passport. He claimed that he was taken to Turkey by smugglers, and from there to Indonesia, where he obtained a fake passport, before arrived Japan.

- **Working sector and occupations:** Migrant workers rely on cheap labour at a competitive edge. Thus, their occupations and working conditions are likely to be worse than other lower competitive sectors. In the US in 2004, migrant workers were over-represented among low-wage workers, in particular in agriculture, forestry and fishing occupations (Capps *et al.*, 2007).

Prevailing gaps in legal and political aspects in certain sectors possibly lead to workers' exploitation. For example, according to Thai laws informal sectors, in particular agriculture, domestic work and fishing sector, are not subject to Labour Protection Acts; there is little incentive for employers in these sectors to apply minimum labour standards (McKay *et al.*, 2012: 62).

- **Education:** Education levels were low. On average, 15.5 per cent in agriculture, fishing, manufacture and the domestic work sector had not attended formal schools at all (ILO, 2006c: 26).
- **Languages proficiency:** An average of 79.5 per cent of migrant workers had no or limited local language proficiency, which potentially assisted them if they faced problems in the workplace (ILO, 2006c: 26). The migrants who did not know the host country language were twice as likely to be identified with a lack of awareness of rights in the countries of destination (McKay *et al.*, 2012: 62). Frequently, migrants suffered from isolation due to their minimal knowledge of the local language. Migrants found it difficult to integrate into local culture, particularly the newcomers (Ofreneo and Samonte, 2005: 39).
- **Awareness and knowledge on labour rights:** Among migrants, employers and relevant stakeholders, migrants were normally unaware of either human or labour rights (McKay *et al.*, 2012). On the other hand, a large number of employers believed that migrants are not entitled under Thai law to leave the work premises outside of work hours (ILOc, 2006).

## 2.1.2 Fundamental Rights at Work

This topic reveals the previous literature regarding freedom of movement, forced labour, child labour, and non-discriminatory and equal practices at work.

### 2.1.2.1 Freedom of Movement

- **Lack of representative associations that represent their interests and can negotiate with employers under the labour laws:** The inadequate skills limit their individual negotiation power against the employer (McKay *et al.*, 2012: 62). In addition, many countries do not allow migrants to freely associate as mentioned in Section 1.4.1.1.

### 2.1.2.2 Forced Labourers

- **Forced to work:** 20 per cent of the fishing sector and 9 per cent of fish processing workers stated they were ‘forced to work’. In addition, there was 2 per cent in agriculture and 1 per cent in the manufacturing sector (ILOc, 2006). Similar to the fishing sector in the previous study, ILO and ARCM (2013a) indicated 16.9 per cent are forced labourers, who were working unwillingly and could not leave.
- **Freedom of movement:** 13 per cent of migrants stated that even during their time off they were not able to go out. 79 per cent indicated that their employer arranged accommodations for them and 72 per cent lived in accommodations on-site. Of these, 64 per cent indicated their belief that living in the provided accommodation was mandatory (ILO, 2006c: 96).
- **Confiscation of ID documents by employers:** On average, 39 per cent of migrants in the agriculture, fishing and manufacturing sectors had possession of their original ID documents. They usually held a photocopy only, which was not recognised as valid identification when confronted by authorities (ILO, 2006c: 39).
- **Violence:** On average 6.5 per cent of workers in the fishing, manufacturing and domestic work had faced physical abuse by their employers. Around 45.5 per cent had faced verbal abuse from their employers. The highest percentage was located in the fishing sector at 64.1 per cent, followed by 56.9 per cent in domestic work (ILO, 2006c: 46). According to the ILO and ARCM (2013a), 17.3 per cent of fishers had been threatened either by their employer, supervisor, or another co-worker. In addition, 10.1 per cent had been severely beaten by a co-worker while on the job.

### 2.1.2.3 Child Labourers

The worst forms of child labourers include work under a minimum age specified in national legislation; jeopardise their physical, mental or moral well-being of a child; or being exploited as slavery, trafficking, debt bondage and other forms of forced labour. Based on ILO (2013a) estimates, using the industry approach, the indication was that there were 17.2 million child domestic workers (5-17 years old) globally. Evidence points to significant numbers of children in debt bondage, or who are victims of trafficking, though the precise number of children in forced labour and trafficking for domestic work remains unidentified.

The sector specific factors are also affected on the intensity of child labourers in each sector. In the fishing and agriculture, it is more common for children to work alongside their parents. On the other hand, in the domestic work and the manufacturing sectors, children are not generally accompanied by their parents (ILO, 2006c: 25).

#### 2.1.2.4 Discrimination

- **Ethnicity:** Migrants of certain ethnicities were perceived to be specialised in specific skills or be more obedient than others. Employers may prefer to hire specific ethnicities, especially in the case of domestic work, where certain migrants are perceived 'cleaner' than others (ILO, 2006c: xxv). The migrants of certain nationalities may presumably work in some certain occupations. For example, Filipina female workers in Japan are perceived to be suitable as entertainers and being engaged in commercial sex work (Ofreneo and Samonte, 2005: 39).
- **Age:** The ILO (2006c) indicated that in four sectors, 86 per cent of employers preferred to hire young workers aged 18- 28 years because they are more obedient and work harder than older workers.

#### 2.1.3 Working Conditions

- **Written employment contracts:** An employment contract may take into consideration the minimum standards of working conditions for workers. The contract provides terms and conditions that are agreed upon between employers and workers. The employment contract may be slightly different upon the nature of work and country, but the employment contract must meet the minimum requirement under national legal standards. The employment standards specifies the duration of the employment, job location and job responsibilities, working and rest hours, overtime work, paid holidays, paid vacation, details of employment termination (and/or retirement). On average 93.6 per cent of workers in the agriculture, fishing and manufacturing sectors do not have a written contract of employment (ILO, 2006c: 53). Lack of written contracts and working in the informal sector imply that many workers in these sectors lack opportunities for redress when they are exploited (ILO and ARCM, 2013a).
- **Working hours:** Excessive work hours were commonly found in agriculture, fishing, manufacturing and domestic work at an average 49.4 per cent. 82.4 per cent of domestic employees worked more than 12 hours per day (ILO, 2006c: 51). In the fishing sector, 25.8 per cent of fishers work 17–24 hours per day (ILO and ARCM, 2013a: 52).
- **Days off:** On average, 34.3 per cent of workers did not have any regular days off per month. Since days off are generally unpaid, or in some cases, 'fines' are deducted for taking days off, most migrants in agriculture, domestic work, fishing and small and medium size textile manufacturing sector are reluctant to take days off work (ILO, 2006c: 52).
- **Wages:** Many employers often justified the wages by indicating they provide food and accommodation to the worker. However, many migrant workers start on a trainee wage, receiving around half of the full migrant wage. The training period could last up to three years before the worker obtains a full wage (ILO, 2006c: 98). Furthermore, a number of them did not know what the deductions were for, as 18.3

per cent of fishers in the ILO and ARCM (2013a)'s study responded in this category.

- **Medical and health care:** Low accessibility to medical and health care is a major problem of irregular workers. Workers who do not avail of these services instead seek assistance from NGOs, religious places and friends rather than official channels, especially in a time of critical need e.g. during a natural disruption period (Bhula-or and Ikemoto, 2014).
- **Occupational safety and health at work:** Migrant farm workers and their families are often forced to endure substandard accommodation, for example, overcrowding, close proximity to pesticides and poor sanitation (Michigan Civil Rights Commission, 2010: 10-12). In the fishery sector, 21 per cent had experienced an on-the-job accident requiring medical attention at a clinic or hospital (ILO and ARCM (2013a: 57-58).

#### 2.1.4 Extent to Reduce Vulnerability

- **Informal networks:** Significant proportions of migrants across all sectors stays connected to their families, friends or relatives for support when facing problems at work or fall ill. When facing work-related or health-related issues, no migrant workers mentioned turning to Labour Department officials, NGOs or recruiters (ILO, 2006c: 98). In addition, there are the insufficient workers associations, NGOs, CBOs and government offices that actively reach out to migrants in these sectors.
- **Training:** Normally there is limited opportunity for access to training in the countries of destination. Among Iranian workers, none of the migrant workers had received any training after coming to Japan, often because there was no organisation to give it in their communicable languages. Another key reason is that they do not wish to spend too long time in the country of destination and have no concrete life plan. One of the interviewees of Asgari *et al.* (2010: 44) said, "Every year I thought, I will go back next year. Now 12 years has passed and I am still here in this unknown situation without any plan for the future."

In addition to the above categories, some literature provided background information on laws and regulations which might result in migrants' vulnerability and poor working conditions in the country of destinations, for example, the working system in Qatar called *Kafala*. This system does not allow migrant workers to leave the country without an exit visa verified by employers. The International Trade Union Confederation estimates that to build infrastructure for the World Cup in Qatar in 2022, an estimate of 4,000 migrants will die due to work. The estimation of deaths in Qatar is projected based on the tragic statistics collected by Nepal and India embassies, which account for around 5 per cent of the total migrant workforce (ITUC, 2014: 14).

## **2.2 Grievances on Labour Rights and Accessibility of Migrant Workers**

As mentioned previously, empirical studies on migrant workers and grievances (or complaints) mechanisms are limited. A large body of the previous literature aims to provide guidelines and recommendations. Most of the empirical literature consists of case studies and qualitative analyses (e.g. Amnesty International, 2014; Jureidini, 2014, Gardne *et al.* 2014). Some literature scrutinised the complaints received by project-based services centres (ILO, 2014a).

Given the limited number of quantitative studies on grievance mechanisms and migrant workers, the analysis is based on cases reported to the government. This type of research analyses based on official information from the migrants' home government agencies located in the developing, sending countries. For example, ILO (2013d) conducted a study in Sri Lanka to identify grievances and complaints of migrant workers, and review mediatory mechanisms operated by various institutions. The common key objective is to provide recommendations for further improving the current system of migrant worker grievance handling. The case files provide information about types of claims, details of complainants and the accused, procedures for processing claims, and the outcomes of cases.

However, given the fact that only a few migrant workers have access to grievance mechanisms, the analysis on the reported cases may not reflect the actual situation in the field based on the experience of migrant workers. As to my knowledge, the only work that explores the actual number of difficulties that migrants face and the reasons of not filing complaints is the research carried out by ILO and ARCM (2013a) in Thailand.

Based on the existing literature, this section is classified into two key sections. The first section will provide an overview of complaints and grievances lodged to governments. The following section will discuss migrant workers and accessibility, as well as the findings on the factors affecting accessibility and effectiveness of the grievance mechanisms based on the case studies.

### **2.2.1 Type of Grievances Filed by Migrant Workers**

This section aims to reveal cases and types of problems faced by migrant workers. The statistics and analysis are made available mostly in sending countries as the report from migrants to government authorities.

Due to no international standards, each country collects and stores data by national classification and by responsible government department's grouping. Therefore, it is difficult to make international comparison by type of complaints. However, the implication from Table 7, which summarises the grievances lodged to the government, indicates that the key common problems are non-payment of agreed wages. Employment contract violation, as well as harassment and physical abuse by employers, are also regularly found. Noticeably, the issue of contact loss, a situation where the family and the worker abroad cannot contact each other, is ranked high in Indonesia and Sri Lanka. Personal problems and problems at home are also important to them as they are rated among the top three issues facing workers.

In the Philippines, the first problem is contract violation and substitution of the contract. It is the 'double contract system' where the worker is forced to sign two contracts, before migration in the home country and after arrival in the country of destination, with lower wages at the destination country. The first contract will be used to submit working visa and document checking in the home country, while the latter will be used as a reference when problems occur. Once the migrant arrives to their country of destination, they have no way to return to their home country and eventually have to sign another contract. It is interesting to note that complaints in the Philippines are more related to issues encountered at the pre-departure migration stage as it mainly concerns to the employment contract.

Based on the official records of the National Body on the Placement and Protection of Migrant Workers (BNP2TKI)<sup>11</sup> in Indonesia, workers arriving at Jakarta airport reported a total of 194,967 problems. Around 75 per cent were made by workers returning from the Middle East, in particular around half of these were made by workers coming from Saudi Arabia. Farbenblum *et al.* (2013: 54)'s study indicates that most problems experienced by Middle Eastern migrant workers occur at the receiving countries, rather than pre-departure or post return. The top two issues of Indonesian and Sri Lanka's migrant workers are identical, which are the non-payment of agreed wages and contact loss. The statistics of Sri Lanka Bureau of Foreign Employment (SLBFE) shows that during 2007 – 2010, unpaid wages account for 19 per cent, while contact loss is 14 per cent.

There are some studies exploring problems faced by migrant workers, though the database system in the sending countries has not yet been available to segregate problems of migrant workers on a computer-based basis. For example, Paoletti *et al.* (2014) examines the grievance mechanisms for Nepali migrant workers, in particular those who were working in the Middle East. They choose 202 case files randomly who were registered to the Department of Foreign Employment, Nepal. Their study suggests that, among migrant workers who faced problem aboard, the first key problem facing by migrant workers are different term and conditions to the employment contract (69.8 per cent), and document confiscation by the employers (62.8 per cent)<sup>12</sup>.

While those two studies provide the pictures of migrants' grievances reported to sending governments, Tamkeen (2009) demonstrates the grievances filed to the NGO in Jordan. With a particular focus on domestic workers, 357 cases was filed to Tamkeen, the top three problems were withholding passports (35 per cent), accumulated fines (16 per cent), and physical violence and abuse (13 per cent) in 2009. The rest of the cases were withholding wages, forced labourer and labour rights (10 per cent), ill-treatment and living (8 per cent), and "others" (19 per cent) (Tamkeen, 2009: 41). Similar to the complaints in Sri Lanka, the high ratio of physical violence, especially sexual abuse, is one of the dominant grievance from female domestic workers (ILO, 2013c).

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<sup>11</sup> The BNP2TKI has been organised since 2006, directly under the president and is comprised of representatives of all departments, agencies, and institutions relevant to migrant work. BNP2TKI is responsible for "implementing policy regarding placement and protection of migrant workers abroad in a coordinated and integrated manner.", but no enforcement authority over recruitment agencies or other actors. There are an overlap responsibility and the unclear respective roles and responsibilities between Ministry of Manpower and Transmigration and BNP2TKI in Jakarta (Farbenblum *et al.*, 2013: 43).

<sup>12</sup> Multiple answers were applied. Out of 202 cases, 43 returned migrants indicated that they encountered problems during migration (Paoletti *et al.*, 2014: 69-70)

Table 7: Top Six Number of Complaints that Were Filed in the Country of Origin

	Castro (2010) Philippines All MWs, file to POLOs (GOV) 2009	Farbenblum <i>et al.</i> (2013: 55) Indonesia All MWs, file to BNP2TKI (GOV) 2008 – 2011	ILO (2013d: 11) Sri Lanka All MWs, file to SLBFE (GOV) 2007-2010
1	Contract violation/substitution (24%)	Non-Payment of agreed wages (22%)	Non-payment of agreed wages (19%)
2	Personal problems (24%)	Contact loss (20%)	Contact loss (14%)
3	Delayed/Non-payment of agreed wages (18%)	Employment different to contract (11%)	Harassment (Physical and Sexual) (12%)
4	Maltreatment/Mistreatment (14%)	Worker wishes to return home (10%)	Problems at home (11%)
5	Poor working/Living condition (8%)	Death in country of destination (6%)	Illness (10%)
6	Immigration/document related problems (7%)	Violence by employers (5%)	Breach of contract (9%)
7	Others (3.9%)	Others (27%)	Others (24%)
Total	Total 37,056 cases	Total 194,967 cases	Total 42,482 cases

Note: Philippines Overseas Labour Offices (POLOs), Sri Lanka Bureau of Foreign Employment (SLBFE), and National Body on the Placement and Protection of Migrant Workers (BNP2TKI).

As the same time, a number of fraud cases are occurring among the recruitment agencies. The unlicensed recruitment agencies are high likely to generate a number of problems, e.g. poor working conditions, violence at work or even human trafficking. The massive difference between the number of grievances of the unlicensed recruitment agencies and the licensed ones prevails. For example, in Thailand, the total number of grievances against unlicensed recruitment agencies was 1,268 cases, whereas the total number of grievances against licensed recruitment agencies was 381 cases (ILO and ARCM, 2013b: Table 3.4)<sup>13</sup>. Nevertheless, in practice the law enforcement on such illegal recruitment agencies is generally problematic and weak in practice (Amnesty International, 2014). In India, complaints against registered recruiting agents are received by the Ministry of Overseas Indian Affairs and the Protector of Emigrants. The Minister of Overseas Indian Affairs announced that the Ministry had cancelled the licenses of 91 recruitment agents between 2010 and 2012. Theoretically, these unlicensed and fraudulent recruitment agencies must be punished according to national laws.

<sup>13</sup> The grievances filed to overseas jobseekers under the Recruitment and Job-Seekers Protection Act between October 2010 and August 2011.

## **2.2.2 Migrant Workers, and Issues in Accessing the Grievance Mechanisms**

This section investigates the accessible rate of migrant workers to grievance mechanisms as well as accessibility during the grievance process.

### **2.2.2.1 Migrant Workers and Accessibility to Grievance Mechanisms**

This section investigates the accessible rate of migrant workers to grievance mechanisms. As mentioned previously, the only study that outlines a clear link between migrant workers and accessibility to the grievance mechanisms is the ILO and ARCM (2013). This section will refer primarily to that study.

The ILO and ARCM study asked the respondent, “Have you complained about a rights violation?” Obviously, the majority of respondents have never filed a grievance related to rights violation as only 5.2 per cent filed a grievance. 61.7 per cent responded that they have never encountered serious rights violations, while 17.2 per cent either did not know or did not want to. Out of this 17.2 per cent, 14.1 per cent did not want to cause trouble, and 1.7 per cent did not believe that complaining would change anything.

The study also explores the existence of the forced labourer using the following questions: “(1) Are you working against your will?”; “(2) If not willingly, why are you working?”; and “(3) If you’ve ever tried to leave your employer, what type of obstacles or threats made you unable to leave?” Under the definition of the ILO Forced Labour Convention C29, 16.9 per cent of the observations were forced labourers. Most importantly, only 8.9 per cent of this group made a complaint. Furthermore, among those who wanted to complain but did not do, 66 per cent did not know, while 30 per cent did not want to cause any trouble and 4 per cent did not believe that complaining would change anything (ILO and ARCM, 2013: 73 and author’s estimation).

From the study, only 5.2 per cent filed a grievance to their employer or through NGOs. The explanation is that processing grievances through the government channels was more time-consuming than asking for assistance from a NGO. Because NGOs could help to fill in the complaint form, which is written in Thai, they also could contact the employer and lead to a faster resolution than via the official approach. The responses of the respondents imply their concern about timely grievance- handling procedures, which impact on their survival strategy.

### **2.2.2.2 Migrant Workers and Concerns on Grievance Mechanisms in Filing a Grievance**

In term of accessibility, practical practices are crucial. This section investigates the accessibility of migrant workers to grievance mechanisms during filing a complaint until the ending of the process. Based on the existing literature, issues that migrant workers face during filing the complaint, going through the investigation process and court, and following the order of labour officials and final settlement, are grouped and described as follows:

- **Language barriers:** In order to accept a worker's complaint, a written complaint against their employer is required. Generally, the complaint must be completed in the local language. Therefore, a translator is crucial to migrant workers in order to file a grievance. If a migrant does not have a friend, a hired translator will be necessary to them. A translator is possibly affiliated to either government or NGOs/CBOs. Regularly, the government claims that translation is regularly available. However, the limitation of translation services is widely recognised. The language barrier is also imperative in the investigation process and mediation.
- **No identification documents:** Given that all migrant workers must comply with the national laws or regulations for the effective detection of being irregular migrant workers, they should still enjoy equality of treatment for themselves and their family on other rights and individual properties, in particular, fundamental human rights. In order to file a complaint, a worker must have an identification document to express themselves as a complainant. However, a number of irregular migrant workers do not hold any identity documents: there is no passport, no copy of a visa, and no official ID card due to the deficiency of the registration system in the country of origin or loss during their transit journey. This irregular migrant worker therefore cannot proceed and cannot file a grievance. This also holds true with a number of regular migrant workers whose employers confiscate their IDs.
- **Long timelines:** Solving the problem in an efficient and timely manner is important to migrant workers. A longer time in dispute resolution results in greater resources required to support their living while they are waiting for the end of the investigation process. They need sufficient resources to support themselves.

Some employers, who know about this limitation of migrant workers, employ this channel as a malicious tool. For example, in Qatar, a worker filed a complaint against to his employer for 3 months' worth of unpaid wages. Over the course of a year, his date of hearing was postponed approximately nine times because the employer would not show up in court. The court eventually ruled that the worker should get all that he asked for. Yet, at this stage, the sponsor appealed the decision before a court of appeals. At the court of appeals, again, the sponsor refused to appear for hearings. After another three hearings at the appeal court, the worker lost his hope and withdrew his complaint. He returned to India with unpaid wages of approximately 2,250 USD in 2013 (Amnesty International, 2014: 59).

- **Law enforcement:** Prosecution measures are generally weak. For example, deceptive recruiting agents must be detained or their licence withdrawn. In the case of India, in June 2008, the Minister of Overseas Indian Affairs indicated that while the Ministry had referred so many cases to the state authorities to take action, there had not been a single conviction until 2013. According to Amnesty International (2014: 64), the Minister of Overseas Indian Affairs reiterated the call to state governments to initiate prosecution proceedings against those recruiting agents.

In principal, all workers should have access to grievance mechanisms that allow them to address their problems or their concerns without fear of punishment or retribution. All communication regarding grievance mechanisms should be in languages that workers understand. Translators should be employed where necessary. Confidentiality in submitting grievances should be assured to all workers. In order to designing effective grievance mechanism, the following points must be considered: regular communication, access, confidentiality, protection for whistleblowers, nonreprisal, resolution and redress, capacity, transparency and documentation (Verite, 2011).

## **2.3 Empowerment in Practice**

Each society is deeply embedded with attitudes about roles and abilities. Such attitudes affect the vulnerable workers' choices about whether their participation actually influences decision making. Negative perceptions about the ability of migrant workers to perform effective or leadership roles also explicitly demonstrate in many societies (e.g. Tunon and Baruah, 2012).

In order to explore and understand practical empowerment issues, this section examines empowerment in practice, and the challenges in implementing empowerment activities and interventions for low-skilled migrant workers.

### **2.3.1 Tools to Empowerment**

Institutional climates create incentives for action or inaction. Although there is no single institutional model for the empowerment of poor people, experience shows that four key elements are almost always present when such efforts are successful.

Information and Communication Technology (ICT) is usually referred to as one key tool to empower people through broadening access to information. It provides an opportunity for access to better education and information as needed. It also helps promote accountability and monitoring as well as having positive impacts on human capital accumulation.

ICT and traditional media could be effective tools in the campaign and mobilisation for the adoption of innovations central to rural development (Akpomovie, 2010). In the case of agricultural products, the potential contribution of ICT to livelihoods using computers, internet, geographical information systems, mobile phones, radio and TV can improve market access, capacity building and empowerment of small-scale farmers and the efficiency of the agricultural sector in developing countries (Stienen, Bruinsma and Neuman, 2011). The use of ICT has resulted in social change, the reduction of vulnerabilities, enhanced advocacy on appropriate issues, development of supportive networks and alliances, and enhanced capacity development outcomes.

In term of skills and employability, ICT can be used to reengage young educational drop-outs; young people who are "Not in Education, Employment, or Training" (NEETs); young offenders; immigrants and black and ethnic minority groups. It also benefits in various perspectives; for example, self-esteem, team working abilities; social networking and communication; technical skills; communication skills; creativity; active citizenship;

meta-cognitive skills; networking skills; and positive learning relationships with mentors and experts. This applies not only the internet, but also other channels like SOMDEL (Somali Distance Education and Literacy), which is an intergenerational radio based distance education and literacy programme in Somali. With integrated use of three learning approaches, i.e. radio broadcasts, structured print materials and weekly community-based tutorials, around 75 per cent of the female participants, who came from disadvantaged social backgrounds, being internally displaced people or labourers, have improved their social status (UNESCO, 2014: 58-59). On the other hand, there are negative effects associated with the use of ICT by at-risk young people. According to Cullen, *et al.* (2011, 9) the risk includes “the risk of isolation associated with high online internet use; adoption of greater ‘risk’ behaviours leading to greater exposure to unsuitable and harmful on-line experiences; exacerbation of educational underachievement; additional threats to accessibility for disabled people”. The key point here of empowerment is to ensure how people use tools properly.

### **2.3.2 Empowerment and Challenges of the Intervention**

In order to empower vulnerable people, intervention must be designed deliberately, due to the complexities in measurement and implementation. For example, only the participation of vulnerable workers in a national board may not automatically reflect the increase in their power. It is found that in the case of women’s participation in the parliament, the number of women representatives does not automatically translate into an increase in women’s power (Horner and Stokes, 2012). Previous literature provides extensive evidence to indicate challenges in implementing empowerment projects, as follows:

#### **2.3.2.1 Discriminatory Social Norms**

Each society has deeply embedded attitudes about roles and abilities, affecting the vulnerable workers’ choices about whether their participation actually influences decision making. Negative perceptions about the ability of the vulnerable workers to perform leadership roles prevent the vulnerable workers from pursuing opportunities to participate in empowerment activities. A lack of experience in participating in public meetings often undermines the workers’ confidence in expressing themselves. It also weakens the impact in their participation in empowerment activities. Even those who are participating in empowerment activities may feel uncomfortable with some issues; for example, participating in certain group activities or unable to talk about certain social or personal topic, or feeling very nervous or lacking confidence to speak out (Beena and Mathur, 2012).

#### **2.3.2.2 Resources Gaps**

A lack of access to resources at the individuals can reduce their ability to empower themselves. Inequalities in access to education and learning outcomes can undermine their confidence to participate in decision making regarding their own lives and their self-development. Therefore, it is important to make sure that the designated system tools are easy to understand and enable continued use.

In addition, challenges in the limited public infrastructure also impede the access of migrant workers to empowerment activities. For example, empowerment activities which used ICT in Kenya faced the problems of limited connectivity, poor ICT infrastructure status, high cost of accessing the Internet, language barrier and inadequate technical skills (Ojuondo and Tom Kwanya, 2014). Likewise, in South Africa, computers and internet are costly for vulnerable people (Langmia, 2005).

### **2.3.2.3 Burden of Household Responsibilities**

Vulnerable workers are mostly loaded by household responsibilities, either financial obligation, household works, or both. Such household responsibility activities are an immediate need and become a high burden for migrant workers. The workers have to balance between the household responsibilities and other activities, resulting in a hesitation to participate in empowerment activities.

### **2.3.2.4 Difficulties of Measuring Empowerment Activities**

The negative perceptions that there is the low possibility of successful results lead to low participation in empowerment activities. The perception is drawn from migrants' perceived information either in the legal or social system. Even their experience in their hometown may contribute to their perception in the country of destination. However, it must be noted that the number of participating vulnerable workers may not automatically reflect an increase in power. For example, the number of women representatives in a parliament does not automatically translate into an increase in women's power (Horner and Stokes, 2012).

## **2.4 Conclusion**

This chapter analysed the current and existence of current literature relating to three key issues: migrant characteristics and their working conditions which impact their vulnerability; grievance mechanisms by types of problems faced by migrant workers and accessibility throughout the grievance mechanisms; and empowerment characteristics and the challenges in intervention in empowerment activities.

The majority of the literature consists of case studies and guidelines, which lead to difficult conclusions as to the exact situations of migrant working conditions. The overall characteristics of migrant workers include variations of gender, ethnic, age, educations, legal status, work nature, working sector and ability to communicate in the local languages. In addition, the lack of awareness of their rights, limited informal networks, and limited bargaining power are key factors affecting vulnerability and decision-making.

Previous literature that links working conditions and grievance/complaints is limited. The grievance mechanisms within labour contexts are unique because normally complainants and defendants relationship are closed, resulting in the necessity of well-designed mechanisms that prevent retaliation and a strong degree of confidentiality and transparency. Similar to the previous literature on working conditions of migrant workers, large bodies of literature consist of guidelines and recommendations. Given a few quantitative studies on grievance mechanisms and migrant workers, the majority of them were analysed based on the cases reported to governments of sending countries. Given the fact that migrant

workers lack of immediate accessibility to grievance mechanisms, the analysis and the cases reported may not reflect the actual situation in the field, and are likely to reveal a small share of actual situation. The top grievances are non-payment of wages; employment contract violation; harassment and physical abuse; and contract loss.

To empower is to help low-skilled migrants select and make right decisions once they are facing labour-related problems. This approach is extensively used; for example, in a medical context, in a humanity context, and the most important reference area, empowering women. The literature identifies tools to empower vulnerable people. It also provides background and challenges in implementing interventions, for example, migrants' burden of household responsibilities, insufficient resources for empowerment activities, and difficulties in measuring the effectiveness of empowerment activities.

## CHAPTER 3

### Framework and Methodology

The previous chapters discuss the background information and previous literature, which provided contextual ideas on prevailing situations and useful references for this analytical framework. This chapter describes the theoretical background and sets out the methodology employed in the study. Section 3.1 addresses the theory of empowerment, which describes how to empower vulnerable people. The framework of this study and the methodology are illustrated in Section 3.2.

#### 3.1 Theoretical Framework

This study adapts the theory of empowerment to examine factor affecting migrants' working conditions and accessibility to grievance mechanisms. Empowerment is the expansion of assets and capabilities to expand choices and actions that affect a person's life. The solutions will be multiple and vary within the situational context, rather there being any single centralised solution. This theory is mostly used in the context of development, especially on poverty reduction and female empowerment. The theory of empowerment discusses how to expand assets and capabilities in order to create more options and allow vulnerable people to take control of their lives.

A conceptual framework that outlines key factors facilitating or obstructing people's effort to improve, establish their power is depicted in Figure 8. It contains four building blocks which are "institutional climate", "social and political structures", "individual assets and capabilities" and "collective assets and capabilities". The first two building blocks are grouped in the term "opportunity structure." The next two building blocks are labelled by the capacity of "agency" to take decisive action (World Bank, 2005: 5-6). The result of the empowerment is also shaped by social norms, institutional and agency behaviours, as well as processes and methods in implementation of empowering activities.

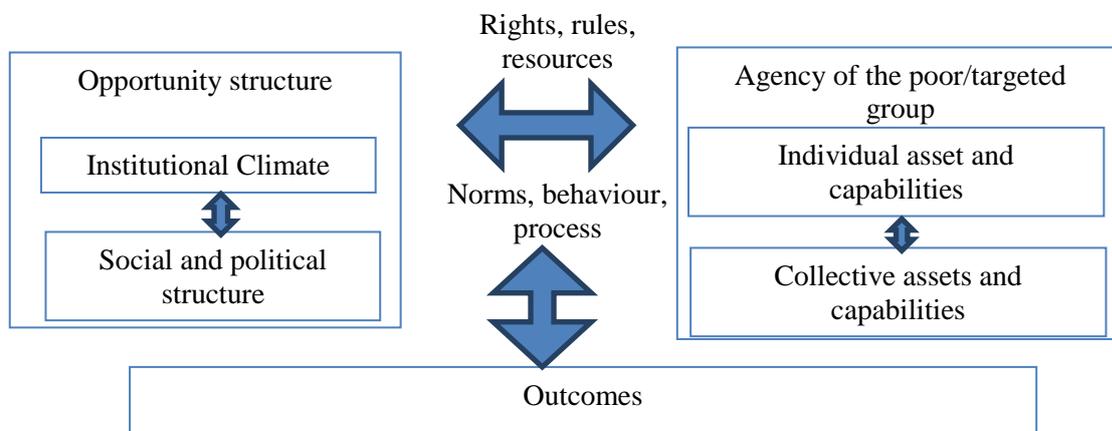


Figure 8: Conceptual Framework of Empowerment.  
Source: Narayan, (2005: Fig 1.1).

### 3.1.1 Opportunity Structure

#### 3.1.1.1 Institutional Climate

Institutions are understood as the rules of the game. These rules can be formal, being explicitly defined and written by government and recognised actors, and informal, in the form of social norms, habits, and routines (Petesch *et al.*, 2005: 45). Institutional climate are composed of formal and informal networks. Four key elements that affect the institutional climate are information accessibility, people participation, accountability, and organisational capacity (Narayan, 2005: 8-9), as listed below.

- **Access to information:** Informed people are better equipped to ensure their best options and opportunities, accessibility to services, exercise their rights, and better negotiation. Only with relevant, timely, and understandable information, targeted people are enabled to take effective action. The information must be two-way communications between targeted people and government to ensure accountable governance.
- **Inclusion and participation:** Inclusion of targeted people in the process and empowerment activities will ensure the best approach under limited resource of their knowledge, their priorities, and commitment to change. Such activities include priority setting, budget formation, and the delivery of basic services which should reflect actual participation. In other words, inclusion and participation do not mean to participate in endless meetings without any impact on policy or resource decisions. OECD (2012) mentioned that in order to empower poor people, a formal political process must also include all representative institutions to participate in governance and deliberative democracy.
- **Accountability:** Accountability refers to the ability of targeted people to call public officials, private employers or service providers for their response or explanation on policies, and actions. Access to laws and justice is also critical to protect rights of targeted people and enable them to access to legal accountability.
- **Organisational capacity:** Organisational capacity refers to the ability of people to organise, and mobilise resources to solve problems of common interest. The group may be either formal or informal, with or without legal registration. Organised groups are likely to be successful in having their voices heard.

### **3.1.1.2 Social and Political Structure**

The social, political structure and economic structures<sup>14</sup> shape functions and conditions of the society. At the national and local levels, regulations regarding openness, competition and conflicts help defining the environment. The openness of state conduct to the scrutiny and feedback leads to better conflict resolution mechanisms. In addition, competition rules determine roles in the society and thus construct the social and political environment.

### **3.1.2 Agency**

#### **3.1.2.1 Individual Assets and Capabilities**

Individual capabilities are inherent and enable vulnerable people to increase their well-being and choose the best choice under their available resources and assets. Individual capabilities include economic and human capital, which are resources, skills, and good health. It helps increase self-dependency, which in turn, increase the capacity and options. OECD (2012) underlines human capabilities and critical awareness. Human capabilities, including skills and critical self-awareness, give people the freedom to engage in economic activities and participate in political and cultural life. In addition, critical awareness is the “power within” that leads to aspiring to change one’s situation.

#### **3.1.2.2 Collective Assets and Capabilities**

Collective capabilities are valuable in order to enhance a person’s bargaining power, expanding resource sharing and creating self-confidence amongst vulnerable people while participating in group decision-making (Thorp, *et al.* 2005). To overcome problems of marginalisation in society, organising and mobilising will help vulnerable people represent their voices and concerns.

## **3.2 Framework and Methodology of the Study**

This section aims to explore factors affecting migrant workers in accessing grievance mechanisms to promoting labour rights. The overall objective is to investigate factors affecting migrant workers in accessing grievance mechanisms ensuring their labour rights in practice. The study emphasises the manufacturing and service sectors and targets migrants working in elementary occupations. A comparison between Thailand and Japan is employed in this study.

Figure 9 depicts the framework of this study as it aims to assess current situations and the working condition of migrant workers. The characteristics that impact current situations are composed of individual and institutional characteristics. Empowerment fosters change in power relations, thus resulting in preferable situations such as better accessibility to information of migrant workers. Good grievance mechanisms and protected labour rights will be a result of changing power directions. In order to ensure sustainability of

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<sup>14</sup> It is noteworthy that this study applies the theory of empowerment with the focus on labour markets. Therefore, the next section, which elaborates on the methodology of this study, will include economic and labour market structure as one of the key functions in this aspect.

empowerment, good grievance mechanisms must be sustained and dynamically evolve with the regular development of the framework of empowerment.

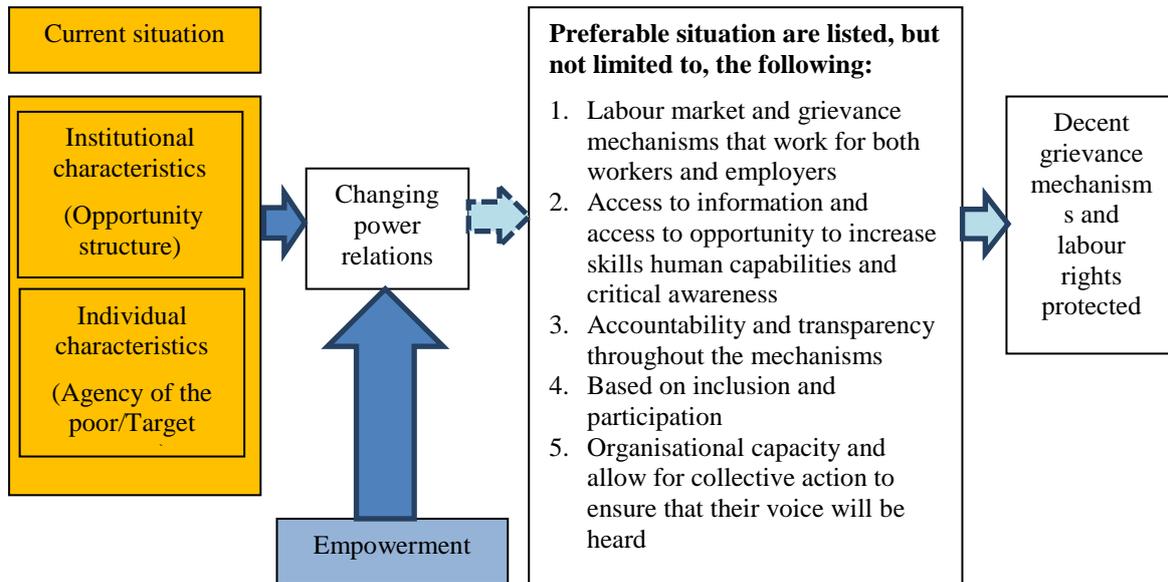


Figure 9: Framework of the Study  
Source: Author

In order to achieve the objectives of the study, the methodology of this study is divided into three steps as depicted in Figure 10. The first step is to explore the working conditions of migrant workers in Thailand and Japan using the desk review and supplement this through the results of the interview (Chapters 4 and 5). The following step is to analyse factors affecting migrant worker choices in accessing grievance mechanisms using the quantitative approach (Chapter 6). The next step is to integrate and scrutinise results of quantitative and qualitative chapters into a comparative analysis (Chapter 7).

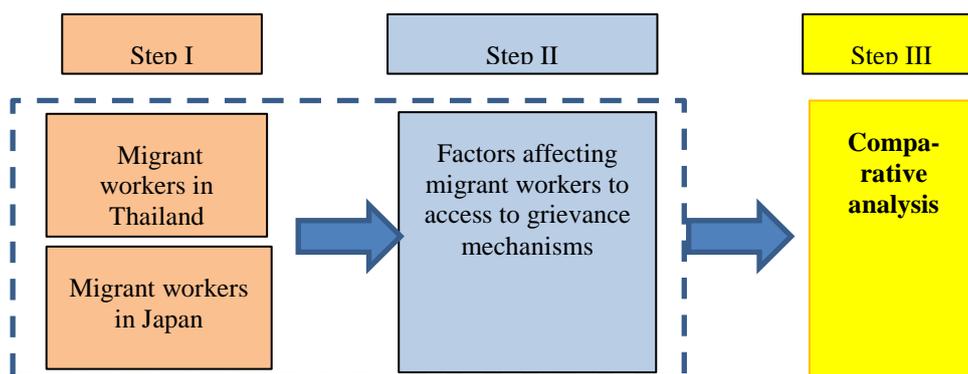


Figure 10: Methodology of the Study.  
Source: Author.

### **3.2.1 Examine Current Situations of Migrant Workers in Thailand and Japan**

#### **3.2.1.1 Methodology**

In order to reveal the current situation of migrant workers, the study applied Thailand and Japan, which share some characteristics as net immigrant countries in East and South East Asia for comparative analysis. The following methods are used:

- Review of primary and secondary data and documents including specific chapters in general working conditions surveys, ad-hoc surveys on migrants' working conditions, case studies and other relevant reports on migrants' working conditions. It aims to collect and demonstrate the overview of the existing literature on migrant workers' employment and working conditions
- In-depth interviews and focus group discussion were conducted to discuss migrants' working conditions. A total of 150 interviews based on a structural questionnaire were carried out through small focus groups, in-person interviews and phone interviews between September 2012 and January 2015. The in-depth interviews, surveys, questionnaires and focus groups were conducted in Bangkok and Tokyo and its surrounding prefectures with 75 migrant workers in Japan and 75 migrant workers in Thailand
- All responses and interviewees were kept anonymous. Each in-depth structured interview took about 1-1.5 hours. A structured interview was developed to ensure a thorough list of grievance mechanisms. The majority of interviews were conducted face-to-face with the migrants. However, phone interviews are utilised with some workers in cases when it was difficult to access to them. Migrant workers in this study are working in low-skilled occupations in the service and manufacturing sector, for example, being a worker in a production line or a waiter
- Those small focus groups, in-person interviews and phone interviews were conducted in Thailand by one trained interpreter. The targeted interviewees are Burmese and hill tribes along TH/MYN border MWs in Thailand. The interpreter is a Burmese-Thai-Pao (minority language)-English speaker and a Thai native interviewer. In Japan, the interview conducted was by one interpreter/translator (English and Japanese) and one Thai native interviewer
- Given the difficulty in reaching respondent 'targets' in a limited timeframe, a snowball, which is a non-probability technique, was employed. Though this technique is considered as a type of purposive sampling, it is an effective method for finding hidden populations who are not easily accessible through other sampling strategies (Family Health International, 2005: 5-6).

#### **3.2.1.2 Sampling Size Determination**

Normally, the sample size for qualitative research is not necessary to be large as there is a diminishing return to a qualitative sample where it is substitutable by detailed data. The cut-off between possible additional findings and not adding might be considered inevitably

subjective. Generally, the number of the sampling size in the qualitative study can be identified by the concept of saturation. However, the point of saturation is difficult to identify (Mason, 2010)<sup>15</sup>. Mason analysed 560 PhD qualitative dissertations and found that the median were 28 and the mean were 31. Among those studies, the average case study approach is 36. While action researches and life history approaches showed mean numbers of participants of 23, the most common sample sizes were 20 and 30.

Therefore for the purposes of this study, a collection of 75 migrants in Thailand and 75 migrants in Japan or a total of 150 migrants is considered as a substantial large sampling size, even for the analysis of each country. In-depth interviews are used to optimise and collect data on individuals' characteristics, perspectives, and experiences. Various questions may be employed to each interviewee to opt for one answer when sensitive topics are being explored.

### **3.2.1.3 Set of Indicators on Working Conditions**

According to the previous literature, indicators on migrant workers' working conditions are demonstrated as follows:

#### **1) Migrant profile**

- Working sector, gender, age, marital status, household members, education, language proficiency, legal status

#### **2) Fundamental rights at work**

- Forced to work and constraints preventing a migrant from leaving their job
- Violence ( Physical and verbal violence)
- Discrimination at work

#### **3) Working conditions that lead to vulnerability**

- Written employment contract
- Payment, wages
- Working hours, rest hours, days off and leave

#### **4) Extent to reduce vulnerability**

- Accessibility to grievance mechanisms
- Union representation and group formation
- Migrants' skills and trainings
- Employment opportunities

After the structured interviews, the quantitative data is analysed using the SPSS (Statistical Package for the Social Sciences) programme and Stata programme for descriptive data, cross tabulation and estimates of the models. Qualitative data obtained from the interviews is scrutinised through the interviewer's context and further analysis with reference to figures and numbers.

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<sup>15</sup> 80 per cent of Mason samples used 15 as the smallest number of participants for a qualitative study irrespective of the methodology.

### 3.2.2 Investigate Factors Affecting Migrant Choices in Accessing Grievance Mechanisms

#### 3.2.2.1 Methodology

Figure 11 depicts the framework in accessing factors affecting decisions of migrant workers and possible factors affecting migrant workers' access to the grievance mechanisms. The key components are composed of the opportunity structure and the agency characteristics. Note that the detailed list of the variables will be elaborated on and discussed in Chapter 6, as a result of the analysis of the migrants' characteristics and the interviews, together with the analysis demonstrated in the previous literature. The quantitative analysis in Chapter 6 will be used to observe characteristics and factors affecting migrant workers to access grievance mechanisms.

- 1) The opportunity structure (institutional characteristics) can be classified into legal/institutional support frameworks and driving factors from labour markets, job options and working environment of each sector.
- 2) The agency structure (The individual characteristics) includes migrants' background, skills, and legal status.

Based on previous literature and the results of the interviews in this study, the responses can be divided into three groups: do not know what to do; know what to do but do not take action; and know what to do and will take action. The analysis is postulated into two types: a simultaneous choice (Multinomial Logistic Regression) and a nested structure analysis.

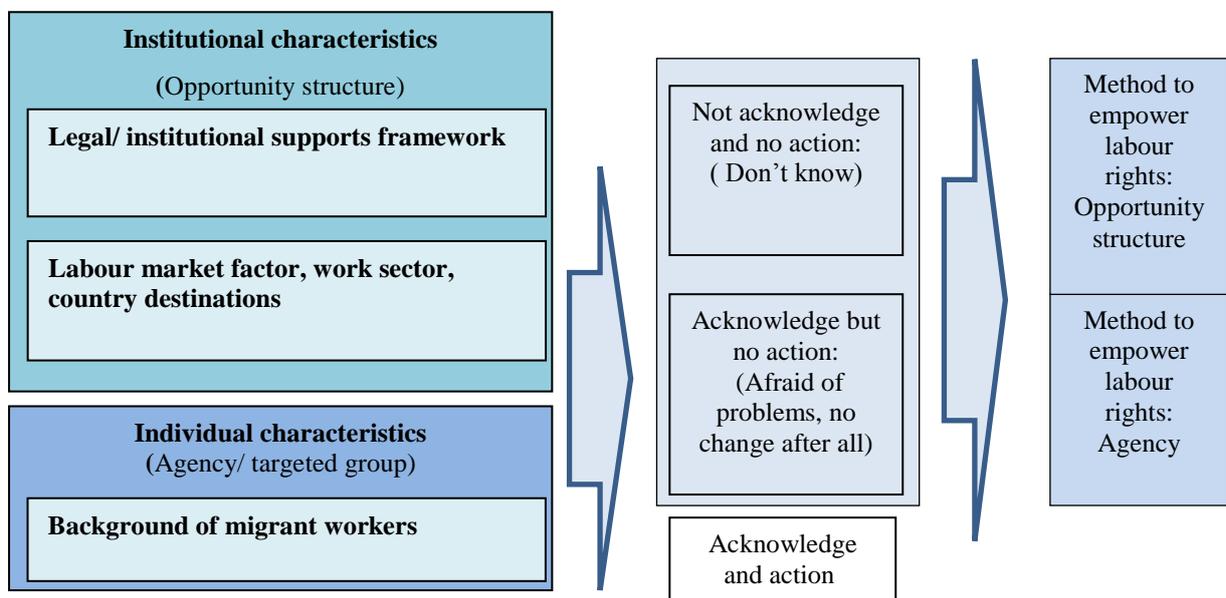


Figure 11: Framework to Investigate the Factors Affecting Migrants in Response to Labour-Related Mechanisms.

Source: Author.

## 1) Multinomial Logistic Regression

This assumption hypothesises that migrant workers respond to the three choices independently and simultaneously. Therefore, the generalised linear modelling technique of Multinomial Logistic Regression (MLR) is applied. The MLR model assumes that the conditional mean of the dependent categorical variables is the logistic function of a combination of independent variables. It is an extension of binary logistic regression that allows more than two categories of the dependent or outcome variable.

The MLR finds the vector of coefficients that maximises the likelihood of the observations. It compares multiple groups through a combination of binary logistic regressions. The score can directly be converted to a probability value, which demonstrating the probability of observation choosing a certain outcome result given the measured characteristics of the observation.

However, in order to use the MLR, the Independence of Irrelevant Alternatives (IIA) assumption is required. The IIA assumption means that the odds will not be affected by adding or deleting alternatives. In other words, the probability ratio of individuals choosing between two alternatives does not depend on the availability or attributes of the other alternatives. The disturbances are assumed independent and homoscedastic (Green, 2003: 724). Violating IIA may lead a model to overestimate or underestimate the coefficients of independent variables. The general form of the MLR can be demonstrated as follows:

$$\Pr(Y_i = j | x_i) = \frac{e^{(\alpha + \beta_j X_i + \varepsilon)}}{1 + \sum e^{(\alpha + \beta_j X_i + \varepsilon)}} \quad (1)$$

...where  $j$  is the number of choices (greater than 2) categories.  $X_i$  represents a set of explanatory variables, which is different across individuals not across choices. The model (1) specifies for choice  $j=1,2,\dots J$  (Green, 2003: 721).

Under this study framework, the baseline of the MLR is the case where migrant workers do not know what to do. The alternative cases are the remaining two choices: where migrant workers acknowledge but take no action; and where migrant workers do not take any action because they do not know what to do (Figure 12A). The models of choice behaviour between three decisions provide two estimates for the effect that each explanatory variable has on the response. The general form of the models is represented as follows:

$$\log \frac{\Pr(Y = \text{Donotknow})}{\Pr(Y = \text{Knowandact})} = \alpha + \beta_i X_i + \beta_j Z_j + \varepsilon \quad (2)$$

$$\log \frac{\Pr(Y = \text{Knownotact})}{\Pr(Y = \text{Knowandact})} = \alpha + \beta_i X_i + \beta_j Z_j + \varepsilon \quad (3)$$

where  $\beta_i$ ,  $\beta_j$  represents coefficients of the explanatory variables;

$X_i$  represents the explanatory variables, individual factors: e.g., age, years of schooling; and

$Z_j$  represents the explanatory variables, institutional factors: e.g., supporting systems, labour market conditions.

The Hausman specification test (1978) is used to evaluate whether this model violates the IIA assumption. It is the comparison among estimators. If the estimator is indeed an efficient (and consistent) estimator of the true parameters, there should be no systematic difference between the two estimators. This observation of the Hausman's specification test is shown below.

$$\chi^2 = (\hat{\beta}_s - \hat{\beta}_f)' [\hat{V}_s - \hat{V}_f]^{-1} (\hat{\beta}_s - \hat{\beta}_f) \quad (4)$$

where  $s$  indicates the estimators based on the restricted subset,  $f$  indicates the estimator based on the full set of choices, and  $\hat{V}_s$  and  $\hat{V}_f$  are the respective estimators of the asymptotic covariance matrices (Hausman and McFadden, 1984).

## 2) Nested Structure Analysis

The purpose of the nested structure is to categorise choices. This assumption assumes that in order to choose their responses, migrants would first make a selection based on a key attribute, which in this case is knowing or not knowing what to do. If they know about the grievance mechanisms, afterward, they will choose their response if they are going to take any action or not. The nested structure is depicted in Figure 12B.

Possible tools used in this type of analysis are the Conditional Logistic Model (CLM), Sequential Logistic Model (SLM) (or multilevel/hierarchical logistic model), and Nested Logistic Model (NLM). The following discussion aims to make the reference to the most proper model as follows:

- The Conditional Logistic Model (CLM), along with the MLR, is probably the most widely used tools for analysing discrete dependent variables due to its globally concave likelihood function that makes maximum likelihood estimation straightforward (Heiss, 2002: 230 -232). This method provides

the analysis on how the characteristics of the categories affect individual's likelihood in affecting the dependent variable. It is the appropriate model of the choice-specific attributes instead of individual-specific characteristics (Green, 2003: 723). This method is extensively used, particularly regarding decisions to move to other countries of migrant workers. For example, Davies, Greenwood and Haizheng (2001) and Rajbhandary and Basu (2006) utilised the CLM to study internal migration in the United States and Canada. Let  $j = 1, 2, \dots, J$  for a total of  $J$  alternatives, the general form will be similar to the MLR, subject to conditional choice-specific options, as shown follows:

$$\Pr(Y_i = j | x_{i1}, x_{i2}, \dots, x_{iJ}) = \frac{e^{\alpha + \beta_i X_{ij} + \varepsilon}}{\sum_{j=1}^J e^{\alpha + \beta_i X_{ij} + \varepsilon}} \quad (5)$$

- The SLM or multilevel/hierarchical logistic model is the group structure which is defined by the presence of macro and micro observations or levels. The same regressors are used in each level. The values of the utilities of the second-stage alternatives do not influence the decisions at the first stage. There are two possible explanations. The first explanation is that these two groups can be treated almost independently if the among-group differences are much larger than the within-group differences. Such differences indicate the high possibility that the choice process is consisting of two stages. The second explanation is that, at the first stage, an individual does not know the values of the second-stage alternatives (Nagakura and Kobayashi, 2009). A great deal of literature suggests that the Sequential Logistic Model is suitable when a choice framework is the “elimination by aspects” process (eg. Tversky, 1972; Laurent, 2006).
- Lastly, the Nested Logistic Model (NLM) relaxes the IIA assumption by allowing the unobserved factors to be correlated. The nested logistic model divides choices into different subsets. Based on the partition, the nested logistic model then allows the unobservable variable to have the same correlation within a nest, but maintains independence across nests (Christiadi and Brian Cushing, 2007; Green, 2003).
- Suppose, then, that the  $J$  alternatives can be divided into  $L$  subgroups. Suppose as well that the data consist of observations on the attributes of the choices  $X_{jl}$  and attributes of the choice sets  $Z_l$ . Given  $I_l = \ln \sum_{j=1}^{J_l} e^{x'_{jl}\beta}$  as the inclusive value for the  $l$ th branch, the model can be written as follows (Green, 2003: 726):

$$P_{j|l} = \frac{e^{\beta X'_{jl}}}{\sum_{j=1}^{J_l} e^{\beta X'_{jl}}} ; \text{ for the case of alternative } j \text{ given by } l \text{ th branch (6)}$$

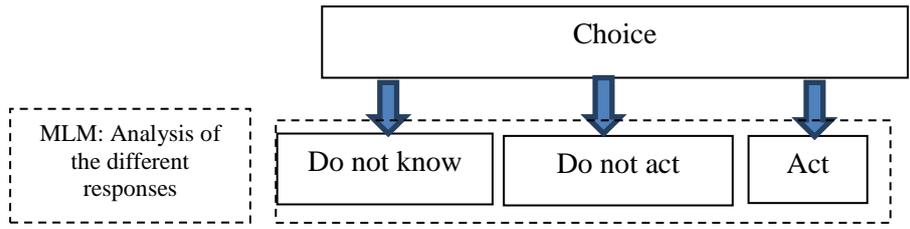
$$P_l = \frac{e^{\gamma z'_l + \tau_l I_l}}{\sum_{l=1}^L e^{\gamma z'_l + \tau_l I_l}} ; \text{ for the case of } l \text{ th branch (7)}$$

These above three models, however, yield qualitatively very similar, in particular with a large sample size. For example, that the results from the NLM is similar to those from the CLM with the same sign and most have the same level of statistical significance of all estimated coefficients (Christiadi and Cushing, 2007). With a sufficed sample size, the MLR estimators provide the same conclusions as the CLM estimator (Dahlberg and Eklöf, 2003).

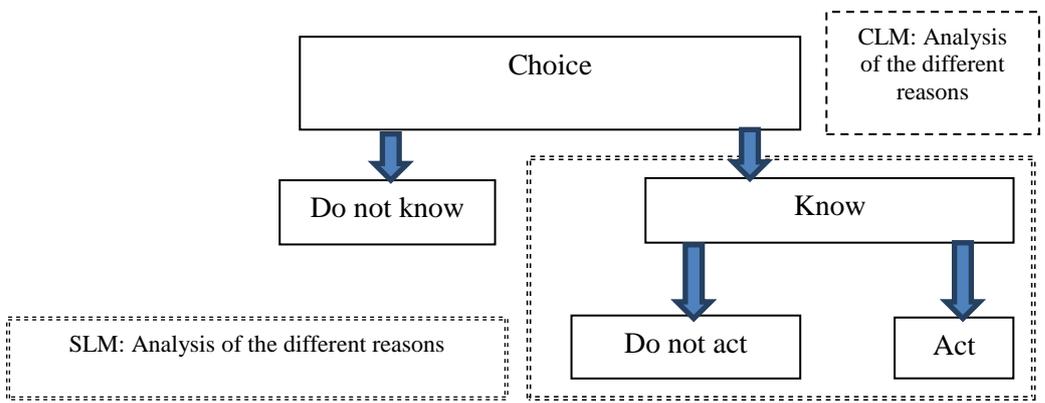
Furthermore, the most importance in identifying and selecting the model is the objective of the study. Train (2009, 51) indicate that *“if a series of questions is asked, with the attributes of the products varying so as to determine how the respondent’s choice changes when the attributes change. The researcher therefore observes the sequence of choices by each respondent.”* Violations of the IIA assumption will cause less affect when estimating average preferences than when forecasting substitution patterns.

With the reference to the nested structure analysis, this study will use the both CLM and SLM for the reasons listed below:

- (i) While the NLM holds a more flexible assumption on the IIA property, the model is considered as a composite alternative when one nested choice competes with the other choices simultaneously. Under this model, the migrant workers will decide what to do with their perceived sets of utilities. Considering that migrant workers who do not know the next stage, or the utilities of the next stage, using the NLM may not fit to the migrants’ pattern when compare to the SLM and the CLM. These two models are more appropriate tools for choices and decisions framework
- (ii) The CLM will complement the analysis of the MLR. While the MLR represent effects of individual's characteristics, this will affect their likelihood of being in certain categories of a dependent variable, and the CLM reflects how the migrants make choices based upon aspects of the knowledge available
- (iii) Unlike the CLM, the SLM are the group structure that the values of the utilities of the second-stage alternatives that do not influence the decisions at the first stage. These two groups: those who know and those who do not know, can possibly be treated independently if the migrant does not know the values of the second-stage alternatives. The SLM analysis will also perform the investigation of factors affecting the status of knowing and not knowing what to do. Bearing in mind that the result of the CLM and the SLM may be different or similar, this study also use these two models to observe the characteristics of migrants decisions (Figure 12B).



12.A Simultaneous decision



12.B Nested structure decision

Figure 12: Proposed Analytical Structure of Migrants' Decision to Responding Labour-Related Problems  
Source: Author

**3.2.2.2 Areas of the Study**

Thailand and Japan are used as the case studies for developing and developed countries, which are net migrant countries in East Asia. The interviews were conducted in Bangkok and Tokyo because of the high number of registered migrant workers.

As briefly introduced, as to the background of Bangkok and Tokyo in Chapter 1, both cities are the capitals of their respective countries with the major economic sector in the service and manufacturing sectors. Therefore, the targeted migrant workers are those who are working in these two economic sectors.

During 2012-2014, Tokyo accounted for 19-20 per cent of foreign residents and was among first rank via other prefectures. Similar to Tokyo, Bangkok accounted for 9-11 per cent of regular migrant workers and ranked as the top three provinces with registered migrant workers (Table 8).

Table 8 Number of Regular Migrant Worker in Bangkok and Tokyo

	2012	2013	2014
Total regular migrant workers/foreign residence (people)			
Thailand	1,133,851	1,183,835	1,339,834
Bangkok	125,514	129,658	120,636
Total regular migrant workers/foreign residence in province/prefecture (people)			
Japan	2,038,159	2,066,445	2,121,831
Tokyo	393,974	407,067	430,658
Percentage of the province			
Japan	11.1%	11.0%	9.0%
Tokyo	19.3%	19.7%	20.3%

Source: Thailand: Department of Employment, Ministry of Labour. Japan: Ministry of Justice

### 3.2.2.3 Sampling Size Determination

The actual population of migrant workers is unknown as there are regular and irregular migrant workers. In Thailand, there are figures for workers registered with the Department of Employment for work permits, but many migrants do not go through these registration processes. Given the following difficulties outlined in the previous literature on accessibility to worksites, there is difficulty in reaching respondent ‘targets’ in limited time while ensuring safety for respondents from their employers, time constraints of migrants, language barriers, etc..

The previous section discussed the sampling size of the qualitative approach and identified that a total of 150 migrants is statistically sufficient. It should be noted that the sample collected is too small to lead to representative conclusions as that which could be derived from a national survey. However, the research results do provide important indications about the migrants’ working conditions. It also delivers a pioneer work in applying comparative studies using a combination of the quantitative and qualitative approach. While the qualitative approach seeks to explore phenomena and flexible instruments, the quantitative analysis is utilised to confirm hypotheses to support the qualitative method. It is also used to quantify variation and observe the magnitude of the possible factors based on evidence-based policy responses.

Further, as to the statistical aspect, sample size calculation for binary regression is a complicated problem, because of many factors such as statistical power and standard error. However, the key criteria are not specifically about the size of the sample alone, yet the rarity of the events on the possibility of a small number of cases. However, a simple guideline sample size selection for binary regressions indicates a minimum of 10 cases per independent variable (Hosmer and Lemeshow, 2000: 347). Yet the total of the observation

should be at 100, the minimum suggested by Long (1997). Therefore, a total of 150 observations are considered to be sufficient for this analysis (King and Zeng, 2001)<sup>16</sup>.

### **3.2.3 Comparative Analysis**

After the desk research, the interviews and model testing, the comparative analysis will be conducted. In terms of data collection methods, comparative case studies are to utilize a combination of qualitative and quantitative data. The explanatory phase of comparative case studies identifies propositions derived from the observed patterns and relationships. Later, the quantitative analysis is used to reaffirm propositions, observe the differences between two countries, and seeks out additional evidences in order to bring about discussions and results on how to promote and empower migrant workers.

### **3.2.4 Research Ethic**

In this dissertation, I ensure that ethical aspects of the interview were made clear. I made sure to ask permission from the participants to use their information and pledged to all interviewees that their information will be kept anonymous to ensure their personal confidentiality and their safety. They were asked to feel free to use an alias and could stop the interview whenever they wanted.

## **3.3 Conclusion**

This section elaborates the reference framework of the study and the framework and methodology of the study. The theory of empowerment aims to define, understand, explain, predict, and empower vulnerable people. This theory points out, expands assets and capabilities of vulnerable people to more options, and takes control of their life's options properly. This theory is largely used for poverty reduction and gender empowerment. Providing elements toward a successful effort in order to empower vulnerable people, in this study the theory is adapted to understand migrant workers and seek the way to empower them in order to access grievance mechanisms.

The framework of this study was developed with the empowerment theory in mind. Both qualitative and quantitative approaches are employed. The primary data using Thailand and Japan as the case studies were conducted to reveal current situations of low-skilled migrant workers using Bangkok and Tokyo and its vicinity.

The study will first investigate migrant workers and their characteristics and institutional context. It will also compare situations with the overall working situations in the country of destination. The analysis will be scrutinised with the interview results, reflecting individual characteristics and working conditions pointing out existing challenges of migrant workers, especially the linkage to grievance mechanisms. Further analysis will be made through quantitative regressions, using the MLR, the CLM and the SLM. These methods will point out the factors affecting on migrants' decisions in response to labour-related mechanisms. The analysis will be extended to examine factors affecting the status

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<sup>16</sup> They mentioned, for example, wars, coups, decisions of citizens to run for political office, or infections by uncommon diseases

of knowing and not knowing what to do. The results from the qualitative and the quantitative approach will be integrated to a comprehensive analysis as to ensure that this study provides a realistic and practical view in promoting labour rights in practice.

## CHAPTER 4

### Migrant Workers in Thailand

This chapter will provide a comprehensive view regarding migrant workers in Thailand. Section 4.1 reveals the overview of labour market in Thailand. Section 4.2 provides a legal framework that includes policies, laws regarding migrant workers and employment-related laws for migrant workers and grievance mechanisms for migrant workers in Thailand. Section 4.3 illustrates trends of migrant workers. Section 4.4 examines current grievance-handling mechanisms in Thailand. Lastly, Section 4.5 highlights working conditions and accessibility to migrant workers in Thailand based on the interviews of the study, previous literature, as well as contributing discussion in comparison to non-migrant and migrant background.

#### 4.1 Overview of Labour Market in Thailand

In 2013, employment in Thailand is approximately 40 million people. The major employment sector is the service sector. The employment share of the service sector is approximately 44-46 per cent, followed by the share of agriculture sector and the industry sector (Table 9).

Table 9 Employment by Economic Sectors, Thailand, 2011 -2013

	Number (million)			Percentage		
	2011	2012	2013	2011	2012	2013
Agriculture	39.49	39.55	39.49	42.5%	41.2%	42.0%
Manufacture	16.8	16.31	16.59	13.0%	14.1%	14.4%
Service	5.15	5.59	5.7	44.4%	44.6%	43.6%
<b>Total</b>	<b>17.54</b>	<b>17.65</b>	<b>17.2</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>

Source: National Statistical Office, Labour Force Survey, 2011-2013

Informal employment is significant in Thailand, like in other developing countries. Informal employment can be roughly estimated by working status. Employed persons who are employers, own account workers, contributing family workers, and cooperative workers may roughly represent a proxy of informal employment (eg. Hussmanns, 2004:1-7). As can be seen from Table 10, the share of informal employment is greater than half the total number of employed.

Table 10 Employment by Working Status, Thailand, 2011-2013

	Number (thousand)			Percentage		
	2011	2012	2013	2011	2012	2013
<i>Employer</i>	922.8	1,023.1	1,024.5	2.40%	2.63%	2.65%
<i>Own account worker</i>	12,184.4	12,290.7	12,551.7	31.68%	31.56%	32.50%
<i>Contributing family worker</i>	8,380.5	8,540.4	8,391.7	21.79%	21.93%	21.73%
<i>Cooperative worker</i>	58.6	68.7	65	0.15%	0.18%	0.17%
Government employee	3,348.8	3,269.3	3,212.6	8.71%	8.40%	8.32%
State enterprise employee	325.9	298.3	309.2	0.85%	0.77%	0.80%
Private employee	13,243.7	13,450.7	13,066.4	34.43%	34.54%	33.83%
<b>Total</b>	<b>38,465</b>	<b>38,941</b>	<b>38,621</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>

Source: National Statistical Office, Labour Force Survey, 2011-2013

## 4.2 Key Policies and Regulations Regarding Migrant Workers in Thailand

### 4.2.1 Immigration-Related Laws

Similar to other countries, international migration plays a long-history phenomenon in Thailand, similar to other countries. The majority of historic immigrant workers were Chinese who arrived in the eighteenth and nineteenth centuries due to their internal situation and demographical changes. A summary of the Acts and laws that affect the movement of people is listed as follows (Stern, 1997; Iredale *et al.*, 2003):

- Act On Women and Girl Prostitution (1928)
- Immigration Act (1950, 1979)
- Alien Registration Act (1950, 1952, 1954)
- Nationality Act (1965, 1992)
- Alien Employment Act (1978, 2008)
- Laws on the Categories of Work not Permitted for Aliens (1979)
- Laws on Forms of Employment and Activities in which Alien Can Engage (1979, 1985).

Among all Acts, the Immigration Act is the key reference on immigration. The Immigration Act defines an immigrant as “*an alien, other than a returning resident, admitted for permanent residence*”. In the 1950, a quota determining the number of foreigners staying in Thailand was set from year to year at maximum 200 people for each country and maximum 100 people for those who did not have citizenship. The recent version of this act was enacted in 1979. According to this revision, the annual quota was diminished to 100 people for each country and 50 people with no nationality (Section 40,

the 1979 Immigration Act). Only professionals were permitted to work in Thailand with a reference to economic and national security reasons.

The Minister of Interior (MOI) is the key body in charge and prosecutes the Act, since the Immigration Office falls under the MOI jurisdiction. Migrants who enter Thailand may enter for a list of activities at a certain time period as shown in Table 11. Under this Act, the immigration Commission has been established<sup>17</sup> to, for example, identify qualifications of any aliens to take up resident status and temporarily visit, establish standard operating procedures for local officials and for other officials regarding national security (Section 7, the 1979 Immigration Act).

Table 11 Temporary Stay for Certain Activities and Certain Periods

Type of Visa	Period of time	Activities
Tourist Visa	Not exceeding 90 days	Touring (Tourist visa)
Transit Visa	Not exceeding 30 days	Sporting (category S); Transit journey (category TS); Being the person in charge of the crew of a conveyance coming to port, station (category C)
Non-immigrant visa	Not exceeding one year	Business (Category B); Study or observation in a project, a seminar (Category ED); Mass media, journalist (Category M); Missionary work (Category R); Scientific research or training or teach in a Research Institute (Category RS); the practice of skilled worker or as a specialist (Category EX); other activities (Category O) (eg. spouse /dependent of foreigner legally works in the Kingdom)
	As deemed necessary for a case	Diplomatic or consular missions/official visa; Courtesy visa; Performance of official duties (Category F)
	Not exceeding two years	Investing under the concurrence of the Ministries and Departments concerned (Category IM)
	As deemed appropriate by the Commission of Investment Promotion	Investing or other activities relating to investing subject to the provisions of the law on investment promotion (Category IB)
Non-immigrant visa (Long Stay)	Not exceeding one year	Applicants' age must be 50 years and over who wish to stay in Thailand, without the intention of working (Category O-A)

Source: Author grouping based on Immigration Act, 1979 (Section 34-35) and Ministry of Foreign Affairs, Thailand, Visa Information: Non-Immigrant Visa "B"

<sup>17</sup> The commission committee is consisted of the Minister of Interior as Chairman and the following members: Ministry of Foreign Affairs, Police Department (Currently, Thai Royal Police), Labour Department (Currently, Ministry of Labour), Public Prosecution Department (Currently, Office of the Attorney General), Board of Investment Committee, National Security Council, Tourist Organisation of Thailand, and the Immigration Division (under the MOI) as a member and secretary (Section 6, the 1979 Immigration Act).

It is clear that from the Act that those foreigners “*who are entering into Thailand to work as a labourer, or to take employment by using physical without skills training or to work in some certain occupations*” are prohibited to enter into Thailand (Section 12(3), the 1979 Immigration Act). In this section, it also indicates that the prohibition includes those who are likely to enter into the country for the purpose of being involved in prostitution, human trafficking, or smuggling (Section 12(8), the 1979 Immigration Act).

Regardless of migrants’ skill level, it is a prerequisite condition that regular migrants working in the country must obtain a working permit, by law. Various categories of the working visa are designed to meet the needs of businesses. The granting of such visa to qualified applicants is under the jurisdiction of the Office of the Immigration Bureau. A migrant with a temporary entry permit must not engage in the occupation or temporary or employment unless authorised by the Director General of the Department of Employment or competent official deputised by the Director General. In practice, the Office of Foreign Workers Administration, Department of Employment is an assigned implementing body, responsible for non-Thai work administration.

In case of any people found helping, assisting, or facilitating smugglers, they shall be punished by imprisonment not exceeding 10 years and a fine not exceeding 100,000 baht. In addition, those who know aliens entering into Thailand in contravention of this Act, who harbour, hide or assist aliens to evade arrest, shall be punished by imprisonment not exceeding 5 years and a fine not exceeding 50,000 baht (Section 63 and 64).

There are problems in enforcing Thai immigration law (Stern, 1997: 233-234). Thailand drew in immigrants due to its extensive border. The Thai government is aware of the large amount of irregular migrant workers. The complication is driven by the accessibility of people who are living in the border, and there being ethnic hill tribes along the border or remote areas. Due to limited knowledge about the border and national laws, many members of ethnic minority groups crossing national borders are unaware about the illegal nature of their movements. In addition, weak government enforcement and the availability of economic opportunities are fostering the number of migrant workers. Currently, at least 10 entry points are main routes of migrant workers to enter into Thailand (Thai Department of Employment, 2012) (Figure 13).



Figure 13: Entry Points into Thailand by Labouring Migrant Workers.  
 Source: Department of Employment, Ministry of Labour (2012).

## 4.2.2 Employment-Related Laws

This section summarises recent employment-related policy development in Thailand which can be classified into employment regarding migrant employment and working standards.

### 4.2.2.1 Employment of Migrant Workers

This section summarises the key laws which regulate migrant workers employed in Thailand. The Thai government with the attempt to administrate and regularise the low-skilled migrants, the Alien Working Acts was firstly enforced in 1979<sup>18</sup> and later revised in 2008. The Alien Working Act was implemented during the period of nationalism under military government during 1947-1991. During this time, migrant workers were considered as the threat to national security (Human Rights Sub-Committee on Ethnic Minorities, Stateless, Migrant Workers and Displaced Persons, 2011). Since 1979, the Act has posited 39 occupations that migrant workers cannot undertake in order to secure the work for Thais<sup>19</sup>. The prohibited occupations include artisans, brokers, engineering-related works, and legal services.

<sup>18</sup> The Thai Immigration Act was enacted in 1950. The enforcement of the Alien Working Act was 2 decades ahead of the labour protection laws. The Labour Protection Acts was enacted in 1998.

<sup>19</sup> For example, producing Buddha images, knives, barber, agricultural work, livestock works. However the list of the occupations was firstly listed since 1979. Some occupations are widely criticized to be obsolete. It is exceptional to those who are MOUs workers who are subject to work as labourers or domestic workers.

Mainly, Office of Immigration Bureau, the Ministry of Interior (MOI), and Office of Foreign Workers Administration, Ministry of Labour (MOL) are taking charge of administrate migrant workers. The MOI is supervising the immigrant status, while the MOL is approving the working status through working permits approval (see an example of the work permit in Figure 14). The intention of the laws clearly states in the Alien Working Acts that the MOL is holding the responsibility to “control” and “administrate” the foreigners who are working with or without approval of the MOL.

According to the Alien Working Act (2008), it is obvious that only skilled workers or experts with a valid working permit can perform works (Section 8, 9). In addition to such skilled workers or experts, migrant workers can be those who work for a normal business, for example, an investor with capital investment of greater than 30 million baht, and an officer for an international NGO. Some special regulations are allow hiring foreigners, for example, Board of Investment Promotion Act BE 2520, Petroleum Act BE 2514, Industrial Estate Authority of Thailand BE 2520) (The Department of Employment, 2012). The relaxation of hiring workers under such laws is designed to prevent the labour shortage problems in certain industries.



Figure 14: Sample of Work Permit in Thailand.  
Source: Ministry of Labour, Thailand.

The 2008 Alien Working Act specifies penalties to employers and migrant workers who do not have work permits, or working sectors as follows:

- If a person employs a migrant worker without a work permit, there will be a fine from 2,000-100,000 baht per person and or imprison not exceed 5 years (Section 54). Migrant workers who are working without a work permit shall be subject to a fine from 2,000-100,000 baht per person and or imprison not exceed 5 years (Section 51)
- If a person employs a migrant worker but that migrant worker does not work for him/herself, the acting employer will be subject to a fine not exceeding 10,000 baht (approx. 325 USD) (Section 54)

- If a migrant worker has a work permit but work in other occupations, and type of work other than registration, the migrant worker will subject to a fine not exceeding 20,000 baht (approx. 650 USD) (Section 52). On the other hand, if employer's of migrant worker order migrant workers to work other than identified in the work permit, the employer will be subject to a fine not exceeding 10,000 baht (approx. 325 USD) (Section 54)
- The foreigner who has a work permit must be ready to show the work permit at authorities' demand, otherwise he/she will subject to a fine not exceeding 10,000 baht (Section 53).

The migrant workers can change to a new employer only under these four conditions: the employer is dead; termination; the business goes bankrupt; and the employer does not comply with labour laws/abuse migrant workers. In addition, in case of a migrant worker comes to Thailand through the MOU, the migrant worker will only be able to change his employer with an approval from the migrant's embassy.

Despite the prohibition of the low-skilled workers, there are some channels that allow migrant workers working in Thailand. Since the high economic growth in Thailand due to the industrial led policy in the 1980s, a great number of migrant workers who had entered into Thailand illegally or overstayed for the purpose of employment had increased, especially for those who are staying at the border between Thailand and neighbouring countries. In addition, many members of ethnic minority groups, who were left out during the official national registration, crossed national borders, not knowing about the illegal nature of their movements. Without any identification documents and written evidence demonstrating their nationalities, they have come for work at border provinces.

In response to the high demand for labour and labour shortage in 1990s, the Thai Cabinet resolutions allowed "irregular" workers to register and legally work for one to two years. The first permission to allow low-skilled migrant workers to work in Thailand was given in 1992 to four border provinces and later expanded to ten provinces<sup>20</sup>. In 1996, the Thai Cabinet issue the resolution for the national registration of migrant workers, allowed Cambodia and Laos, to register in 43 provinces. The registration was granted year by year, aiming for temporary permits in Thailand (Chantavanich and Vungsiriphisal, 2012:215).

Theoretically, after completion of the legalisation, migrant workers' rights will be treated equally to Thai workers, including social security, and work compensation funds. This initiative, however, was not successful as the number of migrant workers approved through this initiative was low. As a result, a number of initiatives to regularise the migrants then were announced periodically<sup>21</sup> on migration amnesty programmes, providing undocumented workers opportunities to register.

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<sup>20</sup> In 1992, the Ministry of Interior's Department of Provincial Administration implemented a classification system of ethnic minorities in Thailand, granting identity cards with 13-digit identification numbers to all members of ethnic minorities more than 12 years of age (IOM, 2011: 65).

<sup>21</sup> Series of the Cabinet resolution were announced, despite minor differences in details, for example, June 1996, April and May 1998, in 1999, August 2000, August 2001, August 2002 (Archavanitkul, and Vajanasara, 2008).

In the late 1990s, besides the temporary permissions for migrant workers, the Thai government has taken multichannel measures to tackle this concern. It includes international symposiums and initiatives on Bilateral- Memorandum of Understanding for employments with neighbouring countries. In April 1999, the Thai government took a lead in hosting the International Symposium on Migration for 19 participating countries in Bangkok<sup>22</sup>. As a result of the meeting, Bangkok Declaration on Irregular Migration was announced with the emphasis on encouraging the governments to prevent and combat irregular migration by improving their domestic laws and measures, and by promoting educational and information activities. In the same year, the Thai government started a discussion with three neighbouring countries about MOUs to encourage formal employment cooperation with Cambodia, the Lao People's Democratic Republic and Myanmar. The MOU with the Lao People's Democratic Republic was signed in October 2002. The MOU with Cambodia was signed in May 2003, and followed that with Myanmar<sup>23</sup> in June 2003 (IOM, 2011: 10). The context of the MOUs includes effective repatriation of migrant workers; protection of migrant workers; and prevention of smuggling, trafficking of illegal workers and employment of irregular workers. However, the MOUs were developed largely under the lead of the National Security Council of Thailand (NSC), which implies a heavy focus on admissions procedures, prevention of irregular migration and employment, and repatriation of migrant workers. It is claimed to be less focused on meeting labour market needs and the protection of migrants (ILO, 2015: 8).

The Thai government also implemented an initiative to administrate the existence of irregular migrant workers in Thailand from three neighbouring countries, so called Nationality Verification (NV). The NV is a process for migrant workers, who do not have citizenship or any identity documents, to verify their nationality through their own government in order to obtain legal working status. However, many migrants failed to register before the deadline due to poor public awareness. In response to the low numbers for registration, the Thai government announced the opening of a number of one-stop service centres for nationality verification throughout the country, and announced several deadline extensions to enable a larger number of registrations<sup>24</sup>.

Since 2007, the official number of migrant workers through the MOUs has been reported. Practically speaking, since 2007, two methods were implemented for legalising irregular migration in Thailand. The first channel is through the MOUs by importing workers directly from neighbouring countries with temporary passports. The second one is through

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<sup>22</sup> THE BANGKOK DECLARATION ON IRREGULAR MIGRATION International Symposium on Migration "Towards Regional Cooperation on Irregular/Undocumented Migration" 21-23 April 1999. The participating countries include the Ministers and representatives of the Governments of Australia, Bangladesh, Brunei Darussalam, Cambodia, China, Indonesia, Japan, Republic of Korea, Lao PDR, Malaysia, Myanmar, New Zealand, Papua New Guinea, the Philippines, Singapore, Sri Lanka, Thailand, and Vietnam, as well as the Hong Kong Special Administrative Region to address the question of international migration, with particular attention to regional cooperation on irregular/undocumented migration.

<sup>23</sup> The MOUs between Thailand and Myanmar is demonstrated in Appendix 3.

<sup>24</sup> It is also claimed that the NV process is delayed due to the insufficient number of authorities, and incomplete documents submitted by the migrants. ASTV Manager Online (28 March 2015); Prachachat Business Online (6 March 2015).

the NV for those who are already in Thailand, to enable them a legalised immigrant status<sup>25</sup>.

The application of these two schemes is also identified as the “Comprehensive Strategy on Resolving Irregular Migrants Problems” (NSC, 2012), by the National Security Council (NSC). Besides the ethnic minority group<sup>26</sup>, the NSC classifies irregular migrants into illegal neighbouring countries, displaced persons, and over-stayers (and other illegal immigrants) (Table 12). According to the NSC, it suggests that the immigrant policies towards low-skilled migrant workers from three neighbouring countries will mainly apply to the legalisation scheme and the MOU admission.

Table 12 Categories of Low-Skilled Immigrants in Thailand

Descriptive	Strategy details
<b>1. Irregular migrant workers</b>	
Special Groups with Specific Policies due to National Security Problems: Irregular migrant workers from neighbouring countries (Myanmar, Laotian, Cambodian)	<b>Strategy for Irregular Migrant Workers Management (Cabinet Resolution on 2 Mar 2004, amended on 26 Apr 2011)</b> <ul style="list-style-type: none"> <li>• Legalisation of Illegal Migrant Workers (Register for personal identification with MOI; Register/renew work permit with MOL; Proceed national verification by collaborating with CLM countries)</li> <li>• MOU Admission</li> </ul>
- Displaced Persons from military and political conflicts from Myanmar, Rohingya and North Korea	<b>Specific policies and measures (proposed by NSC)</b> <ul style="list-style-type: none"> <li>- Since these groups are involved in political unrests, bilateral relations must be highly concerned</li> <li>- Collaborate with international communities and NGOs in resolving problems, including providing humanitarian aids under the supervision of Thai authorities</li> <li>- Voluntarily returning to home country/resettlement in the third country must be proceeded safely</li> </ul>
<b>2. Other illegal immigrants</b>	
- Over-stay persons, mafia , outlaw groups, etc.	Subject to suppression and arrest according to Immigration Act under ordinary system

Source: Office of the National Security Council (NSC), Thailand (2012)

#### 4.2.2.2 Working Conditions Based on Legal Standards

This section makes reference to laws related to working standards of all workers in Thailand which are Labour Protection Act (2008), Social Security Act (1999), Workmen’s

<sup>25</sup> However, the regularisation was intended only on the adult workers without mentioning on their dependents (IOM, 2011: 19)

<sup>26</sup> Ethnic minority groups can be classified into 2 groups (1) granted status and permanent residence (obtained Thai Nationality or legal Immigrant Status); and (2) granted temporary stay (relatives or offspring of group (1) but never been surveyed, no connection with or rejected by the country of origin, under the investigation of MOI). According to Strategy on the Resolution of Status and Rights of Persons (Cabinet Resolution on 18 Jan 2005, amended 7 Dec 2010), Thai descendants or child of this group who is born in Thailand are granted Thai nationality; other alien migrants granted the status of legal migrants.

Compensation Act (1994), Occupational Safety, Health and Environment Act (2011), and the Employment and Job-seeker Protection Act (1985). The Labour Protection Act outlines working conditions for all workers in Thailand, whereas the Social Security Act and Workmen's Compensation Act are a social safety net for all workers when they face accidents or illness from work. Moreover, the Occupational Health and safety and Environment Act draws proper working environment for workers working in Thailand. The above Acts benefit all migrant workers, including inbound/immigrant workers. An additional Act is Labour Relations Act (1975), which shapes the regulations regarding collective bargaining<sup>27</sup>.

In order to observe working conditions in the country of destination, such Acts will be summarised into 5 categories, each of which lists issues related to employment contracts, wages, working hours and day-off, and health and safety.

In the beginning, it should be noted that some occupations and some sectors are exempted from the Labour Protection Act in some certain benefits. The exemptions are largely in the sectors for which it is difficult to identify the nature of work and certain hours of work; for example, "domestic work" or "agricultural work". Due to the variety of the work in each occupation, this study will focus only on general regulations and exemption which are related to those of low-skilled workers and the low-paid sectors such as manufacturing and the service sector. With such focuses, the Labour Protection Act does not apply to an employer who employs the employees to do housework which is not a part of a business undertaking, and employers whose employee does uneconomically profitable work<sup>28</sup>. This Act also exempts the employer whose employees do work in agriculture, and works done at home<sup>29</sup>.

## 1) Employment Contracts

The Labour Protection Act (2008) defines an employment contract as "*a contract made in writing or orally which its context is clearly expressed, or may be implied, that a person called the employee agrees to work for a person called the employer and the employer agrees to pay wage in return of work throughout the working period*" (Section 5, the 2008 Labour Protection Act). According to this definition, the contract can be written or oral when relating to wages (and work-related conditions) and working period. There is no section requiring either employers or workers to have a written employment contract before beginning work.

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<sup>27</sup> It must be noted that some affiliated enterprises are subjected to special laws. For example, workers of state enterprises are subjected to the State Enterprise Labour Relations Act which posits different labour relation regulations to the Labour Relation Act. The Employment and Job-seeker Protection Act mainly benefits Thai migrant workers, as this Act administrate recruitment agencies in sending migrant workers abroad.

<sup>28</sup> Ministerial Regulation (B.E. 2541) issued under the Labor Protection Act, B.E. 2541 (1998) published in the Government Gazette, Vol. 115, Part 49a, page 9, dated 19th August B.E. 2541. According to Section 4, the 2008 Labour Protection Act, this Act shall not apply to (1) central, provincial and local administration and state enterprise under the law on State enterprise labor relations as well as employer who carries out the private school undertaking under the law on private schools because they are subjected to the "Private School Act 2007".

<sup>29</sup> Based on Ministerial Regulation (B.E. 2541) Issued under the Labor Protection Act, B.E. 2541 (1998) Published in the Government Gazette, Vol. 115, Part 62a, page 20, dated 22nd September B.E. 2541.

However, according to the Act, the employer who employs ten or more employees must provide the working regulations in Thai. Such regulations shall, at least, have the details as follows: (1) working days, ordinary working period and rest period; (2) holidays and rules on holidays; (3) rules on overtime and holiday work; (4) date and place of payment of wage, overtime pay, holiday pay and holiday overtime pay; (5) leave and rules on leave; (6) discipline and disciplinary sanctions; (7) complaints procedures; (8) termination of employment, severance pay and special severance pay (Section 108, the 2008 Labour Protection Act). For migrant workers, the first difficulty is the regulations in Thai, since majority of them cannot read Thai, and some of them cannot even read their own language. Secondly, this Section applies to those establishments with at least 10 workers, therefore the migrant workers who are working in a smaller establishments are excluded from this requirement.

The employment contract will be expired upon the period as specified in the contract without advance notice. In the case where there is no such specified period, the employer or employee may terminate the employment contract by giving advance notice, in writing, to another party on or before any payment date in order to terminate the employment contract at the next payment date. Such advance notice shall not be longer than three months (Section 17, the 2008 Labour Protection Act).

## **2) Wages and Overtime Wages**

“Minimum wage rate” means the wage rate determined by the Wages Committee under this Act (Section 5, the 2008 Labour Protection Act). The Wages Committee consists of representatives of the government, the employers and the employees appointed with the Ministry of Labour appointed as a secretary. The Wages Committee determines and proposes the minimum wage rate. Once the minimum wage rate notification has come into force, no employer shall pay wage to the employee lower than the minimum wage rate (Section 78, 88, 89, 90; the Labour Protection Act).

Any employer who fails to pay at equal or greater than minimum wage shall be liable to imprisonment for a term of not exceeding 6 months or to a fine of not exceeding 100,000 baht, or to both (Section 144; the Labour Protection Act).

## **3) Working Hours, Work Breaks, Days off and Leave**

Working hours shall not exceed 8 hours per day or 48 hours per week (or 7 hours per day and 42 hours per week for dangerous work) (Section 26, the LPA and the Ministerial Regulations No 2 BE 2541). If a working day is shorter than 8 hours, then a work day may be extended to 9 hours by mutual agreement, but the work week shall not exceed 48 hours per week.

The employer shall provide the weekly holiday to the employee for not less than one day per week. The interval period between each weekly holiday shall no longer than six days (Section 28; the Labour Protection Act).

The employee who has worked consecutively for one year shall have the right to the annual holiday for not less than six working days a year (Section 30; the Labour Protection Act).

In the case where the employer demands the employee to do work overtime, the employer shall pay the overtime pay to the employee at the rate of not less than 1.5 times of the hourly wage rate to be paid on the working day for the overtime hours (Section 61; the Labour Protection Act).

In the case where the employer demands the employee to do work on holiday, the employer shall pay the holiday pay (Section 64). In the case where the employer fails to provide holidays, the employer shall pay holiday pay and holiday overtime pay to the employee as if the employer demands the employee to do work on holiday (Section 62, 64; the 2008 Labour Protection Act).

The total working hours of the overtime work and the working hours on holiday shall not exceed 36 hours a week. The working hours on holiday shall include the working hours of the overtime work on holiday (Ministerial Regulations No 3 BE 2541).

#### **4) Social and Labour Insurance**

All workers are entitled compensation schemes to cover injuries, illness, and death both inside and outside of work. Two key acts are the Workmen's Compensation Act (1994), and the Social Security Act (1991).

The Workers Compensation Act states that the employer must provide compensation for employees who are injured, become ill, disabled, or die during or as a result of performing their work duties. Four types of compensation benefits are (1) the compensation amount or indemnity (60 per cent of monthly wages, from 3 days to 15 years depending on the case); (2) the medical expenses (Actual and necessary medical expenses must be paid up to baht 45,000-300,000 ); (3) work rehabilitation expenses (must be paid as necessary, up to 20,000 baht); and (4) funeral expenses (100 times the minimum daily wage rate). While the Workers Compensation Act covers injuries and illness from work, the Social Security Act covers a greater extent beyond work. This insurance fund provides compensation to employees in case of injury, illness, disability or death that is unrelated to performing work duties. The insurance coverage includes child delivery, child welfare, old age pensions, and unemployment.

Similar to Thai workers, an employer with a migrant worker who has a passport and a work permit must register his worker's name to the Workers Compensation Act and Social Security Act within 30 days. However, under the Social Security Act, the exceptional sectors are workers in agricultural, fishery, forestry, and husbandry businesses, as well as stall trades. It also excludes the worker who is working for a non-profit business, and domestic work.

## 5) Occupational Safety and Health Laws

No employer demands the employee to do work overtime or on holiday in the case where the work may be harmful to health and safety of the employee. In addition, the employee shall have the right to leave for his or her sickness during the actual sickness period. The employer may require the employee to express the medical certificate issued by the first class physician or the government infirmary if the sick leave takes more than three days. The day in which the employee is unable to do work because he or she is in danger or sick from working, and the day the employee leave for parturition under section 41 shall not be deemed as sick leave under this section (Section 31, and 32; the 2008 Labour Protection Act).

The employer shall pay wage to the employee who takes a sick leave in an amount equal to the wage to be paid for the working day throughout such leave, but shall not exceed thirty working days per year (Section 57; the 2008 Labour Protection Act).

### 4.3 Migration Trends in Thailand

Thailand has become a regional migration hub in Southeast Asia, especially from neighbouring countries with no less than 3-4 million migrants (Office of the National Security Council, 2012). According to the UN estimates, approximately 3.7 million migrants lived in the country. It is estimated that around 85 per cent (Huguet *et al.*, 2012) of the migrants are working in Thailand. According to this share, 3.2 million migrants are actively working but not all of them have working permits. Though the actual total number of migrants is ambiguous, the majority of the migrant workers are found in the agricultural sector, followed by the domestic work and construction sectors. The rest are dispersed in fishery and fish processing, the rice mill, ice making, mining, transportation and other sectors (Chantavanich, *et al.*, 2007).

Based on the official records of the Office of Foreign Workers Administration, the responsible unit in granting work permits, the number of migrant workers with work permits ranged between 0.62 and 1.95 million migrants. In 2011 and 2012, the share has been growing in response to the restrictive measurements of Thai government and the policy against immigrant workers at that moment (Figure 15).

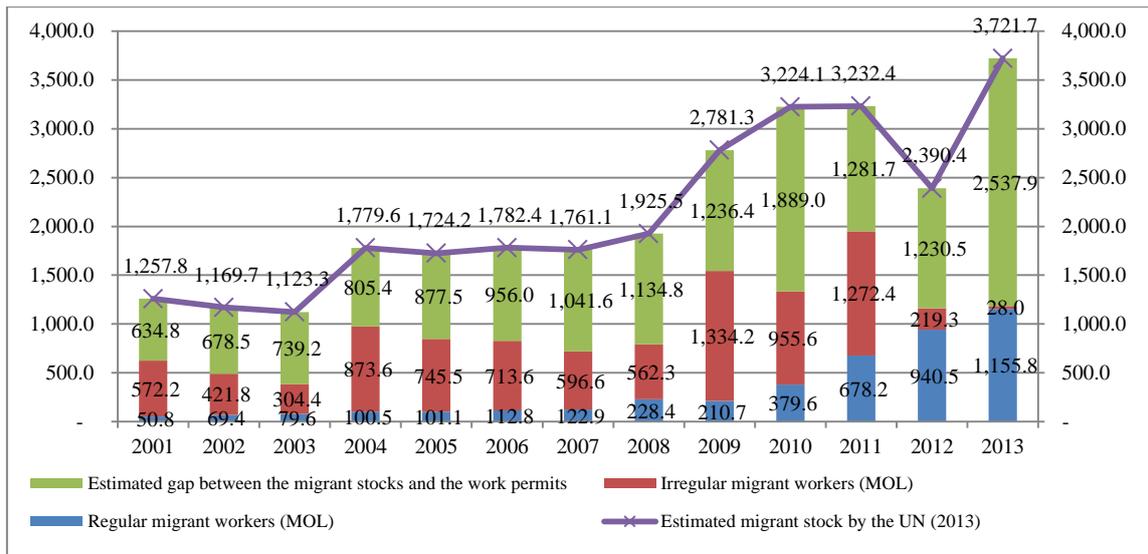


Figure 15: Number of Regular and Irregular Migrant Workers<sup>1/</sup> and the UN's Estimates of Migrant Stocks in Thailand, 1990-2013<sup>2/</sup> (Thousand)

Note: 1/Regular migrant workers are calculated by the summation of permanent resident and temporary work permit (general, MOU, national verification, special Acts), while the irregular migrant workers are ethnic minorities and CLM's nationality according to the amnesty of cabinet's resolution and the NV.

2/The migrant stock in 2000 represents the data in 2001. The estimated gap between migrant workers reported to the MOL and the migrant stock is author's calculation by assuming constant rate of migrant stock between data existing years.

Source: (1) Regular migrant workers and irregular migrant workers: The Office of Foreign Workers Administration, Ministry of Labour (MOL). (2) United Nations(2013) provides data in 2000, 2010 and 2013 (3) The estimated gap between migrant workers reported to the MOL and the migrant stock is author's calculation.

As mentioned previously, Thailand currently has applied two key schemes for administrating migrant workers: the NV and the MOUs. The NV<sup>30</sup> is a process for migrant workers who do not have nationality or any identity document to verify their nationality through their embassy in order to regularise them and enable them a legal working status. The other scheme is the MOU, which is the government-government scheme in sending migrant workers.

However, it can be observed that the number is far lower than the UN estimates and the NSC estimates of migrants. In other words, the legalised attempts appeared not to be effective schemes. For example, a deadline was announced on 28 February 2010 informing those irregular migrants to register themselves; otherwise irregular workers would be deported. Nevertheless, at the end of 2010, not all migrants had completed the process. Only 1.3 million migrants registered, compared to the estimated number at around 2-3 million. As a result of a large remaining number of unregistered migrants, many migrant rights groups had run campaigns requesting permission for all migrants to register. In addition, on the employer's side, it called for new registrations to address on-going

<sup>30</sup> A similar programme was also implemented in Malaysia. In 2011 Malaysia initiated a '6P' regularisation program that allowed employers and agents to legalise foreign workers in the country. The "6P" include measures for amnesty, registration, legalisation, supervision, enforcement, and deportation of migrants. This program was officially discontinued in September 2013. In response to a request from Indonesia, a Special Program of Managing Illegal Immigrants (PKPP) was initiated by the Malaysian government in 2013 to allow workers who reported being cheated by agents during the 6P program to be regularized by their employers (Mekong Migration Organisation, 2014).

shortages of low-skilled workers. In the following years, the Cabinet made the decision to re-open migrant worker registration to all workers from Cambodia, the Laos People's Democratic Republic and Myanmar.

During the 2000s, the explanation for the low rate of registered migrants and the high fluctuation of registered migrants is mainly given to the ineffectiveness of law enforcement. In particular criminal migrants' employers were considered to have a very rare chance to be arrested (Human Rights Watch, 2001; ILO/TDRI, 2007). In addition, long-term conflicts between ethnic groups along the Thai-Myanmar border also effect the number of registrations, since a number of ethnic people along the border line do not want to be verified as Burmese people (Muntarhorn, 2005: 93).

On the other hand, migrants have dropped out of the registration process on the view that it was confusing and useless to register because they had recently entered Thailand and were not required to register. Furthermore, it conflicted with the fact that many of the low-skilled migrants often change work and employers. However, the Alien Working Act does not allow for such flexibility and the changes in occupation and employer would classify them as irregular migrants. The restrictive policy on changing employers, geographic mobility as well as costly process discourages migrant workers from the renewal process. The migrants were afraid of official records because they would also be identified as "illegal, pending deportation"<sup>31</sup> who could work during waiting for deportation. For migrant workers whose immigration status have been legalised through obtaining the legal travel documents, it is necessary to report to Immigration Bureau every 90 days. If they fail to do so, they have to restart the entire recruitment process from the original country all over again. This has led to a number of migrants opting for illegal exit and re-entry (Rukumnuaykit, 2009: 5).

The limited government quota of migrant workers given to employers did not meet real anticipated labour needs. According to Rukumnuaykit (2009), many employers did not obtain work permits for the migrants they actually employ. *"In 2006, employers requested a quota for 1.3 million migrant workers. The government quota was 1.2 million, but only 668,576 migrants received work permits. A main reason for the discrepancy was that 41 per cent of the requests for migrants were in "other sectors," but only 5 per cent of the work permits were issued to migrants in these sectors"*.

In addition, as mentioned previously, informal employment plays a significant role in Thai labour markets and job availability for migrant workers. It accounted for 62.3 per cent of the total employment in Thailand in 2010 and gradually increased to 62.5, 62.7 and 63.7 per cent in 2011, 2012 and 2013 respectively (NSO, 2013)<sup>32</sup>. Informal, low-skilled workers have less or no collective bargaining power than that of employers. Moreover, the

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<sup>31</sup> From this study, 15.8 per cent of the migrants in Thailand also mentioned that it does not feel different to operate within the system or not, because most cases they had to pay the authorities anyway. In the worst case, they may be jailed for hours or days for any charge. Therefore, it is better for them to simply bribe for many reasons. However, it is worth to note that good authorities are available, but some of them may be corrupt.

<sup>32</sup> The Informal Employment Survey module (IES), conducted by the NSO. Informal employment, in the survey, is defined by the workers who are not covered by social security. Formal employment, on the other hand, includes workers who are protected by existing labour legislation and includes the following - government employees, state enterprise employees, teachers based in private schools, employees of foreign governments and private employees who are under the coverage of labour laws.

informal job market is characterised by low-skilled sectors and major economic sectors are excluded from minimum wage laws/labour protection acts. In addition, a number of migrant workers are informal workers, causing the difficulty in accessing the actual number of irregular migrant workers.

As can be seen in Figure 15, the difference between the UN estimates and the official Thai record of migrant workers in 2013 was around 2.5 million people, implying a large number of undocumented migrants in the economy. This represents the existing stock of undermined migrant workers and their dependents.

In term of the nationality, the share of Burmese migrant workers is greater than any other ethnic group. According to the UN estimates, Burmese migrant workers made up around 50 per cent in 2013 (Table 13). Generally, Burmese migrants in Thailand came from several ethnic minority states in eastern Myanmar, for example, Kayin, Kayah, Mon, and Shan states. The Human Rights Sub-Committee on Ethnic Minorities (2007) estimates that, taking into account of all ethnic minorities, the migrant share of Burmese accounted for around 75-80 per cent of migrant workers in Thailand. The stock of Laotian and Cambodian migrant workers shows a substantial proportion as well. In 2013, the share of migrant workers from Cambodia was around 10-15 per cent, and that from Laos was around 20 per cent.

Table 13 Top Three of the Number of Migrant Stock in Thailand

	Number		Percentage	
	1990	2013	1990	2013
Myanmar	229,504	1,892,480	43.4%	50.8%
Laos	165,019	926,427	31.2%	24.9%
Cambodia	73,756	750,109	14.0%	20.2%
Others	60,414	152,719	11.4%	4.1%
Total	528,693	3,721,735	100.0%	100.0%

Source: United Nations, Department of Economic and Social Affairs, Population Division (2013) Trends in International Migrant Stock: Migrants by Destination and Origin (United Nations database, POP/DB/MIG/Stock/Rev.2013).

#### 4.4 Grievance Mechanisms in Thailand

For inbound migrant workers in Thailand, the Labour Protection Act provides a framework for voicing a grievance through collective bargaining. According to the laws, in the case where there are fifty employees or more in the work place, the employer must establish the welfare committee of the work place, consisting of at least five representatives of the employees, otherwise the employer will be liable to a fine of not exceeding 50,000 baht (Section 96, 152; the 2008 Labour Protection Act).

In an establishment with a smaller number of employees, the employer who employs ten or more employees must provide the working regulations in Thai<sup>33</sup>. Though this mechanism, a grievance shall contain details as follows: (1) scope and meaning of grievances; (2) method and steps of dealing with grievances; (3) investigation and consideration of grievances; (4) procedure for settlement of grievances; and (5) protection for the claimant and involved persons (Section 108, 109, 152; the 2008 Labour Protection Act). The responsible authority in charge of filing the complaints is the Department of Labour Protection and Welfare (DLPW), Ministry of Labour.

In general, grievances can be classified into non-money-related and money-related issues. The non-money related issue concerns general working conditions; for example, an environment with health risks. Normally in this case the information can be notified to a DLPW labour inspector through any channel, including email, a letter, or a call. The notification can be informed with or without the claimant's name. After receiving a complaint, the DLPW labour inspector will investigate the fact and proceed to an order within 30 days.

On the other hand, money-related cases are generally more serious, because the procedure in lodging a grievance requires the presence of the claimant and his/her supporting documents in order to verify their existence. A filed complaint in a government grievance form (So called Kor Ror 7) in Thai will be investigated by an assigned DLPW labour inspector. The total period of time under the DLPW inspection will be within 42-60 days, with the possibility to be extended to 90 days (Figure 16). If the employer does not comply with the labour inspection officer's written orders, the employer will be fined between 5,000- 200,000 baht (approx 150-5,700 USD) or imprisonment for less than 1 year, or both.

Practically, the responding actions of the employers can be classified into 3 responses: (1) The employer follows the labour officials' order; (2) If the employer does not pay the compensation to the counterpart worker within 30 days, the labour inspector shall bring the case into criminal case; and (3) If the employer or the worker does not agree with the labour inspector's order, they can file a grievance to the court within 30 days since the first date of the order. A valid grievance will be filed to Labour Court, if there are new evidences; new/actual litigants; the prejudicial labour inspector's orders (or the order is beyond juristic authorities of the labour inspector); and new evidences in favour of litigants. In Thailand, cases<sup>34</sup> will be brought to the Labour Court<sup>35</sup>. The result of the

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<sup>33</sup> According to the 2008 Labour Protection Act, the work rules in Thai shall contain at least the following details: (1) Working days, normal working time and rest periods; (2) Holidays and rules of taking holidays; (3) Rules governing overtime and holiday work; (4) the date and place of payment of wages, overtime pay, holiday pay and holiday overtime pay; (5) leave and rules of taking leave; (6) discipline and disciplinary measures; (7) Lodging of grievances; and (8) termination of employment, severance pay and special severance pay.

<sup>34</sup> In general, the court system can be divided into (1) the Courts of First Instance (2) The Courts of Appeal and (3) The Supreme Court.

<sup>35</sup> The court of first instance for general cases are composed of (1) general courts (composed of Civil Court, Criminal Court, Provincial Court, Municipal court); (2) juvenile and family courts; and (3) specialized courts (composed of Civil Court, Criminal Court, Provincial Court, Municipal court). Additionally, there are four specialised courts, i.e, the Labour Court, the Tax Court, the Intellectual Property and International Trade Court, and the Bankruptcy Court.

Labour Court can be appealed to the Supreme Court for labour cases. It is found that in a number of cases, the employer filed a case to the Labour Court against the labour inspector<sup>36</sup>.

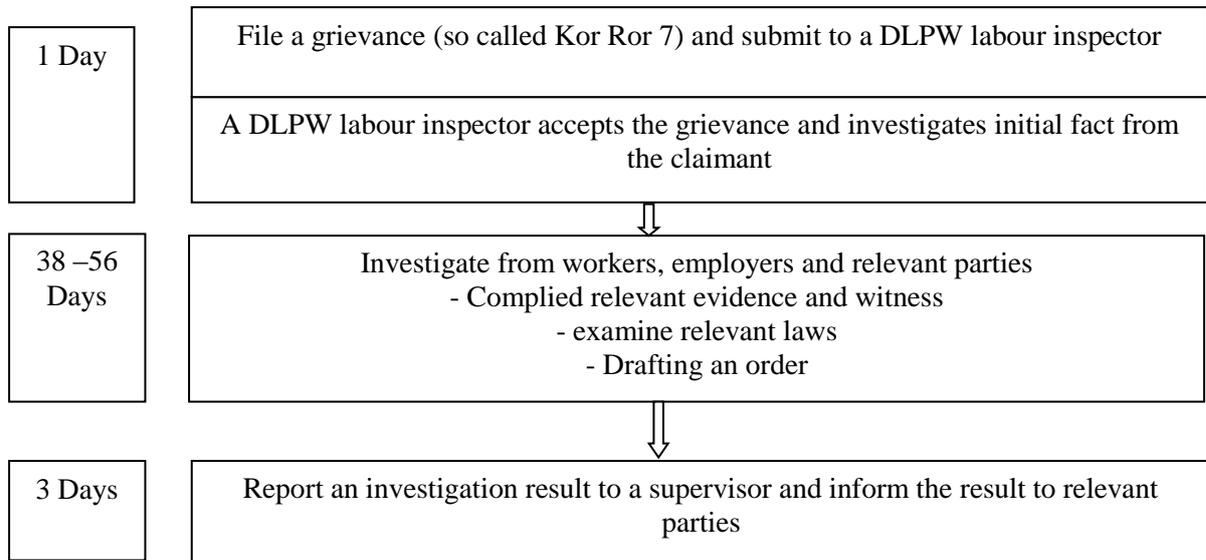


Figure 16: Process in Filing a Money-Related Grievance Through a DLPW Labour Inspector.  
 Note: The total process must be concluded by 60 days. However, the labour inspector may request to the Director General or the provincial governor for 30 days extension.  
 Source: Labour Protection Bureau, Department of Labour Protection and Welfare (DLPW), Ministry of Labour.

Generally, the DLPW labour inspector is responsible for enterprises inspection to ensure that employers abide by the minimum standard of work as set out by the Labour Protection Act. The number of inspected enterprises averages at 10-17,000 enterprises per quarter. The violation rate, the share of violated enterprises to total inspected enterprises, ranged around 1-5 per cent between 2012 and 2014 (Figure 17).

The number of money-related grievances through the DLPW is around 5-9,000 cases per year. In 2013, the number of cases filed to the DLPW was 6,537 cases. The statistics interestingly reflect somewhat declining trends of the number of grievances even during the economic recessions in the late 2000s (Figure 18). The number of violation rate must be referred to with caution due to very low violation rate. It is noticeable that the inspected enterprises in Thailand are mainly formal enterprises, while the majority of all enterprises are operating in informal enterprises/informal employment. Also, weak law enforcement is shaping labour market conditions in Thailand, as will be discussed in Chapter 7.

<sup>36</sup> For example, the Supreme Court number 5874/2544, the Supreme Court number 363/2548, and the Supreme Court number 8403/2550.

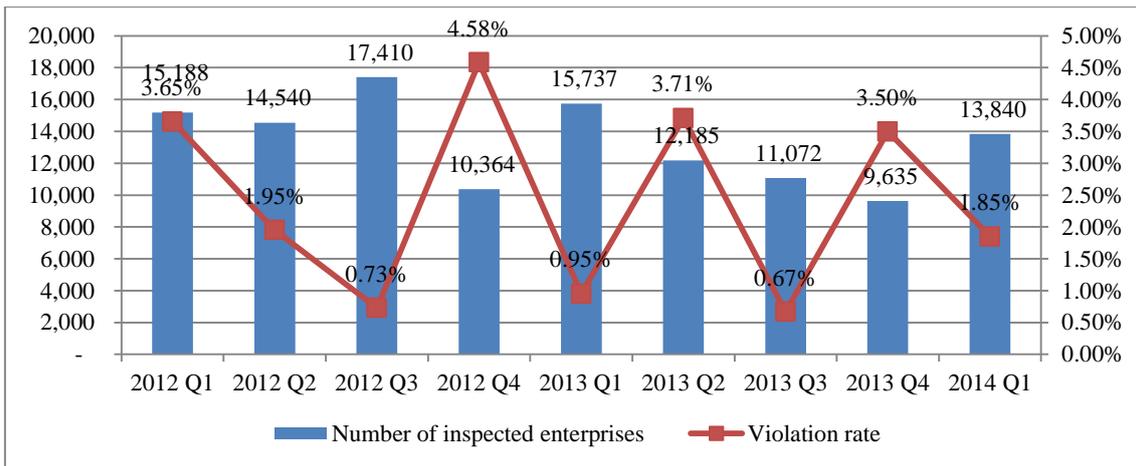


Figure 17: On-site Inspection and Violation Rate in Thailand.  
 Note: Excluding Occupational Health and Safety (OSH).  
 Source: Minister's Secretariat, Ministry of Labour (2013: 91).

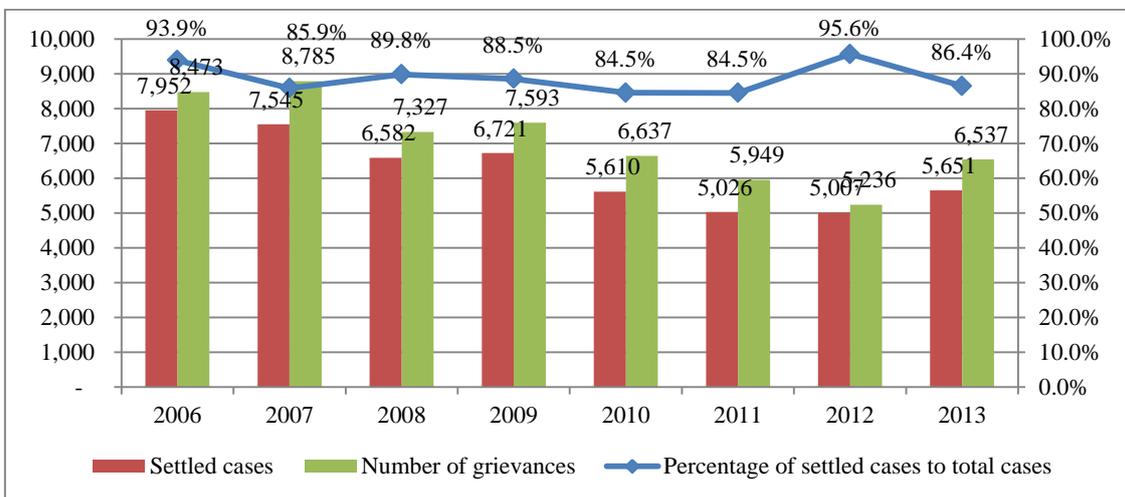


Figure 18: The Number of Money-Related Grievances Through the DLPW.  
 Source: Minister's Secretariat, Ministry of Labour (2013: 90).

#### 4.5 Working Conditions and Access to Grievance Mechanisms of Migrant Workers in Thailand (Result of the Interviews and Previous Study/Survey)

As discussed previously in Chapter 3, the profiles and working conditions of migrant workers in Thailand will be classified into four key sets of indicators. They are: migrant characteristics; basic labour rights; working and employment conditions of works; and extents to reduce the vulnerability.

In this section, the analysis will examine results from the interviews with supporting evidence from the 2010 Informal Employment Survey (IES) and previous studies. The IES is a nationwide survey conducted by the Thai National Statistical Office. One of the questions asks “Are you a registered migrant worker?” The questions in the IES include those about their occupations, wages (of employees), type of payments, hours of work, type of accidents and injury at work, as well as complaints about work.

However, in order to use the IES, we must be aware of the following four concerns. Firstly, in response to the question, “Are you a registered migrant worker?”, the respondent who answers ‘no’ can be either a Thai or an unregistered migrant worker. Secondly, the number of registered migrant workers estimated from the IES database is only 272,000 workers, while the number of registered work permits is approximately 1 million. With the awareness of the inconsistency of statistical gaps, the comparison is focused only on “within-group analysis” with the assumption of well-behaved statistical distribution. For this reason, the result of the IES analysis will cover only those who are regular migrant workers, excluding irregular migrant workers. Lastly, the IES collects the information of “private employees” only. In other words, it accounts around 33.2 per cent of total employment, and excludes non-employee employment to avoid variation. Despite the above four limitations, the number of respondents at 272,000 (weighted) is sufficiently large for this study. In addition, the data allows cross checking with other sources of data, especially in the parts related to working and employment conditions of works, and possible factors that reducing the vulnerability.

Note that the list of interviewees is provided in Appendix 2. To protect the anonymity of the interviewees, only the number of the interviewees will be mentioned in the analysis.

#### **4.5.1 General Profile**

- **Economic Sector**

Similar to the migrant workers situation reports from the Department of Employment, the majority of the low-skilled migrant workers (85.3 per cent) in Thailand are working in the service sector, while the rest are working in the manufacturing sector. Unlike low-skilled Thais who are working in elementary occupations within these two sectors are fairly balanced, with 48.5 per cent working in the manufacturing sector and the remainder in the service sector.

- **Gender**

The majority of the respondents were female (69.3 per cent), while the official statistics of the Department of Employment, MOL, reported that the share of female migrants was 40.6 per cent in 2014. According to the IES, Thai males who are working in elementary occupations within these two sectors accounted for 50.9 per cent, while the share of females was 49.1 per cent (author’s estimation). However, the greater share of female workers is not surprising as Myanmar’s labour force participation rate (LFPR) of female-male ratio has been greater than 1. In 1990, the share ratio was 1.058 and in 2012 the ratio was 1.034. In Thailand, the female-male LFPR ratio also reflects a substantial high ratio. The share in Thailand was 0.871 in 1990 and gradually decreased to 0.797 in 2012 (ILO, 2013b).

- **Age and Age of Starting Work**

The average age of female’s starting work is 23 years of age, while that of males is 27. Interestingly, the interviews found 24 per cent of migrant workers started working at less than 15 years old. According to Thai laws, the working age starts from 15 years old. Out of 75 interviewees, 4 of them stated working since age 13, and 13 of them started working

since age 14<sup>37</sup>. It was found that those who are starting working at the early age have started working in households as either a domestic worker or an in-house helper in small restaurants. The maximum wage of starting working in Thailand was 29 years old. On average, they started working at 19 years old.

Among those who started working before 15, when I asked whether their employers knew their age of starting working, their response can be classified into 3 types. The first group (13 interviewees) said they did not know if the employers knew or not. It is associated to the fact that they could not speak Thai and later they had never talked about this concern. The next group (2 interviewees) knew that recruiters had already lied to the employers that they were 17-18 year olds. The last group (2 interviewees) said the employers knew their real age at the beginning of work, yet they said nothing about it. This group of the employers were likely to say that it was OK since they would take care of the workers as if they were their children. Yet, one out of two interviewees did not pay wages to her for several months and then she decided to escape from that household (Interview #43).

**#13 Burmese female migrant worker, age 19**

...I smuggled by working cross the border (Thai-Burma) at age 13 (to 14). I came here with my cousin and some of my friends from the village. I do not what to come. But there were nothing to do at home. There was a guy from the next village told us that he could bring us to Thailand ... I remembered that it took me 2 days walking and walking. I thought I heard bullet shots at the border. We were so afraid and ran for our life.

Firstly I was brought to work in a house in Laoprao area. But I could not speak Thai at all. Then my employer was so angry at me and shouted at me everytime.

**#43 Karen, female migrant worker, age 26**

...I started working in a household in Bang-Rak area. My aunt worked here in Thailand and she said I had better come because there was no job in my hometown. Her friend who was working in BangJak area was looking for a domestic worker for her employer's friends. When I arrived here, my aunt brought me to the employer. They said (understand through her aunt) that they would take care of me as if I was their child. They had one child and one sick parent who was tube-feed. They said they would give me 5000 THB per month (approx. 157 USD). My aunt told me that I was so lucky because they looked generous and my wage was almost comparable to my aunt's wage.

Yet, several months passed, they have never paid me wage. They just gave me 200-300 THB per week saying to buy miscellaneous stuffs. They sometimes gave me their cloth, which I did not really like to. I only would like to send money back to my family. I consulted my aunt. She suggested me to keep asking. They were instead angry at me. Then I asked my aunt to get me a new job and decided to escape from that household.

After that I moved to work as an assistant in a hair shop. Now I am working at a small shop as a domestic work for the shop owner and a cooker for all workers of that shop. When I finished those regular jobs, I then have to help the shop packing small mechanic parts. My work starts from around 7 am and finishes around 8 pm. I earn 12000 THB a month (approx. 375 USD) and have one day off.

<sup>37</sup> The four who started working since age 13 are interviewees number: 40, 43, 72, 75. The 13 who started working since age 14 are interviewees number: 13, 17, 23, 34, 37, 39, 41, 45, 49, 55, 66, 71, 73.

- **Marital Status**

The majority of interviewees, (86.7) per cent, in Thailand were not married. Though they had boyfriends/girlfriends, they were afraid that they cannot get engaged to anyone due to living in a middle of economic hardship. They need to take care of their family and are not sure about their future. About 88 per cent of migrant workers commit to be the main source of family income. It is observable from the IOM's study (2011) that the migrants living and working in border provinces in Thailand are likely to be settlers and having family. However, it cannot be said with certainty about the difference to their currently cultural norm, since in the 2000s the average mean age of marriage in Burma was 27.5 years for men and 26.4 years for women.

- **Household Members**

The average number of household member at their hometown is sizable at around 6.21 people. The maximum number of the household size is at 10 people. The size of the household members in three neighbouring countries of Thailand is normally large due to cultural factors in this area. In Laos PDR (Sisenglath, 2009<sup>38</sup>), the average number of migrants' household members was 7 people. The maximum number of household members was 18 people while the minimum was 2 people.

- **Year of Schooling**

Of the interviewees, the average age of schooling was 8.47 years. Every man at least experienced formal education for 4 years, whereas some females did not experience formal education at all. The mean years of schooling of males were 8.48 years, while that of females was 8.46 years. Not surprisingly, migrant workers who did not attend formal education were in line with those who started working since they were young (#42, 43, 74, 75). It is also worth noting that, interestingly, all people with no education expressed that they know what to do, but did not want act due to being afraid of the consequences. Not surprisingly, it was noticeable that all migrants who started working since 13 are associated with no schooling. They were also linked with some networks (relatives/friends) before they came for work in Thailand. Therefore, they are expressing themselves that the know what to do, but rather find some other ways to get out of the problem. Where the average year of schooling was less than the high school graduates, it was higher than mean years of schooling in Myanmar which was less than the primary education. The mean year of education was 3.9 years in 2012. The male population with at least secondary education was 17.6 per cent, which was lowest among three neighbouring countries (UNDP, 2013)<sup>39</sup>.

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<sup>38</sup> This survey had a sampling size of 200 using the recipient household members in the country of origin, Laos. The interviews were conducted with remittance recipient household, and with informants, mainly carried out at the central level in Vientiane. The survey also included community group discussion with community members.

<sup>39</sup> One interesting fact is that Myanmar is the only country among the three countries with a higher average year of schooling of female than that of male.

However, based on the IES (author's estimation), those in the elementary occupations have only 3.1 years of schooling. The registered migrant workers have 1.5 years of schooling, while Thais have 3.12 years of schooling. The great differences in years of schooling highlight the inequalities of workers' characteristics in urban and rural areas, which hold true not only with natives, but also migrants.

**#53 Mon-Burmese female migrant worker, age 26**

According to the interview, the interviewee with the highest education graduated bachelor degree in Korean language. She came to work as a domestic worker in a well-educated family whom offers her about 16,000 THB (approx. 500 USD) per month. This wage was higher than the mean wage of domestic work at around 3 times. She said

“The family that I am working for is nice. I am making some savings for her family and for myself. I hope that I will work in Korea someday.”

Her case is an example of overqualified migrant worker as found by the Eurofound (2007).

- **Local Language Proficiency**

On average, they have already spent 5.5 years in Thailand. Given a self-assessment on the local language proficiency to communicate in Thai, 13.3 per cent of migrant workers rate themselves to be able to communicate in Thai at good level and 57.3 per cent of migrant workers are speaking fluently. The rest can only 21.3 per cent can communicate some words and 8 per cent cannot speak Thai at all. The local language proficiency does not relate to the number of years staying in Thailand. Instead, it is found to be differentiating due to sectors and occupations. Based on the interviews, the migrant workers who are working in the manufacturing sector with migrant friends are likely not to have local language proficiency since they are likely to use their own languages daily with their friends.

- **Work Permits**

While non-migrant people can work in any sector and change employees anytime, migrants need to hold a proper work permit in order to work as a regular worker. Migrants' status as either being illegal or tenuously documented increases vulnerability to extortion and rights abuses by police and employers (OHCHR, 2011:2).

It was found from the interviews that 36.0 per cent were working without a proper card. At first four migrants told me that they had a proper card ID (Interviewees #7, 24, 35, 57). But when I asked if I could see their ID, Interviewee# 7 showed me a passport and a card that was provided by a recruitment agency. However, such a card is not an official work permit from the Thai government. #7 did not know what the Thai government work permits looked like. Based on the interviews, it is highly likely that the recruitment agency kept that document. Interviewees #24, #35 and #57 also showed me a white card given by a

recruitment agency. None of these interviewees knew what was written on the card, because it was written in Thai. Its design also looks like a Thai ID card.

Without a proper working permit, migrant workers are put into a highly vulnerable situation. In some cases, employers often avoid paying migrants their rightful wages by calling police and reporting their own undocumented migrant workers. Migrants who are arrested, detained and deported for being undocumented commonly have no possibility of recovering personal valuables (OHCHR, 2011: 6). They are normally deported informally and quickly, leaving them no option in filing any grievance.

#53 Karen/Pa-an Burmese male migrant worker, age 26

”My friend met me at Mae Sot entry point and brought me to this place. Then he recommended me that if I would like to stay here. I need to have a working card. He brought me to a recruitment agency. He asked me to go there and brought me to a government office (I think it must be the Ministry of Labour). Finally, I have received this card ... He said I have to renew every year. The expenses may vary upon the government regulations.”

He first arrived at Bangkok at 23 years old. Currently, he is working for a small ice seller with 2 Karen friends.

#### 4.5.2 Basic Human and Labour Rights

- **Forced Labourers**

The definition of forced labour specified in the ILO Forced Labour Convention, No 29 (1930) is “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 himself voluntarily”. Forced labour is being entered into employment voluntarily, no abilities to leave employment freely, and penalties or threats used to keep workers from leaving employment<sup>40</sup>.

The key question used in this study is, “In the case that you wanted to refuse this work, are there any limits/obstacles/threatened that you faced?” According to the interviews, 24 per cent are forced labourers (Table 14). Among these the main leverage is confiscation of identify documents. The number of forced labourers in the service sector is 5 times greater than that of in the manufacturing sector.

The intensity of forced labour varies by working sector. A survey conducted in the fishing industry in Thailand by ILO and ARCM (2013) indicated that about 16.9 per cent workers were working against their will. A survey to identify the prevalence of human trafficking and forced labour among Myanmar migrants working in the seafood processing sector in

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<sup>40</sup> ILO indicators of forced labour are composed of 1) abused of vulnerability, 2)deception, 3)restriction of movement, 4) Isolation 5) physical and sexual violence, 6) intimidation and threats, 7) retention of identity documents, 8) withholding of wages, 9) debt bondage, 10) abusive working and living conditions, and 11) excessive overtime

Samut Sakhon in 2010 found that 33.6 per cent of these migrants had been trafficked. Furthermore, 57.3 per cent of the total population had been subjected to forced labour (LPN and the Johns Hopkins School of Public Health, 2010).

Table 14 Forced Labourers and Penalties Their Faced

Description	Work voluntary		Total
	Yes	No	
Report to authorities	5.3%	2.7%	<b>8.0%</b>
Confiscation of identity documents	2.7%	8.0%	<b>10.7%</b>
Physical violence	2.7%	0.0%	<b>2.7%</b>
Threats to family members	2.7%	0.0%	<b>2.7%</b>
Forced labour			<b>24.0%</b>
No penalty	86.7%	89.3%	<b>76.0%</b>
Total	100.0%	100.0%	<b>100.0%</b>

Source: Author's estimation from interviews

#40 Mon-Burmese female, age 24

When I told the woman I was working for that I wanted to leave, she threatened me. She also told my recruitment agency. The next day, the recruitment agency came to me and said that you have to work at least 2 years with this employer. Otherwise, his friend will “visit” my family regularly. I was so afraid of him and worry about my family.

#4 Burmese male, age 22

He has withheld my identity document since I arrived. He said, there will be another stamp needed to be made. Later, he gave me a copy of my ID and told me that he would help me keep my document, to ensure that it is safe. He has not yet returned me my identity document ever since. That was almost 1 year now. Last month, I asked him if I can have my own ID for. He said, he would not give me back until I worked with him at least 1 year and that was last year.

About 33 per cent pay for the recruitment fee (on top of the transportation and logistics) at an average 14,000 baht. The recruitment fee ranges between 8,000-20,000 baht. It costs around 1.2–3 months working wage (calculated based on the one month minimum wage). However, in the cases of receiving wages less than minimum wage, it will take around 3-5 working months to pay the recruitment fee. Some employers tell migrant workers that they will reimburse them for the recruitment fee. However, some migrants found that returning fee has never been made though it was more than a year.

- **Bad Practices and Discrimination**

The highest proportion of bad practices at work is related to verbal abuse, at 25 per cent, followed by the payment delayed and payment deduction (Figure 19). A number of migrants reported age discrimination and national discrimination at 13 and 12 per cent, respectively (Figure 20).

Age discrimination is normally found in low-skilled workers since they are likely to be more obedient and work harder than older workers. In terms of nationality, employers may prefer to specific ethnicities, especially in the case of domestic work, where certain migrants are perceived ‘cleaner’ than others (ILO, 2006c). Attitude of employers toward migrant workers in Thailand is showing differently to Thais.

#45 Karen/Pa-un Myanmar female, age 19

“I have worked for this household since I started working in Thailand. Khun Nai (The employer’s wife) complaints and swear at me almost every day. Even nowadays..5 years passed. I told myself every day to be patient. One of my tasks is to take care of Khun Nuu (The employer’s son). I came here since he was 2-3 moths. Now he is 5 years old. He reminded me to my brother ... My wage is normally paid late and I had to ask every month...”

She started working in Thailand since she was 14 years old as a domestic worker. She still works in that household. She has no identity document. She would like to find a new job but is afraid of moving to elsewhere. She has just started to study Thai in a NGO school in Thailand for 6 months. At first, the employer did not want her to go.

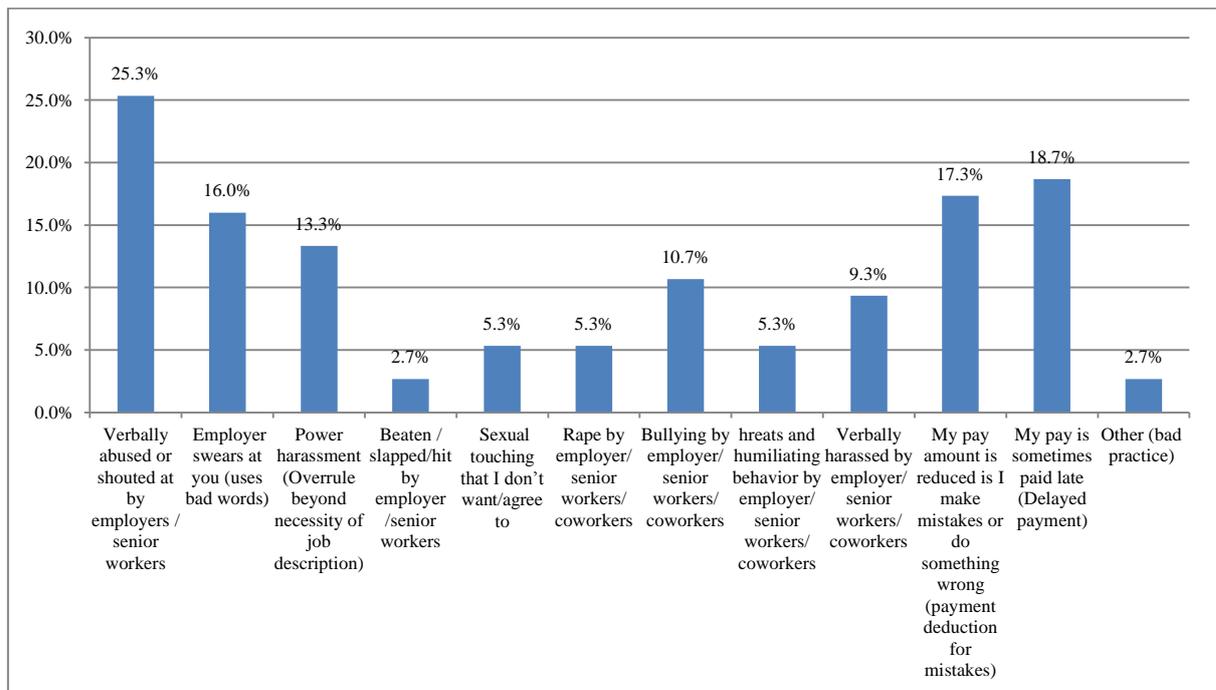


Figure 19: Bad Practices at Work.  
Source: Author’s estimation from the interviews.

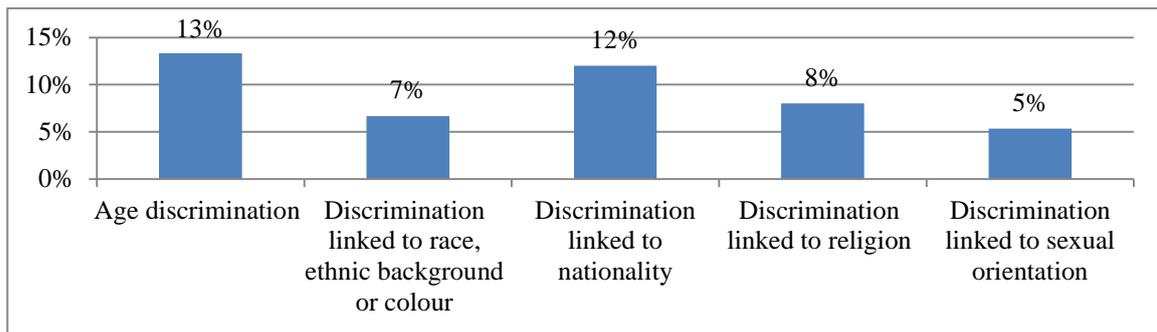


Figure 20: Discrimination at Work

Source: Author's estimation from the interviews

### 4.5.3 Working Conditions

#### 4.5.3.1 Employment Contract

None of the migrant workers responded that they had signed an employment contract for their current workplace. While 16 per cent concretely answered that they did not sign an employment contract at all, 84 per cent answered that they were not sure. The majority of them did not recall signing any document regarding wages and working conditions. Interviewees #1, #5, #7, #8, #9, #15, #18, #68 and #71 indicated that they signed some papers, which were written in Thai. They were told that such papers would be used in submitting for work permits application. Moreover, Interviewees #14, #20, #22, #36, #39, #46, and #72 pointed out that they did not have an employment contract with their current employer, since they signed a standard employment contract with a recruitment agency who was acting as their employer. This would allow them to find and change job without losing a working visa, though they are subject to be fined if they are arrested<sup>41</sup> as this practice actually violates the law. However, in practice, it is difficult for migrant workers to prove that their employer are violating labour laws or abuse them unless filing the complaints. From the interviews, they did not know about this regulation. In their view, they understood that the Thai government can find them through a recruitment agency (who is acting as an acting employer), and it is easier for them to change direct employers if they find a labour problem. However, they have to pay “a renewal fee” to that recruitment agency at 1,500-2,500 baht per year. Similarly, most Thais and migrants work in relatively low-skilled occupations and most Thai in these categories do not have a written employment contract (Table 15).

<sup>41</sup> As mentioned previously, Thai laws allow migrant workers to change an employer only when their employer is dead; the migrant is terminated; businesses is bankrupted; or the employer violate labour laws /or abuse the migrant workers (provable).

Table 15 Waged Workers by Occupation 2010 (Per cent)

	Male		Female		Total	
	Regis-tered	Thai	Regis-tered	Thai	Regis-tered	Thai
Legislator, senior officials and managers	0.1	2.1	0.1	1.7	0.1	1.9
Professionals	2.1	2.5	0.5	3.9	1.4	3.1
Technicians and associate professionals	2.5	5.3	0.0	9.3	1.4	7.1
Clerks	1.2	3.8	0.2	10.5	0.8	6.7
Service workers and shop and market workers	5.5	8.0	12.2	14.8	8.4	11.0
Skilled agricultural and fishery workers	20.9	9.6	21.0	9.2	20.9	9.4
Craftsmen and related trades workers	18.1	30.1	16.1	12.4	17.2	22.3
Plant and machine operators and assemblers	20.1	18.4	17.7	13.7	19.1	16.3
Elementary occupations	29.4	19.9	32.2	24.5	30.6	21.9
Armed force	0.0	0.2	0.0	0.1	0.0	0.1
Total	100.0	100.0	100.0	100.0	100.0	100.0

Note: Relatively high-skilled occupations include legislators, senior officials and managers, professionals, technicians and associate professionals.

Source: Informal Employment Survey, National Statistical Office, author's calculation.

#### 4.5.3.2 Wages, and Overtime Wages

In general, there are wage gaps between migrants and non-migrants. In English-speaking countries, migrants from non-English-speaking countries earn about 9-12 per cent less than non-migrants (e.g Voon and Miller, 2005; Liebig, 2005).

As mentioned previously, since 2013 the minimum wage of Thailand is 300 baht (approx. 10 USD) per day, with the exemption in agricultural, fishery, uneconomically profitable household businesses, and work at home, including domestic work. However, it can be roughly referred to as a normal standard of the minimum cost of living in Thailand. Under the minimum wage rate, if the workers work eight hours a day with one day off a week, they should earn 7,800 baht per month.

The income of those who work without proper permission is lower than the proper ones. Chantavanich and Vungsirihisal (2012: 223)<sup>42</sup> study migrants who have no work permit, a quarter of them can earn between 5,000-8,000 baht, half of them between 3,000-5,000 baht and a quarter of them earn less 3,000 baht monthly.

From the interviews, the domestic workers for households earn about 8,618 baht, but the standard deviation varies from 3,000 baht to 16,000 baht. The workers in the manufacturing sector earn about 7,229 baht, which is less than the minimum wage. The minimum wage received was 5,000 baht per month. Waiters and waitresses received 6,000 baht per month (Table 16). The majority of their income was paid to remittance, as on average 58.5 per cent was sent to their town home at a regular basis.

<sup>42</sup> This survey was of 204 workers living in three provinces: Bangkok, Samuthsakorn and Mae Sot District in Tak, reflecting information about their attitudes and their interest to contribute to development in Myanmar.

Table 16 Average Wage of the Migrant Workers

	Mean	N	Std. Deviation	Min.	Max.
Domestic workers for households	8,618	22	3,137	3,000	16,000
Manufacturing industry	7,229	7	1,752	5,000	10,000
Services in restaurants	6,000	2	-	6,000	6,000
Sales persons	10,750	4	866	10,000	11,500
Domestic workers for a cleaning company	7,875	8	954	6,500	9,000
Total	8,330	43	2,582	3,000	16,000

Source: From the interviews, Authors calculation

It must be noted that, however, the targeted interviewees are located in metropolitan areas, where workers averagely earn wages greater than rural/provincial areas. Therefore, the IES is used to refer to nationwide wages between migrants and non-migrant. Table 15 shows the mean wage of Thai and migrant workers in low-skilled sectors, based on the IES. In 2010, it was found that an average wage of Thais was 12,554 baht, while that of migrants was at 5,730 baht (Table 17). It can be seen that in the low-skilled categories, migrants earn less than Thais<sup>43</sup>. However, the wage differentials between migrants and non-migrants of low-skilled occupations are less than that of high-skilled occupations. The migrant workers earn 5,713 baht per month, while Thais earns 7,837 baht per month.

Table 17 Average Montly Wages, Selected Occupations and Gender, 2010

	Male			Female			Total		
	Registered migrants	Thais	Total	Registered migrants	Thais	Total	Registered migrants	Thais	Total
Service workers and shop and market workers	4,085	8,789	8,718	4,211	10,489	10,377	4,165	9,802	9,708
Skilled agricultural and fishery workers	5,096	14,105	13,696	4,897	8,912	8,723	5,009	11,876	11,559
Craftsmen and related trades workers	5,473	9,834	9,777	5,226	6,867	6,822	5,371	9,107	9,045
Plant and machine operators and assemblers	4,673	13,525	13,319	5,073	6,438	6,401	4,837	10,910	10,759
Elementary occupations	5,451	7,139	7,086	6,020	8,557	8,487	5,713	7,837	7,774
<b>Total</b>	<b>6,095</b>	<b>13,265</b>	<b>13,112</b>	<b>5,264</b>	<b>11,654</b>	<b>11,518</b>	<b>5,730</b>	<b>12,554</b>	<b>12,409</b>

Source: Informal Employment Survey, National Statistical Office, Author's calculation

It is clear that they are responsible for the households' expenses, since on average they allot about 60 per cent to remit home monthly (Figure 21). The major remittance channel

<sup>43</sup> The table also indicates gender wage differentials. However, this dimension is beyond the focus of this study.

is through money brokers who collect the transferring fee varies at 5-15 per cent depending on the distance to migrant’s hometown and total amount of money.

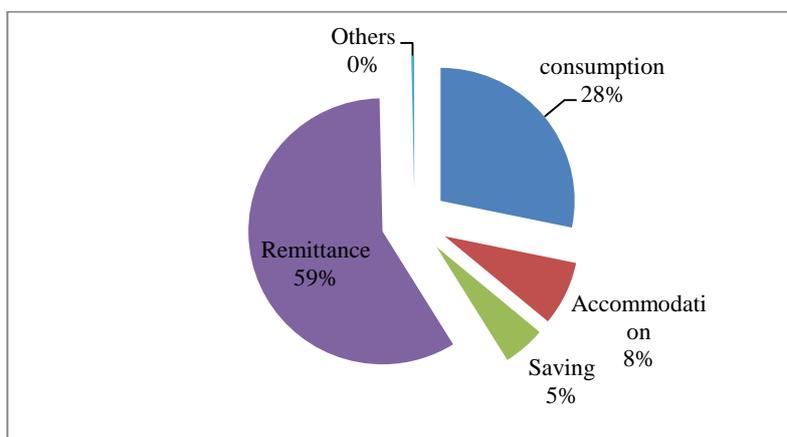


Figure 21: Expenditure Share of Migrant Workers in Thailand.

Source: Author’s estimation from the interviews.

#### 4.5.3.3 Working Hours, Work Breaks, Days Off and Leave

From the interviews, the number of working hours is greatest in domestic workers for a cleaning company; on average they work 12-14 hours per day. It is similar to those who are service providers in restaurants and the domestic workers for households who work greater than 10 hours a day, whereas migrant workers in the manufacturing sector work 52.7 hours per week. On average, in one month, the migrant worker will have four day off (mostly every Sunday). On average, migrant workers work around 69.6 hours per week or around 11.6 hours per day.

Based on the IES, the migrants work longer hours than Thais, particularly female migrant workers, who work 51.2 hours per week. The male migrants work an average of 50.4 hours per week. The average hour differences per week are approximately 3-4 hours per week.

Table 18 Average Hours of Work Per Week, 2010

	Registered migrants	N (weighted)	Thais	N (weighted)	Different hours of work between migrants and Thais
Male	50.4	152,531	48.2	6,966,575	2.17
Female	51.2	119,392	47.3	5,500,178	3.92
<b>Total</b>	<b>50.8</b>	<b>271,923</b>	<b>47.8</b>	<b>12,466,753</b>	<b>2.94</b>

Source: Informal Employment Survey, National Statistical Office, Author’s calculation

**#27 Burmese worker male, age 27**

“I have only one day rest per month according to the restaurant day off. It is the restaurant in a food court in a department store.”

A cook helper, married. However, he works around 15 hours per day and earns a wage of 10,400 baht per month.

#### **4.5.3.4 Occupational Safety and Health**

Occupational health and safety is observed through the following questions: “Do you think your health or safety is at risk because of your work?”; “Does your work affect your health, or not?” Based on the interviews, 24 per cent of the respondents believed that it negatively impacted on their health. Based on the interviews, about 46.7 per cent will have to take care of themselves if they fall sick. 24 per cent rely on employers, and 18.7 per cent rely on parents, family or friends.

Migrants registered with a passport and work permit are covered under the Social Security Scheme as formal workers. The migrants have to make contribution to the funds from 5 per cent of monthly wages, whereas the employers require making the same amount of money. There is concern that employers are deducting the full 10 per cent from migrants’ wages without proper monitoring (OHCHR, 2011: 4).

In term of expenses, among total of 24,701 injured migrants, about 2,503 answered the question about who is responsible for their health expenses of their injuries. The key scheme that the migrant used is the universal health insurance. Private health insurance is normally compulsory for some certain factories, mostly medium or large sized ones.

A key difficulty in using health services is the accessibility of health information and services in the migrant’s language. Some hospitals or health centres that provide migrant health assistants are those who are mostly supported by NGOs. These NGOs, in particular local NGOs, are challenged by non-sustainable source of funding and human resource problems.

In summary, the overall satisfaction compared to before working in Thailand is shown in Figure 22. About 16 per cent of the respondents are disappointed as to their living conditions, while 9 per cent was disappointed about their wage received, mainly due to false information from the recruiters.

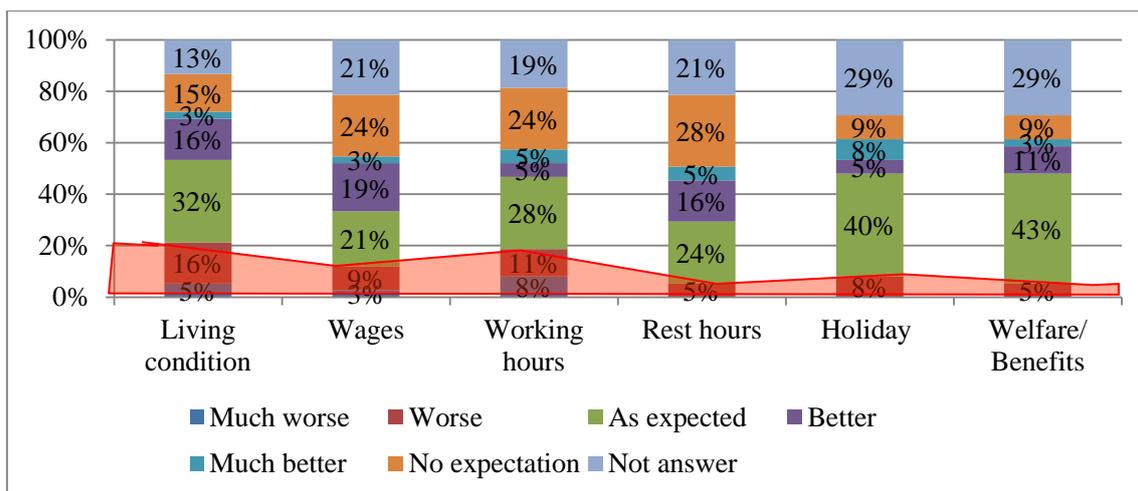


Figure 22: Expectation of Work and Working Condition and Reality.

Source: Author's estimation from the interviews.

#### 4.5.4 Extent to Reduce Vulnerability

##### 4.5.4.1 Accessibility of Grievance Mechanisms

According to this study, even among forced labourers, when they confront labour-related problems only about 22.2 per cent know what to do and go ahead with it. On the other hand, about 55.6 per cent do not know what to do and 22.2 per cent pointed out that they are afraid of problems and do not believe that the grievance mechanisms will help (Figure 23).

The migrants' answers are in line with OHCHR (2011: 6). *"No support is provided to migrants in accessing or navigating the legal process, and the quality of translators provided is not guaranteed. In addition, the period of filing the case may take a couple of years. Migrants who file suits have difficulty maintaining their legal status and right to work, which can deter migrants from pursuing their case. Some migrants may be deported before the case has been completed, rendering them unable to collect final payment from lawyers. Labour negotiations that occur out of court, in the Labour Protection Office or in court, commonly result with workers receiving less than the minimum wage because the starting figure for negotiations is minimum wage, resulting in the employer paying less than the legal wages even after going to court"*.

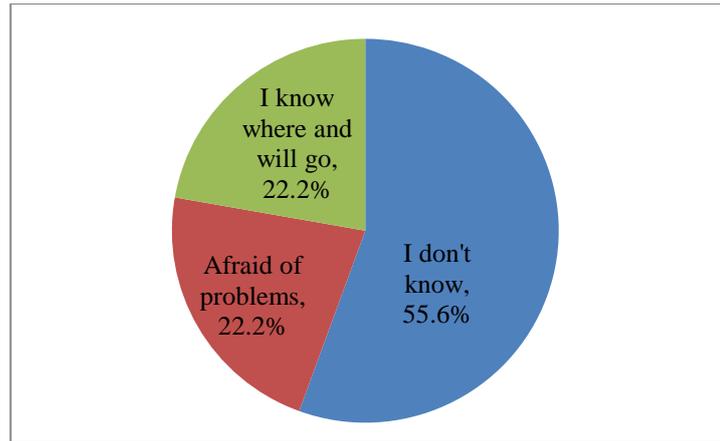


Figure 23: Response Toward the Labour-Related Problems.  
Source: Author's estimation from the interviews.

#### 4.5.4.2 Union Representation and Group Formation

In Thailand, by law migrant workers are not allowed to be committee members of workers' unions or to form their own union, resulting in weakening of their collective bargaining (OHCHR, 2011: 3).

Group formation can be a source of empowerment and information sharing. From the interviews, only 2.7 per cent are belonging to any group in their migrant community (Figure 24). Actually, around 35 per cent of them want to be a member of "any" associations or groups. The explanation from the interviews is either they do not have time to join such groups, or they do not know where to join. It must be noted that they do not know about the benefits of collective bargaining, rather they believe in benefits of information sharing and a source of job opportunities.

The first issue is about the group formation that leads to sharing and collective bargaining. It is found that only 2.7 per cent belong to any groups in the community. However, they would like to join or to become a member of any association at 35 per cent.

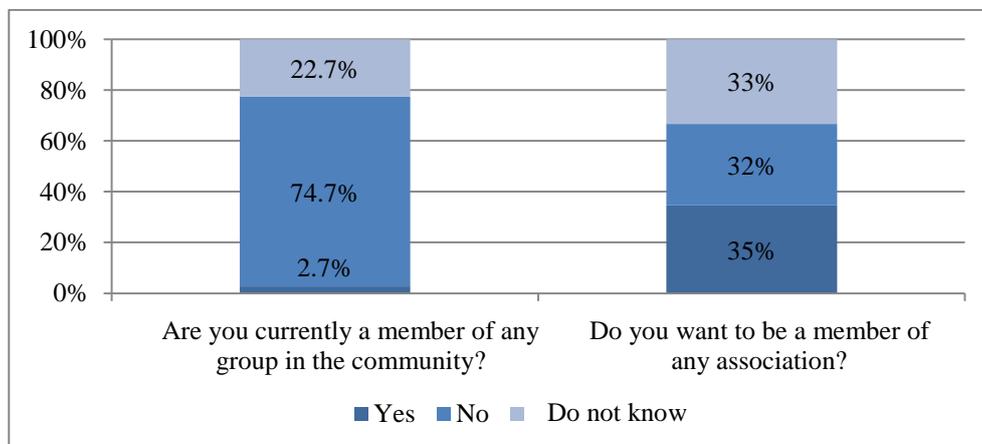


Figure 24: Group Formation in Thailand.  
Source: Author's estimation from the interviews.

If they face problems at work, around 21 per cent of migrant workers in Thailand do not know who to consult, or at least to talk to about their problems. Around 24 per cent indicate that they will find a chance to talk to their employers. Talking to employers is considered to be an implicit indicator representing that their employers are somewhat approachable, unlike those who cannot talk to their employers at all (Figure 25). However, there is no clear implication if migrant workers can talk freely about labour-related problems<sup>44</sup>.

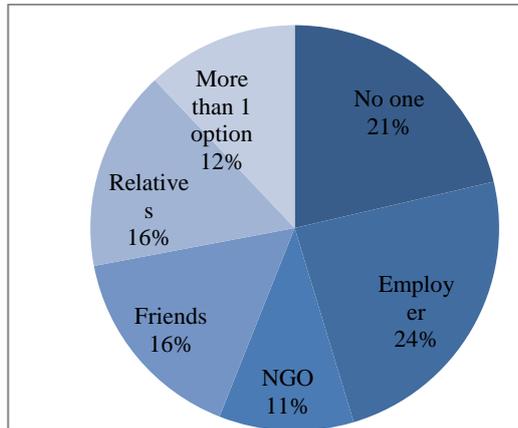


Figure 25: Consultation Channels in Thailand.

Note: The maximum consultation channels are three channels, including NGOs, friends, and relatives. All interviews, who indicate multiple channels, include friends as one of options, followed by NGOs.

Source: Author's estimation from the interviews.

#### 4.5.4.3 Skills and Training

The skill level reflects migrants' individual bargaining power of migrants to their employers. 40 per cent of migrant workers felt that their existing skill level corresponded well with their duties (Figure 26).

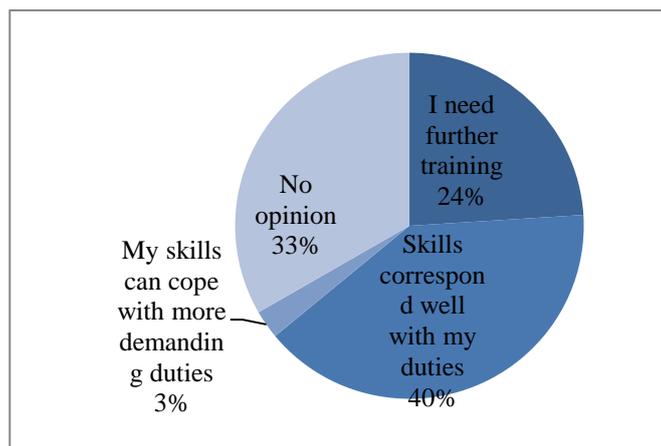


Figure 26: Skills Training Needs.

Source: Author's estimation from the interviews.

<sup>44</sup> Later in this study, this indicator will be treated as a proxy where talking to employers is regarded as no consultation channel. Since the result of consultation channel implies possibility to all possible solutions in response to labour rights violation, including filing a grievance to labour officers, undoubtedly employers are high likely not introducing migrants filing a grievance to government officials (labour officers) against them.

The top three areas where training was desirable were health, job training and local languages. These preferable trainings can lead to empowerment activities and reflect the potentials of empowerment activities.

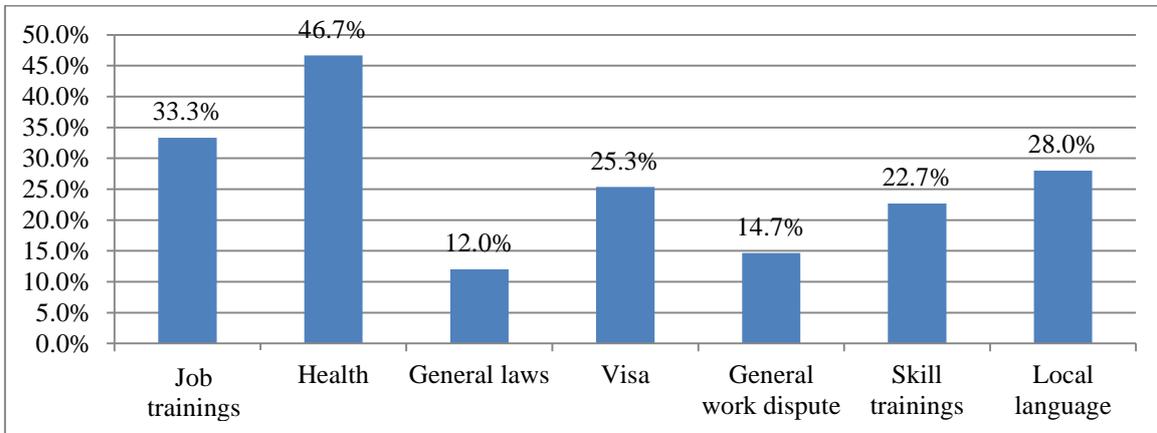


Figure 27: Skills Training Needs by Types of Trainings.  
Source: Author’s estimation from the interviews.

#### 4.5.4.4 Employment Opportunities

It was found that in Thailand, 33 per cent of migrant workers indicated that it was easy to find a new job, though about 43 per cent indicated that they have no opinion about the labour market flexibility. Notably, this aspect is the combination of the economic and legal environment in migrants’ views.

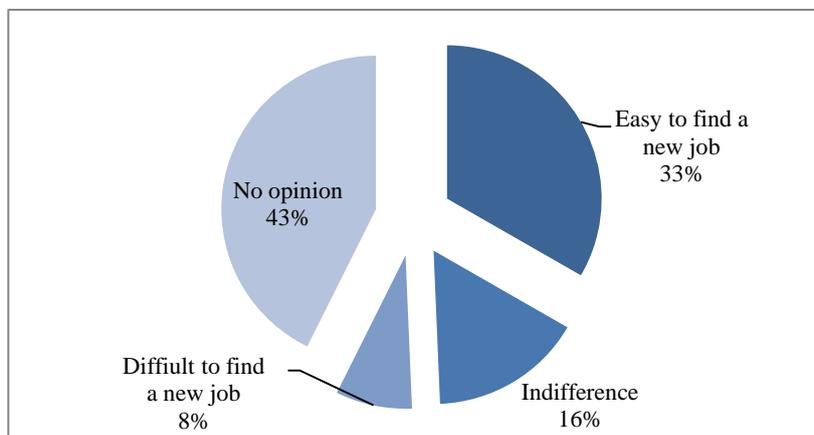


Figure 28: Employment Availability.  
Source: Author’s estimation from the interviews.

## 4.6 Conclusion

This chapter revealed the economic and legal environment of migrant workers in Thailand, followed by migrant workers characteristics and their working conditions from the interviews. It is structured by firstly discussing the labour market in Thailand, which is characterised by low employment rate and high share of informal employment. The next section provides policies and laws regarding migrant workers. Two main types of laws are

stipulated. The first is immigration law, which determines who is allowed to enter the country, and the period of stay in the country. The other is employment law, which are classified into high-skilled and low-skilled migrant workers. The Thai government prefers to administrate the number of low-skilled workers but the key challenges are large numbers of migrant workers in the economy and how to enforce the laws. The extensive border to neighbouring countries with hill tribes and traditional communities allows many members of ethnic minority groups to cross national borders, many of them not knowing the illegal nature of what they are doing. In addition, the economic inequalities between Thailand and neighbouring countries, in particular Myanmar, continuously attract low-skilled workers to Thailand. The challenges in law enforcement also effect on the effectiveness of its grievance mechanisms.

The challenges of protecting the labour rights of low-skilled workers are fostered by labour protection laws, which exempt certain occupations due to the difficulty in identifying work conditions and certain working hours. These exempt occupations are largely in the low-skilled occupations; for example, domestic workers, agriculture, and per-piece workers working at home.

This chapter explored and discussed the working conditions and their characteristics that link to their vulnerability and thus affect the accessibility of grievance mechanisms. Such conditions are classified into four key sets of indicators. They are migrant characteristics; basic labour rights; working and employment conditions of works; and extents to reduce the vulnerability. The following chapter is a parallel chapter presenting and discussing migrant workers in Japan.

## CHAPTER 5

### Migrant Workers in Japan

In parallel to the previous chapter, which provides an overview of the situation Thailand, this chapter will deliver detailed working conditions of migrant workers in Japan. This chapter is organised as follows: Section 5.1 introduces an overview of the labour market in Japan, followed by the legal framework regarding migrant workers in Section 5.2. Section 5.3 reveals the number of migrant workers and an estimated number of low-skilled migrants in Japan. The accessibility of grievance mechanisms is discussed in the subsequent section, Section 5.4. Working conditions of migrant workers in Japan using previous studies and results of the interviews will be explored in Section 5.5.

#### 5.1 Overview of Labour Market in Japan

In January 2015, the Japanese labour force numbered 65 million people. Japan's unemployment rate in the second quarter of 2014 was 3.6%, which was one of the lowest rates among OECD countries (OECD, 2014). In contrast to Thailand, only a very small share of employment is working in the informal employment as only 10.9 per cent are self-employed and family workers (Table 19).

Table 19 Employment by Working Status, Japan, 2013

	Number (Thousand)			Per cent		
	Male	Female	Total	Male	Female	Total
<i>Self-employed worker</i>	396	136	533	11.1%	5.1%	8.5%
<i>Family worker</i>	28	125	153	0.8%	4.7%	2.4%
Long-term employee	2,962	2,128	5,090	82.7%	79.4%	81.3%
Temporary employee	138	244	381	3.9%	9.1%	6.1%
Daily employee	42	34	77	1.2%	1.3%	1.2%
Status unknown in employment	16	12	28	0.4%	0.4%	0.4%
<b>Total</b>	<b>3,582</b>	<b>2,679</b>	<b>6,262</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>

Source: Statistics Bureau, Ministry of Internal Affairs and Communications, *E-stat*

During 2011 and 2013, the share of employed people in agriculture was at 4 per cent (approximately 2-2.5 million employed people). The manufacturing sector accounts for 24-26 per cent, while the largest share was the service sector at 70-73 per cent (Table 20).

Table 20 Employment by Economic Sectors, Japan, 2011-2013

	Number (million)			Percentage		
	2011	2012	2013	2011	2012	2013
Agriculture	2.52	2.23	2.40	4.2%	3.6%	3.8%
Manufacture	15.50	14.73	15.38	25.9%	23.5%	24.4%
Service	41.75	45.74	45.33	69.9%	73.0%	71.8%
<b>Total</b>	<b>59.77</b>	<b>62.70</b>	<b>63.11</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>

Source: Statistics Bureau, Ministry of Internal Affairs and Communications (2015) Japan Statistical Yearbook 2015: Table 16-3A

In Japan, the number of semi-low-skilled workers includes security workers, agricultural, forestry and fishery workers, manufacturing process workers, transport and machine operation workers, construction and mining workers, and carrying, cleaning, packaging, and related workers. These occupations account around 47 per cent of all employed persons (Table 21). Undoubtedly, as the common labour characteristics in developed countries, the share of high-skilled occupations is greater than that of high-skilled occupations in developing countries, including Thailand.

Table 21 Employment by Occupation, Japan, 2011-2013

Occupation	Number (10,000 people)			Per cent		
	2011	2012	2013	2011	2012	2013
Administrative and managerial workers	151	153	143	2.5%	2.4%	2.3%
Professional and engineering workers	945	1,010	1,004	15.8%	16.1%	15.9%
Clerks	1,177	1,214	1,235	19.7%	19.4%	19.6%
Sales workers	850	875	860	14.2%	14.0%	13.6%
Service workers	719	758	780	12.0%	12.1%	12.4%
Security workers	118	122	125	2.0%	1.9%	2.0%
Agricultural, forestry and fishery workers	220	237	229	3.7%	3.8%	3.6%
Manufacturing process workers	855	902	900	14.3%	14.4%	14.3%
Transport and machine operation workers	211	222	224	3.5%	3.5%	3.5%
Construction and mining workers	284	302	302	4.8%	4.8%	4.8%
Carrying, cleaning, packaging, and related workers	393	414	427	6.6%	6.6%	6.8%
<b>Total</b>	<b>5,977</b>	<b>6,270</b>	<b>6,311</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>

Source: Statistics Bureau, Ministry of Internal Affairs and Communications (2015): Japan Statistical Yearbook 2015, Table 16-3B

## 5.2 Key Policies and Regulations Regarding Migrant Workers in Japan

In Japan, migrant workers refer by government documents as foreign workers. The definition of migrant workers in this study is non-Japanese nationalities who are currently working in Japan. Similar to the previous chapter, two key laws, which are immigrant laws and work-related migrant workers laws, are stipulated in Section 5.2.1. The immigrant

laws refer to the national regulation of immigration flow and border control as well as control of immigration and deportation according to the legal status of people. Section 5.2.2 is linked to work-related migrant laws that determine the condition to be employed in that country. As mentioned previously in Chapter 1, these two laws are mixed in term of public understanding, but in fact they must be justified separately. For example, if a migrant has their rights violated, that migrant should still be protected under the labour standard acts and the labour rights fundamental, though they may be deported to their home country due to the immigration acts or be detained due to the violation of the foreigner employment laws.

### **5.2.1 Immigration Laws**

The Immigration Control and Refugee Recognition Act 1951 was to provide for equitable control over the entry into and departure from Japan of all persons and to consolidate the procedures for recognition of refugee status (Section 1, The 1951 Immigration Control and Refugee Recognition Act). The influx of foreigners to Japan emerged in the time of the economic boom and rapid appreciation of the yen during the mid-1980s. In the recent decades, the revision in Immigration Control and Refugee Recognition Act in the 2000s, (date of promulgation, July 15, 2009) has clearly allowed some skilled occupations, but not low-skilled labourers.

The Japanese government links overstaying foreigners, or workers without a valid visa, to the crime rate. In 2004 the Japanese government established “Action Plan for the Realisation of a Society Resistant to Crime”, setting a goal to halve the number of “illegal foreigners” within 5 years. It also extended the landing denial period for individuals with a history of deportation to 10 years, and shortened the landing denial period for qualifying individuals to one year.

For Japanese descendants, the Japanese government has generally relaxed their entry requirements. Since the number of descendants of Japanese emigrants returned to Japan after 1987 in response to the higher demand for workers in Japan, the 1990 revision of the Immigration Control Act enabled foreigners who are second- and third-generation descendent of Japanese emigrants to go to Japan as long-term residents. Normally, it is required to have a hosting organisation or an inviting person (visa sponsor) identified in an application form for a visa in Japan. Japanese descendants do not need an employer as a sponsor for a visa application, but relatives or friends. As a result, there was an emergence of a great number of ethnic Japanese workers. Japan signed a “Declaration of Unity in the Entertainment Industry”, which granted special visa requirements for Japanese-Filipino children to support reunification with their Japanese fathers in 1994 (Ofreneo and Samonte, 2005). The 1990 revision to the Immigration Control Act facilitated the number of Japanese descendants from Brazil to entering Japan. In addition, the recent laws permit non-Japanese nationals who are Japanese descendants by issuing “long-term resident” statuses<sup>45</sup>. This legal status obtains no restrictions on type of work and skill levels.

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<sup>45</sup> Iguchi (2012) referred to two categories of permanent residents: the special permanent resident and the ordinary permanent resident. The special permanent residents are individuals who had had Japanese nationality before the San Francisco Peace Treaty took effect. These individuals are mainly Koreans and Chinese, and Taiwan. The ordinary permanent resident: an individual who applied for and obtained

Besides Japanese descendants, all foreign workers in Japan are granted temporary visas. There are 27 types of visa, which can be classified as follows: working visa, non-working visa, and family related visas. In particular those who are working and doing work-related activities are only allowed for the occupations listed in Table 21. In practice, the non-working visa is not allowed to work. One of the visa types under the non-working visa is one allowing students to work up to 28 hours per week with permission granted by the Immigration Bureau of Japan. However, a large number of immigrants under the non-working visa have overstayed or worked beyond the number of working hours permitted. Such activities classify them as irregular migrant workers (For more discussion, see Section 5.3).

Table 22 Summary of Residence Status under the Immigration Control Act

<b>Visa type</b>	<b>Summary of Authorities permitted</b>
<b>Working Visa</b>	<b>Award to only the following listed occupations</b>
<b>Highly Skilled Professional (Type 1: 5 years, and Type 2: Indefinite)</b>	Type 1: Advance academic research activities in research, education, natural science, humanities, business management, and etc. Type 2: Being Type 1 with 3 or more years of residence in Japan.
<b>Specialist in Technologies/Humanities /International Services (3 years to 5 years)</b>	Working in services which require skills or knowledge pertinent to these fields: legal, economic, social, human science, etc..
<b>Intra-company Transferee (3 months to 5 years)</b>	Activities performed by an expatriate who is transferred to a head office or branch in Japan.
<b>Skilled Labour (3 months to 5 years)</b>	Activities with industrial techniques or skills belonging to special fields; for example, foreign cooking, training animals, piloting aircrafts, instructing sports, sommeliers.
<b>Management (3 months to 5 years)</b>	Activities to conduct or manage international trade or other business.
<b>Diplomat (during mission)</b>	Personnel of the embassies and consular offices, diplomatic missions, Government personnel and their families.
<b>Official (during mission: 15 days to 5 years)</b>	Personnel of the foreign governments, or international organisations, and their families.
<b>Professor (3 months to 5 years)</b>	Research and education at University or equivalent educational institutions.
<b>Instructor (3 years or 5 years)</b>	Instruction of foreign languages or other education at elementary schools, junior high schools, high schools, etc..
<b>Artist (3 months to 5 years)</b>	Artistic activities that generate sufficient income to support life in Japan (For instant photographer, fine arts, music)
<b>Religious Activities (3 months to 5 year)</b>	Missionaries sent from foreign religious organisations.

permanent resident status on the basis of Article 22 of the Immigration Control and Refugees Recognition Act. For those foreigners who have been residing in Japan for at least 10 years (some privileged cases where foreigners can apply within 5 years) and who are, for example, highly talented scientists, entrepreneurs, spouses of Japanese citizens.

<b>Visa type</b>	<b>Summary of Authorities permitted</b>
<b>Journalist (3 months to 5 years)</b>	Journalists who signed a contract with foreign journalistic organisations.
<b>Legal /Accounting Services (3 months to 5 years)</b>	Registered foreign lawyers, certified public accountants or other specialists with legal qualifications.
<b>Medical Services (3 months to 5 years)</b>	Physicians, dentists or other medical specialists with legal qualifications.
<b>Researcher (3 months to 5 years)</b>	Researchers conducted under a contract with public or private organisations in Japan
<b>Entertainer (15 days to 3 years)</b>	Theatrical performances, musical performances, sports or any other show business.
<b>Technical Intern training (6 months to 1 year)</b>	Those who have acquired skills from the activities for skill development and knowledge transfer with an employment contract.
<b>Non-working visa</b>	
<b>Cultural Activities (3 months to 3 years)</b>	Cultural or artistic activities that provide no income. Studies or researches of Japanese cultural or artistic activities.
<b>Student (3 months to 4 years 3 months)</b>	University student, high school students, students at Japanese language schools and other educational institutions. The visa application is submitted through the school and the time of application is limited. The student can work up to 28 hours per week (general standard) with the permission to engage in activities from the Immigration Bureau of Japan.
<b>Trainee (3 months to 1 year)</b>	This status is granted only if the candidate is to engage in a job requiring the technology, skills or knowledge at a public or private organisation in Japan.
<b>Dependent (3 months to 5 years)</b>	Daily activities by the dependent of a foreign resident with a resident status permitting work or a status of cultural activities or student.
<b>Temporary Visitor (15-90 days)</b>	Tourism, vacation, sports, family visit, participation to seminars, conferences or reunions.
<b>Designated Activities</b>	Activities specifically designated by the Ministry of Justice (1) Domestic servants employed by diplomats; (2) Working holiday-makers on the basis of agreements between Japan and 12 countries; (3) Nurse and care worker candidates on the basis of EPA between Japan and Indonesia, Philippines, or Vietnam; (4) Workers who have completed on –the –job training programs in construction and shipbuilding industry are allow to stay in or re-enter Japan to be employed until 2020.
<b>Family related visa</b>	No restriction in activities to be engaged.
<b>Permanent Resident (Indefinite)</b>	Visa granted to those who have stayed sufficiently long time in Japan.
<b>Spouse or Child of</b>	Spouses and children of Japanese nationals.

<b>Visa type</b>	<b>Summary of Authorities permitted</b>
<b>Japanese National (6 months to 5 years)</b>	
<b>Spouse or Child of Permanent Resident (6 months to 5 years)</b>	Spouses and children of Permanent Resident.
<b>Long Term Resident (6 months to 5 years)</b>	Eg. Refugees, descendants of Japanese nationals, etc..

Source: Tokyo Metropolitan Government (2015) The Foreign Workers Handbook: 126-141

## **5.2.2 Employment-Related Laws**

This section is divided into two parts. The first part outlines laws and regulation of hiring migrant workers and the later part is about legal framework regarding working conditions for all workers in Japan. The second part is a summary of national laws regarding working conditions.

### **5.2.2.1 Employment of Migrant Workers**

Unlike in Thailand, there is no specific law to administrate migrant workers and their work permits. Instead, the living and employment status is demonstrated in Immigration Control and Refugee Recognition Act, which clearly bans low-skilled foreign workers and imposes tough penalties on employers and labour brokers who knowingly recruit and hire foreigners without proper status (Solidarity Network with Migrants Japan, 2010). The penalties include the establishment of regulations to employers who hire non-Japanese nationals whom do not possess working visa up to 3 years of imprisonment, and up to 3 million yen in fines.

In complement to the Immigration Act, the Employment Measures Act 1966 and later revised in 2007 has been enforced. The purpose of this Act is to facilitate proper functioning of labour supply and demand, and to enable workers to make effective use of their abilities by guiding them through the necessary measures for employment. However, in practical terms, this Act emphasises the appropriate measures to control the entry and stay of foreign nationals, and to prevent foreign nationals from engaging in illegal work (Article 4, the Employment Measures Act 2007). If migrant workers are currently residing in Japan without permission, under the Immigration Control Act or the Special Act, the Minister of Justice will take measures to encourage them to turn themselves in as well as considering other measures to reduce the number of illegal residents (Article 60, the Employment Measures Act 2007).

Before the revision, notification of hiring foreign workers was on a voluntary basis once a year in June at companies with 50 or more employees. The revision requires employers to report each time that one or more foreigners enter or leave employment at their workplaces. Notably, these regulations have no mandatory effect on labour contracts between employers and employees. In the case that employers violate these regulations, they might receive advice, guidance or recommendations from the MHLW (Sakuraba, 2009: 69).

Besides the revision of the laws, a public awareness scheme is also included in “the Liaison of Illegal Employment Foreigners<sup>46</sup>”. The Liaison has regularly arranged activities and public awareness campaigns to promote public understanding about countermeasures against illegal employment foreigners. The series of public campaigns have encouraged Japanese to monitor non-Japanese national residents in their own local communities.

Since the government does not allow unskilled migrant workers to work in Japan, many migrant workers have entered Japan on short-term visas and continued to reside in Japan even after their visas’ expiration and therefore became irregular migrant workers. Besides over-stayers who clearly violate the Immigration Act, another key channel that allows low-skilled migrants to come to Japan is Japan’s company trainee program. Despite the laws indicated for any “technical intern trainees”, the trainee status was used by some enterprises to acquire cheap labour and some foreign workers were exploited<sup>47</sup>. The establishment of the industrial trainee and technical intern program that mixes training with employment became the de facto “low-skilled migrant workers” in Japan, though the Labour Standard Act does not allow an employer to exploit an apprentice, student, trainee by reason of the fact that such person is seeking to acquire a skill. It also does not allow them to undertake other works, e.g. domestic work, that are in no relation to acquisition of a skill (Article 69, Labour Standard Act amended 2012). This program is linked to small- and medium-sized Japanese establishments, which is debateable based on the establishment’s level of technology capabilities. According to Tsuda’s (2008) study, the migrants under the entertainment visa, mostly from the Philippines, were actually working as bar hostesses or as prostitutes. Many of Japan’s immigrant sex workers are undocumented female migrants who are exploited by human traffickers and forced to work in the sex industry. Furthermore, students, especially in colleges, language schools and vocational schools, can be considered potential low-skilled immigrant workers by employers, since they can work part-time. However, most workers are working in excess of the allowed hours, and many are becoming full-time, particularly in the service sector (For more discussion, see Section 5.3).

Currently, the immigration procedures have been simplified in order to meet the increasing demand for foreign managerial and technical and educational fields (Tsuda, 2008; The Solidarity Network with Migrants Japan, 2010). Since December 2009, one of key policies was the “New Growth Strategy” to facilitate and promote entry of highly skilled workers, and eventually implemented the points-based system for highly-skilled foreign professionals on May 7, 2012. Three types of highly-skilled workers are activities engaging in research, research guidance or education, technical activities in natural sciences or humanities, as well as business management activities.

### **5.2.2.2 Working Conditions Based on Legal Standards**

This section is a summary of national laws regarding working conditions. In Japan, the key

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<sup>46</sup> It is composed of 3 chairmen from the National Police Agency, the Ministry of Justice, and the Ministry of Health, Labour and Welfare. Its recent activities, for instance, were “the conference for countermeasures against illegal employment foreigners” and “migrant worker awareness month”, a campaign to promote public understanding on countermeasures against illegal employment foreigners has been conducted in every June.

<sup>47</sup> Before 2010, trainees were not covered by Labour Protection Act. The laws were amended in 2010 to reform the trainee system.

laws regarding working conditions for general occupations are: the Labour Standards Act 1947; the Labour Contract Act 2007; the Employment Security Act 1947; the Industrial Accident Compensation Insurance Act 1972; the Industrial Safety and Health Act 1972; and the Act on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment 1972. Besides these key Acts, there are a number of Acts that related to working conditions in specific situations or working statuses; for example, the Act on Improvement, etc. of Employment Management for Part-Time Workers 2007; the Act on the Welfare of Workers Who Take Care of Children or Other Family Members Including Child Care and Family Care Leave<sup>48</sup>; the Act for Securing the Proper Operation of Worker Dispatching Undertakings and Improved Working Conditions for Dispatched Workers 1985<sup>49</sup>; and the Labour Union Act 1949.

The Labour Standards Act 1947 outlines the working conditions to meet the needs of workers at least at minimum standards for those who live lives worthy of human beings. However, it must be noted that this Act does not apply to agriculture, the livestock industry and fishery<sup>50</sup>. Mariners are subject to the Mariners Law. In addition, it is not applicable to businesses that employ only relatives who live together, nor to domestic workers (Article 116, Labour Standards Act 1947). The Labour Contract Act 2007 facilitates reasonable determination of or changes to working conditions under the employment contract through voluntary negotiation. The Employment Insurance Act is to provide necessary benefits for workers who are unemployed, who are having trouble continuing employment or who are receiving job-related training, and to facilitate their job-seeking activities. The Industrial Accident Compensation Insurance Act is to grant necessary insurance benefits to workers in order to give them prompt and fair protection against injury, disease, disability or death or the like resulting from an employment-related cause or commuting, and to promote the social rehabilitation of workers who have suffered an injury or disease from an employment-related cause or commuting. Industrial Health and safety Act 1972 is to secure the safety and health of workers in workplaces, as well as to facilitate the establishment of comfortable working environment. The Act on Securing, Etc. of Equal Opportunity and Treatment Between Men and Women in Employment 1972 aims to secure equal opportunity and treatment between men and women, in particularly the treatment with regard to employment during pregnancy and after childbirth.

The following listed are describing key working standards into 5 key areas: employment contract; wages and overtime wages; working hours; work breaks, days off and leave; and labour insurance occupational safety and health .

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<sup>48</sup> This Act aims to ensure of proper working conditions for part-time workers, improve employment management for them, promote their transformation to ordinary workers, and develop and improve of vocational abilities due to the increase in part-time workers in Japan.

<sup>49</sup> The purpose of this Act is to take measures for securing the proper operation of Worker Dispatching Undertakings, in conjunction with the Employment Security Act, as well as measures for securing improved working conditions for dispatched workers.

<sup>50</sup> This exemption is also enforced in other aspects. However, in practice there are concerns in enforcement and implementation. Suezaki and Horiguchi (2014) reported that a cooperative in Ibaraki area, so called JA Hokota cooperative, failed to pay overtime to Chinese interns. The JA Hokota officials argued that the provision of Labour Standards Law does not apply to the farm work and claimed that this view was shared by Tokyo Regional Immigration Bureau officials. However, later the bureau began insisted that overtime must be paid.

## **1) Employment Contract**

The employer shall clearly indicate the wages, working hours and other working conditions to the worker (Article 5, Employment Security Act, 1947; Article 15, Labour Standards Act Amended 2012). If the working conditions differ from the actual situation, the worker may immediately cancel the labour contract (Article 15, Labour Standards Act Amended, 2012). The clear statement to ensure an in-depth understanding of the working conditions and the contents of the labour contract to the worker with a suggestion to confirm the content of the labour contract in writing (Article 4, Labour Contract Act, 2007).

Labour contracts without a definite period shall not be concluded for three years. In general, it is exceptional to those who have expert knowledge, skills or experience and those who are aged 60 or older at the maximum 5 years (Article 14, Labour Standards Act Amended 2012).

If a worker dispatch contract is terminated before its expiration, the contract between the dispatched workers and the dispatching entity shall continue until expiration of the period of employment, and the dispatching entity shall pay the dispatched workers his/her wage. It is illegal to make a contract which fixes in advance either a sum payable to the employer for breach of contract or an amount of compensation for damages (Article 16, Labour Standards Act Amended 2012). An employer shall not require a contract for savings or make a contract to take charge of savings incidental to the labour contract, unless having an agreement with a labour union or establishing rules governing the keeping of savings and informing the workers of these rules (Article 18, Labour Standards Act Amended 2012).

## **2) Wages and Overtime Wages**

In order to ensure that wages are properly paid, the Labour Standards Law stipulates the following five principles for payment of wages. The payment must be paid in Japanese currency, direct payment wages, paid in full, paid at least once a month and on a definite date (Article 24, Labour Standards Act Amended 2012). However, wage deduction can be added to the following list: 1) Income tax, residential tax, social insurance premiums and labour insurance premiums; and 2) dormitory fees, utility fees.

Minimum wages are stipulated in the minimum wage laws. Wages must be paid at least at the minimum wage level. There are two types of minimum wages which are (1) regional minimum wages, and (2) specific-sector minimum wages.

In the event of an absence from work for reasons attributable to the employer, the employer shall pay the worker an allowance for absence from work (60 per cent of the worker's average wage).

Overtime wages must be between 25 and 50 per cent on top of the hourly wages for working on statutory days off. Night workers (conducted between 10:00 p.m. and 5:00 a.m.) should receive on top at 25 per cent on the normal wages (Article 37, and 67, Labour Standards Act Amended 2012).

Upon a worker's leaving of employment, the employer shall pay unpaid wages and other due amongst within 7 days of his/her request of payment.

### **3) Working Hours, Work Breaks, Days Off and Leave**

It is stipulated by law that working hours shall be a maximum of eight hours per day or 40 hours per week (Article 32, Labour Standards Act Amended 2012). For certain size and types of industry, 44 hours a week is deemed possible (Articles 40 and 131 of the Labour Standard Law). Working hours are calculated by subtracting work break from on-duty hours from starting time to ending time. Commuting time is not included in working hours. Overwork in excess of statutory working hours is object of payment of extra wages.

An employer shall provide a work break during working hours as follows: at least a 45-minute work break in case working hours per day exceed six hours, and at least a one-hour work break during more than eight working hours. However, enterprises may adopt a variable working hour system after completing the designated procedures with an employment contract (Article 34, Labour Standards Act Amended 2012).

An employer shall provide workers with at least one day off per week or four days off or more during a four-week period. For annual paid leave, an employer shall grant annual paid leave to workers who have been employed continuously for six months calculated from the day of their being hired and who have reported for work on at least 80 per cent of the total working day (Article 34, Labour Standards Act Amended 2012).

The rules of employment provide for a decrease in wages can be made as a sanction to a worker. The amount of decrease for a single occasion shall not exceed 50 per cent of the daily average wages, and also the total amount of decrease shall not exceed 10 per cent of the total wages for a single pay period.

### **4) Labour Insurance, Occupational Safety and Health Laws**

Except a family business and an individual farmer with less than five workers, all enterprises with at least one employee are subjected to labour insurance. Labour insurances are composed of 2 schemes which are: (1) Workers' Accident Compensation Insurance; and (2) Employment Insurance. The first one covers injuries, illness, and death of workers. The company bears a full amount of insurance premium. In the case that medical treatment is necessary, expenses for recovery or medical treatment shall be paid free of charge. In case the worker cannot receive wages due to medical treatment, 80 per cent of the daily wage shall be paid from the fourth day of medical treatment. The Employment Insurance is paid when a worker has lost his/her employment or being unemployed. An accepting company and a worker share insurance premium at a fixed percentage (JITCO, 2011 and MHLW, 2011).

Since in Thailand the Social Security Act covers health, unemployed, pensions, child birth, to ensure a comparable coverage for comparative analysis, health insurance schemes and national pensions will be briefly mentioned as follows. First of all, two public medical insurance schemes are common: the Public Health Insurance Scheme and the Health Insurance Scheme. The Public Health Insurance is based on the National Health Insurance

Act. Whereas the Health Insurance is a medical insurance system which covers medical expenses when a person who works at a private company becomes ill or suffers injury for reasons other than work, the National Pension is a compulsory pension system applied to all people in Japan. While the employee's Pension Insurance is a compulsory pension system for full time workers of incorporated companies, the National Pension and the employee's Pension Insurance can receive lump-sum withdrawal payments<sup>51</sup>.

It is required by laws to protect workers from danger or damage to health. An employer shall arrange for the worker's medical examination, upon employing new workers or for certain periods of time as provided by law. During the worker's medical treatment it is prohibited to dismiss them during the absence and 30 days thereafter (Article 19 of the Labour Standards Law). A complaint can be filed if a person object to acknowledgment of injury, illness, or death in the course of employment; the method of medical treatment; the determination of the amount of compensation; or other matters pertaining to the compensation, may apply to the relevant government agency for examination or arbitration of such cases, including through an Industrial Accident Compensation Insurance Examiner (Article 85, 86, Labour Standards Act Amended 2012).

### **5.3 Migration Trends in Japan**

This section investigates the number of migrant workers in Japan, in particular low-skilled migrant workers. Though Japan clearly does not allow low-skilled workers, a number of low-skilled migrant workers are working in the country through various channels. However, the figures cannot be determined by any official statistics. Therefore, estimation is needed, and presented in this section.

#### **5.3.1 Overall Trends of Migrant Workers in Japan**

In 1990, the number of registered foreign nationals was 1.1 million and grew to almost double. The growth rate is similar to the share of immigrant workers of the total population from 0.87 in 1990 to 1.6 in 2012 (Figure 29). Noticeably, the number of migrants in the late 2010s has been slowing down. The higher growth rate of developing countries and the impact of economic crisis caused by a great earthquake in 2011 are likely to decelerate the mobility from other countries.

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<sup>51</sup> Lump-sum withdrawal payments can be made if they are subjected to the following requirements: (1) Not to possess Japanese nationality; (2) To have paid insurance premiums for the national pension or the employee's pension insurance for six months or more; (3) Not to domicile in Japan; (4) Not to have had a right to receive a pension (including disability allowance).

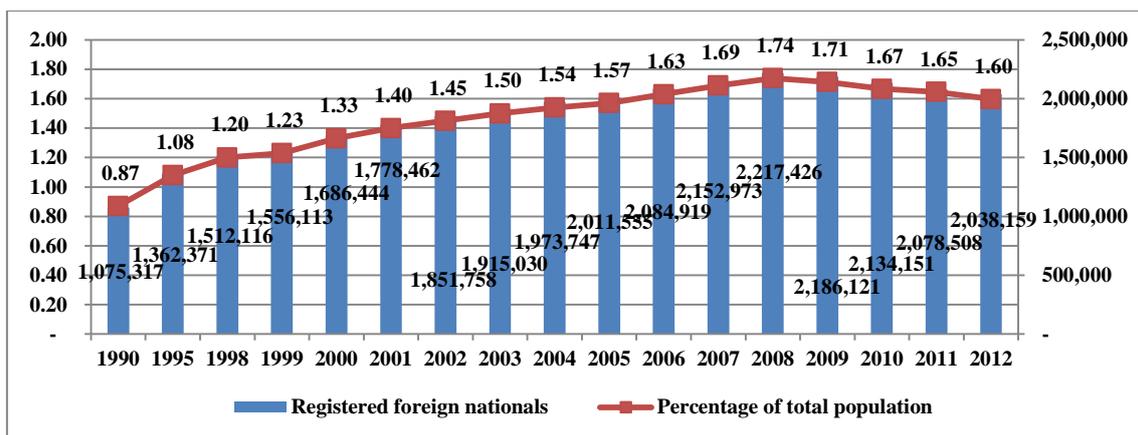


Figure 29: Changes in the Number of Registered Foreign Nationals and the Share of Total Population of Japan, 1990-2012.

Source: Ministry of Justice (2010:5) Basic plan for immigration control. The shares of the total population of Japan from 2009 to 2012 are authors' calculation.

In terms of the numbers by migrants' nationality, this has quite stable in the last 20 years with the majority from China and Korea respectively. The number of Chinese had dominated at 32 per cent of foreign residents in Japan, and overtook the first rank among other nationalities (Figure 30).

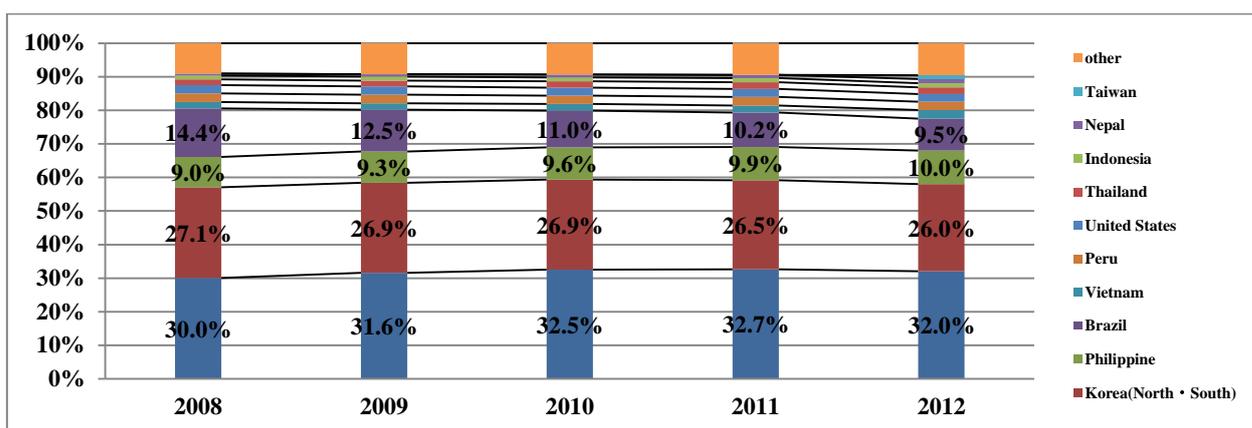


Figure 30: The Number of Foreign Residents in Japan by Nationality, 2008-2012.

Note: The number excludes the number of medium-to long-term residents at 31,159 people. Until 2011, China includes Taiwan. From 2012, Taiwan is distinguished from China.

Source: Ministry of Justice, Japan.

### 5.3.2 Types and Trends of Low-skilled Migrant Workers in Japan

Though the government does not welcome low-skilled workers, based on Iguchi's estimate (2012), 70 per cent of the foreigners employed were low- or semi-skilled workers. 36 per cent of foreign workers work in manufacturing, 60 per cent of whom are production workers. The illegal immigrant worker population is approximately 300,000 (Tsuda, 2008). Potential migrant workers working in low-skilled work can be categorised into 3 main groups: foreign trainees of training programmes; over-stayers; and those who have applied for visas not relating to working (false purpose).

It must be noted that there are two non-Japanese groups that are a mix of high-skilled and low-skilled migrant workers. The first group is the skilled workers/specialists, who are working in low-skilled occupations. This group mainly faces employment contract violation or false information during the recruitment process. In other words, they have employment contracts, but job responsibility, working conditions and wages are unlike those agreed to beforehand. The second group includes "Permanent Resident", "Spouse or Child of Japanese National", "Spouse or Child of Permanent Resident" and "Long term Resident", who are legally engaged in any type of activities in Japan. Low-skilled workers in this group obtain equal rights to Japanese workers. Many workers in this category have worked in the service sectors with two part-time jobs in order to earn liveable wages. This situation can be considered as the general working condition faced by low-skilled workers in Japan.

The criteria of categorisation are based on the legal status of low-skilled migrant workers linked to employment contracts and working conditions, as grouped in Table 23. Following Table 23, each type of low-skilled migrant worker is described.

Table 23 Summary of Types of Low-Skilled Migrant Workers Under Work-Related Visa in Japan

Category	Legal status	General features
1.Foreign trainee and technical intern system	Have a trainee/skill training visa but they are actually working in low-skilled occupations	Receiving wages and working conditions as per defined in the employment contract. Normally, such conditions and wages are at the minimum rate at stated by laws.
2.Over-stayers	Have other non-working visas type and keep staying in Japan after the last date of permission.	Generally working without employment contract. Receiving wages less than minimum wages.
3.False purpose of entering Japan (non-working visa)	Have other non-working visas type, but work during the period of stay.	Using the permitted hours for students but normally working longer hours than the allowed hours of work.

Source: Authors' grouping.

### 1) Foreign Trainee And Technical Intern System

This is the most debated channel for obtaining low-skilled migrant workers (eg. Abella, 2009; Iguchi, 2012). Trainees under the "Technical Intern Training Program" (TITP), started from 1993. The programme is "*where young workers from various overseas countries acquire industrial and vocational skills as technical intern trainees at companies in Japan, and then improve their acquired skills through further two years technical intern training, so that they can utilise such skills for economic and industrial development after their return to home countries*" (JITCO, 2011:2). It is considered to be a form of overseas development assistance that enables trainees from developing countries to acquire technical skills at Japanese companies. At first, trainees receive lectures and technical training for up to one year. Then they can engage in on-the-job training for up to two years, after which they must return to their country. Qualified non-profit organisations, which are small business associations or chambers of commerce and industry, can accept technical

intern trainees and provide trainings for their member companies. Individual Japanese companies may accept and provide technical intern training for employees of their overseas branches, joint venture companies, and business partners.

Under the foreign technical training scheme, the main government-recognised organisations are the Japan International Cooperation Agency (JICA), the Association for Overseas Technical Scholarship (AOTS) and the ILO Association of Japan, Inc. Those organisations accounted for 14.2 per cent. The rest, about 85.8 per cent, of total foreign trainees and technical interns arrived by the private sector organisations supported by the Japan International Training Cooperation Organisation (JITCO) (Watanabe, 2010).

JITCO was founded in 1991 under the joint jurisdiction of a number of ministries, including the Ministry of Justice, the Ministry of Foreign Affairs, the Ministry of Health, Labour, and Welfare, the Ministry of Economy, Trade and Industry, and the Ministry of Land, Infrastructure and Transportation. JITCO is now the public interest incorporated foundation, authorised by Japanese Cabinet office. JITCO is an organisation to supply information and necessary services for matching interns. Currently, there are 15 countries under technical intern trainee schemes: China, Indonesia, Vietnam, Philippines, Thailand, Peru, Laos PRD, Sri Lanka, India, Myanmar, Mongolia, Uzbekistan, Cambodia, Nepal, and Bangladesh. JITCO provides consultation and support services for trainees and technical interns in Chinese, Vietnamese, Indonesian and Filipino with an aim to relieve stress dealing with culture shock, immigration regulations, and technical internship systems.

JITCO and its network determine the quota and qualification of trainees. However, due to its aging society and labour shortage problems, the number of low-skilled workers in this category as well as the period of work is periodically discussed in labour and employment policies. Then the extension of the training period of training programme is going to be revised from 3 years to 5 years in 2015. The extension is claimed to serve as an emergency measure to cope with serious labour shortage in specific sector, in particular in the shipbuilding industry, construction work, in areas hit by the 2011 Great East Japan Earthquake as well as infrastructure for the 2020 Summer Olympic Games in Tokyo. In addition, recently since 2014, Japan's Ministry of Health, Labour, and Welfare has discussed that the accelerating aging society of the Japanese population requires a large number of care takers to support the elderly. A total of 2.5 million care-service providers will be needed - by 2025, up from nearly 1.8 million employed now, or 700,000 additional caregivers by 2025 (Adachi, Ishida and Oka, 2015). Therefore, this training programme is used to obtain such labourers (Japan Today, 2015; Japan Times, 2015).

JITCO classified supervisors into 2 types: individual enterprise type and supervising organisation type. The first type is an individual enterprise type which is a transferring employee of overseas branch offices, subsidiaries or joint-ventures within that enterprise. The number of trainees are limited. For example, an enterprise with 50 employees or less may train trainees at the maximum of 3, while an enterprise with 51–100 employees may have 6 technical intern trainees. The other type is a supervising organisation type which is registered under the NPOs type and falls into the following activities: (1) Chambers of commerce and industry or societies of commerce and industry; (2) Small business associations; (3) Vocational training companies; (4) Agricultural cooperatives, fisheries cooperatives; (5) Public interest incorporated associations, public interest incorporated

foundations; and (6) Supervising organisations specified by announcements by the Minister of Justice (JITCO, 2014).

Though the objective of the programme is supposed to promote transference of job skills to developing economies through the trainees, this programme, inversely, is claimed to be a source of cheap labourers and working in semi-low-skilled work (Iguchi, 2012). This argument can be outlined by trainees’ work categories. Under the Technical Intern Training Program, introduced in 1993, roughly 160,000 trainees from overseas were working in 69 categories, 127 works as of January 23, 2015 (JITCO, 2014) as listed follows:

- (1) Agriculture (2 occupations, 5 works such as poultry farming(collecting chicken eggs), upland field cropping /vegetable growing;
- (2) Fishery (2 occupations, 9 works) such as set net fishery, crab and shrimp basket fishery;
- (3) Construction (21 occupations, 31 works) such as stone processing work, carpentry construction work, framing construction work;
- (4) Food Manufacturing (7 occupations, 12 works) such as production work of ham, sausage and bacon, smoked product manufacturing;
- (5) Textile (12 occupations, 21 works) such as weaving process, dress-shirt producing work;
- (6) Machinery and Metal (15 occupations, 27 works) such as machine sheet metal operation, transformer assembling work;
- (7) Others (10 occupations, 22 works) such as manual welding, injection forming work.

A technical intern trainee will have to spend 1 year as a trainee. Thereafter, a technical intern trainee will be able to spend 2 years in Japan after passing a final examination, and then sign a dispatch contract with a sending organisation.

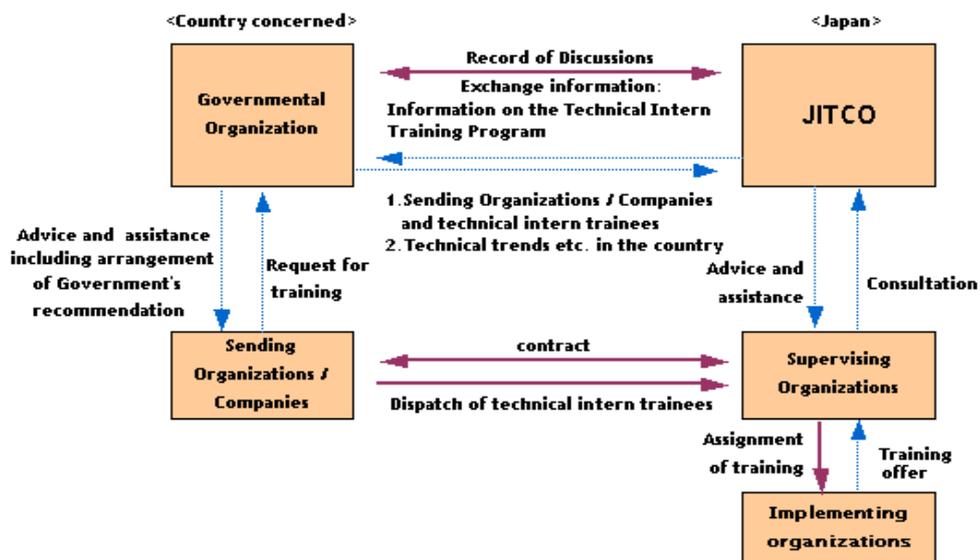


Figure 31: Organisational Structure and Information Exchange, JITCO System.

Note: As of 31 March 2015, currently 15 governmental countries are engaging with JITCO system, which are People's Republic of China, Indonesia, Vietnam, Philippines, Thailand, Peru, Laos PDR, Sri Lanka, India, Myanmar, Mongolia, Uzbekistan, Cambodia, Nepal, Bangladesh.

Source: JITCO (2015) Accessed on 31 March 2015. Organisational structure for information exchange between the sending countries and JITCO.

The working conditions are roughly at the minimum standard as set out by laws. For example, a contract with IM Japan (International Manpower Development Organisation, Japan: IM Japan)<sup>52</sup> provides 1 month wage at 80,000 yen and the salary of the following month is set at the minimum wage. If the trainees work for a 1 year contract, they will get a 200,000 yen year-end bonus, and for those who hold a 3-year contract will receive a 800,000 yen end-of-contract bonus. A pre-departure training is required for 3-4 month trainings and an additional one month for language and cultural training in Japan. From the interviews, on average the workers' wages were deduced for rental cost, electricity, gasoline, lunch, tax. They earn 80,000-90,000 yen per month net. Omagari (2012:4) points out that trainees and interns cannot leave the country and job easily. They were stranded by regulations and contracts to complete their agreed assignment, regardless of the origin of the contract, Japan or sending countries.

At the end of the internship, not all interns return to their home country. According to JITCO (2015), around 1-2 per cent of the trainees leave the training programme before they graduate from the program. To prevent the occurrence of missing trainees from the program, JITCO suggested and requested for cooperation from the receiving organisations to build trust with sending organisations and ensure that the sending organisations are qualified and have a good understanding about the programme. In addition, the selection of the technical intern trainees should be deliberately selected.

JITCO also pointed out mismatches as one of the reasons for the missing interns, including mismatch of job, mismatch about working conditions and training environment, as well as with everyday life in Japan. With regards to the mismatch of the working conditions and training environment, JITCO recommends to make the clear understanding about the working condition, between receiving organisations and trainees through an employment contract in trainees' language. Besides general working condition, the deduction, for example taxes, insurances, accommodations must be clearly described to the technical intern trainees. In addition, the receiving organisations must not violate human rights by restraining migrant workers in limited areas or confiscating their identity documents or mobile phone.

## **2) Over-Stayers**

Since the Japanese government does not allow low-skilled workers to explicitly work in Japan, a number of foreigners have decided to enter into Japan in other Visa types. Later they find jobs in Japan and reside in the country as irregular migrants. It can be implied that over-stayers are low-skilled migrant workers; otherwise, they should be able to obtain a working visa. As can be seen from Table 24, the trend of the number of over-stayers is declining. In 2014 the largest share of over-stayers is from the short/temporary stay type, the next potential groups are skills training and trainings, and foreign students under working visa.

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<sup>52</sup> Announcement "Call for applications" Posted on the Department of Employment, for the IM programme in 2014, first round.

Table 24 Number of Over-Stayer by Visa Status (People)

	Temporary visitor	Technical intern training	Trainees	College students	School attendance	Entertainers	Other	Grand total
2007	117,289	0	3,333	7,448	5,281	8,162	29,326	170,839
2008	102,069	0	3,136	6,667	4,311	6,624	26,978	149,785
2009	76,651	0	2,561	5,090	3,186	5,015	20,569	113,072
2010	63,169	0	1,621	3,610	2,232	4,120	17,026	91,778
2011	54,220	3	1,192	4,322	0	3,425	15,326	78,488
2012	46,845	641	732	3,187	0	2,956	12,704	67,065
2013	43,943	1,614	501	2,847	0	2,432	10,672	62,009
2014	41,403	2,830	396	2,777	0	2,224	9,431	59,061

Note: The number is calculated on January 1<sup>st</sup> every year.

Source Ministry of Justice Immigration Bureau, cited from JITCO, (2015) Report of missing persons of Technical Intern Training Program: for prevention measures (技能実習生の行方不明者 発生防止対策について).

In general, these overseas migrant workers work under short-term employment contracts and with non-regular working status (Asia Monitor Resource Centre, 2008; Solidarity Network with Migrants Japan, 2010). The majority of migrant workers in Japan worked in the manufacturing sector, and migrants are employed by labour contractors and dispatched to production lines with a three-month or shorter employment contract. Besides these full-time work groups, migrants are likely to be exempt from social security in Japan since they usually work as part-time workers, temporary workers and in very small enterprises and/or family enterprises. However, currently the Ministry of Justice and Ministry of Health and Labour Welfare (2015) have jointly proposed an initiative to ensure acquisition of technical trainees and interns, such as determining the authorisation process of implementing or supervising organisations. Moreover, according to this Act, organisation for technical trainees and interns will be established to protect their labour rights, for example, providing consultation to them.

### 3) Workers Whose Main Purpose is to Work but Holding A Student Visa (False purpose of Entering Japan)

A number of migrant workers are in Japan on a student visa. However, many student migrants were purely economically motivated, in particular, the students in a language school. As with many other countries, Japan issues conditional part-time work permits to international students. In the case of foreigners with the status of "College Student", "Pre-college Student" and "Dependent", they must obtain a permit for extra-status activities from the Immigration Bureau before they start working. College students are permitted to work up to 28 hours a week.

This permission opens to international students in supporting themselves during their school years. Some of these students never entered a classroom in Japan. It is reported that at one point 60 per cent of language students overstayed their visas (Noro 2002, cited by Liu-Farrer, 2013:226). A large share of this group became over-stayers in later on, as can be seen in Table 24.

To sum up, based on the estimation, the annual number of low-skilled migrant workers were around 0.46-0.52 million people from 2010 to 2014 (Table 25). This number accounts for around 74–76 per cent of total migrant workers, excluding the special permanent residents, medium- and long-term residents, permanent residents, spouses or children of Japanese nationals, dependents, spouses or children of permanent residents and the temporary visitors.

Table 25 Estimated Semi-Skilled and Low-Skilled Migrant Workers, 2010-2014 (People)

Status <sup>1/</sup>	2010	2011	2012	2013	2014
Specialists in humanities	68,467	67,854	69,721	72,319	76,902
Engineers	46,592	42,634	42,273	43,038	45,892
Intra-company transferees	16,140	14,636	14,867	15,218	15,378
Investors and business managers	10,908	11,778	12,609	13,439	15,184
Instructors	10,012	10,106	10,121	10,076	10,141
Professors	8,050	7,859	7,787	7,735	7,565
Religious activities workers	4,232	4,106	4,051	4,570	4,528
Researchers	2,266	2,103	1,970	1,910	1,841
Artists	480	461	438	432	409
Medical service workers	265	322	412	543	695
Journalists	248	227	223	219	225
Legal and accounting service workers	178	169	159	149	143
<b>Potential high-skilled workers (a)</b>	<b>167,838</b>	<b>162,255</b>	<b>164,631</b>	<b>169,648</b>	<b>178,903</b>
Skilled labourers	30,142	31,751	33,863	33,425	33,374
Cultural activities workers	2,637	2,209	2,320	2,379	2,614
Entertainers	9,247	6,265	1,646	1,662	1,967
<b>Potential semi-skilled workers (b)</b>	<b>42,026</b>	<b>40,225</b>	<b>37,829</b>	<b>37,466</b>	<b>37,955</b>
Technical intern trainees	100,008	141,994	151,477	155,206	167,626
Trainees	9,343	3,388	1,804	1,501	1,427
College students <sup>2/</sup>	201,511	188,605	180,919	193,073	214,525
Designated activities workers	72,374	22,751	20,159	22,673	28,001
<b>Potential low-semi-skilled workers (c)</b>	<b>383,236</b>	<b>356,738</b>	<b>354,359</b>	<b>372,453</b>	<b>411,579</b>
<b>Over-stayers (d)</b>	<b>91,778</b>	<b>78,488</b>	<b>67,065</b>	<b>62,009</b>	<b>59,061</b>
<b>Total (a)+(b)+(c)+(d)</b>	<b>684,878</b>	<b>637,706</b>	<b>623,884</b>	<b>641,576</b>	<b>687,498</b>
<b>Total low-semi skilled workers (b)+(c)+(d)</b>	<b>517,040</b>	<b>475,451</b>	<b>459,253</b>	<b>471,928</b>	<b>508,595</b>
<b>Percentage of semi-low-skilled foreigners to total foreigners</b>	<b>75.5%</b>	<b>74.6%</b>	<b>73.6%</b>	<b>73.6%</b>	<b>74.0%</b>

Note: 1/Despite the fact that the total foreigners' residents are approximately 2 million people, this table represents only migrant workers with work-related statuses. The following categories are excluded from the statistics: special permanent residents, medium- and long-term residents, permanent residents, long-term residents, spouses or children of Japanese nationals, dependents, spouses or children of permanent resident and the temporary visitors.

Note: 2/The assumption of Iguchi (2012) is applied to this table.

Source: Ministry of Justice, Immigration Bureau and own estimations.

## 5.4 Grievance Mechanisms in Japan

The official department responsible for ensuring that working conditions are meeting the minimum standards is Labour Standards, Department of Prefectural, Labour Bureau which is under the supervision of the Ministry of Health, Labour and Welfare. The Department is organised to secure and improve working conditions and is responsible for managing Workers' Accident Compensation Insurance. Furthermore, the Department is responsible to improving working conditions and ensuring the minimum work standards; for example, securing minimum wages, temporary payment of unpaid wages due to business failures or other reasons, encouragement of working hours reduction, and promotion of use of workers' insurance and appropriate collection of insurance premium. The Department provides the following services: supervision and guidance for businesses; judicial punishment against serious and vicious violations of laws; handling of applications for approval, reports; dealing with declarations and consultations; inspection for the safety of manufacturing facilities; carrying out investigations for industrial accidents and giving guidance for recurrence prevention; and payment of Workers' Accident Compensation Insurance benefits. There are Labour Standard Inspection Offices, which are under supervision by the Department. The Labour Standard Inspection Offices performs inspections to ensure the minimum standard stipulated in Labour Standards Act. They are also in charge of improving wage system, reducing working hours, and preventive measures against occupational accidents (MHLW, 2014b: 37-38). The 343 Labour Standards Inspection Offices (and 4 branches) located across Japan (MHLW, 2015) in 47 Metropolitan and prefectures of Japan.

For foreigners, advisors for foreign workers are located within the Inspection Division of the Labour Standards Departments at the major Labour Bureaus and the Labour Standards Inspection Offices to offer consultations concerning working conditions in English and other languages. The Consultation services offer consultation concerning working conditions. Other Labour Standards Inspection Offices can answer questions concerning working conditions in Japanese. Besides the above services provided by the MHLW, each prefecture normally provides its own consultation services for its residents. Foreign languages and working hours service counters are different in each prefecture<sup>53</sup>.

Labour inspectors of the Labour Standard Bureau are responsible for on-site inspection as well as collecting and investigating a grievance. If they find rights violated on-site, they will give advice and orders. However, if the advice is not followed by employers or if the case is considered to require a court procedure, the labour inspector will submit the case to the public prosecutor's office. A public prosecutor will make a decision on whether or not to request a court trial in a civil court, and request for a summary order, where the sentences are rendered through the examination of documentary evidence without a public court trial (Figure 32).

On the other hand, if a migrant files a grievance in Japan, the settlement is processed via the individual labour dispute resolution system (Figure 33). Before the worker files a

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<sup>53</sup> At Shinjuku city centre, each service may provide one up to eight languages in specific dates and time. For example, Foreign Resident Advisory Corner provides three languages, while consultation on visa status/everyday living provides 5 languages. At Tokyo Labour Consultation Centre, there are translators of English and Chinese in order to give advice and consultation to foreign worker. Translators of the following five languages could be dispatched: Spanish, Portuguese, Korean, Thai, and Persia upon advance requests.

grievance to a labour inspector, it is expected that an initial consultation has already been made. Generally, the labour inspector will ask if there is written evidence from the worker to the employer informing them of the problem or the request, before proceeding to the next stage. This process implies that workers who are facing unfair practices have to reveal themselves to their employers. This system indicates that the workers are likely to have a new workplace/employer before filing a complaint in order to avoid confrontation.

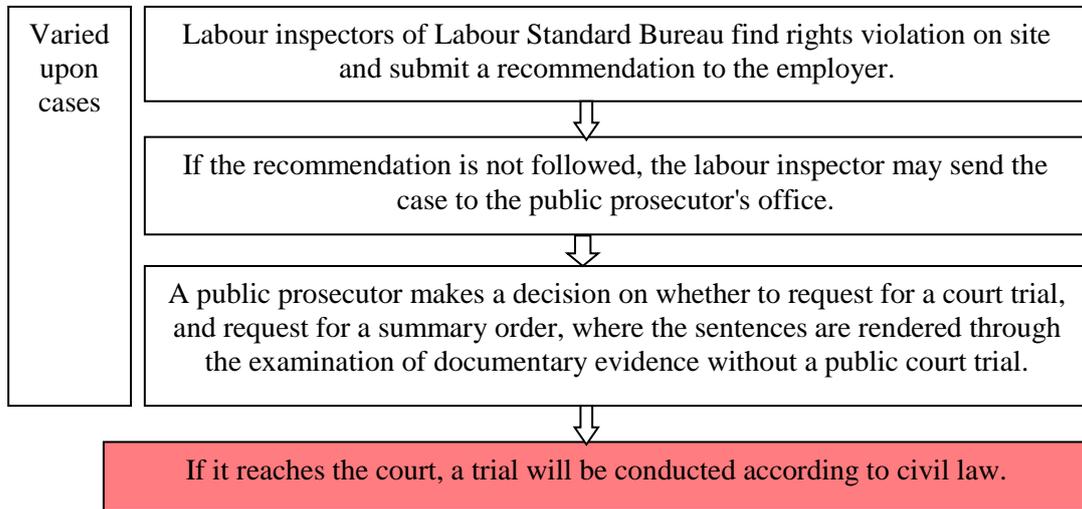


Figure 32: Grievance-Handling Procedure of On-site Cases.  
Source: Ministry of Health and Labour Welfare (2014: 113).

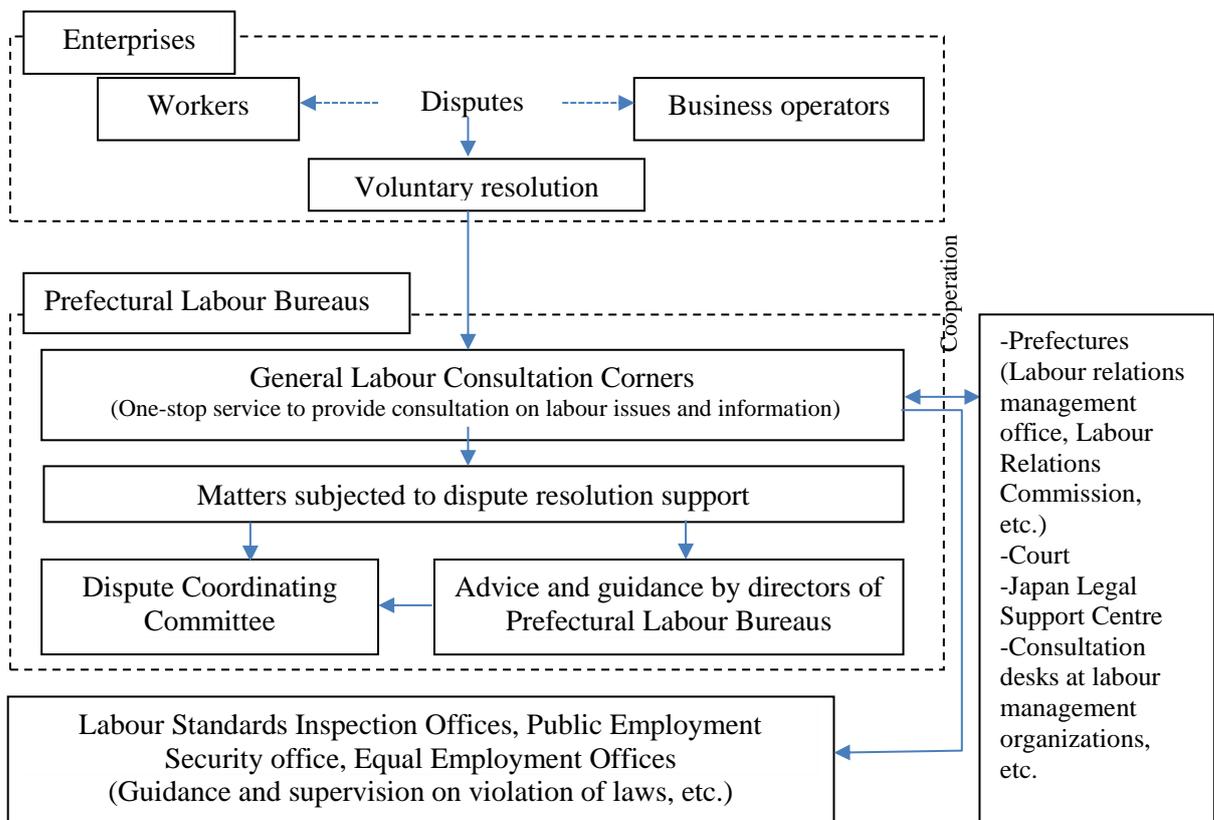


Figure 33: Labour Dispute Resolution System in Japan.  
Source: Ministry of Health and Labour Welfare (2014: 145).

However, practically, the grievance mechanisms are not usually accessed by migrant workers. For example, Bhattacharjee’s (2014: 1167) study highlights that the placement with an employer is a prerequisite to stay legally in Japan, especially in the case of being an intern or a trainee. “When an intern or trainee goes to report unpaid wages to the local labour standards bureau, there have been many cases where they return to their domicile or workplace to find someone from their hiring company or association waiting to force them to return to their home country, sometimes making them leave that very day.”

With the number of average inspection around 161-176,000 establishments annually, the violation rate of on-site inspection in Japan was around 65-69 per cent. Reports or grievances filed to labour inspectors are approximately 40-48,000 cases per year (Figure 33). While the general violation rate of general establishments was around 70 per cent, a greater number of rights violations were found in establishment with technical trainees. In 2013, the Ministry of Health, Labour and Welfare indicates that from 2,318 inspection sites, 79.6 per cent of establishments were violating labour laws (Figure 34). Suezaki and Horiguchi (2014) claimed that the possible explanation is weak supervision by the supervising organisations, because many supervising organisations handle both role of accepting interns and overseeing them as implementing organisations.

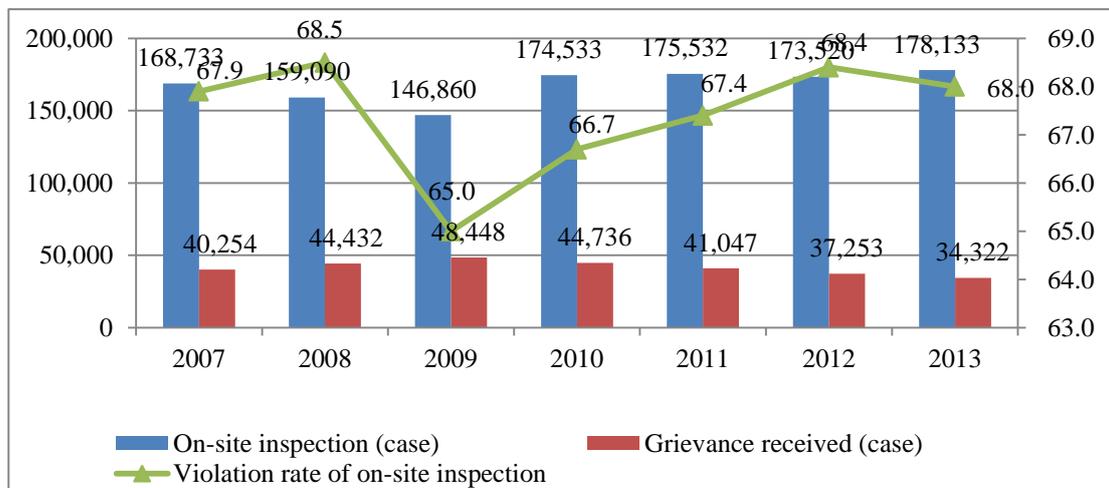


Figure 34: On-site Inspection, Grievance Received, and Violation Rate in Japan, 2007-2013  
Source: Ministry of Health and Labour Welfare (2014: 113).

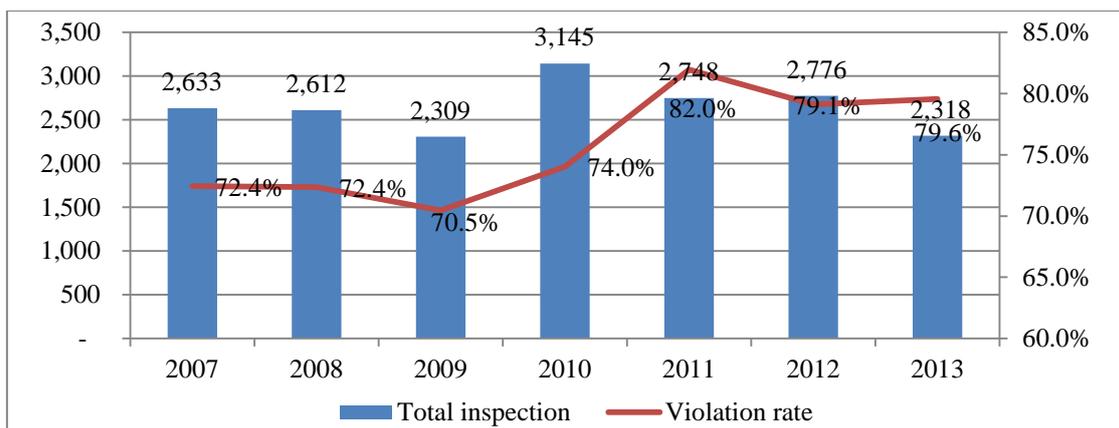


Figure 35: On-site Inspection and Violation Rate of Establishments with Technical Trainees in Japan, 2007-2013.

Source: (MHLW, 2012) Status of recent cases subjected to supervision and direction of Labour Standards Inspection Offices and sent to public prosecutor's office in order to ensure appropriate working conditions for technical interns in recent year.

## 5.5 Working Conditions and Access to Grievance Mechanisms of Migrant Workers in Japan (Result of the Interviews, Supported by Previous Study/Survey)

From the interviews, the profile and working conditions of migrant workers in Japan will be classified into four key sets of indicators: migrant characteristics; basic human rights; working and employment conditions of works; extent to reduce the vulnerability. The result of the interviews will be complemented with the official survey and previous studies and will be discussed in a national context.

### 5.5.1 General Profile

- **Economic Sector**

The majority of the migrant workers in Japan were working in the manufacturing sector at 77.3 per cent, while the rest were working in the service sector at 22.7 per cent. Though in Japan, the largest employment sector is the service sector, at averagely 72.4 per cent. The previous literature suggested that migrants are largely working in the manufacturing sector. In 2009, the MHLW reported a total of 562,818 foreign workers in 95,294 establishments<sup>54</sup>. 38.9 per cent of migrants are employed in the manufacturing sector, followed by the service industry (not classified elsewhere) at 13.2 per cent and the hotel and good service industry at 11.3 per cent (The MHLW, cited by Yamada, 2010: 10).

- **Gender**

Based on the share of over-stayers, the gender share was somewhat equal in 2010 at 50.5 per cent male and 49.5 per cent female (Yamada, 2010: 11). However, over-stayers accounted for only around 20 per cent of total employed people. Based on the 2012 official

<sup>54</sup> These figures are the result of the stricter measures under the revised Employment Measure Acts in 2007, which stipulates that all employers have to notify the MHLW when hiring every foreign worker.

number of foreign residents, the share of female to total foreign residents was 54.7 per cent. The share of Thai female residents in Japan was larger than those Thai male residents, at 76 per cent. Such a great share of Thai females is similar to the share from the interviews in this study. From the interviews, the majority of the respondents are female at 86.7 per cent, with males accounting for the remaining 13.3 per cent. The greater share of female to total interviewees is due to limitations in accessing low-skilled migrant workers for conducting the interviews<sup>55</sup>. Similar to the national tendencies, the majority of low-skilled workers and those largely working in part-time, temporary jobs in Japan are female (Futagami, 2010)

- **Age and Age of Starting Work**

Unlike in Thailand where the age of migrant workers is around 20, the average age of migrant workers in Japan is about the late 30s. The mean age of males is 39.5 years, while that of females is 38.5 years. The minimum age of migrant workers is 24, while the maximum age is 48.

The age of starting work is on average 34.6 years. The minimum age of starting work is at 18 years and the latest starter is 43 years old. Four interviewees, who started working at 18 years old, were students in language schools (Interviewees #60, #66, #69, and #72). Now they are still students, but one has changed to a vocational school. Though legally they are allowed to work up to 28 hours per week from the MOJ, in reality, they are working as full-time workers in the service sector, either a waitress or a massager or a cook helper. One worked in a restaurant in the night shift and at weekends (Interviewee #60). One worked at 2 places (4 hours per shift in two restaurants) (Interviewee #66). The other two worked in a massage parlour (Interviewees #69 and 72).

**#69 Thai female worker, aged 24**

“My work starts from 8 pm to 4 am. Most of the customers here are night workers and mafias. But I do not do such things (prostitutes or sex services). After I finish work, then I walk back home and to get some sleeps. Normally, I sleep at around 6 am. I wake up at around noon and go to the school which normally start at around 1pm until 5 pm ... then I back to work. On the weekend, I came for work during the day time (10 am – 7 pm) some days upon the call to stand by ... I have received wages per numbers of clients. Some day with a number of guests, that’s good (Though, it is indeed tried). But some days there is no guest, it means no income. However, this shop is nice, at least it support the transportation fee at 2,000 yen per day.”

A student, who has stayed in Japan for 6 years, works as a Thai massager. She earns wages per client. Approximated wages are around 150,000 yen per month. She would like to have some savings and certain Japanese proficiency before she returns home.

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<sup>55</sup> Since female workers are more likely to cooperate in interviewing and the interviewer is female, gender bias in conducting the interviews is likely to incur.

- **Marital Status**

Unlike in Thailand, where only 8 per cent were married, 44 per cent of the migrant workers in Japan are married and 29.3 per cent are divorced or widowed. It is found that a number of female migrant workers divorced their spouses in Thailand and became single mothers. While in Japan, the single parent will receive some subsidies, there is no this type of social safety net in Thailand. One of the decisions that drives them to work in Japan is a substantial income in the low-skilled category. They plan to save some money for their children and their families before going back home.

- **Household Members**

Based on the interviews, the average number of household members in the worker's hometown is sizable at around 4.1 people. The maximum number of the household is about 7 people, with the minimum of 2. The number of average sized households reduced from around 6 people in the 1960s and the 1970s to 3.2 people in 2010 (National Statistical of Thailand, 2010). The number of household members of Thai migrant workers is greater than that of average households in Thailand. About 76 per cent of migrant workers commit to be the main source of family income.

In 2010, the Population Census shows that Japan had 51.84 million private households (excluding "institutional households" such as students in school dormitories). Of that total, 56.3 per cent were nuclear family households, and 32.4 per cent were one-person households. The member per household was averagely at 2.42 people (Ministry of Communication, 2010).

- **Year of Schooling**

The mean years of schooling are averagely 10.2 years. The mean years of schooling of men are 11.7 years, while those of women are 10 years. The minimum years of schooling are 9 years, and those who graduated 9 years for 61.3 per cent. It is normal that low-skilled occupations are low-educated. Like other countries, the graduated employed persons from primary school, junior or senior high school are highly concentrated in low-skilled occupations (Table 26).

Normally, migrant workers are not recognised by their educational level, due to the unrecognised education from their home countries (Eurofound, 2007). This trend is different to the foreign-born population in the country of destination. The foreign-born population is on average less educated than the native ones. For example, in the US among the working-age immigrants, only 28 per cent have not completed high school, compared to 7 per cent of natives (Camarota, 2012)<sup>56</sup>.

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<sup>56</sup> This study used the latest Census Bureau data from 2010 and 2011. More than 50 million immigrants (legal and illegal) and their U.S.-born children (under 18) in the United States are observed using the public-use files of the 2010 American Community Survey (ACS) and the March 2011 Current Population Survey (CPS).

From the interviews, the highly-educated ones are those who are younger. This finding is similar to Ruenkaew (2002) who explored Thai female migrants in Japan and discovered that labourers from 18 to 35 are well educated compared to those who are older due to better educational opportunities.

Table 26 Employment by Level of Education, Japan, 2012

	Total (‘000 people)	Primary school , junior or senior high school	Junior college	College or university, incl. graduate school	Never attended
Administrative and managerial workers	100%	39.9%	9.8%	51.0%	0.0%
Professional and engineering workers	100%	16.5%	29.5%	54.0%	0.0%
Clerical workers	100%	41.3%	22.0%	36.7%	0.1%
Sales workers	100%	49.8%	16.0%	34.3%	0.0%
Service workers	100%	65.6%	23.3%	11.1%	0.0%
Security workers	100%	59.1%	9.1%	31.8%	0.0%
Agricultural, forestry and fishery workers	100%	84.8%	8.9%	6.7%	0.0%
Manufacturing process workers	100%	73.6%	13.8%	12.6%	0.1%
Transport and machine operation workers	100%	82.6%	8.2%	9.2%	0.0%
Construction and mining workers	100%	78.9%	9.3%	11.8%	0.0%
Carrying, cleaning, packaging, and related workers	100%	78.5%	11.4%	9.8%	0.0%
Workers not classified by occupation	100%	54.5%	22.7%	22.7%	0.0%
Total	100%	53.8%	18.5%	27.8%	0.0%

Note: 1/ Devastated quake-hit prefectures (Iwate, Miyagi and Fukushima) are not included in the figures.

Note: 2/ This table accounts only those who are graduated from school, exclude those who are studying.

Source: Ministry of Internal Affairs and Communication, Labour Force Survey, Table 6.

- **Local language proficiency**

From the interviews, only 17.4 per cent of the workers can speak Japanese at good or fluent level, while the remaining 82.7 per cent of migrant workers can only speak some words. Similar to Thailand, the migrant workers in the manufacturing sector are likely to have low Japanese proficiency with the average period of working in Japan at 0.56 years. On the other hand, migrant workers in the service sector have a higher Japanese proficiency. On average they have been working in Japan for 8.8 years.

- **Work permits**

It was also found that about 92 per cent of migrant workers are working with a proper and valid card/visa for work, while the rest are over-stayers or working without informing authorities regarding the proper visa.

The interviewees who did not have a proper working permission can be classified into two types: those who have student visa but their working hours are greater than 28 hours a week (Interviewees #60, #66, #69, and #72); and over-stayers (Interviewees #1 and #20), coming to Japan through a working visa. This group, with the support from their relatives and friends, can find employment from their network. Since they are violating Japan's immigration law, if they want to work in Japan they have to voluntarily leave the country and re-enter with proper visas.

### **5.5.2 Basic Human Rights, Forced Labourers**

This section elaborates two key areas regarding forced labourers and bad practices at work in relation to migrant workers in Japan.

- **Forced Labourers**

According to the definition of forced labour specified in the ILO Forced Labour Convention, No 29 (1930), this study did not find any forced labour in Japan.

- **Bad Practice at Work and Discrimination**

In Japan, workplace bullying has been increasingly reported. The MHLW showed that the number of bullying and harassment cases at the prefectural Labour Bureau in 2002 was 6,627 cases, and in 2013 it had increased to 59,197 cases (MHLW, 2013). Cases related to workplace bullying and suicide caused by workplace bullying, which are determined as industrial accidents, are also growing (Naito, 2013). According to the MHLW survey, in 2012, 25.3 per cent of all respondents experienced workplace bullying. The MHLW survey also pointed out that the workplace with little communication between bosses and subordinates, which is the main common characteristics of workplaces with grievances related to power harassment. In harmony to the Japanese working environment, based on the interviews, around 7-8 per cent of migrant workers are harassed by power harassment, bullying, and verbal harassment (Figure 36). In addition to such harassment, around 7 per cent of the interviewees are paid their wages late. It is mostly found that in the manufacturing sector migrant workers are deducted wages due to their mistakes. The factory also applies the same practice to Japanese workers. The wage-delayed payment issue was also found in the interviews, mostly those migrant workers who are working in the service sector and small-sized establishments.

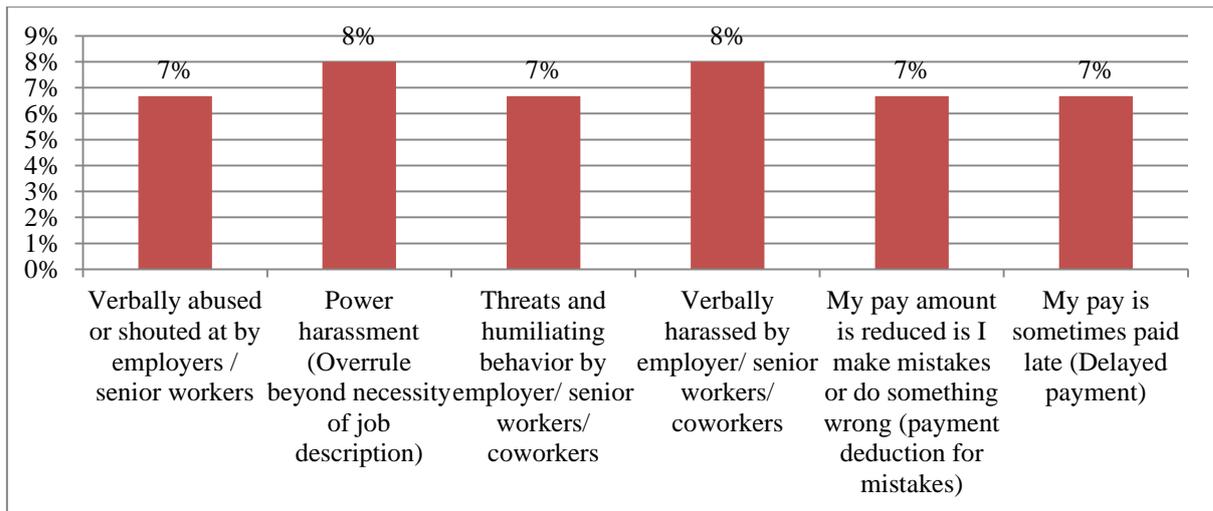


Figure 36: Bad Practices at Work 1/

Note: 1/ The open-ended question approach is used for these questions to avoid possible biased answers. Therefore, it is possible that one interviewee may face more than one problem or issue.

Note: 2/ A total of 44 per cent (33 interviewees) responded to these questions.

Source: Author's estimation from the interviews.

In terms of discrimination, it was found that 10 interviewees faced this. It is noticeable that every interviewee faced more than one type of discrimination at a time whilst working in the manufacturing sector. Workers in the service sector are more likely to accept flexible working environment and consider such work-related problems as individual employer-employee problems, rather than considering them discrimination. On the other hand, workers in the manufacturing sector are more organised with a group of colleagues and working in a routine with a greater level of hierarchy management. Since the discrimination-related questions are to rate their experiences, and subject to individual opinion, it is necessary to be aware of possible existence of personal bias and individual effects. It is, nevertheless, possible to use the results as a guide to the existing problems in various respects (Figure 37).

The first aspect is regarding age discrimination. It was found that for low-skill workers, employers are likely to prefer younger workers, since a younger worker is more likely to be obedient (ILO, 2006c: xxv). While in general older employees are less likely to be laid off than their younger counterparts, the situation is dissimilar in low-skilled occupations. Not requiring up-skilling to work in these occupations and requiring only a short time to understand the job, the low-skilled job employers can more easily find replacements. Some employers may be reluctant to hire older people, thinking about unhappy workers working for a younger supervisor. In addition, in a modern technology factory, a younger worker who is familiar with technology will have advantage in getting recruited.

In compliance with the fact that the average age of workers from the interviews are comparatively old for low-skilled jobs (averaged 38-39 years old), the respondents considering that their management departments preferred younger workers and thus considered their work insecure. They were likely to stick to their employment contracts and save as much as possible for their homeland investment.

The next aspect is that of gender discrimination. According to previous literature and international indicators, gender equalities are prevailing in Japan. Japan is the second

ranking country for full-time earnings between genders, after South Korea. In addition, the proportion of women in upper-level occupations and professional occupations is extremely low as the ratio of women among researchers/specialists is at 14 per cent, which is bottom among OECD countries (Estévez-abe, 2013).

The Basic Act for Gender Equal Society (Act No. 78 of 1999) prohibits discrimination on the basis of sex and identifies the necessity to form a gender equal society, including workplaces, schools, local communities and homes (Article 10, Basic Act for Gender Equal Society). If a worker is treated unfavourably, she or he may follow the procedure laid out by the act to solve her or his dispute, asking for assistance (advice, guidance, or recommendations) from the Prefectural Labour Bureau and for mediation by the Dispute Adjustment Commission. Nevertheless, with regards to the Japanese employment discrimination law, this has not been a strong instrument in abolishing discrimination. In Japan, freedom of employment contract predominates over the equality principle with regard to the hiring process (Sakuraba, 2008).

In addition, it is reported that there is discrimination linked to sexual orientation, especially those who are homosexual (Interviewees #3, #14, #22, #33, #55 and #62). Though there is no official record on this type of discrimination at work, regular issues on the discrimination on lesbian, gay, bi-sexual and transgender (LGBT) are prevailing (Gay Japan News, 2009; ILGA, 2014). According to ILGA, across Europe, 47% of LGB people felt they experienced discrimination or harassment because of their sexual orientation; for example, in France, 41% and in Germany, 46% of LGB people experienced workplace discrimination or harassment because of their sexual orientation. In the case of Japan, Gay Japan News (2009) reported that a 50 year old transgender woman was fired by her employer, a social welfare corporation in Osaka. In the interview, two workers explicitly revealed that they are lesbian (Interviewees #3 and #55) and dressed in a masculine fashion. One of two interviewees was bullied by their management officers when they use public toilets and restrooms. The other one, working for a bread factory, is the subject of jokes from her employer about whether she is capable of doing her work.

The rest confessed that they would like to express their sexual preferences, but they are afraid of doing so. Especially, one interviewee saw his colleague was sexual harassed by his supervisor. He was touched unwillingly, and verbally bullied because he was a gay. He finally resigned after only a few months to find work elsewhere.

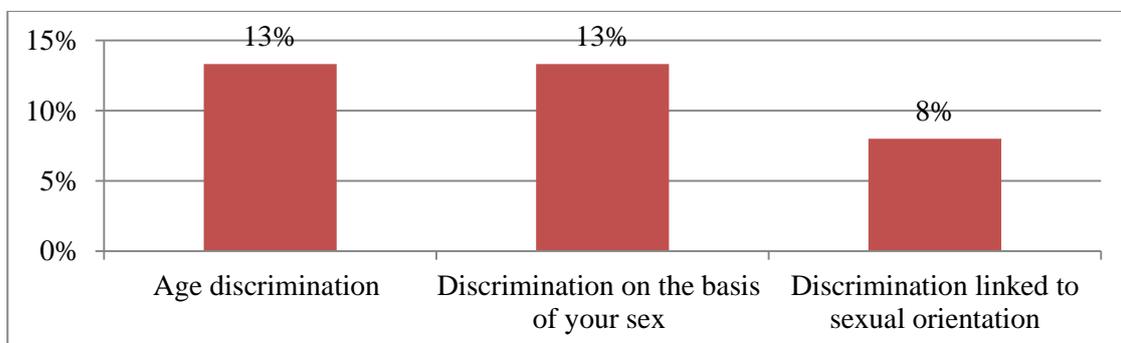


Figure 37: Discrimination at Work.

Source: Author's estimation from the interviews.

### 5.5.3 Working Conditions

#### 5.5.3.1 Employment Contract

Unlike in Thailand, the majority of migrant workers (81 per cent) in Japan are working with an employment contract. Considering the nature of the employment contract, those migrant workers are aware of their basic working condition entitlements. Therefore, they are likely to have a written evidence to make reference to. However, the type of employment contract is also important in terms of labour protection. During the economic crisis, employment losses in the manufacturing sector were concentrated among non-standard workers, such as dispatched and subcontracting workers. Among migrant workers, employment loss was often accompanied by the loss of their accommodation, because many of them lived in accommodation provided by their employers. These workers were often unprotected by safety nets, such as unemployment benefits or sickness insurance, because they were not eligible as a result of their fixed-term contracts, which last for only 2 months (Iguchi, 2012). Noticeably, those who do not have a proper working permit have only verbal agreements. The majority of them are working in the service sector<sup>57</sup>.

#### 5.5.3.2 Wages and Overtime Wages

Since 1 October 2014, the minimum wage in Tokyo is set at 888 yen per hour. The minimum wage is gradually increasing from 873 yen per hour. During the time of the interviews (Oct 2012-March 2015), if a migrant worker receives wages at minimum wages and works in normal working hours (40 hours/week), he should receive 139,680-142,080 yen per month.

Table 27 demonstrates the average monthly wages of migrant workers. The first category is the migrants who are working for the manufacturing sector, who receive wages at an average 102,326 yen. In the service sector, cook helpers and waitresses earn 100,000 yen per month, while masseurs earn on average 161,111 yen per month. Explicitly, on average they are receiving net wages lower than the minimum wage. However, it should be noted that those who are working in a restaurant are receiving accommodation by staying and sleeping inside the restaurant. From the interviews, only some migrant workers received monthly wages greater than the minimum wage. They are working in massage parlours, having certain years of experience with that parlour and being somewhat recognised to their skills, which is reflected by their repeat business.

The majority of their income is spent on remittance at 50.1 per cent. About 30.3 per cent of total income is allocated for their consumption, suggesting household responsibility (Table 28). About half of the income is remittance, which is mostly saved in a bank account and will be brought back with the migrant themselves when they return home.

On the other hand, the MHLW indicates that in 2013 the average wage of females was 139,000 yen, while the average wage of males was 255,000 yen (Table 29). However, since the figures neglect to take into account experience, age, hours of work, geography

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<sup>57</sup> Though there is no interviewee who does not hold a proper work permit, working in manufacturing sector, one interviewee in the service sector used to work in the manufacturing sector in Gunma prefecture without a working contract. It was a company which packing auto parts with 12 employees.

and other effects to workers' wage, it would be reasonable to compare the intensive daily/part time wages workers which are intensively represented by females. It can be said that the average wage of migrant workers was less for female workers around 37,000 yen. However, it must be noted that the differentials might go to accommodation fees that those working in the manufacturing sector live in, deducted every month.

Working in the accommodation, eating and drinking services sector provides the lowest average wages. In 2013, male workers earn only 169,000 yen, while females earn 83,000 yen. From the interviews, cook helpers and waitresses earn approximately 100,000 yen per month. In addition, if a masseur is categorised as being part service sector which is not categorised elsewhere, they might earn around 151–252,000 yen per month. Based on the interviews, the average earnings are around 130,000–180,000 yen per month.

It can roughly imply from the national statistics that females receive only around half that of males<sup>58</sup>. Using the bottom and top quintile of wage distribution among OECD countries, Estévez-abe (2013) indicated that Japan ranked at the second country in terms of gender wage gap differentials. In term of employment, OECD (2014: 2) shows that gender differences in employment in Japan are substantially large. The difference between male and female labour force participation rates is almost 20 percentage points, comparing to 17 percentage points across the OECD. The gender pay gap at median earnings is 27 per cent.

Based on the interviews, the wage gaps are not visible due to gender. The large gap suggests the premium of being in the different employment status, since the fixed term employment can enjoy the possibility of an annual wages increase. Moreover, the explanation is given to a major share of women in part-time lowly-paid non-regular workers, unlike men who are mainly working in a fixed-term or a long-term employment.

Table 27 Average Wage of the Migrant Workers

	Mean	N	Std. Deviation	Minimum	Maximum
Manufacturing industry	102,326	43	22,766	80,000	140,000
Services in restaurants	100,000	5	-	100,000	100,000
Massager/spa therapist	161,111	9	19,003	130,000	180,000
<b>Total</b>	<b>111,404</b>	<b>57</b>	<b>30,204</b>	<b>80,000</b>	<b>180,000</b>

Note: Average wage per month.

Source: Author's estimation from the interviews.

Table 28 Expenditure Share

	Consumption	Accommodation	Saving	Remittance	Others
Mean (Total =1.00)	0.303	0.097	0.068	0.501	0.03
N	56	56	56	56	56
Std. Deviation	0.187	0.148	0.156	0.308	0.04

Source: Author's estimation from the interviews.

<sup>58</sup> Though it is clearly stated in the Principle of Equal Wages for Men and Women (Article 4) that an employer shall not discriminatorily treat a woman different to a man with respect to wages due to gender reason.

Table 29 Average Monthly Total Cash Earnings per Regular Employee for Establishments with 1 to 4 Regular Employees (Selected Industry), 2010-2013 (Unit: 1000 yen)

	Male				Female			
	2010	2011	2012	2013	2010	2011	2012	2013
Construction	273	276	275	279	147	146	143	144
Manufacturing	255	258	259	257	126	124	128	132
Transport and postal activities 2/	255	262	269	256	138	167	174	153
Wholesale and retail trade	253	255	258	260	140	139	138	140
Finance and insurance	314	325	333	314	160	171	166	166
Real estate and goods rental and leasing	249	249	243	248	159	170	176	159
Accommodations, eating and drinking services	170	175	172	169	84	84	81	83
Living-related and personal services and amusement services 3/	202	198	206	202	125	130	130	128
Education, learning support	172	175	183	173	94	105	107	107
Medical, health care and welfare	245	233	252	240	161	169	169	166
Compound services	334	343	355	359	198	186	188	204
Services (not elsewhere classified) 4/	248	254	257	252	146	154	153	151
<b>Total</b>	<b>251</b>	<b>254</b>	<b>256</b>	<b>255</b>	<b>135</b>	<b>139</b>	<b>139</b>	<b>139</b>

Note: 1/ Up to 2005, mining.

Note: 2/ Up to 2005, transport.

Note: 3/ Excluding domestic services.

Note: 4/ Excluding services by foreign governments and international agencies in Japan.

Note: 5/ Data are based on the Monthly Labour Survey. Special survey (establishments with 1 to 4 regular employees) is as of the end of July. Total cash earnings figures are the sum of contractual cash earnings and special cash earnings. Based on the 12th revision (November 2007) of Japan Standard Industrial Classification.

Source Statistics and Information Department, Minister's Secretariat, Ministry of Health, Labour and Welfare.

Most low-skilled migrant workers are paid minimum wage. Some of them experienced wages deducted for their food, accommodation and utilities without a clear explanation and reasonable expenses. The percentage of wage deductions is varied and based upon the migrants' workplace (e.g. Minami, 2008; Tanno, 2010). In addition, some measurements are found to be used on migrant workers; for example, "good attendance bonuses" which is a bonus that is paid if the person works on specific working days stipulated by the employer. One case study provided by Tanno (2010) revealed that one migrant took leave for a class observation of his child. As a result, the migrant wage was deducted substantially. He complained to his employer about the deduction. The worker was sent to another factory and was terminated within three months; he secured no health insurance or pension during his employment<sup>59</sup>. In addition, some of migrants have to pay the brokerage fee, which is normally around 200,000-260,000 baht (or approx. 710,000 – 922,000 yen).

<sup>59</sup> Health Insurance and Employees' Pension Insurance are public insurance programs which cover all workers (regardless of their nationality) in private companies except for very small businesses and short-term workers. Residents of Japan who are not covered by these or any other programs are covered by National Health Insurance and National Pension.

### 5.5.3.3 Working Hours, Work Breaks, Days Off and Leave

From the interviews it can be seen that, on average, the number of working hours is about 40-46 hours per week, or about 8-9 hours per day. While the long working hours are common in the Japanese working environment, based on the General Survey on Working Conditions conducted by the MHLW (2010), the average weekly regular working hours per enterprise in the whole country is around 38-40 hours of work per week (Table 30). Only certain industries related to the accommodation and food service, living-related, personal service, and amusement service industries are on average working longer hours (Figure 38). The average working hours, however, are likely to be longer in smaller enterprises, as shown by the statistics for the working hours of enterprises with minimum 30 employees. It also excludes the hours of work of domestic workers. The migrant workers have one or two days off per week, as they have 7.5 days per month off, with the minimum at 3 days a month to 8 days a month.

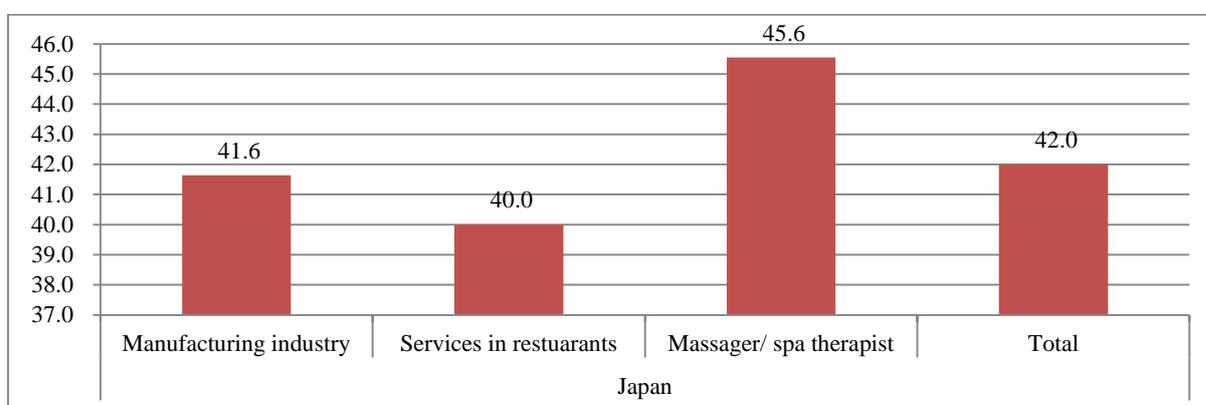


Figure 38: Number of Working Hours Per Week.  
Source: Author's estimation from the interviews.

Table 30 Scheduled Weekly Working Hours of Enterprise by Industry, Japan (2013)

	All enterprise	40 or less than 40 hours	Greater than 40	Average weekly regular working hours per enterprise
Mining and quarrying of stone and gravel	100	100.0	0.0	39:14
Construction	100	97.7	2.3	39:40
Manufacturing	100	99.0	0.8	39:20
Electricity, gas, heat supply and water	100	99.2	0.8	38:36
Information and communications	100	100.0	0.0	38:40
Transport and postal activities	100	98.2	1.9	39:38
Wholesale and retail trade	100	96.9	3.0	39:22
Finance and insurance	100	100.1	0.0	37:57
Real estate and goods rental and leasing	100	96.5	3.4	39:09
Scientific research, professional and technical services	100	98.9	1.0	39:05
Accommodations, eating and drinking services	100	88.6	11.5	39:53
Living-related and personal services and amusement services	100	90.0	9.9	39:41

	All enterprise	40 or less than 40 hours	Greater than 40	Average weekly regular working hours per enterprise
Education, learning support	100	99.0	1.1	39:05
Medical, health care and welfare	100	99.7	0.3	39:39
Services (not elsewhere classified)	100	96.7	3.2	39:23

Note: 1) Private enterprises with 30 or more regular employees; 2) Excluding domestic services; 3) Excluding services by political, business and cultural organisations, religion, and foreign governments and international agencies in Japan; 4) Weekly scheduled hours worked represent hours to which most employees are applied; 5) Excluding employees whose working hours are not regulated, such as those engaged in monitoring or in intermittent work, superintendents and administrators.

Source: Statistics and Information Department, Minister's Secretariat, Ministry of Health, Labour and Welfare (2013).

### 5.5.3.4 Occupational Safety and Health

The effect on workers' occupational health and safety is observed through the following questions: "Do you think your health or safety is at risk because of your work?" and "Does your work affect your health, or not?" It was found that around half of the interviewees (50.7 per cent) believed that it negatively impacted on their health.

In the case of falling sick, while migrant workers in Thailand from the interviews have to take care of their own health, in Japan the share is about 30.7 per cent. Around half of the interviewees rely on their friends, and around 12 per cent employers rely on their employers. These figures imply a proportion of dependency during the migrants' vulnerable situation. Although a small proportion, it is noticeable that the majority of migrant workers in Japan believe in their employers' responsibility health and medical issues.

Overall, about 41 per cent of the respondents were disappointed to their living conditions. 31 per cent was disappointed about their rest hours (Figure 39). In case of Thailand, living conditions, wages and working hours were raised as the top three dissatisfactions.

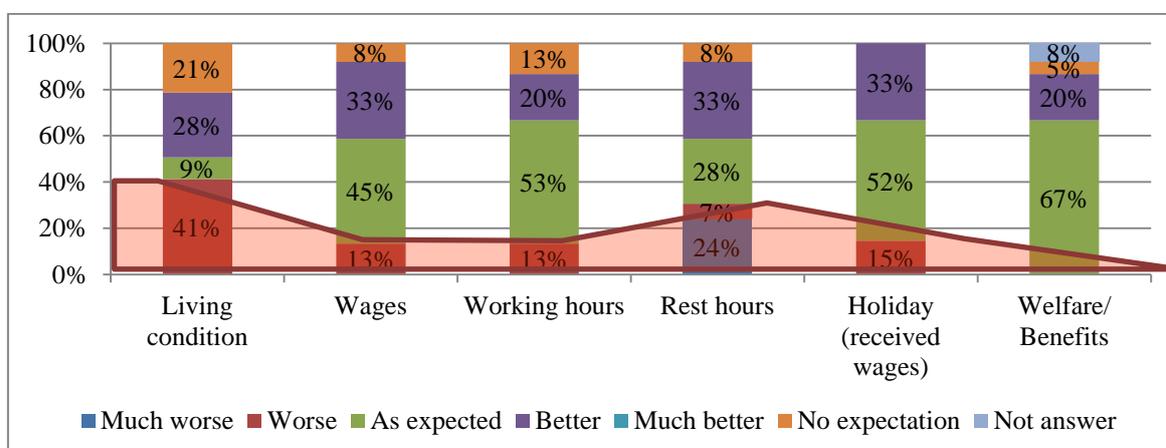


Figure 39: Expectations of Work and Working Condition Compared to Reality.

Source: Author's estimation from the interviews.

## 5.5.4 Extent to Reduce Vulnerability

### 5.5.4.1 Accessibility to Grievance Mechanisms

When migrant workers face labour-related problems only about 21.3 per cent know what to do and take action. Unlike in Thailand, where over half of migrant workers do not know what to do, only 17.3 per cent do not know what to do. The most interesting part is the majority of them know what to do, but do not want to take action because they believe that there will be no change after all (44.1%). The rest, around 17.3 per cent of migrant workers, are afraid of problems. These two groups combined together equal 61.4 per cent, and chose to do nothing when they faced problems (Figure 40). Among those who are facing bad practices and discrimination at work, the share of the group who know what to do but do not believe that there will be any change is as high as 73.1 per cent.

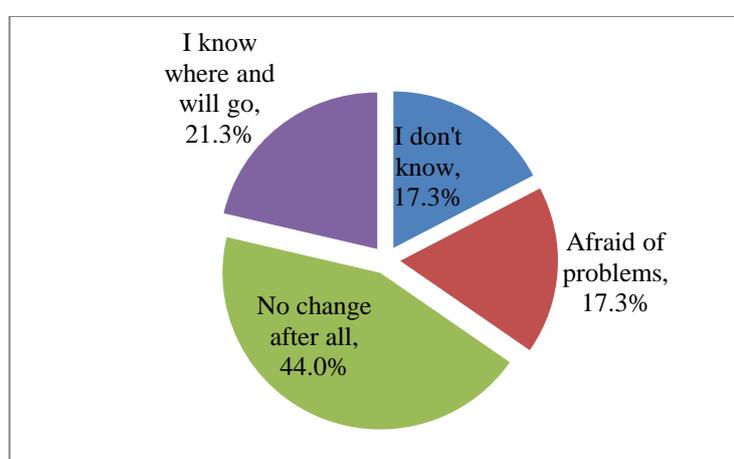


Figure 40: Decision to Access to Grievance Mechanisms.  
Source: Author's estimation from the interviews.

### 5.5.4.2 Union Representation and Group Formation

As Japan has ratified ILO C87 and ILO C98, any workers are entitled by freedom of association and rights to organize and collective bargaining. As a result, according to the laws, migrant workers have the right to organise a labour union, bargain and act collectively, in order to keep and improve their working conditions. Any employee can organise a union freely at any time with the minimum of two members. There is no need to gain consent from the company. After the organisation, the union can negotiate working conditions, regardless of the number of members (Article 6, Labour Union Law). Moreover, the union is entitled to complain against an unfair practice to the Labour Relations Commission.

Though the group formation is allowed in Japan, none of migrants belong to any groups in the community<sup>60</sup>. They are quite reluctant to join, since most of them are working in Japan temporary and consider it risky to join a union. Despite this, in general they would like to join or to become a member of any association at 14.7 per cent (Figure 41).

<sup>60</sup> Based on the interviews, in Thailand, there was 2.7 per cent are joining in a group or community.

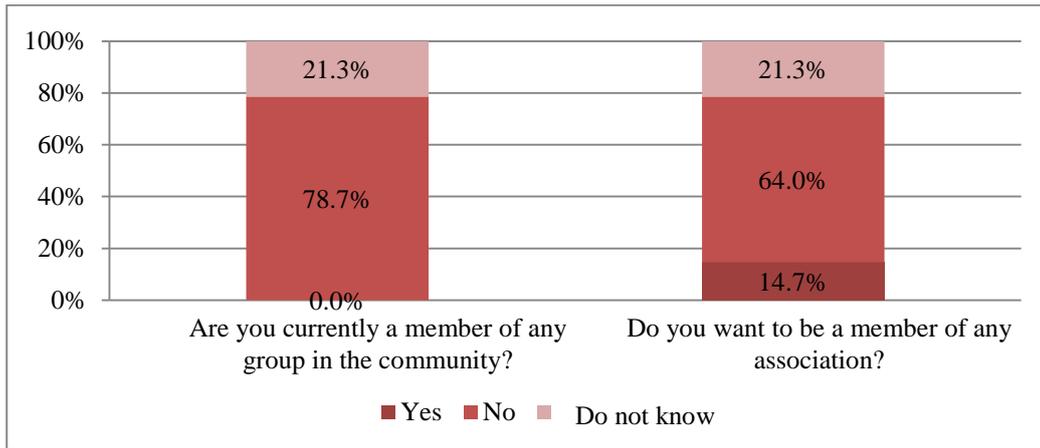


Figure 41 Group Formation.  
Source: Author’s estimation from the interviews.

Approximately 55 per cent of migrant workers in Japan do not know who to consult or at least to talk to about their problems (Figure 42). This substantial share is larger than twice the share in Thailand. The most important consultation channel is talking to friends. Interestingly, unlike in Thailand, no one will consult NGOs. However, later answers indicated that some of the friends that they aim to consult with are actually not their work colleagues, but acting similar friends-help-friends. Most of these groups are Thais who are married to Japanese spouse or family-related visas (e.g. dependent visa).

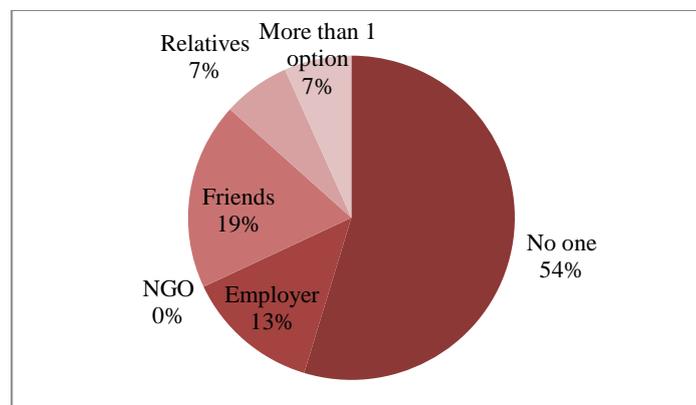


Figure 42: Consultation Channels in Japan.  
Note: All respondents, who indicate more than one option, specify labour officers and friends.  
Source: Author’s estimation from the interviews.

**#63 Thai male worker, aged 42 years**

“Last 4-5 years ago, I had got injured while working in a factory. The employer denied to pay for medical expenses and to accept him back to work after the recovering. His wife called Thai Embassy and thus a Thai embassy officer helped connecting him to the Labour Inspector of the Labour Standard Bureau. Not knowing the process and when to receive the compensation, he spent 2-3 months searching for a new job to earn survival money. It took 8 months from the date he filed a grievance to the Labour Standard Bureau to the date he received the compensation.”

### 5.5.4.3 Skills and Trainings

Among low-skilled workers, skill levels may not be a preconditioned requirement. This issue reflects whether migrant workers rated themselves overqualified or underqualified for their current job. In OECD countries, immigrants are formally overqualified for their jobs, in particularly, among high-skilled occupation (OECD, 2014), as the high-educated immigrants have lower employment rates than the high-educated native-born. According to the interviews, there were no overqualified workers. Those who considered that their skills were appropriate for their duties numbered 53 per cent (Figure 43).

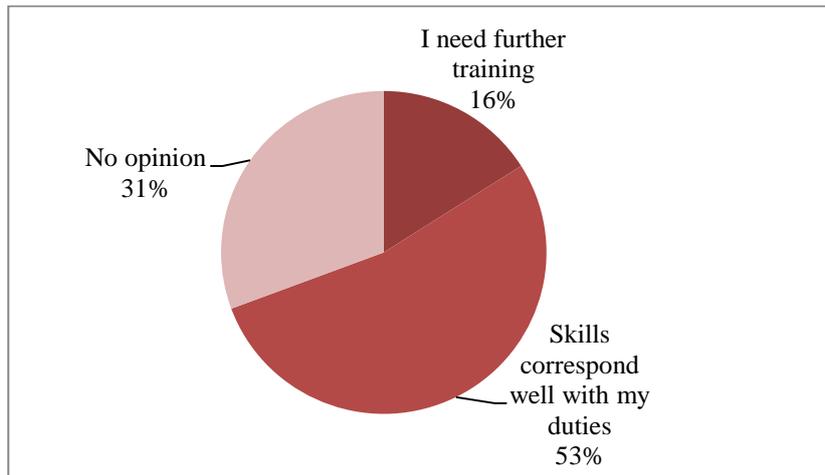


Figure 43: Skills Training Needs.  
Source: Author's estimation from the interviews.

Similar to those of migrant workers in Thailand, the top four preferable training related to training in local languages, health-related training, job trainings, as well as general laws (Figure 44).

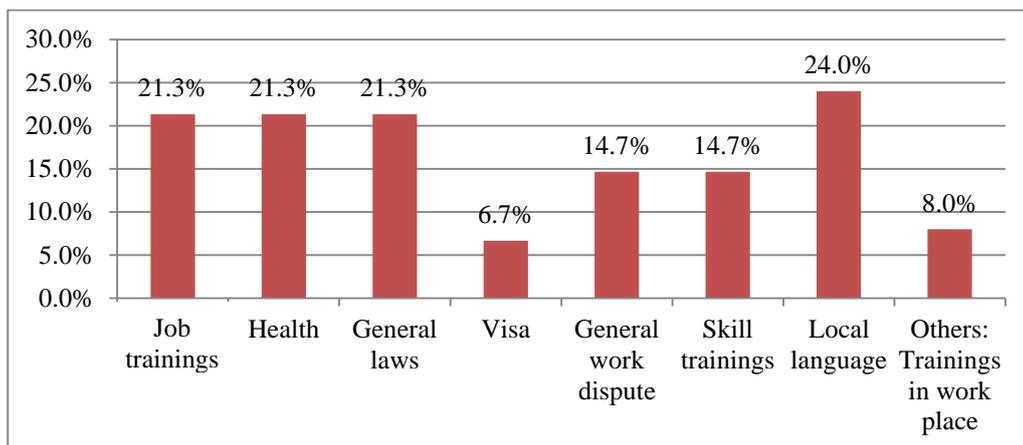


Figure 44: Skills Training Needs by Type of Trainings.  
Source: Author's estimation from the interviews.

#### 5.5.4.4 Employment Opportunities

Migrants were asked if it was difficult to find or change a new job at a comparable wage to the current job. The answer to this question is a mix of individual opinions of themselves, economic situation and legal aspects. Based on the interviews, only 16 per cent of migrant workers indicated that it was easy to find a new job of similar salary (Figure 45). Since a prerequisite to stay legally in Japan is a guarantee by a Japanese employer about the placement, and that they must stay in employment during their stay in Japan, most considered it difficult to move to other establishments or find a new job. In addition, if the job came under a short term or temporary contract, they would choose to tolerate a poor situation and wait for the returning date, as long as such problems are not related to physical injuries or money.

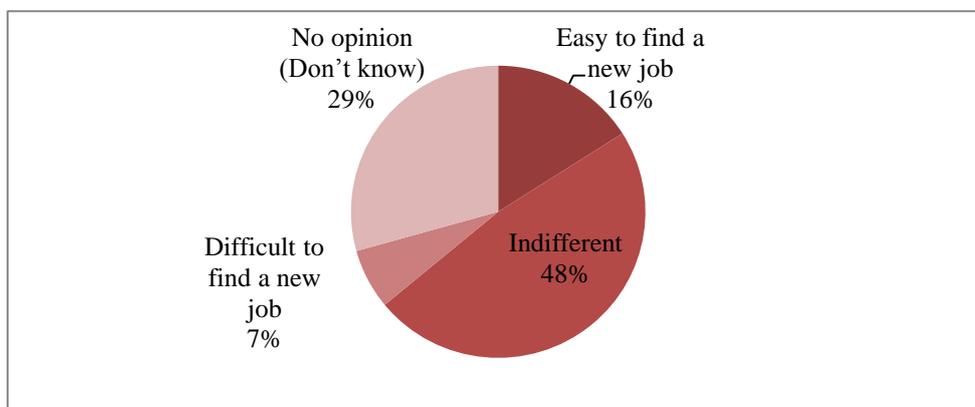


Figure 45: Employment Opportunities.

Source: Author's estimation from the interviews.

#### #61 Thai male, aged 37

“I am already 37 years old now. I have worked here for about 10 years now. Nowadays, the income has become less than last 10 years when the Snack bar girls were abundant. They came for massage after work. Now, only some of them remain due to the strict regulation to foreigners and this economic situation ... My income now is about 60 per cent to last 10 years. I do not think I can find work easily.”

He entered into Japan studying in a vocational technical school. After he graduated, he could not find a job in his qualified field. Instead he used his massage skills and work as a masseur ever since. The owner of the parlour provided him with a visa for technical/skilled workers.

## 5.6 Conclusion

This chapter revealed the current situation of migrant workers in Japan. The first section provided an overview of the Japanese labour market. The labour market in Japan is more organised with the majority of workers in Japan being waged workers. However, previous literature emphasised types of contracts and types of work which illustrate equality gaps, in particular, gender equalities.

Like many countries, the immigration laws and work-related laws relating to foreign workers are welcoming only to high-skilled workers. However, besides over-stayers and false visa users, a trainee scheme allows low-skilled workers to work in Japan. Currently, an estimation of the number of low-skilled workers is around 0.5 million.

Since all foreigners in Japan are considered to be residents, a number of consultation services in various languages provided by municipal, provincial or NGOs can be found. The consultation services include general and daily living services as well as labour consultations. It is, nevertheless, noted in previous literature that a migrant's legal status of staying in Japan is bound to their employment status. This regulation dominates the possibility to claim their rights. Once they file a complaint or consult with Labour Standard Bureau office, they are likely to be identified as a problem and requested to leave the country.

In terms of working conditions, in general these are somewhat better than migrant workers in Thailand. In contrast to the situation in Thailand, most migrants possess proper working permits and written employment contracts. There is no forced labour, yet bad practice at work and discrimination is found, although this is similar for both foreign workers and Japanese. Still, the large number of sufferers does not act when they are facing labour problems. The main reason is that they are afraid that complaining will not change anything anything for the better, being afraid of consequences, or simply not knowing the procedure.

The following chapter will scrutinise and analyse factors affecting migrant workers' decisions to access to grievance mechanisms and act in response to labour-related problems.

## CHAPTER 6

### **Factors affecting Migrant Workers' Decision in Accessing Grievance Mechanism**

The previous chapters discuss the policies and legal frameworks regarding low-skilled migrant workers as well as the current situations and socio-economic conditions in Thailand and Japan. This chapter provides an in-depth analysis of factors affecting migrant workers in accessing grievance mechanisms using quantitative approaches.

Section 6.1 provides more detail regarding the responses of the interviewees when they are facing labour-related problems. Section 6.2 describes possible factors which are drawn from the interviews in Chapter 4 and Chapter 5. Section 6.3 employs a quantitative analysis to reveal and discuss factors affecting such decisions as stipulated in Chapter 3. The result of the discussion of this chapter will be applied with the following chapter, which is the comparative study using both qualitative and quantitative analysis.

#### **6.1 Response of Migrant Workers to Labour-Related Problems**

This study asked the interviewees to elaborate on their approach when they face labour-related problems. The corresponding response can be classified into three groups. The first group is made up of migrant workers who do not know what to do or where to get a consultation. Another group is made up of migrant workers who are afraid of problems or do not believe that filing a grievance will truly help them. The last group is made up of migrant workers who know what to do and aim to take action in response to such problems.

From the interviews, it is clear that the majority of migrant workers in Thailand and Japan both do not act in response to labour-related problems/rights violations. In Thailand the share is 88 per cent and in Japan the share is 78.7 per cent. These numbers highlight the fact that regardless of the country of destination, the share of migrant workers who access the grievance mechanisms is considerably low, while the share is even lower in Thailand (Table 31).

However, the key reasons in this category vary. The migrant workers in Japan believe that although they file complaints, the result of the complaints will make no change after all (44.0%). In other words, it is no use filing the complaints against the employer. The given reason of migrant workers in Thailand was that they do not know what to do (54.7%), while in Japan this share was only at 17.3 per cent. Another significant reason in Thailand is that they are afraid of problems that might incur as a result of speaking about to/about the employers (20.7 %).

As mentioned previously in Chapter 3, ILO and ARCM conducted a survey in Thailand in 2013. It also probed similar questions regarding accessibility of complaints-filing. This study asks the following questions: "Have you complained about a rights violation? If not, why not?" While this study aims to find the factors affecting migrants' decision regardless

of their current situation in facing labour-related problems, the question used in this study asked a possible scenario. The question used in this study is, “If there is any complaint about labour rights violation/any problem at work, do you know where to get help/consultation?”<sup>61</sup>

These two questions are similar, but the results are different in term of application and analysis. The ILO and ARCM’s study asks migrants’ current situations and if they “have already” filed a complaint.

This dissertation observes their responses and decisions in response to labour-related problems, regardless of the migrant’s current situation. The interviews are conducted with an effort to reduce any possible error and bias. This question was asked repeatedly in different ways, so that the answer represented actual responses of the interviewees and ensured the validity and reliability of their responses. This methodology and approach are used to satisfy the objective of this study in encouraging and empowering migrant workers as well as promoting practical labour rights, as it helps outreach to people who both are facing and not-facing labour problems. Given different approaches, a comparison between these two studies helps observe statistical consistency.

In Thailand, the magnitude and structure of responses are similar. The main reason for not complaining in Thailand is due to “do not know” at 45.2 per cent. The share of this reason is even larger among forced labourers at 55.9 per cent. The next most common reason is that they are afraid of trouble from filing a complaint at around 25-37 per cent (Table 32).

Table 31 Response of the Migrant Workers to Labour-Related Problems

	Observation			Per cent		
	Japan	Thailand	Total	Japan	Thailand	Total
<b>Do not act in response to labour problems/rights’ violation</b>	<b>59</b>	<b>66</b>	<b>125</b>	<b>78.7%</b>	<b>88.0%</b>	<b>83.3%</b>
I don't know	13	41	54	17.3%	54.7%	36.0%
Afraid of problems	13	23	36	17.3%	30.7%	24.0%
No change after all	33	2	35	44.0%	2.7%	23.3%
<b>Act in response to labour problems/rights’ violation</b>	<b>16</b>	<b>9</b>	<b>25</b>	<b>21.3%</b>	<b>12.0%</b>	<b>16.7%</b>
I know where and what to do and I will do	16	9	25	21.3%	12.0%	16.7%
<b>Total</b>	<b>75</b>	<b>75</b>	<b>150</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>

Source: Authors’ survey and estimations.

<sup>61</sup> Since the methodology in this study is the interview, the actual question is normally simplified. In addition, the stage of this question varies for each interviewee.

Table 32 Reasons For Not Complaining of Fishers in Thailand

Responses	General cases		Forced labour	
	Number	%	Number	%
<b>Don't know/Don't know who or where to complain</b>	<b>103</b>	<b>45.2%</b>	<b>33</b>	<b>55.9%</b>
Don't want to cause trouble	84	36.8%	15	25.4%
Don't believe complaining can change anything	10	4.4%	2	3.4%
I did complain	31	13.6%	9	15.3%
<b>Total</b>	<b>228</b>	<b>100.0%</b>	<b>59</b>	<b>100.0%</b>

Note: Besides this response, one of the responses is that “I have not encountered any serious violations” (Consequently, I did not complain.). For the comparison propose, I exclude this response, and regroup.  
Source ILO and ARCM (2013) Table 7.2.

## 6.2 Possible Factors Affecting Migrant Workers' Decisions in Accessing Grievance Mechanisms

In order to understand explainable factors affecting migrants' decisions, this section will discuss potential factors categorised by the theory of empowerment. The later section examines these potential factors whether such factors are significant in affecting migrants' decisions in accessing grievance mechanisms. To my knowledge, it is the first time that a quantitative analysis is used to complement qualitative analysis enabling a comprehensive analysis on this issue.

As mentioned previously, empowerment is the expansion of assets and capabilities to expand choices. Its conceptual framework outlines two building blocks, which are the opportunity structure and the agency themselves. These key factors facilitate or obstruct people's efforts to improve establish their power. As a result of the analysis of the migrants' characteristics from the interviews, the potential factors of the analysis are depicted in Figure 46.

Referring to Chapter 3 regarding methodology of the study, this study will utilise discrete choice models. The assumptions explaining their decisions are discussed through two types: the independent decision among three choices and the nested structure decision. The MLR will be used to analyse the independent decision among three choices. Under the nested structure decision, the result of the estimation of the CLM and the SLM will complement the analysis of the MLR in order to observe the characteristics of migrants' choices.

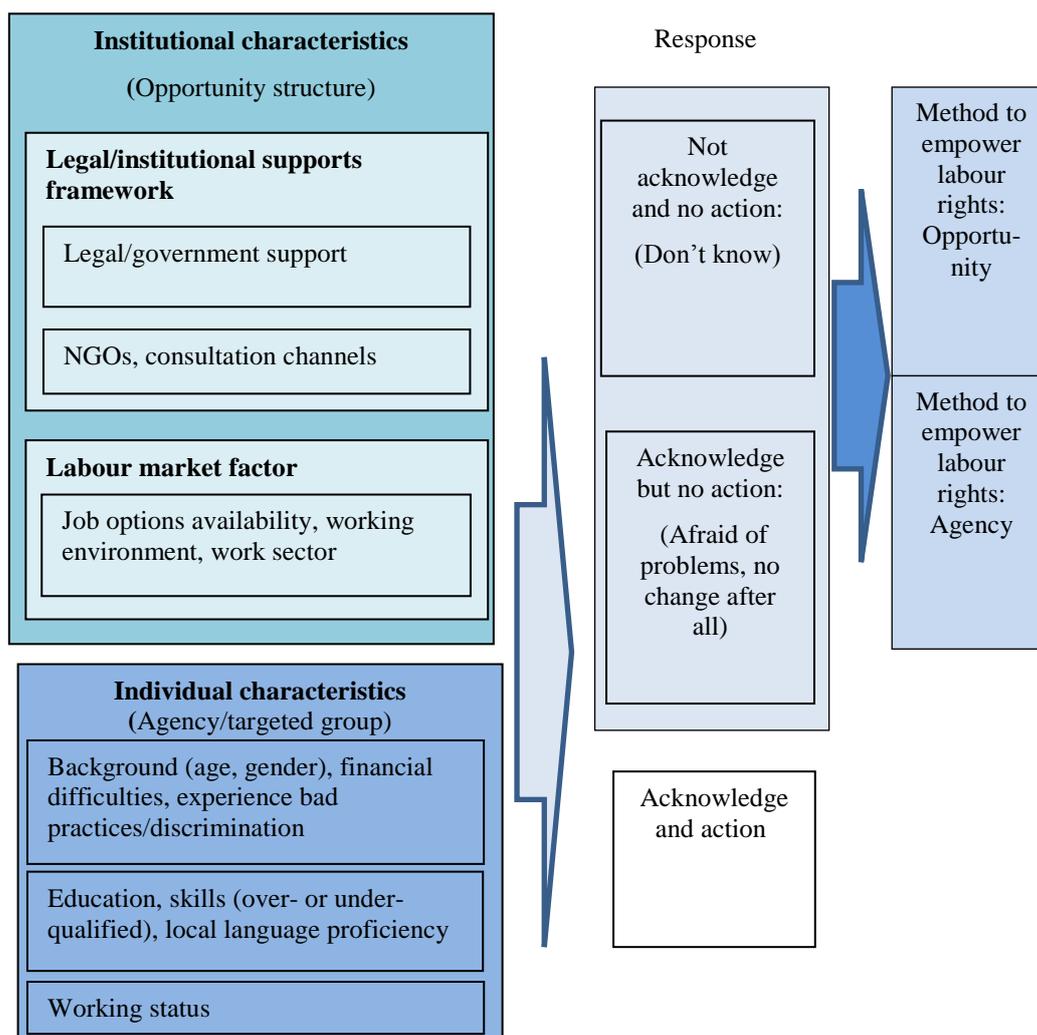


Figure 46: Possible Factors Affecting the Migrants' Decision to Respond to Labour-Related Mechanisms. Source: Author.

It must be noted that though that whilst it is preferable to have a large data set for binary regression analysis, it is possible to assess the validity of findings derived using such analyses with small sample sizes (Garson, 2008). As he mentioned that “the small sample sizes should primarily be of concern for multinomial regression analyses when the standard error presented in the parameter estimates is exceptionally high”. The acceptable standard error of the study should less than 2. In addition, sample size guidelines for multinomial logistic regression indicate a minimum of 10 cases per independent variable (Hosmer and Lemeshow, 2000). The total number of observations is expected to be at least 100 (Long, 1997). Therefore, a total of 150 observations for 13 independent variables are considered to be sufficient for this analysis. It will become more robust in the later model where the independent variables are more selective.

For further discussion, choices (or the dependent variable) are categorised into three groups:

- Group I: Migrant workers do not know what to do
- Group II: Migrant workers who know what to do but take no action
- Group III: Migrant workers who know what to do and will take action

The list of variables and the assumptions, which are generated from the previous studies and the interviews, are described as follows:

### 6.2.1 Opportunity Structure

$X_{sur}$  represents where the interviews were conducted. A migrant who was interviewed in Japan is given 1, and 0 for those who were interviewed in Thailand. This reflects the institutional and working environmental differences between Thailand and Japan.

$X_{formals}$  denotes the accessibility to grievance through a system of formal/and legal mechanisms. The question is “In your opinion, which mechanisms or means would be the most effective consultation regarding legal, living condition, and general cases?” If the responder answered “labour officers”, “embassies”, or “overseas employment office”, for example, it implies that they are highly likely to know about the formal consultation process, or existence of the grievance mechanism. This group is denoted by 1, otherwise is denoted by 0. The formal/government mechanism is expected to positively influence on the accessibility to the grievance mechanisms.

$X_{network}$  denotes the accessibility to consultation channels regarding labour problems. The question is: “If you face problems at work, who will you talk to?” The question is asked using an open-end question, where multiple answers are expected. If the responder answers “no-one”, it implies that this migrant worker does not have any consultation channel or anyone to consult by which to seek consultation, or at least to talk to about their problems. If the responder answered only their employers, this variable will be treated as “no-one”. The result of consultation channel implies possibilities to all possible solutions in response to labour rights violations, including filing a grievance to labour officers, while employers are highly likely to not introduce migrants filing a grievance to government officials (labour officers) against them. This group is denoted by 0, which means a lack of network or consultation channels; otherwise this is denoted by 1. A migrant worker who has consultation channels is expected to know about grievance mechanisms and is likely to take action through the grievance mechanisms.

$X_{jobopt}$  denotes job options available to the migrant workers, according to their opinions. The question is “If I were to lose or quit my current job, would it be easy for me to find a job?” The answers are graded “strongly agree”, “agree”, “indifferent”, “disagree” and “strongly disagree.” Those who responded “strongly agree” and “agree” reflect the fact that they have certain confidence in finding jobs in compatible occupations. Their perceived knowledge on the job options implies if they encounter problems at the current work that they may consider changing jobs. It may be considered as a proxy of the labour market flexibility in migrant workers perspective. One of the implications is the existence of the national laws that obstruct migrant workers to change employers or change jobs. Those who consider finding other jobs easily (“strongly agree”, and “agree”) are denoted by 1, while those who consider it difficult (“indifferent”, “disagree” and “strongly disagree”) to find a new job are denoted by 0. Migrants who have job options available to them are assumed to find other jobs instead of accessing the grievance mechanisms.

$X_{\text{wsector}}$  denotes the working sector of the migrants. Those who are working in the manufacturing sector are represented by 1, while those in service sector are represented by 0. This variable aims at observing the sector difference between these two sectors.

### 6.2.2 Agency

$X_{\text{age}}$  denotes the age in years of the interviewee. The elder is more likely to either fight for their rights or leave the problems behind.

$X_{\text{sex}}$  denotes the gender of the interviewee. Male is represented by 1, female is 0. A male is assumed to more likely lodge a grievance.

$X_{\text{workps}}$  denotes the legal status of the interviewee. In Japan, holders of proper legal working status hold work-related visas, i.e. a working visa or an intern/trainee status. In Thailand, those who do not hold valid work permits are counted as irregular workers. This variable is to observe the difference between those who are holding a proper working permit and those who are not. This variable also reflects the understanding of migrant's rights and human rights. As discussed in Chapter 1, the immigration laws and labour laws must be dissected. Though a migrant worker does not have a working permit, they should not be exploited by certain employers who seek migrants in irregular status in order to take advantages from them. The migrant workers with regular status and proper working-related documents are represented by 1; 0 is otherwise.

$X_{\text{edu}}$  denotes the age in years of the formal studies/education of the interviewee. An additional year of schooling is more likely to increase the possibility to access to the grievance mechanisms.

$X_{\text{Fam}}$  denotes family needs. The question is "Are you the main source of income for your household in the home country?". Those who are the main source of the income is to be represented by 1, otherwise by 0. This variable identifies the financial difficulties facing by the migrant workers. Thus, the migrant workers in this group are more likely to fight for their rights though the grievance mechanisms.

$X_{\text{speakll}}$  denotes the ability to speak the local language in the country of destination. Migrant workers who rated themselves with poor language proficiency are represented by 0, while those with fine abilities are represented by 1. It is expected that migrant workers with a better speaking skill are able to communicate their problems, and more likely to access to the grievance mechanisms.

$X_{\text{wskill}}$  denotes working skills. Migrant workers who respond to the question "Which of the following alternatives would best describe your skills in your own work?" with "I need further training to cope well with my duties", are regarded as those who might consider themselves to have insufficient skills working in their current jobs. Those who responded that "My present skills correspond well with my duties" and "I have the skills to cope with more demanding duties" are categorised as those who have sufficient skills to cope with the work in their own capacity. Migrant workers who possess sufficient skills are symbolised as 1, while the migrant workers with insufficient skills are symbolised as 0.

Migrant workers with sufficient working skills are more likely to have a certain level of individual negotiation to their employers.

$X_{\text{badanddis}}$  represents the experiences the respondent has of discrimination or bad practices. The migrant workers who experience such practices are denoted by 1, while the migrant workers who do not have such experiences are denoted by 0. The factor is to observe if migrants' experiences influence their probability of lodging a grievance. Migrant workers who experienced such practices (either a first-hand or second-hand incident) are more likely to learn from experience and know how to respond to labour-related problems or lodge a grievance.

### 6.3 Result of the Estimations

As discussed previously in Chapter 3, this study will employ MLR to analyse independent decisions among three choices, and it will employ the CLM and the SLM to investigate the nested structure decision. It reflects how the migrants make choices based upon aspects of the knowledge available to them.

#### 6.3.1 Result of the MLR: Independent Decision Among Three Choices

Under this study framework, the baseline of the MLR is the case where migrant workers do not know what to do (Group I). The alternative cases are the other two choices: where the migrant workers acknowledge but take no action (Group II), and where migrant workers do not take any action because they do not know what to do (Group III). The dependent variable represents a migrant who knows their rights and will take action to solve the problem (Group III). The result of the estimation is demonstrated in Table 33.

Model I is the original model which includes all possible factors. The result of the Model I clearly indicate that age, sex, working skills, and being the main source of income for the household significantly influence Group I to be Group II or Group III. Using the reference to Loglikelihood Ratio test, Model II eliminates three insignificant variables from the regressions, which are age, sex and working skills. Following the same method of variable selection of Model II, the formal channel, being the main source of income, and local language proficiency are eliminated from Model II. Eventually, Model III provides overall satisfactory properties; for example, significance of the Loglikelihood test, and lower-than-two standard errors of independent variables. According to the Hausman specification test, Model III does not violate the IIA property.

From Table 33, Model III suggests that those who know what to do (regardless of taking any action or not) are likely to be migrant workers in Japan, as migrant workers who are working in Japan are 90 per cent less likely to be Group I ( $X_{\text{sur}}$ ). According to the interviews those who are trainees have passed the pre-departure trainings. As a result of such trainings, the migrant workers are likely to know the system, yet they do not want to use it<sup>62</sup>. In addition, the geographical factor is possibly an influential factor. While the

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<sup>62</sup> Note that some of trainees said that they did not know what to do. In fact, the labour rights are one of the compulsory documents to distribute in the pre-departure training course. The author then assumed that trainees, who do not know about grievance systems, either forgot or cannot visualize the system and do not actually understand.

majority of migrant workers in Thailand are crossing borders and coming to work illegally, either through official or unofficial entry points, the migrant workers in Japan have arrived through airports. Therefore, besides finding a job in Japan, migrant workers who are coming to Japan have to learn about immigrant laws and employment laws at some extent<sup>63</sup>.

The network factor (or the consultation channel accessibility) ( $X_{\text{network}}$ ) plays a great role in reducing the chances of taking any action upon labour problems. Those migrant workers, who have consultation channels, are 6.6 times more likely to not take any action. A possible explanation from the interviews is that it is noticeable that those who consult with their network are likely to seek for jobs and adopt the leave-it-behind strategy.

Remarkably, Job options availability ( $X_{\text{jobopt}}$ ) increases the possibility of accessing grievance mechanisms, as those who have job options are less likely being Group II at 94 per cent, and less likely being Group I at 77 per cent. According to the in-depth interviews, the possible explanation is that the job option is a key for survival. Once the worker files the complaint, they are likely to avoid confrontation with their employer and thus the option of employment elsewhere helps them feel comfortable and continue going through the grievance and investigation process. If the period of the investigation is unknown, they have to ensure that they can survive such a process. Above all, the legal status in staying in the country of destination is bounded to their employment status. Failing in holding on to the employed status means losing legal immigrant status to stay and live in the country. In a worst-case scenario, they may be threatened to withdraw the case, eventually lose their job and having to return to their home country unwillingly.

Positive significant effects originated by individual characteristics are holding a proper work permit ( $X_{\text{workps}}$ ) and years of schooling ( $X_{\text{edu}}$ ). Holding a proper work permit is supported by the fact that those who do not hold a proper work permit will not find it possible to obtain a written employment contract. This is based on the fact that migrant workers are largely working in exempt sectors of labour standard laws. Thus, holding no written evidence means that they have to refer to the verbal agreed terms, which is difficult to prove. Based from the estimation, holding a work permit is 100 per cent reduces the chance of being placed in Group I or Group II. In other words, it is necessary to have a proper working permit.

Moreover, the additional year of schooling decreases the probability of being those who do not know (Group I) and those who know but do not want to take any action (Group II) at around 37 and 42 per cent respectively. This aspect highlights the importance of the socio-economic factor in the country of origin that impacts the migrant's choices in the country of destination. Years of schooling shapes the ability to gain access to information. Some migrant workers in Thailand did not have formal education. Some of them are illiterate, which is the main barrier in accessing useful information regarding labour rights. In addition, according to the interviews, even those who are literate cannot visualise the procedure of filing the complaints and do not what to ask for friends' assistance.

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<sup>63</sup> This explanation is not applicable to human-trafficked people.

Table 33 Different Characteristics of Being Migrant Workers Who Do Not Know What To Do (Group I) and Who Do Not Want to Take action (Group II)

	Model I				Model II				Model III			
	Exp(B)		Exp(B)		Exp(B)		Exp(B)		Exp(B)		Exp(B)	
	Don't know (Group I)		I know, but I don't want to (Group II)		Don't know (Group I)		I know, but I don't want to (Group II)		Don't know (Group I)		I know, but I don't want to (Group II)	
	B	Exp(B)	B	Exp(B)	B	Exp(B)	B	Exp(B)	B	Exp(B)	B	Exp(B)
Intercept*	33.398*** (6.780)	-	30.683*** (6.853)	-	27.402*** (2.851)	-	26.248*** (2.748)	-	24.371*** (1.849)	-	24.164*** (1.829)	-
Place of work ( $X_{sur}$ )	-4.839** (2.405)	0.008	2.305 (2.450)	10.027	-2.753** (1.283)	0.064	0.419 (1.281)	1.521	-2.271** (1.082)	0.1032	0.706 (1.003)	2.0261
Gov assistance ( $X_{formals}$ )	-.730 (1.584)	0.482	2.453* (1.400)	11.620	0.743 (1.033)	2.102	0.345 (0.951)	1.411				
Network ( $X_{network}$ )	1.849 (1.978)	6.355	6.695*** (2.172)	808.259	-1.621 (0.899)	0.198	2.239** (.951)	9.383	0.974 (0.716)	2.6483	1.883*** (.718)	6.570
Labour market flexibility ( $X_{jobopt}$ )	-2.246 (1.606)	0.106	-6.571*** (1.932)	0.001	-1.621 (0.899)	4.790	-3.155*** (.946)	.0043	-1.489* (0.762)	0.2257	-2.828*** (.832)	.0059
Work Sector ( $X_{wsector}$ )	4.752** (1.893)	115.861	.616 (1.741)	1.852	2.411** (1.168)	11.145	.176 (1.187)	1.193	1.646 (1.003)	5.188	-.126 (0.909)	0.882
Age ( $X_{age}$ )	.006 (.112)	1.006	-.133 (.127)	0.876								
Sex ( $X_{sex}$ )	-2.019 (1.826)	0.337	.151 (2.105)	0.943								
Work permit ( $X_{workps}$ )	-18.862*** (.966)	0.000	-19.517*** (0.000)	0.000	-19.376*** (.587)	.000	-19.171*** (.000)	0.000	-18.913*** (.544)	.000	-18.659*** (.000)	0.000
Year of schooling ( $X_{edu}$ )	-.1.089*** (.409)	0.337	-.980** (.385)	0.375	-.691*** (.229)	.501	-.683*** (.224)	0.505	-.462*** (.159)	.6297	-.539*** (.164)	0.5832
Main source of income ( $X_{fam}$ )	-5.067 (2.685)	0.006	.039 (2.698)	1.040	-1.569 (1.051)	0.208	-0.508 (1.052)	0.601				
Speak local language proficiency ( $X_{speakit}$ )	.053 (1.679)	1.054	-2.545 (1.913)	0.184	0.124 (1.108)	0.883	-.221 (1.148)	0.802				
Working skills ( $X_{wskill}$ )	.472 (.988)	1.603	.518 (1.012)	1.679								
Experience bad practice ( $X_{badanddis}$ )	3.103** (1.581)	22.260	.730 (1.609)	2.076	.1566 (0.870)	4.790	.632 (0.877)	1.881				
<b>N=150</b>	Cox and Snell 0.642		Nagelkerke 0.740		Cox and Snell 0.458		Nagelkerke 0.529		Cox and Snell 0.418		Nagelkerke 0.482	

Note: Std. Error is shown in the parenthesis. \*\*\* Significance at 1%, \*\* Significance at 5%, \* Significance at 10%. The base case represents those who know what to do and will take action (Group III). Source: Author's estimation.

Model III suggests that migrants who are likely to know what to do ( $X_{sur}$ ) are likely to be migrant workers in Japan. The following tables represent descriptive data (Table 34) and the same set of Model III regressors by country (Table 35).

Table 34 Descriptive Data by Country

	Thailand (N=75)				Japan (N=75)			
	Min.	Max.	Mean	Std.	Min.	Max.	Mean	Std.
<b>Opportunity structure</b>								
Government assistance ( $X_{formals}$ )	0.00	1.00	0.028	0.165	0.00	1.00	0.413	0.496
Consultation channel ( $X_{network}$ )	0.00	1.00	0.819	0.387	0.00	1.00	0.540	0.502
Job options availability ( $X_{jobopt}$ )	0.00	1.00	0.347	0.479	0.00	1.00	0.143	0.353
Work Sector ( $X_{wsector}$ )	0.00	1.00	0.153	0.362	0.00	1.00	0.730	0.447
<b>Agency structure</b>								
Age ( $X_{age}$ )	17.00	35.00	24.935	5.063	24.00	48.00	38.088	4.874
Sex ( $X_{sex}$ )	0.00	1.00	0.306	0.464	0.00	1.00	0.159	0.368
Work permit ( $X_{workps}$ )	0.00	1.00	0.634	0.485	0.00	1.00	0.905	0.296
Year of schooling ( $X_{edu}$ )	0.00	16.00	8.431	3.135	9.00	16.00	10.381	1.938
Main source of income ( $X_{Fam}$ )	0.00	1.00	0.875	0.333	0.00	1.00	0.698	0.463
Ability to speak local language ( $X_{speakll}$ )	0.00	1.00	0.694	0.464	0.00	1.00	0.206	0.408
Working skills ( $X_{wskill}$ )	0.00	1.00	0.417	0.496	0.00	1.00	0.556	0.501
Experience bad practice ( $X_{badanddis}$ )	0.00	1.00	0.472	0.503	0.00	1.00	0.381	0.490

Note: Std. denotes Standard Deviation.

Source: Author's estimation.

Table 34 well denotes the difference between countries. It must be noted that, though a minimum of 10 cases per independent variable is still valid, the sampling size has become smaller when it is segregated into countries, and there is statistical bias due to the nature of the data (i.e. the majority of migrant workers who know what to do in Thailand is very small in Thailand). As a result of this, the magnitudes of the coefficients are not likely to be affected, the standard deviations are possibly large and only the results of highly significant coefficients are concerned.

Among those who do not know, the key significant factors are remaining years of schooling and holding a proper work permit. In contrast to the previous result, having a consultation channel in Japan does not significantly affect Group III. In Thailand, similar to the previous result, having a consultation channel is more likely to increase

the probability of migrant workers being in Group I and Group II. Based on the interviews in Thailand, the network is more likely to encourage “an exit strategy” by introducing work elsewhere. When the migrant encounters labour-related problems, the first question is likely to find other jobs, rather than consulting on how to deal with such problems. Interestingly, the job options availability has become insignificant for migrant workers in both Thailand and Japan in being in Group I. The possible explanation is that, because they do not know about the grievance mechanism, they are likely to tolerate their current employment, regardless of the situation. However, the job options availability is statically significant in reducing the probability of migrant workers being in Group II. The educational effects significantly decrease the possibility to be in Group I and Group II, which are consistent to the previous estimation.

Table 35 Different Characteristics of Those Who are Taking Action and Those Who Are Not Taking Action, by Country

	Japan				Thailand			
	Exp(B)		Exp(B)		Exp(B)		Exp(B)	
	Don't know		I know, but I don't want to		Don't know		I know, but I don't want to	
	B	Exp(B)	B	Exp(B)	B	Exp(B)	B	Exp(B)
Intercept*	28.392*** (5.655)	-	23.511*** (4.243)	-	25.596*** (3.869)	-	27.021*** (3.870)	-
job options availability ( $X_{jobopt}$ )	-21.748 (6327.093)	0.000	-3.723*** (1.291)	0.024	-.246 (1.270)	0.782	-2.486* (1.465)	0.083
Consultation channel ( $X_{network}$ )	1.729 (1.629)	5.634	1.510* (1.305)	4.527	3.870* (1.865)	47.944	3.475** (2.055)	32.303
Work permit ( $X_{workps}$ )	-20.044*** (1.976)	.000	-18.506*** (.000)	0.000	-17.436*** (.775)	.000	-18.432*** (.000)	.000
Year of schooling ( $X_{edu}$ )	-.896** (.438)	.408	-0.426** (.373)	0.653	-1.002 ** (.438)	.367	-.984 ** (.430)	.374
Experience bad practice ( $X_{badanddis}$ )	-.652 (2.008)	.521	1.613 (1.369)	5.018	1.923 (1.436)	6.842	-1.213 (.297)	.297
	<b>Cox and Snell 0.448</b> <b>Nagelkerke 0.528; N=75</b>				<b>Cox and Snell 0.517</b> <b>Nagelkerke 0.615; N=75</b>			

Source: Author's estimation.

### 6.3.2 Nested Structural Analysis

Further investigation about the responding actions among who know what to do, this section demonstrates the result of the estimation using the nested structure analysis. Two types of models (i.e. the SLM and the CLM) to investigate the factors affecting the decision of those who know but do not act will be utilised in this section (as discussed in Chapter 3).

The SLM is stipulated into 2 steps, as follows (Table 37):

- (1) Analyse factors affecting migrants to know or not know what to do (Group I /Group II and Group III);
- (2) Observe that if migrant knows what to do, what are the factors affecting whether or not they take action (Group II /Group III).

- **Factors Affecting “Know” (Group II and III) or “Do Not Know How to Do” (Group I)**

Overall, the result of the estimation is similar to the previous section. It is clear from the previous section that migrant workers who are working in Japan are 38.7 times likely to know what to do than those in Thailand. Apparently, the migrants who have a network or a consultation channels are 6.4 times more likely to know about the grievance mechanism. On the other hand, migrant workers who consider that they can find jobs easily are 78 per cent less likely to know where to file a grievance ( $X_{\text{jobopt}}$ ). A possible explanation is that if migrants have job options available, they will pay less attention to know how to file a complaint. Furthermore, migrant workers who are working in the manufacturing sector are 94 per cent more likely to know what to do ( $X_{\text{wsector}}$ ). The possible explanation is due to the fact that workers in the service sector are more exposed to people and consultation channels than workers in the manufacturing sector.

Years of schooling ( $X_{\text{edu}}$ ) reaffirms its importance as one additional year of schooling are 28.3 per cent more likely to be enlightened about grievance mechanisms (Group I). Based on the interviews, though the return to education did not prove beneficial to migrant workers due to low recognition of their education and the low skills needed to be effective at the job, the learning ability helps them in learning and searching for necessary information when needed. Interestingly, according to this estimation, being a main source of family income ( $X_{\text{Fam}}$ ) also drives migrant workers to learn what to do when they encounter problems, being 33.6 times more likely to know what to do.

- **Factors Affecting Migrants’ Decision to Take or Not Take Action**

Following the previous estimation, this section demonstrates estimations only among those who know what to do (Group II and Group III) in order to identify the factors affecting whether or not they will take action. The number of sampling size then reduces from 150 to 82. The descriptive data is demonstrated in Table 36.

Table 36 Descriptive Data of Migrant Workers Who Know What to Do (N=82)

	Min.	Max.	Mean	Std. Deviation
<b>Opportunity Structure</b>				
Place of work in Japan ( $X_{sur}$ )	0.00	1.00	0.622	0.488
Gov assistance ( $X_{formals}$ )	0.00	1.00	0.256	0.439
Consultation channels ( $X_{network}$ )	0.00	1.00	0.671	0.473
Job options availability ( $X_{jobopt}$ )	0.00	1.00	0.183	0.389
Work sector ( $X_{wsector}$ )	0.00	1.00	0.451	0.501
<b>Agency Structure</b>				
Age ( $X_{age}$ )	19.00	48.00	33.545	7.558
Sex ( $X_{sex}$ )	0.00	1.00	0.195	0.399
Work permit ( $X_{workps}$ )	0.00	1.00	0.841	0.367
Year of schooling ( $X_{edu}$ )	0.00	16.00	9.732	3.178
Main source of income ( $X_{Fam}$ )	0.00	1.00	0.780	0.416
Ability to speak local language ( $X_{speakll}$ )	0.00	1.00	0.415	0.496
Working skills ( $X_{wskill}$ )	0.00	1.00	0.585	0.496
Experience bad practice ( $X_{badanddis}$ )	0.00	1.00	0.427	0.498

Note: This section focuses on those who clearly indicate that they know what to do, in particular the approach that eventually leads to formal channels. The total number of interviewees who know what to do is 82. That of in Thailand is 31, while that of in Japan is 51.

Source: Author's estimation.

Not all people who know what to do hold work permits, but those who indicate that they are going to take action do hold work permits<sup>64</sup>. It can be simply implied that holding proper work permits is the necessary condition for taking action<sup>65</sup>. Therefore, this factor is excluded from the SLM step II to avoid a statistical problem.

In harmony with the MLM estimation result, government assistance ( $X_{formals}$ ) is not significant in influencing migrant workers to file a grievance. On the other hand, if the migrants have clear consultation channels ( $X_{network}$ ), they are 85 per cent less likely to find a solution. In addition, migrants with job options availability ( $X_{jobopt}$ ) are 20.7 times high likely to take action. Based on the interviews, job options availability helps migrant workers on the following three concerns: (i) to avoid conflict and potential retaliation; (ii) to ensure survival money during investigation process; and (iii) to maintain their regular status (See the detailed discussion in Chapter 7). Migrants with an additional year of schooling are 44 per cent more likely to take action.

<sup>64</sup> Do not hold a proper work permit and do not know what to do = 13; hold a proper work permit but will take no action=49 ; and hold a proper work permit and will take action=20.

<sup>65</sup> The migrant worker is afraid of being arrested and deported back to their country. Most importantly, in the case of Thailand, some migrant workers do not even have their ID from their home countries. Therefore, they cannot provide an ID to attach to an official grievance. Then, the labour officials cannot process their grievance through an official channel.

It must be noted that migrants with consultation channels ( $X_{\text{network}}$ ) are 6.4 times more likely to know what to do, but 85 per cent less likely to take action. It highlights the fact that having consultation channels is an important factor, enriching migrant workers' understanding to solve labour-related problems. However, how the information is communicated is also necessary to ensure a better accessibility to the grievance mechanisms. Moreover, migrants with job options availability ( $X_{\text{jobopt}}$ ) are 78 per cent less likely to know where to file a grievance, but once they know, they are 20.7 times high likely to take action. It highlights the fact that once they decide to enter the grievance mechanisms, the grievance handling process and the survival strategy is considered to be crucial for the rights exercise of low-skilled workers.

In addition to the SLM, the CLM is also estimated to affirm the conditional cases (Table 38). The results of the estimation are consistent to the prior type of estimation. It is clear that three variables are statistically important, which are years of schooling, the consultation channels and the labour market flexibility. Those who know who have consultation channels are 89 per cent less likely to file a grievance. On the other hand, if a migrant has alternative job options, they are 17.7 times more likely to file a grievance.

Table 37 Factors Affecting Migrants' Decision to Access Grievance Mechanisms: Sequential Logistic Regression

	SLM step1 Do not know=0 ; Know =1 (Group I /Group II and III)		SLM step2 Know and act=1 ; Know not act=0 (Group III /Group II)					
			Model 1		Model 2		Model 3	
	B	Exp(B)	B	Exp(B)	Exp(B)	Exp(B)	B	Exp(B)
Intercept	-5.648 (2.913)***	0.004	-22.120 (9.565)**	.000	-12.595 (5.047)**	.000	-4.684 (1.641)***	0.009
Place of work (X <sub>sur</sub> )	3.656 (1.346)***	38.715	-1.105 (2.395)	.331	-.116 (1.700)	.891		
Government assistance (X <sub>formals</sub> )	1.676 (1.051)	5.346	-1.629 (1.698)	0.196	-1.870 (1.115)	.342		
Consultation channel (X <sub>network</sub> )	1.861 (0.853)**	6.431	-3.078 (1.684)*	0.046	-2.970 (0.983)***	.154	-1.902 (0.731)***	.149
Labour market flexibility (X <sub>jobopt</sub> )	-1.524** (0.680)	.218	4.091 (1.432)**	59.800	1.619 (1.621)**	19.485	3.031 (0.923)***	20.727
Work Sector (X <sub>wsector</sub> )	-2.879 (1.153)**	.056	2.196 (2.395)	8.986	2.460 (2.083)	11.706		
Age (X <sub>age</sub> )	-.007 (0.059)	0.993	.194 (0.133)	1.214				
Sex (X <sub>sex</sub> )	.708 (0.829)	2.030	6.139 (0.397)**	463.359	4.409 (2.038)**	82.217	0.859 (0.752)	2.361
Work permit (X <sub>workps</sub> )	.810 (0.696)	2.248						
Year of schooling (X <sub>edu</sub> )	.249 (0.126)**	1.283	.881 (3.121)**	2.413	.690 (0.242)***	1.993	0.363 (0.148)**	1.438
Main source of income (X <sub>Fam</sub> )	3.515 (1.412)**	33.613	4.679 (2.698)	107.639	3.152 (2.050)	23.393		
Ability to speak local language (X <sub>speakil</sub> )	-1.566 (0.840)	.209	4.290 (2.518)*	72.966	1.619 (1.621)	5.049		
Working skills (X <sub>wskill</sub> )	.613 (0.555)	1.845	-.280 (0.988)	.756	-2.030 (1.350)			
Experience bad practice (X <sub>badanddis</sub> )	-1.006 (0.595)	.366	-3.721 (2.372)	0.024	-1.073 (1.115)	.131		
	Nagelkerke R Square = 0.584 N=150		Nagelkerke R Square = 0.643 N=82		Nagelkerke R Square = 0.523 N=82		Nagelkerke R Square = 0.429 N=82	

Note: 1/The variable, "holding a proper work permit" is neglected in the SLM step2, because the simple crosstab indicates that all migrant workers who are taking actions are holding a proper work permit.

Table 38 Factors Affecting Migrants' Decision to Access Grievance Mechanisms: Conditional Logistic Regression

Know not act	CLMI/					
	Model 1		Model 2		Model 3	
	B	Exp(B)	B	Exp(B)	B	Exp(B)
Intercept*						
Gov assistance ( $X_{formals}$ )	-2.846 (1.861)	0.058	-.486 (1.039)	0.615		
Consultation Channel ( $X_{network}$ )	-4.488** (2.209)	0.011	-2.264** (1.081)	0.104	-2.247*** (.789)	0.106
Labour market flexibility ( $X_{jobopt}$ )	5.037** (2.067)	154.007	2.873*** (.950)	17.690	2.872*** (.916)	17.672
Work Sector ( $X_{wsector}$ )	1.905 (2.821)	6.719				
Age ( $X_{age}$ )	.117 (.151)	1.124				
Sex ( $X_{sex}$ )	5.800* (3.392)	330.300	.819 (0.926)	2.268		
Work permit ( $X_{workps}$ )	19.050 (2902.697)	187,633,28 4				
Year of schooling ( $X_{edu}$ )	.736* (.457)	2.088	.404*** (.161)	1.498	0.386*** (.147)	1.471
Main source of income ( $X_{Fam}$ )	3.494 (3.420)	32.917				
Ability to speak local language ( $X_{speakll}$ )	5.262* (3.109)	192.867	-0.619 (.967)			
Working skills ( $X_{wskill}$ )	.471 (1.188)	1.602				
Experience bad practice ( $X_{badanddis}$ )	-5.042* (2.872)	0.006	-.644 (1.020)	0.525		
	Log likelihood = -15.489 Pseudo R2 = 0.605		Log likelihood = -27.032 Pseudo R2 = 0.351		Log likelihood = -28.137 Pseudo R2 = 0.325	

Note: 1/ Controlled by country of destination. The base case is the case where the migrant know what to do and take action, while the alternative case is the case where the migrant know what to do, yet take no action.

Source: Author's estimation.

## 6.4 Conclusion

This section explored factors affecting migrant workers' access to grievance mechanisms. It discusses the result of the estimations and linkages to the theory of empowerment.

This study asked the interviewees to elaborate on their approach in the event that they faced labour-related problems. It is clear that the majority of migrant workers in Thailand and Japan do not act in response to labour-related problems/rights violations. However, the reasons for this vary. The migrant workers in Japan believe that it is no use filing complaints against the employer. The given reason by migrant workers in Thailand is that they do not know what to do and they are afraid of problems.

This study employs two assumptions. The MLR is used to analyse the independent decision among three choices. Additionally, the SLM and the CLM are used to analyse

the nested structure. The results of the study suggest that well-designed grievance mechanisms are considered to be necessary, but are not currently sufficient for a successful scheme since, regardless country of destinations, a large share of migrant workers do not practically access to the grievance mechanisms.

It must be highlighted that opportunity structure, especially job options availability, increases the opportunity to access to grievance mechanisms. If they can change to a comparable job with similar earnings, they will be less worried of the threat of dismissal for voicing complaints. Networking or having someone to consult reduces the probability to file a formal grievance. Moreover, key individual characteristics (or agents) are a proper work permit and years of schooling. In the views of migrant workers, holding a proper work permit is a necessary condition in filing a grievance, though the international human and labour rights should theoretically apply to all migrants, regardless of their working condition. On the other hand, an additional year of schooling increases the probability that workers will access grievance mechanisms. This factor forms the migrants' ability in accessing information when needed.

Among those who do not know, the most significant factors are remaining years of schooling, and holding a proper work permit. In contrast to the previous result, having a consultation channel in Japan does not significantly effect on the state of knowing. In Thailand, similar to the previous result, having a consultation channel is more likely to increase the probability of migrant workers not taking an action. Based on the interviews in Thailand, the network is more likely to encourage "an exit strategy" by introducing work elsewhere. However, the job options availability is statically significant in reducing the probability of migrant workers.

The result of the nested structural analysis (the SLM and the CLM) is fitting with the result of the MLM, in that government assistance is not significant in influencing migrant workers to file a grievance. Migrants with consultation channels) are 6.4 times more likely to know what to do, but are 85 per cent less likely to take action. It highlights the fact that having consultation channels is an important factor, enriching migrant workers' understanding to solve labour-related problems. However, considering how the information is communicated is also necessary to ensure a better accessibility to the grievance mechanisms. Migrants with job options availability are 78 per cent less likely to know where to file a grievance, but once they know, they are 20.7 times high likely to take action. It highlights the fact that the grievance handling process and the survival strategy is considered to be crucial for the rights exercise of low-skilled workers. The next chapter will be a comparative analysis based on result of quantitative analysis and the qualitative analysis in Chapters 4, 5, and 6.

## **CHAPTER 7**

### **Comparative Analysis**

This chapter will integrate quantitative and qualitative analysis, utilising the investigation from the previous chapters to analyse comparative differences and similarities, as well drawing from previous literature. The theory of empowerment, the opportunity structure and the agency are discussed in a way to identify factors hampering or affecting migrant workers' decisions to access grievance mechanisms and to promote the fair practice of labour rights. Section 7.1 will describe the opportunity structure, followed by the agency capabilities in Section 7.2.

#### **7.1 Opportunity Structure**

The opportunity structure describes the institutional climate and social and political structure. In this study, the opportunity structure also includes economic and labour market structure as they contribute towards the opportunities of migrant workers in the world of work.

##### **7.1.1 Institutional Climate**

###### **7.1.1.1 Overall Policies and Laws Regarding Low-Skilled Migrant Workers**

The government considers the migration policy as a part of national security and political issues, as immigration acts have been enforced to regulate immigration flows, border control and deportation. Nevertheless, currently the economically-globalised driven world has gradually altered the direction in the immigration policy in many countries to respond to the dynamical changes in demand for labour and economic policies. It is internationally accepted that the migration policy is one of the labour market tools to manage labour supply and labour demands of the country, and to ensure a country's economic needs and sustainable economic growth (IOM, 2010). International practices in many countries utilise basic levies, fees and taxes as well as migrant quota systems. For example, the Singaporean system uses a foreign workers levy system that differs by sector, skill and firm. The maximum employment period for foreign low-skilled workers was extended from 6 to 10 years in order to maximise productivity gains. Malaysia uses an annual levy system and a specific-quota system (Othman, 2013).

Both Thailand and Japan still hold a similar stance on excluding low-skilled workers from working in the country. Migrant workers cannot easily submit an application for working visas in Thailand and Japan in low-skilled occupation categories. However,

both countries have some channels available to allow entry from some low- or semi-skilled migrant workers.

As mentioned previously, in Thailand, two authorities are responsible for administrating migrant workers: Office of Immigration Bureau, the Ministry of Interior (MOI), and Office of Foreign Workers Administration, Department of Employment, Ministry of Labour (MOL). The attitude toward migrant workers clearly indicates in the Alien Working Acts that the MOL is responsible for “controlling” and “administrating” the foreigners who are working with or without approval of the MOL. The Thai government, in an attempt to administrate and regularise low-skilled migrants, first enforced the Alien Working Acts in 1979<sup>66</sup> and later revised it in 2008. The Act also posits 39 occupations that migrant workers cannot do to secure the work for Thais<sup>67</sup>. The Alien Working Act was implemented during the period of nationalism under military government during 1947-1991. During this time, migrant workers were considered a threat to national security (Human Rights Sub-Committee on Ethnic Minorities, Stateless, Migrant Workers and Displaced Persons, 2011).

However, limited economic opportunities, income inequalities, as well as political and military conflicts in neighbouring countries have attracted a large number of low-skilled workers to Thailand, particularly since the economic boom in the 1980s. The government of Thailand has acknowledged the migration flows and implemented certain measures since the 1990s. Thailand has occasionally announced the Thai Cabinet Decision to grant temporary stay for workers and allowed them to work since 2004. The intention of the grant is to attract underground migrant workers to surrender themselves and legalise them. Not only the grants, but also the National Verification (NV) has been used to legalise those who do not have the ID to surrender themselves in exchange for being allowed to work legally with a possible extension of 4-years of work in total. Though the deadline to NV was set, the extension was always awarded due to the pressure of the employer organisations and international organisations<sup>68</sup>. In addition to the NV, the MOU scheme was implemented in the late 2000s. However, up to now, the number of migrant workers through the MOU initiative is very small in comparison to those two previous schemes<sup>69</sup>. The demand for migrant workers is determined by the number of total demand submitted by employers and approved by the Department of Employment (DOE), the Ministry of Labour. The quota is considered on an individual basis, annually, based on the employer’s requests in prior years. Besides direct employers, a number of recruitment agencies also submit via this channel to obtain legal migrant workers. These migrant workers will be used as dispatched workers during their working period in Thailand.

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<sup>66</sup> The Thai Immigration Act was enacted in 1950. The enforcement of the Alien Working Act was 2 decades ahead of the labour protection laws. The Labour Protection Acts was enacted in 1998.

<sup>67</sup> For example, producing Buddha images, knives, barber, agricultural work, livestock works. However the list of the occupations was firstly listed since 1979. Some occupations are widely criticized to be obsolete. It is exceptional to those who are MOUs workers who are subject to work as labourers or domestic workers.

<sup>68</sup> For example, the NV, which was announced its deadline on December 2014, was extended for 3 months because three private organisations called for the extension (Federation of Thai Industries, the Thai Chamber of Commerce and the Board of Trade of Thailand).

<sup>69</sup> Only two of the interviewed migrant workers in Thailand had heard about the MOU. Nevertheless, one of them said, “I have seen many of those (migrant workers under the MOU scheme) have problems. They do not know anyone except the employer ... Then who will help them?”

The migrant administrative system is different in Japan. The key authority is the Immigration Bureau, referencing "Immigration Control and Refugee Recognition Act" and "Alien Registration Law". There is no exemption or relaxation for low-skilled migrant workers. The Japanese government has employed only the methods of visa management with the social integration scheme on the anti-irregular migrant workers. Only the Immigration Control and Refugee Recognition Act 1951, which was revised in 1979, was utilized as the reference to control and administrate foreigners. Instead of allowing low-skilled migrant workers to work temporarily in the country, the Japanese government has developed an initiative, which is the trainee training scheme. Though the key objective of this scheme is claimed to be a technological skills transference scheme, in practice it has become one of the key channels to allow low-skilled migrants to work in the country<sup>70</sup>. JITCO, the public interest incorporated foundation authorised by Japanese Cabinet office, is now responsible to the largest share of trainee scheme organisations. Up to now, JITCO determines quota of migrant workers for 15 sending countries. The quota is settled largely by the government organisations and supervising organisations in Japan, with the supervision of JITCO. Actually, the supervising organisations behave like recruitment agencies and implementing organisations are employers.

Two observable concerns can be concluded from the Thai and Japanese migration administration systems. Firstly, Japan administrates the migrants working status by visa granting only<sup>71</sup>, whereas in Thailand, the Immigration Bureau is responsible for the visa granting and the DOE is responsible for working permits. Each department engages in their own responsibility and laws, resulting in a number of regulations that migrant workers have to follow. For example, amnesty- granted migrant workers are required to report to the Immigration Bureau every 90 days and can travel within specific areas, while the MOU migrant workers do not need to report and can travel in Thailand freely. Several relaxations and deadlines, a number of regulations and relevant-authorities from many departments, as well as the multiple schemes for low-skilled migrant workers in Thailand, are complicated for migrant workers and employers to understand, and even for authorities to enforce.

Secondly, the demand for labour in Thailand is determined individually, while in Japan it is determined by organisations. Though the Thai system opens to all sizes of enterprises and households to request for low-skilled migrant workers, it also allows illegal recruitment agencies to exploit this channel and leads to a fake demand for labour. Many migrant workers, who are confused in a process to get them proper work permits, are working for these recruitment agencies. The most popular option is to use a recruitment agency as a proxy employer. The recruitment fee ranges between 8,000-20,000 baht or the equivalent of 1.2–3 months' working wages (calculated based on the one month minimum wage). The recruitment agency charges about 2,000-3,000 baht per year for a work permit renewal<sup>72</sup>. The migrant worker who uses this approach usually works as a domestic worker, a sales helper, a cook helper or something similar.

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<sup>70</sup> As mentioned in Chapter 5, though some occupations are high-skilled, a number of trainees' occupations are clearly filled by low-skilled migrant workers e.g. poultry farming (collecting chicken eggs) and weaving process workers.

<sup>71</sup> Except those with student visa, who can work up to 28 hours a week.

<sup>72</sup> Work permit renewal can be applied for the maximum of 2 years. However, they normally apply for 1 year permission.

Their work shares the same characteristic of working in isolation with none or a small number of migrant workers, and most of the time, are informal, micro enterprises. Being hired through these recruitment agencies impedes them from obtaining the right information about working legally. These migrant workers are at risk of misunderstanding that such recruitment agencies and paying recruitment fees are a part of the employment processes, as this study has found four migrants in Thailand who understood that a card provided by the recruitment agency is an official working permit. On the other hand, the quota in Japan is settled by government organisations and supervising organisations, as a result of this practice, and the quota is a more systematic and policy-driven approach.

#### **7.1.1.2 Law Enforcement: General Law Enforcement and Immigrant Control**

Law enforcement and implementation is a key structural problem in Thailand. This factor is mentioned regularly during the interview in Thailand. Consequently, majority of migrant workers in Thailand do not believe in the government-related procedure and are more likely to find other solutions<sup>73</sup>. A simple indicator is the Corruption Perceptions Index, which ranks countries and territories based on how corrupt their public sector is perceived to be. From 175 countries, Thailand was rated 85, while Japan was rated 15<sup>74</sup>.

Clearly, the immigration and employment policies of migrant workers in Thailand have been challenged by law enforcement issues. Based on the interviews, the result of uncertain deadlines is confusion for the authorities, employers, and migrant workers. Despite the fact that every announcement was disseminated through all relevant authorities, many authorities apply personal arbitration when they face migrant workers. As found in previous literature, the result of the interviews obviously indicates that many migrant workers do not believe in fair law implementation, as many of them used to pay bribe to the police.

Undoubtedly, in Thailand's case, official borders can be crossed easily with migrants led by smugglers on foot, by motorbike, vehicle or boat. Based on UNODC (2010) border surveys, approximately one third of the irregular migrants basically proceed along major roads. The border trade volume and the number of cross border people are steadily increasing. Some enterprises in Thailand have even located their factories at the border to receive cheap labourers from border residences. Normally, these factories are in light-industries (eg. garment sector), which operate at the lower-end of global supply-chain businesses and rely largely on cheap labourers. They use the strategy to mix up the regular and irregular migrant workers to hide the irregular workers. For example, a garment factory located in Mae Sot (One of the biggest border entries between Thailand and Myanmar) employed about 3,000 workers. Among those 3,000 workers, there were 400 workers working without work permits. The average wage of migrant workers was only about half of the minimum wage or at about 2 USD per 8

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<sup>73</sup> Other solutions include, for example, finding other jobs elsewhere, or physical offense.

<sup>74</sup> Country or territory's score indicates the perceived level of public sector corruption on a scale of 0 (highly corrupt) to 100 (very clean). A country or territory's rank indicates its position relative to the other countries and territories in the index. This year's index includes 175 countries and territories.

normally working hours (ILO, 2006c). Though a number of migrant workers are crossing the border daily in the early morning for work and return before the entry point is closed, the majority of them live near or in-the-factory accommodation provided by their employers. These migrant workers, in particular irregular migrant workers, do not normally sign any employment contract and receive wages daily in cash<sup>75</sup>. According to this study, none of the interviewees held a copy of an employment contract, regardless their legal status.

In Thailand, despite the nationwide 300 baht minimum wage rate per day<sup>76</sup>, it is clear that in practice this wage rate minimum is not being upheld in place. The wage rate is given at the market wage rate in each area. The average wage of migrant workers and non-migrant workers in municipal areas is higher than the average wage at the borders. The rural areas at least provide wages to meet the 300 baht minimum. Therefore a number of migrant workers who worked for Thai factories at the border for a period of time may consider moving to the centre of border provinces and, most of the cases, move to work in Bangkok and the vicinity. The interviews suggested that the tendency to move is associated with the recommendations from migrants' friends or recruitment agencies.

In order to work in Thailand, workers must obtain a proper working permit<sup>77</sup> or take the risk of being arrested. However, the decision of whether or not to obtain a work permit is driven by the migrants' perception on transparency of the authorities and accountability of the system. In association with costly and a complicated procedures to become regular workers, a number of them voluntarily stay in irregular status. A number of them are familiar with the military-corrupted system in their villages which results in their understanding toward the authority practices. Corruption and bribes are parts of the process of migrating and working illegally, which results in a smaller possibility of accessing the grievance mechanisms.

One of the interviewees said, "I know that there are good and bad cops. But, I normally face the bad cops ... holding the ID or not, it is indifferent." The other one said, "I paid 500 baht per month to police. My friend helps me collect this to the police. I then have this pink card (look like an ID card with several stamped marks on the back of the card), which is even better than the ID. I don't have to pay every time that I meet them (the police)". Once they know where to get a job in Bangkok, they would smuggle themselves there by public transportation or in trucks. A few interviewees travelled by

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<sup>75</sup> Note that, besides those groups, there were some of them that simply crossed the border without any ID, working in agricultural sector in Thailand, eg in orange gardens. This group does not have their IDs and is familiar in living in the territory. They are not likely to come to work at the city. Their lifestyle is staying in isolation and they are likely to follow their traditional living family styles and customs. This group can be considered to one of the most hidden groups to inspect due to their nature and area of work.

<sup>76</sup> As mentioned in Chapter 4, this regulation is not applied to all workers working in agricultural, fishery, and domestic work.

<sup>77</sup> Though they have an active working permit, they may not work directly for the employer. Many recruitment agencies work as dispatched companies, as discussed in Section 7.1.1.1. According to the laws, the migrant is still working illegally since they are working for the non-direct employer. Nevertheless, according to the laws, they (the migrant and the employer) will be caught only when a labour inspector finds a flagrant offence. A number of migrants and employers have a very small chance to be arrested and employ various strategies to reduce such chance.

van which took around 7-12 hours per one trip with the transportation fee at 500-1,200 baht, depending on the route, and an additional cost of a “smuggling fee” at 15,000-25,000 baht per trip. There is a regular inspection by the police, in which few of their friends were arrested and deported. According to HRW (2010) in order to avoid arrest, migrants have reported paying bribes of between 6.50–260 USD. Some police moonlight as smugglers themselves (Pearson and Punpuing, 2006).

However, not all of smuggled migrants are lucky in entering into Thailand. The illegal entry is fraught with danger from accidents or incidents. For example, in April 2008, 54 Burmese migrant workers suffocated to death in a container truck while they were being smuggled to the Thai resort island of Phuket (Saw Yan Naing, 2013). This kind of smuggling is conducted by illegal recruitment agencies or human traffickers, not by individual migrant capacities.

On the other hand, migrant workers who come to work in Japan can only come by plane or sea. However, nowadays it is uncommon to see smuggling by boats, since Japan’s mainland is an island and the closest sea ports of other countries are at least 3 hours away<sup>78</sup>. Currently, the most common method of entering Japan is through the international airport. In order to access to Japan, migrant workers need to have passports and purposes of stay. This differs from Thailand, where entry points can be accessed by air, land and sea<sup>79</sup>.

### **7.1.1.3 Grievance-Handing Procedure**

As mentioned previously in Chapter 4, in Thailand, once the migrant workers file their grievances to a labour inspector, the labour inspector will investigate and give the final written order to the employer. Based on the labour Protection Act 1998<sup>80</sup>, If the employer does not comply with the labour inspection officer's written orders, the employer will be fined 5,000-200,000 baht (Approx 150-5,700 USD) or imprisoned for less than 1 year, or both.

However, practically, the response of many wicked employers is to file a grievance against the labour inspector’s order. The grievance will be filed to Labour Court, if there are new evidences; new/actual litigants; the prejudicial labour inspector's orders (or the order is beyond juristic authorities of the labour inspector); and new evidences

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<sup>78</sup> A ferry between Japan and China takes 40-48 hours. Between Japan and Korea takes 3-16 hours, and Japan to Russia takes approx. 5.5 hours.

<sup>79</sup> The majority of low-skilled migrant workers proceed along the major roads and cross at the official checkpoints. Some of low-skilled migrants come via boats, and many of them do not survive. For example, in June 2013, at least 12 Burmese migrant workers drowned off Thailand’s southwestern coast when boats smuggled them from Kawthaung, Burma’s southernmost town in Tenasserim Division, to Ranong Province, Thailand. According to the news, In April, a fourth boat carrying 41 Burmese migrants sank while making the crossing, but Thai authorities spotted the migrants holding on to parts of the vessel and rescued 38; the rest were assume dead. Saw Yan Naing (2013) 12 Burmese Migrant Workers Drown En Route to Thailand (THE IRRAWADDY, June 3, 2013, newspaper).

<sup>80</sup> Labour Protection Acts 1998, Section 139 (3), identifies that in the performance of his or her duties, the Labour Inspection Officer shall have the authority “to issue written orders requiring bosses or employees to comply correctly with this Act” and Section 146, an employer who does not comply with Section 139(3) must be fined not more than twenty thousand baht.

in favour of litigants. The result of the Labour Court can be appealed to the Supreme Court for labour cases.

On the other hand, in Japan, when labour inspectors find violation of labour standard cases at the inspection site, they investigate the case as special judicial police officers, in accordance with the Code of Criminal Procedure, and send the case to the public prosecutor's office. A public prosecutor makes a decision on whether to request for a court trial, and request for a summary order, where the sentences are rendered through the examination of documentary evidence without a public court trial. If it reaches the court, the trials will depend on the court's juristic process. The type of case will be under civil law, considering as an individual conflict case (The Secretariat of the Judicial Reform Council, 1999). In the case of labour conflicts, possible relevant courts are composed of Summary Courts, District Courts, High Courts and the Supreme Court<sup>81</sup>. The Summary Courts handle, in principle, civil cases involving claims which do not exceed 900,000 yen; and criminal cases relating to offences punishable by fines or lighter penalties; and civil conciliations (including some labour cases). The District Court handles the first instance of most types of civil and criminal cases. The High Court handles appeals filed against judgments rendered by the district courts, family courts or summary courts. Lastly, the Supreme Court is the highest and final court that handles appeals filed against judgments rendered by the high courts.

It is found that both systems are exploited by some employers to intentionally bring the case to the Labour Court/Civil Court to extend the period of investigation and delay the final decision. Once the court is open, all relevant parties must engage in a trial and open for a new investigation. The employer normally assigns a representative (a HR in the company or a lawyer), whereas the worker, who normally cannot afford a representative, must be involved in all court trials and the whole investigations. As a result, in a number of cases, workers decide to withdraw without any compensation because of impossibility of taking frequent leave from work (in case that they found a new job), unaffordable travel fees, or long time waiting for the court's final decision. A principal of reconciliation can be applied at any stage. Eventually many workers accept a lower compensation than that previously reconciled by the labour inspector. These practices are actually a common problem for low-skilled workers, regardless of nationality. Migrant workers are even more vulnerable to such situations since their immigration status and the employment status are time-definite conditions.

Furthermore, a number of cases are difficult to find evidences in supporting such cases, especially in small and medium size enterprises. For example, the unpaid overtime payment can be difficult in verifying the precise in/out time without clock in-out system. In order to confirm weak evidence, at least a witness is needed. However, most of the time, it is difficult to urge a workmate involving as a witness in such cases, due to the afraid of difficulties and also engaged in financial needs. Once a migrant worker decides to file a grievance, they must hold on the evidence or the witness, therefore the well-designed grievance mechanisms with no retaliation from the employer to the migrant or the witness in a necessity to the migrant workers' decision.

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<sup>81</sup> The other type of court is the family courts which handle family affairs determinations, conciliations and juvenile delinquency cases.

Retaliation against migrant workers is not uncommon in other countries. For example, in Jordan when the worker demands his rights, the employer commonly files a complaint of theft against the worker. Most of these complaints of theft are false. Eventually, the migrant workers are discharged at the end of the case proceedings (Tamkeen, 2012: 11). In Sri Lanka, a bruised Sri Lankan domestic worker arrived at her embassy in Jordan, saying “*her employers beat her. Police detained the worker but not the employer, who had filed a theft complaint against her*” (Tamkeen, 2012: 10). In support to this prevailing fact, around one fifth of migrant in Japan and one third of migrants in Thailand expressed that they are afraid of problems, which is consistent with the previous study in Thailand<sup>82</sup>. One of the interviewees, who experienced filing a grievance to the Labour Standard Bureau, expressed their feeling during the grievance-handling procedure that they did not know when he would receive the compensation so that he was really stressed and desperately waiting for the end of the process.

#### **7.1.1.4 Accessibility to Labour Governmental Infrastructure**

Resource shortages, including human resource shortages and lack of physical services, are generally found due to budget limitation, especially in Thailand.

In Thailand, there are local offices of the DLPW in every province, at least one office per province. Therefore, in total, there are at least 75 offices in provincial areas and 12 offices in Bangkok. However, there are only 3-8 provincial labour offices with interpreters for migrant workers. A central hotline is available and provided at the centre with 3 languages (Thai, Myanmar, and English<sup>83</sup>) but operate in office working hours only.

In contrast, the number of Labour Standard Offices in Japan, under the Labour Standard Bureau (LSB), is much greater. The offices are located in each of the 47 metropolitan and prefectures of Japan and 343 local offices (and 4 branches). The Japanese governments provide 37 Foreign Workers Consultation Counter Service concerning working conditions in English and other languages at certain dates and specific working hours in a week. In Japan, not only the labour standard offices, but also consultation services on other issues provided by the local government and the NGOs are available. A great extent of consultation services are based on the principle that such services are provided to “foreign residents”, not for “foreign workers”.

Nevertheless, it is noticeable that the hotline services, and the interpreter services provided by the DLPW, as well as the interpreter service of the LSB, are provided in office hours only. Given the fact that how for low-skilled migrant workers in the manufacturing sector and the service sector it is difficult to take reasonable leave to seek consultation on a labour-related issue, opening hours is considered to be one of the areas to be improved.

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<sup>82</sup> According to ILO and ARCM (2013), around 36.8 per cent of migrants who know what to do say they do not what to cause trouble.

<sup>83</sup> As of May 2015, there were three languages available and an on-going process in procurement for Khmer services.

Based on the interviews and the quantitative analysis, however, government assistance is not a significant help for migrant workers who need to access grievance mechanisms, regardless the receiving country. Even among those who know the existence of this system, they are not likely to access through the government channel. Nevertheless, it is evident from the interviews that a sufficient basic infrastructure is a necessary condition for migrant workers, otherwise it will be even more difficult for all low-skilled workers to access help from the government service.

#### **7.1.1.5 Rules and Regulations in Changing Employers or Transferring to Other Workplaces**

Since being employed is a necessary condition of obtaining working visa/working status of migrant workers, the employers' intention to hire migrant workers is functioning as a permission to leave and stay in the country of destination. If a migrant worker faces the problem on rights violations, they normally face difficulty in keeping working with employers. Thus, their employment status has become at risk, though in many cases, the employer is the one who exploits the migrant.

In Thailand, the general work permit of regular migrant workers requires employers' permission to transfer them to another employer. A migrant worker can change or find a new employer without the current employers' permission only when the employer is dead; the migrant's employment is terminated; the current enterprise is close its operation; or the employer violates labour laws/commit physical violence to workers. Migrant workers, who face right violations, can apply in the last case. However, in order to use the last option, two conditions must be arranged. The migrant workers have to file a complaint to the DLPW and the migrant workers must have a new job and a new employer readily to file a request to the DOE. Referencing the last case is also considered to be challenge to migrant workers, given the fact that the migrant workers face multiple challenges in accessing grievance mechanisms, they also have to find a new employer who readily submits the required documents to the DOE and responds as a new employer. An additional process for the MOU migrant requires the migrant's embassy's approval before the migrant changes employers.

In Japan, similarly to the general work permit in Thailand, the migrant workers who hold a general visa can change their employer only with the employer's permission. In case of the migrant workers are fired or unemployed, they will have a one-month duration searching for job. However, there is no clear rule to request for changing employers for technical trainees. Ideally, a technical trainee may request help from an officer of the supervising organisation and report malpractices to the supervising organisation, or request to change to implementing organisation under the supervising organisation. However, practically, the implementing organisations are "advised", not "ordered", by the supervising organisation to follow the minimum labour standards. Cases of changing the implementing organisation are rarely found.

It is clear from the interviews that if the grievance mechanisms allow and facilitate workers to transfer to other workplaces, it will increase the possibility of filing a grievance. The quantitative analysis also reaffirms the strong significance of this factor through "job options availability", as migrants who perceive that they can find a

comparable job easily are 20.7 times more likely to file a grievance. Based on the interviews, there are three key common concerns:

- (i) To avoid conflict and potential retaliation from the employer after filing the grievance. One migrant in Japan explained that they had heard about their work senior, who went to consult in a labour consultation service, about unpaid overtime payment. After he went for that consultation, one of his work colleagues reported this to the employer. Since then, he has received all pending overtime wages, but he has never since been assigned overtime work.
- (ii) Financial reasons. It is common that low-skilled migrant workers do not have or have a very small amount of savings, because of the low wages and the large portion of wages to remit back to home country. Therefore, they need a place to continue working and receiving survival money during investigation process. This risk is becoming a great concern when there is no certain deadline of the finalisation of the investigation process.
- (iii) To maintain their regular status. For those who have a proper work permit, their immigrant status is bound to the employment status. Therefore, as a result of filing a complaint, it is possible for them to encounter a hostile working environment, or even a threat to return to their home country. Some of them decide to file a grievance when they have already returned to the home country. However, in practice, it is difficult and impossible for the investigation process and compensation settlement in Japan. The situation is even worse for irregular migrant workers. If the employers inform the authorities about their presence, they can be detained and deported back to their home country unexpectedly before they file a grievance. Therefore, if they feel that their employer is not satisfied with their work, or they feel insecure, or they are not paid wages at around 1-2 months, they prefer to change their workplace in order to secure their living strategy.

The interviews in this study add to existing evidence publicly available. For example, in 2011, an employment broker in Bangladesh told a Bangladeshi woman that she would be able to earn 160,000 yen (1,330 US dollars) a month as a technical intern in Japan. She arrived in Japan and started working at a clothing plant in Nagasaki Prefecture. In reality, though she worked more than 400 hours a month, she earned only 100,000 yen (The minimum hourly wage in Nagasaki prefecture at that time was 646 yen). After a 40,000 yen deduction for her living and other expenses for the employer, and 50,000 yen deduction for the broker, she was left with only 10,000 yen per month. She lodged a complaint to the management in August 2012. However, company officials drove her to Fukuoka Airport and threatened to send her back to Bangladesh. She has now works at a food manufacturing plant. In spring 2013, she then decided to file a lawsuit against the clothing factory, seeking for redress (Suezaki and Horiguchi, 2014).

## **7.1.2 Social and Political, and Economic Structures**

### **7.1.2.1 Overall Labour Market Environment and Migrant Workers**

Though the number of irregular workers remains unidentified, based on estimates, there are more migrant workers working in low-skilled/low-waged sectors in Thailand than in Japan. The number of irregular migrant workers implies the scale of ordinariness in employing the migrant workers. In Thailand, though the number of migrant workers is officially reported at around 1 million, it is estimated that the actual total number of migrant workers in Thailand is around 3-4 million. The estimated share of low-skilled migrant workers to total employed people in Thailand is around 7.5-10 per cent. While Japan has the low- to semi-skilled migrant workers mostly coming through trainee schemes, over-stayers, or a student who comes to serve an actual objective for working, the total migrant population is around 2 million people. The estimated number of low-skilled workers as shown in Chapter 5 represents around 0.5 million workers in Japan<sup>84</sup>. The estimated share of low-skilled migrant workers to total employed persons in Japan is approximately 0.8-1 per cent.

### **7.1.2.2 Public Attitudes Toward Low-Skilled Migrant Workers**

Public attitude may translate into actions and behaviours that either negatively or positively impact on groups in society. It results in a social and working environment for migrant workers formed both directly and indirectly. The attitude affects the overall accessibility to the grievance mechanisms, the employers' provision of working conditions and throughout the grievance-handing mechanisms. Key typical concern on anti-migrant policy is about "possible job rivals of migrant workers". Some locals perceive threats to their living environments including livelihoods, religion, or culture coming from influxes of foreign labourers, resulting in discrimination practices. It is understandable to such concerns based on national and traditional points of views; however, such perceived threats conflict with the human rights value and trends of globalisation.

Like many countries, migrant workers in both Thailand and Japan are facing a somewhat negative attitude against them. In Thailand, Tunon and Baruah (2012) indicate that the proportion of respondents' support for migrant workers in Thailand<sup>85</sup> is 24 per cent, suggesting that a high proportion opposes them. Though a different question is used to observe the public attitude toward migrant workers in Japan, the high opposing perception is similar to that of in Thailand. Japanese attitudes toward illegal foreigners were mixed, with an increasing association of irregular migrants with criminality and a rise in the perception of them as victims deprived of basic rights (Shipper, 2005). Green and Kadoya (2013) utilised data to test Japanese public opinion toward immigration using the question if the respondent is "for" or "against" an increase in the number of foreigners in his or her community. The perception of immigrants in Japan is still generally negative, as 37 per cent of the respondents were

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<sup>84</sup> As of Jan. 1 2015, there were 60,007 over-stayers in Japan (Tomohiro, 2015).

<sup>85</sup> While that of in Malaysia, Singapore and Korea are 19, 39 and 50 respectively. In Singapore and Malaysia, the more highly educated people are, the more supportive they are of migrant workers.

“for” an increase in the number of foreign residents. According to their study, those with higher levels of English conversation skills are significantly more favourable to having more foreign residents in their communities. In addition, a bigger city tends to have greater numbers of immigrants and more favourably disposed to them in this survey. The public attitude also impacts on the law enforcement, especially where authorities apply personal arbitration or with a weak monitoring system.

### **7.1.2.3 Labour Market Flexibility and Job Options Availability**

Labour market flexibility means the ability of the labour market to adapt and respond to change. A narrow definition means the degree to which employment and/or working time or wages adjust to economic changes (Cazes and Nesporova, 2004:25). A broader definition is the ability to adapt and respond to change which includes employment flexibility, wage flexibility, internal or functional flexibility and supply side flexibility (Rodgers, 2007:2). Labour market flexibility means the perceived job options availability from the view of migrant workers. The possibility of finding a job is often mentioned during the interviews as a key alternative to avoiding workplace conflicts, earn survival money, and maintain the regular status, as mentioned in Section 7.1.1.5. Migrants who perceive that they can find a comparable job easily are 20.7 times more likely to file a grievance.

This section aims to elaborate on the labour market flexibility under the economic and labour market structure. Employers normally have greater economic power over the low-skilled workers: the wage, internal and functional flexibility are determined by the employers. It must be noted again that, unlike non-migrants, migrant workers’ legal status is linked to an active employment status; otherwise they will either gain an irregular status or leave the country.

#### **1) Unemployment Rate**

Unemployment rates reflect the overall difficulties of the job availability. It is clear from the statistics that finding a job in Thailand is likely to be easier than finding one in Japan. In February 2015, the unemployment rate in Thailand was only 0.82 per cent (NSO, 2015), whereas in Japan it was 3.5 per cent. These figures are in accordance with the results of the interviews. In Thailand, 33 per cent of migrant workers indicated that it was easy to find a new job. On the other hand, only 16 per cent of migrant workers in Japan indicated that it was easy to find a comparable job to their current one.

#### **2) Size of Informal Sector**

Since migrant workers are likely to be employed by enterprises run by employers who already hire migrants and/or employers with the same nationality and in small and medium size/informal business. From 1999 to 2007, the average share of the informal economy in Thailand<sup>86</sup> was 50.6 per cent, while the size of that in Japan was 11 per cent (Schneider, Buehn and Montenegro, 2010). The large size of the informal sector

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<sup>86</sup> The country with the high share of the informal sector and the low capita income is likely to be characterized by a low unemployment rate.

and number of the SME enterprises facilitate the possibility of finding underground jobs for migrant workers, in particular those who are irregular workers.

#### **7.1.2.4 Network and Initial Consultation**

Social partners (NGOs, NPOs, CBOs) and religious places play a great role in providing consultation and accessibility to the grievance mechanisms.

##### **1) Consultation Availability and Source of Funding**

In Thailand, the number of active NGOs regarding migrant workers is limited to around 5-8 organisations, excluding CBOs and religious places. There is little or no financial support from the government for local NGOs. As a result, the NGOs can only arrange outreach activities occasionally, and these are generally not sustainable. There is a high turnover rate of NGO staff due to low income and the low job security.

In Japan, on the other hand, the number of NGOs regarding migrant workers, composing of Christian and Civic organisations, is around 48 organisations. The activities are more sustainable in terms of funding since a number of them are government-funded. For example, International Communication Committees, and many NPOs in each prefecture, are designated and annually funded by the Ministry of Internal Affairs and Communications (MIC). It also provides mobile units for legal consultations once a month in rotation and in various areas. In addition, local governments, including metropolitan and prefecture's consulting services, provide such services on top of the services delivered by the NGOs.

##### **2) Outreach and Accessibility to Migrant Workers Through Supporting Mechanisms**

Only a limited number of migrant workers in Thailand have ever visited of NGOs for foreign workers (4%). One of the problems is that if a campaign is conducted for migrant workers' rights, the public understanding is somehow against such activities. Therefore, most of the time, the outreach activities conducted by the NGOs has to do in the migrant communities under health themes, or as a cultural gathering, which are more acceptable to locals than events on labour issues or labour rights. However, the migrant workers are organising themselves as communities and the NGOs can identify them. The outreach activities are key to enlightening migrant workers about their rights and helping them to know where to get initial consultations or support throughout the process.

The outreach activities in Japan are more widely free mobile consultations and outreach activities provided by NGOs organised and supported by ICC. Nevertheless, only 6.7 per cent of migrant workers in Japan have ever visited NGOs for foreign workers, although the percentage is higher than that of in Thailand.

## **7.2 Agency Capabilities**

The concept of the agency is composed of individual asset and capabilities, and collective asset and capabilities.

### **7.2.1 Individual Asset and Capabilities**

Assets refer to material assets that enable migrant workers to endure possible shock and expand their possible choices. Capabilities, according to the empowerment theory, are inherent in individuals and enable individuals to use their assets in different ways to increase their well-being (Worldbank, 2005: 10). This section reveals the migrants' characteristics on the comparative perspective.

#### **7.2.1.1 Work Permit**

About 63 per cent of migrant workers in Thailand hold work permits. The proper work permit means that they are legally recognised in their working status. Those who do not hold the proper work permits are at risk of being arrested by immigration officers, police, and other government agencies.

According to the previous literature, the percentage of people holding proper work permits in the border and territory areas might be less than 10 per cent. None of them have a written employment contract. It is in line with the findings of Waronwant (2012), which indicate that employment contracts are often non-existent. However, migrant workers who produce goods for Western brands may sign a contract, but they are not given a copy of their contracts, nor are they informed of the company's code of conduct.

While in Japan, signing a contract is more common. It was found that 92 per cent of migrant workers hold a valid visa for work. According to the interviews in Japan, many interviewees noticed that for the permanent residents it was more likely they would get to sign an employment contract if they were at a larger business.

#### **7.2.1.2 Employment Contract**

Not many hold a written employment contract with the current employers in Thailand, based on empirical studies and these interviews, whilst the majority of migrant workers in Japan have written employment contracts (81.3 %). Since migrant workers are normally working in small-sized enterprises and law-exemption sectors (ie agricultural, fishery, domestic work), an employment contract will help them understand their basic rights, responsibilities between employees and employers, and working conditions. Without an employment contract, workers will not know about their rights. It is also difficult to testify any agreed terms when problems arise.

#### **7.2.1.3 Education**

Migrant workers in both countries are bound by their familial responsibilities. Their remittance helps support their family's basic needs. If the country of origin lacks

educational opportunities and is characterised by significant income inequality, the average years of schooling of a poor family is normally low. In Thailand, some migrant workers started working full time at 13 years old, without educational opportunities. While in Japan, some started working full time at 18 years old. The average years of schooling are up to high school/diploma level. The minimum education is usually at high school graduate level.

It is noticeable that migrant workers in Thailand are more likely to have fair speaking skills in Thai (71%), while only minority of the migrant workers in Japan can speak Japanese well. The educational level is not directly related to the language proficiency. However, an additional year of schooling helps migrant workers to find important information when needed. According to the quantitative analysis, a migrant with an additional year of schooling is 28 per cent more likely to know what to do. Furthermore, once they know what to do, a migrant with an additional year of schooling is 43.8 per cent more likely to take action in response to labour-related problems.

### **7.2.2 Collective Asset and Capabilities**

Collective capability is the ability of a group to overcome marginalisation and social and psychological barriers by organising and mobilising their individual capabilities and express and represent themselves in a unified voice. In 2012 Q4, the ratio of labour unions to total establishment in Thailand is significantly low at only 0.4 per cent (Ministry of Labour, Labour Indicators, 2013)<sup>87</sup>. While in 2012, the ratio of wage and salary earners that are trade union members to the total number of wage and salary earners in Japan was at 18 per cent<sup>88</sup>. The small ratio of unionisation in Thailand simply pointed out the weak unionisation in Thailand.

In Japan, trade unions (including a form of advocacy networks) play crucial roles in helping interns as regularly found on the news. The union effectively helps by providing trainees consultations, and shelters also supports throughout the grievance-handling process. For example, a Chinese intern had developed an uncommon occupational disease called Kienbock's disease. With the support of the Zentoitsu Workers Union, he could apply for workers' compensation and claimed for his unpaid wages (Godoy, 2010). Another case was reported in 2013, in which the Chinese interns at a distribution company in Gifu 13 did not receive their regular wages for 16 months. An official of Gifu Ippan Labour Union helped negotiation between the employer and the interns (Foster, 2013)<sup>89</sup>. On 31 October 2012, a Japanese union organiser helped three trainees from Kameda, a family-owned apparel factory, and drove them to a

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<sup>87</sup> The original table is the ratio of labour unions to total establishment (Table 56). The total labour union was 1,411, and the total number of establishment was 349,677.

<sup>88</sup> Trade union density corresponds to the ratio of wage and salary earners that are trade union members, divided by the total number of wage and salary earners. The average figure in OECD countries in 2012 was 17.1 per cent. However, it should be noted that the number of unionisation has been continuously decreasing. As in Japan in 1999, the ratio was 22.2 and the average ratio of OECD countries was 20.8.

<sup>89</sup> Though the result was not successful, as the employers gave the interns three choices: return to China; drop their complaints; or apologize and stay on. The interns chose to go home. Eventually, the employer paid them each 750,000 yen, which is just enough to cover the broker fee at the airport.

convenience store and then to the local labour standards office. They had worked at Kameda since 2009. They received around 500 yen per hour, while the minimum wage at that time was 691 yen. The interns claimed that Kameda forced them to work excessive hours at below minimum wage. In 2011, their busiest year, the women were working 16 hours a day, six days a week, with 15 minutes for lunch. Working without knowing how to escape until around August 2012, the interns reached out to the Japanese union organiser. He advised that they would not be able to continue to work after they filed their complaint. In addition, he recommended that they keep working and collecting evidence. Takahara then took them to the local labour standards office to testify about their experience at the factory. In late 2012, Kameda agreed to pay unpaid wages to these three interns (Harney and Slodkowski, 2014).

According to the law, there is no barrier when it comes to joining the trade union. Migrant workers who are full time workers can be members of a labour union. However, in practice, most migrant workers are working in the small establishments without the benefit of collective bargaining or union practices. Therefore, the possibility to join an enterprise-level union is limited. A more likely possibility of migrant workers is to join a general union (or a sectorial union).

In addition, in Thailand, a number of labour unions regulations demand a potential candidate member to “be a worker of that company”, which does not include migrant workers who are sent from dispatched companies to join the union. Furthermore, as mentioned in Chapter 1, Thailand has not yet ratified ILO C87 and ILO C98, which allow freedom of association and the right to organise. As a consequence, migrant workers cannot organise their own union-type groups legally.

Based on the fact that currently, migrant workers are facing challenges in participating labour union, this study asked if a migrant would want to be a member of any association/group. The result is clear that in Thailand, only 2.7 per cent belongs to any type of group, yet the share wishing to join a member of any association is at 35 per cent. On the other hand, none of migrant workers in Japan have joined any group, but they wish to participate at 14.7 per cent. The key benefit of participation is for information sharing and a source of job opportunities.

### **7.3 Summary**

This Chapter provides a comparative analysis of factors affecting migrant workers, using qualitative and quantitative analysis and using the theory of empowerment to promote the labour rights in practices through grievance mechanisms.

The opportunity structure describes the institutional climate and the social and political as well as economic structure. Firstly, the laws and regulations related to low-skilled workers of both countries outline the differences in low-skilled migrant management. Thailand has organised multiple initiatives to regulate migrant workers since the 1990s. Japan does not allow visas for low-skilled workers, but they come through trainee programmes.

Nevertheless, in Thailand, there is a key challenge in law enforcement due to confusion of the law enforcement and structural problems. Thailand's Corruption Perceptions Index was rated at 85 out of 175 countries. In Japan, the Corruption Perceptions Index was rated at range 15. Based on the interviews, the share of migrant workers working without a proper work permit is much greater than that of Japan. The share can be used as an indicator of the effectiveness of law enforcement.

Migrant workers are facing difficulties in accessing grievance mechanisms due to the requirement of employment and immigration status and the legal procedure. Since the valid immigration status requires an active employment status, once a migrant worker files a grievance, there is a high risk of being terminated or retaliated on by their employers. Currently, there are some channels allowing migrant workers to change employers. In Thailand, a migrant worker can change an employer only with an employers' permission or in the most necessary of circumstance, namely if the employer dies, the migrant is terminated, the business goes bankrupt, the employer violates labour laws or commits violence against that migrant worker. Given the fact that the nature of labour laws violation is difficult to prove, especially in small establishments, migrant workers are facing multiple difficulties in accessing grievance mechanisms. While there is a large share of informal labour market available to them, a number of migrant workers decide to flee away and become irregular workers, which make them become more vulnerable.

In Japan, the changing of employers is allowed only with the employers' permission. If a migrant has a common working visa, he can be unemployed and search for a job within one-month duration. However, the situation is different for technical trainees. There is no clear rule about changing employers. It is possible, if they are employed by a Supervising Organisation, they may be transferred to other individual members (an Implementing Organisation). However, in practice, a Supervising Organisation will make a recommendation to the Implementing Organisation, which lacks regulatory power. In addition, some Supervising Organisations are also Implementing Organisations. This practice involves poor monitoring, and conflicts of interest.

It is clear that networking is important to migrant workers as a source of information. Besides migrants' friends, social partners and religious places are good sources of information. In Thailand, the number of active NGOs on migrant workers is less than 10. On the other hand, in association with local government's services, the social partners in Japan are more extensive and a number of them are supported by government budgets. Nevertheless, in both countries, only a limited number of migrant workers have visited such services. Migrant workers depend largely on their acquaintances. However, based on the interviews, advice from these organisations mainly seems to be to find other jobs rather than find solutions; some advice on processes is sometimes explained wrongly; and some advice is the lessons learnt on the failure in accessing the grievance mechanism. Therefore, it is important to ensure that migrant workers can access to accurate and updated information.

Given the fact that there are some legal constraints in transferring to other workplaces, the socio-economic environment in Thailand facilitates migrant workers in Thailand to find other jobs more easily than those in Japan. Unlike in Japan, the economic structure in Thailand is embedded by a large informal sector, which impacts largely in searching for a job in Thailand without the need of a work permit.

One of the main factors that greatly increases the probability of accessing grievance mechanism is years of schooling. The reason is straightforward as the years of schooling potentially increases a worker's ability to understand information and access it when needed. In addition, the percentage of workforce unionisation is low reflecting the power of employers over workers in general. There is also a practical impediment for migrant workers to be a member of the union, though the results of the interviews suggest that a number of them want to join a group/organisations, in particular training groups.

The following chapter provides a summary and recommendations based on the analytical results of this study.

## CHAPTER 8

### Conclusion and Recommendations

The principal purposes of this study are to empower migrant workers in accessing grievance mechanisms. This is in order to promote labour rights in practice by enabling migrant workers working to meet the minimum of national working standards. Related to that effort, it is necessary to understand low-skilled migrants' working conditions, their problems at work, and linkages to grievance mechanisms. It is also important to compare migrants' points of view in accessing grievance mechanisms and the factors affecting migrant workers' decisions to take any actions in response to labour rights violations. This chapter concludes the previous discussion and proposes recommendations from the result of the analysis.

#### 8.1 Conclusion

The demand for low-skilled workers is escalating in developed countries, whereas the demand for low-skilled workers in developing countries is increasing in every economic sector. However, a number of low-skilled migrant workers around the world were found facing human rights abuses, exploitation, and living in very vulnerable situations. Low-skilled migrant workers are widely recognised in their inferior working conditions and their multiple disadvantages. Their employment is likely to be found through a network, which mostly places workers in low productive sectors, resulting in their low wages. A number of low-skilled migrant workers are likely to live and spend their lives in poverty and to be exposed to less formal work arrangements.

Effective grievance mechanisms play a crucial role in labour rights protection, since grievance mechanisms offer an opportunity for rights-violated migrant workers to be compensated, as well as helping to prevent violations occurring in the first place. However, the number of empirical studies on migrant workers and the accessibility of grievance mechanisms is limited. Previous literature empirically confirms that migrant workers have limited accessibility to the grievance mechanisms. Only the study of ILO and ARCM (2013) empirically quantified an actual accessible rate of migrant workers to the grievance mechanisms in the country of destination. Even among forced labourers, the study indicated that less than 10 per cent of workers had accessed such mechanisms.

The key challenge is to find a process to strengthen the migrants' power to claim their rights and to challenge marginalisation and exclusion. Relatively little is still known about factors affecting migrant workers' decisions to access grievance mechanisms. There is no such analysis regarding migrants' grievance mechanisms in different working environments and in different countries of destination.

Therefore, the key objectives are to identify factors affecting migrant workers' decisions to take any actions in response to labour rights' violations and problems at

work to ensure the actual accessibility to the labour rights. This is to ensure practical labour rights at the national minimum standards. It must be noted that all migrant workers must comply with the national laws or regulations for the effective detection of irregular migrant workers, yet they should still benefit from basic human and labour rights. In order to achieve the objectives, this study observes the migrant workers' working conditions and investigates legal and socio-economic frameworks that impact on migrant workers' decisions to access available grievance mechanisms.

In response to those gaps and challenges, this study employs the theory of the empowerment to assess how to empower migrant workers to access grievance mechanisms. In order to expand assets and capabilities to more options and take control of lives' options, the theory of empowerment is composed of four building blocks: institutional climate, social and political structures, and individual and collective capabilities. While the opportunity structure shapes the rules of the game, the agents' capabilities enable migrant workers to increase their well-being and choose the best choice according to their available resources and assets. The migrants can be empowered through collective assets and capabilities. The opportunity structure can be roughly defined as structural factors in accessing grievance mechanism, whereas the agency factor reflects individual influences that determine the accessibility of grievance mechanisms.

The contribution of this study is to fill the literature gap by investigate migrants' actual accessibility to the grievance mechanisms in developed and developing countries. The expected contribution is to highlight key factors regarding affecting the accessibility to grievance mechanisms using qualitative and quantitative approaches. To my knowledge, this study is the first study on this issue that employs quantitative analysis that leads to effective and prioritised activity planning in promoting labour rights under the resource limitations.

A total of 150 migrant workers in Thailand and in Japan were interviewed. In general, working conditions of migrant workers in Japan are somewhat better than migrant workers in Thailand. In contrast to the situation in Thailand, most migrants possess proper working permits and written employment contracts. There is no forced labour in Japan, yet bad practice at work and discrimination is found in both countries. Migrant workers tend to work overtime. Longer working hours are found among migrant workers, especially those who are domestic workers. The average working hours are normally longer than the legal standards, without overtime payment. The long-hour unpaid wage is normally found in small/ medium establishments where there is no explicit evidence in starting/end working time. Still, the large number of sufferers does not act when they are facing labour problems.

Evidently, both migrants in Thailand and Japan face bad practices and harassment at work, especially in Thailand. They face verbal abuse, power harassment, threats and humiliation, payment deductions due to mistakes and delayed payment. Discrimination is also prevailing in both countries, including age, religious and sexual-orientation discrimination. Interestingly, the primary discrimination in Thailand is racial discrimination, where in Japan it is gender discrimination. Certain types of discriminations are incurred by all workers due to the common management style in

the countries of destination and the nature of low-skilled workers' preference. However, a limitation of measuring discrimination is that discrimination may arise due to the specific qualifications, or certain professional experiences, or the replication of the major population's cultural assumptions, not solely at work. To improve the discrimination problems, there is a need for a public understanding of discrimination and reducing stigmatisation.

Migrants also have limited rights when it comes to unionisation. They are often weakly represented by trade unions. In a number of countries, there are indications that suggest workers' unionisation is curtailed in sectors where migrant workers are located<sup>90</sup>. The migrant workers in this study say that they opt to join any group at 14 and 34 per cent in Japan and Thailand, respectively. Based on the interviews, a number of trainings are identified as being needed. The training can be employed as a gathering strategy ensuring the accessibility to information. The patterns of training needs are similar in both countries, signifying the common needs of migrant workers. The first priority is training on labour laws (and visa-related concerns), followed by health and local languages.

The result of the study emphasises that regardless the countries of destination or their working conditions, only a small number of migrant workers are actually accessible to the grievance mechanisms. In Thailand the share of such workers is 12 per cent and that in Japan is 21.3 per cent. The key reasons vary. The migrant workers in Japan believe that though they file a grievance, the filing will make no change after all. While, the main reason of migrant workers in Thailand is the dearth of knowledge of the grievance mechanisms. Another significant reason is that they are afraid of problems that might be incurred by the employers.

Regarding the quantitative analysis, binary models are used to capture and support the qualitative analysis. Factors affecting migrants' decisions to access grievance mechanism are estimated through the MLM, the SLM and the CLM. These three models confirm a certain set of factors.

Under the opportunity structure, the result of the nested structural analysis (the SLM and the CLM) is fitting with the results of the MLM, that the government infrastructure does not significantly influence migrant workers to file a grievance, though it is necessary once they decide to file one. In comparative perspectives, migrant workers working in Japan, and those who working in the service sector, are more likely to know what to do when they face labour-related problems. However, the condition of knowledge does not affect their decisions to take action.

Noticeably, the quantitative analysis and the interviews confirm that having a wider network enables migrant workers to understand how to deal with labour problems. Nevertheless, the network factor plays a great role in reducing the chances in taking any action upon labour problems, since the network usually supports seeking another job and adopts the "leave-it-behind" strategy. The quantitative analysis suggests that

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<sup>90</sup> For example in Denmark, Hungary, Poland and the UK, migrant workers tend to concentrate in sectors with a less than average union density or in only some specific sectors (Eurofound, 2007).

migrant workers with consultation channels are 6.4 times more likely to know what to do, but of these 85 per cent less likely to take action. In addition, most of the time, the information sharing is unclear and is discussed in a way to complain about their fate, or seeking other jobs, rather than seeking redress. It highlights the fact that having consultation channels is an important factor, enlightening migrant workers' understanding to solve labour-related problems. However, how the information is communicated is also necessary to ensure better accessibility to the grievance mechanisms.

Migrants with job options availability are 78 per cent less likely to know where to file a grievance, but once they know, they are 20.7 times high likely to take action. The job options availability, particularly during the grievance-handling procedure, expands survival choices for a migrant worker. Based on the interviews, the first reason is to avoid conflict and potential retaliation from the employer after filing the grievance. Once the workers file a grievance, they are likely to avoid confrontation with their employer and thus seeking employment elsewhere helps them feel comfortable during the investigation process. The second reason is financial. This is a great concern when there is no certain period of time that the investigation will run for until completion. The longer the procedure means the worse situation for migrants themselves and their family in their home countries. Above all, legal status in staying in the country of destination is bound to their employment status. Failing to hold onto the employed status means losing legal immigrant status to stay and live in the country. In the worse cases, they may be pressured to withdraw the case, eventually losing the job and having to return to the home country unwillingly. Some of them decide to file a grievance when they have already returned to the home country. However, in practice, it is difficult for the investigation process and compensation settlements. The situation is even worse among irregular migrant workers. If the employer informs the authorities about their presence, they can be detained and deported back to their home country directly.

Obviously, positive significant effects originated by individual characteristics are holding a proper work permit and years of schooling. Holding a proper work permit is supported by the fact that those who do not hold a proper work permit are unable to obtain a written employment contract and thus it is difficult to file a complaint to the verbal agreed terms and working conditions, unless they have a witness or a significant piece of evidence. On the other hand, an additional year of schooling increases both the probability to know what to do and the probability of taking action. This aspect highlights the importance of the socio-economic factor in the country of origin that impact on the migrants' decision in the country of destination.

Therefore, in order to empower migrant workers, the scheme to promote labour rights should emphasise labour market analyses and widen their job options, especially when their rights are violated. The job options should be supported and included in a part of an effective grievance mechanism. In this regard, the outreach activities and Information and Communication Technology are taking critical roles in promoting knowledge on labour rights, visualising successful case studies in a simple format. Furthermore, at the same time, the ICT widens their job options in countries of destination and their home country through the easy and timely accessibility, and

elevating their skills to ensure better job options and a better individual bargaining power with their employers if their labour rights are violated. From the interviews, the majority of migrant workers use smartphones, resulting in an opportunity for knowledge sharing and information. However, there are certain technical problems with this, for example, font characteristics using different scripts or languages, and learning how to use the phone to access information in the first place. This is an issue especially in Thailand, where a number of migrants are illiterate. The study also suggests that migrant workers believe that they can develop themselves through self-development, group formation, better information accessibility, and human capital accumulation through skills and language trainings.

## **8.2 Recommendations**

Based on this study, two sets of recommendations are proposed. The first set (Section 8.2.1) is overall recommendations on immigration and migrant workers' employment policies and grievance mechanisms. The recommendations proposed in this section are considered necessary conditions to ensure the accessibility to grievance mechanisms. The next section (Section 8.2.2) suggests specific recommendations to empower migrant workers in accessing grievance mechanisms. These specific recommendations are considered sufficient conditions to empower migrant workers in ensuring an effective grievance mechanism.

### **8.2.1 Overall Policy Recommendations**

#### **8.2.1.1 Promoting Understanding in Employing Migrant Workers and Their Rights**

Understanding of the principles of human rights at work should be promoted, as international principals posit all migrant workers are human and subject to international human rights and labour rights standard. Otherwise, it is possible that certain employers will find an inducement to seek migrants in irregular status in order to reap benefits from them. Therefore, right and clear understandings about these principles must be disseminated to all stakeholders and promote accurate understandings toward migrant workers' rights.

Based on the study, various types and levels of the discrimination and harassment at work are prevailing. The levels of discrimination and harassment are due to working sectors and working environment of receiving countries. However, a major reason is raised by unclear understanding regarding equal human rights and national laws. In addition, there are wage gaps between migrants and non-migrants. In Thailand, many migrant workers understand, through their employers, that their wages are lower than Thais because they are not covered by Thai laws. It is also possible that some employers actually do not know the human rights and labour rights principle, but they give wages at their perceived-market wage rate. Therefore, in order to leverage the working conditions of migrant workers, measures to improve overall working environment of all migrants and non-migrants must be applied. Together with those measures, the public understanding is essential to a fair and human rights-based society.

Therefore, it must be clear that all migrant workers must comply with the national laws or regulations for the effective detection or deportation of being irregular migrant workers, yet they are subject to equality on fundamental human rights and individual properties. Adequate and effective measures to eliminate employment in an irregular situation are also encouraged. The existing committee regarding migration policy in each country should ensure that such measures do not diminish that human and labour rights and do not establish a sphere of discrimination in the society.

Moreover, in particularly in Thailand, the policy on accepting migrant workers should be united into one simple system and with a long-term plan. This is to ensure that all relevant parties will understand a single scheme.

### **8.2.1.2 Strengthening Law Enforcement/Corruption Elimination**

Clearly, the immigration and employment of migrant workers in Thailand has been challenged by law enforcement issues. The results of the interviews indicate that many migrant workers do not believe in law implementation, as many of them used to pay bribe to the police. In some cases, employers often avoid paying migrants their rightful wages by calling police and reporting their own undocumented migrant workers. They are normally deported informally and quick leave them no option in filing any grievance (OHCHR, 2011: 6). These cases are normally associated with the accomplice between the employ and the police. Therefore, governments should work towards leveraging law enforcement and the elimination of corruption in their law enforcement services.

Moreover, this recommendation also links to the elimination of exploited labour brokers and malicious recruitment agencies. These agents are highly linked to corruption issues. For example, in Nepal, Manandhar and Adhikar (2010) suggested that the recruitment process of migrant workers has actually become a ground for corruption due to over-centralisation and the inefficiency of the processes. In Thailand, some malpractices relate to, for example, how politicians and government officials take collections from recruitment agencies in exchange for political favours (ILO and ARCM, 2013b: 57). It leads to distrust from many migrant workers in the accountability and transparency of the grievance-handling procedure.

### **8.2.1.3 Promoting of Understanding in Developing Feedback Systems and Lodging a Grievance**

In response to such situations, effective grievance mechanisms play a crucial role in labour rights protection. Grievance mechanisms are tools to express workers' concerns regarding possible misconduct at work and offer an opportunity for rights-violated migrant workers to be redressed. Therefore, the effective grievance mechanisms work as preventive measures of rights violations as well as promoting a more stable workforce and more preferable work climate.

However, based on culture and norms, Eastern people do not prefer to engage in conflict and complaints. Unlike Western individuals, East Asians value flexibility and make dispositional attributions (Norenzayan *et al.*, 1999). Therefore, the benefits in

accessing grievance mechanisms must be promoted to both key players: workers and employers.

Workers must understand that exercising their rights is not bad practice, especially in the case of working too-long hours or unpaid overtime. This perception is reflecting migrants' viewpoints to those who are filing a grievance. However, such practices are against the working standard laws and workers should be encouraged to speak up in accordance with their rights.

On the employer side, two types of employers can be found. The first type is an employer who does not really know that such practices are rights violation. This group is likely to be a small business, or a family business. The other group is an employer who intentionally disregards working standard laws. Psychologically, supervisors of low-skilled workers do not prefer to be asked by their workers about working conditions, or to assist in filing an official grievance. Therefore, promoting the right understanding of working standards and the existence of grievance mechanisms should be clearly undertaken to ensure the rights protection.

For a small establishment, where an owner/employer does not know about the labour standards, a well-designed dissemination measure is key to promoting labour-rights standards, along with regular advice/close supervision provided by local labour inspectors. The dissemination activities should be implemented with a measure to formalise the small establishment. This measure will also help the small establishment to ensure that they will be well protected and promote their business as a place of decent and moral principles. A formal establishment is also more likely to comply with national legal standards or have a systematic feedback/management system in the establishment. On the other hand, for a larger establishment, a representative body is an important tool to voice workers' concern. However, the share of workers who are unionised, in particularly in Thailand, is relatively low. The building of an organisation of unions or representatives should be promoted.

#### **8.2.1.4 Addressing Necessary Infrastructures Provided by Government**

Though according to the quantitative analysis, government assistance does not influence the migrant decisions in taking actions, it is clear from the interviews that the accessibility to government infrastructure is a necessary condition in ensuring the accessibility of grievance mechanism throughout the grievance handling process.

##### **1) Addressing Language Barriers**

Based on the interviews, resource shortages and particularly language barriers, are key obstacles blocking the accessibility of government mechanisms, in particular in Thailand, where the number of offices, human resources and interpreters is smaller than that of Japan.

However, in both countries when lodging a grievance, migrant workers who cannot communicate in local languages need a friend to help them communicate with labour

offices. For a temporary migrant worker, it is difficult for him to find a local-language-speaking workmate to join him. This is due to either similar low level of language proficiency among low-skilled migrant workers. In addition, typically migrants' friends try to avoid difficulties that may be incurred if the employers know about their support to file a grievance. Therefore, complainants must be accessible to qualified translation services at free of charge. The best scenarios are to employ interpreters at every provincial office. The number of the interpreters aims to be proportionate to the number of migrants in the province. At least, there should be a nationwide call centre for the top 10 majorities of migrants in every language operated by national governors.

Given that the resource limitation is an issue in the developing countries, priorities should be given to ensure the most effective measures at an effective cost. A resource pool can be managed and accessible through technologies, using a cost-effectiveness approach. For example, internet and virtual technology can be utilised in accessing to an interpreter pool at the centre. However, it must be kept in mind that the most preferable scenario is an availability of interpreters in every labour office, which should be taken as a long-term goal.

It is noteworthy that, based on the interviews, language barriers also found elsewhere, for example, in the health services. Relevant governmental departments/offices should discuss working toward a language barrier-free system for all migrant workers, in particular regarding occupational health and safety.

## **2) Harmonising with Migrants' Working Characteristics**

Regardless of any priorities and management styles, the consultation service should be available to migrant workers, through reflecting and harmonising with their working characteristics. Consultation services should consider working in non-office hours, and/or weekends. A hotline should be available 24 hours or at least for some hours after normal working hours, ensuring that migrant workers (and non-migrant workers) have access to such services.

## **3) Public-Public Partnerships or Cooperation with Social Partners**

According to the results of the study, the existence of governmental services is necessary, but not currently sufficient. Therefore, such infrastructures must be complemented by outreach activities provided by supporting mechanisms (eg NGOs/CBOs/trade unions and other relevant organizations) to ensure an effective approach (There are additional specific recommendations in Section 8.2.2.2).

The long-term employment of interpreters, and dissemination activities with regular budgets from the government to social partners (NGOs/CBOs/trade unions and other relevant organizations)' funding should be considered. Since labour complaints are complicated and require a certain period of time to comprehend the issues, short-term employment reduces the expectation of interpreters and thus results in a higher turnover rate, which is a significant problem in Thailand. However, it is highly

recommended to gather the list of social partners (NGOs/CBOs/trade unions and other relevant organizations), establishing a paralegal on labour (and human) rights in every province through public-public partnerships.

Besides social partners in an organized form, an informal network is the most reliable channel to migrant workers. Migrants are more likely to follow advice of long-term residents, especially, in the case of Japan Thai women with the Japanese spouse, and Thai enterprise owners. Therefore, capacity building to such group is recommended.

#### **4) Ensuring Accessibility of Consultation Services Provided by the Migrants' Embassy (Country of Origin)**

Based on the interviews, the support from the country of destination is important to migrant workers. Therefore, a consultation and supportive service to ensure the accessibility to the grievance mechanism throughout the process should be made available to the migrant worker in the countries of destination. The labour section, conducted through labour attachés and consulates of the sending countries, should play an essential role to support them. Such support covers from the beginning of consultation for possible redress to the completion of the grievance procedure.

The collaboration between country of origin and the country of destination should be made available to facilitate fair practices throughout the grievance-handling procedure. The collaboration should include joint on-site inspections and discussions between labour sections of sending and receiving countries to ensure protective measurements and anti-retaliation to migrant workers and the witnesses.

The labour attachés and consulates of the sending countries also play a crucial role in being a representative for migrant workers as a part of referral mechanisms. It is also recommended that the labour attachés and consulates of the sending countries should work closely with social partners for interpretation, dissemination, outreach activities, legal consultations, as well as immediate assistances to enabling migrant workers to access to grievance mechanisms at a timely and effective manner.

#### **8.2.1.5 Ensuring a Timely, Predictable Period of time, and Reliable Grievance Handling Procedure with No Retaliation**

Thailand and Japan use international labour standard practices in their labour investigations. There are two types of grievances on working condition through labour inspectors: regular inspection and inspection based on reports filed by workers, which may be either a case for compensation/redress or a case for overall inspection.

##### **1) Cases for Compensation/Money-Related Cases**

In the case of a grievance filed by a worker for compensation, the investigation process by a labour inspector in both countries is similar. But once the case is finalised by the labour inspector, there is a channel to carry on the case to the next stage: the court. As

discussed previously, some employers normally remain absent from the court and also assign a representative, endlessly drawing out the process. The worker, who is normally unable to afford a representative, must be involved in the entire process, investigation and trials. In a number of cases, workers decide to withdraw because of either the impossibility of take frequent job leave, unaffordable transportation fees, or from giving up due to the long time to wait for the court's final sentence. Therefore, the indispensable condition is to ensure reliable grievance mechanisms without retaliation from an employer. Most importantly, the total time of finalising the investigation and enforcing the final order is essential to migrants as it determines the migrants (and the migrants' household) survival. Therefore, timely, predictable period of time and reliable grievance handling procedure are critical for migrant workers in accessing to the grievance mechanisms.

A number of days of investigation in the grievance-handling mechanisms should be made clear at the beginning of the investigation and at time of filing a complaint, since there is a need to make sure the migrant worker and the employer have a clear understanding of the grievance process. It is highly recommended that the migrant workers should be transferred to other workplaces before proceeding with the grievance mechanism. A clear procedure, and days of the grievance-handling procedure by a labour inspector should be incorporated as a part of the grievance form and be signed by the migrant workers to signify the commitment of the labour inspector in carrying on the case accountably and within a definite timeframe. On the other hand, in order to reduce the number of cases to be pursued by the Court, the cases that filed to the Court, that have passed the labour inspector' investigation, should be given privileged or specifically defined a timeframe to finalized and settled at the Court with a certain timeframe.

## **2) Cases for Non-Money Related Cases**

For non-money cases, the information of the complainer should be kept confidential to avoid retaliation. Measures must be in place to protect complainants against reprisals for their actions to encourage more migrants to denounce abuses and assert their rights (ensuring confidentiality whenever possible, prohibiting retaliatory dismissal, providing greater flexibility in transfer of work permits, sheltering irregular migrants from deportation, etc.).

## **3) Develop a Referral System to Grievance Mechanisms Between Countries of Destination and Countries of Origin**

In addition, there are many cases where migrant workers return to their country after filing a grievance, and some cases report to the government of the country of origin. Possible reasons that they have to go back include because they cannot find a new job, they feel psychological sick, or they are manipulated by the employer to return home. In response to such conditions, there is a need to establish a mechanism that allows migrant workers to track the development through an official representative, provided by the country of origin, in the receiving countries. It is also recommended for the government of receiving countries to help this group find a job and promote reintegration when they return home. The mechanism should also allow the

transference of the compensation at the end of the procedures, to the government/organisation of the country of origin before to the return of migrant workers.

### 8.2.2 Specific Recommendations

From the analysis, the key specific areas that highly affected migrants' decisions to access grievance mechanisms are posited in five key concerns. Three factors affecting the opportunity structure are: job options, networks, and legal framework on employment statuses. The other two factors are agent factors, including ability to understand and access of useful information as well as collective capabilities (Figure 47).

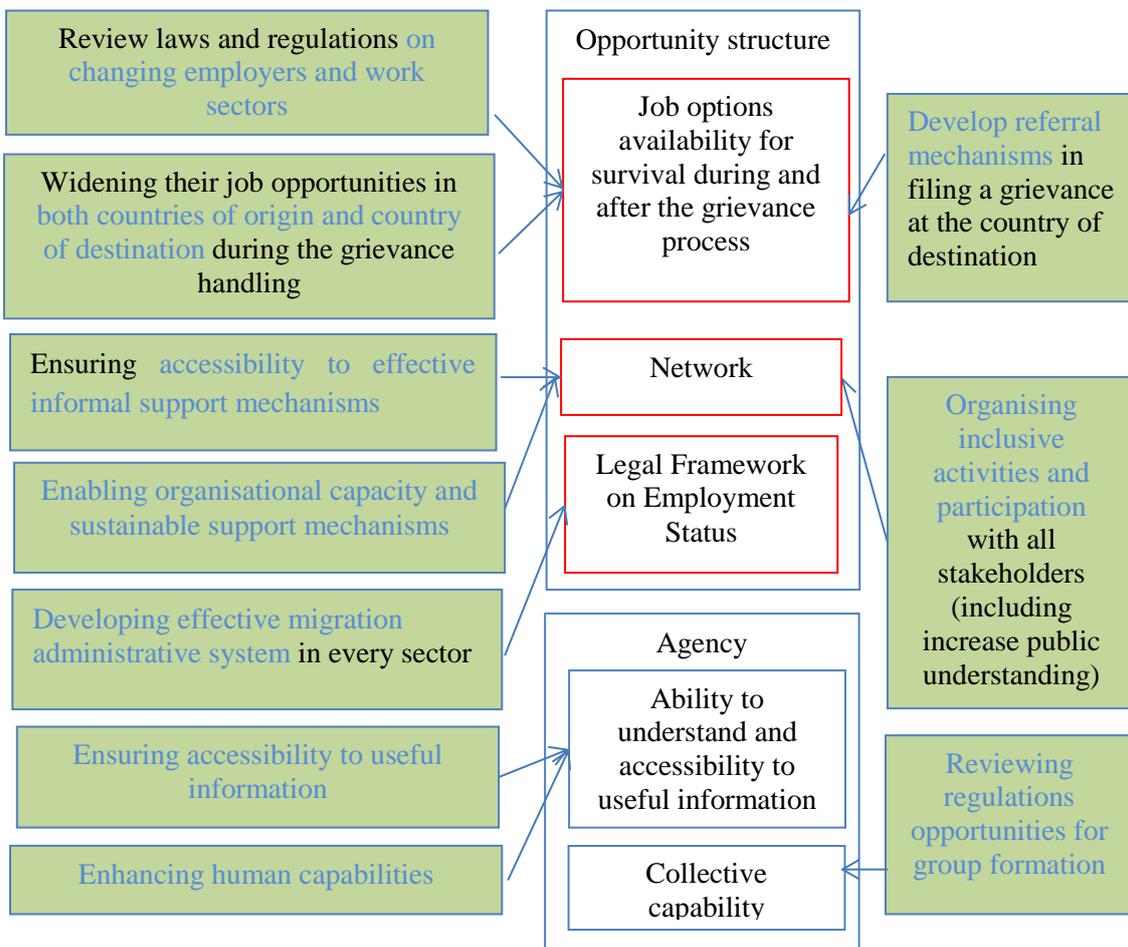


Figure 47: Specific Recommendations.  
Source: Author.

#### 8.2.2.1 Job Options Availability

This recommendation is to ensure that migrant workers can survive during the investigation process and after filing their complaints. Unlike the non-migrant workers, one of the conditions that obstructs migrant workers from filing a grievance is that their immigration status is bound to their employment status. As discussed previously,

regardless of their employment status, all migrant workers are afraid of deportation against their will. The valid immigration status requires an active employment status. Once a migrant worker has their rights violated and wishes to lodge a grievance to request for compensation, it is difficult for that migrant worker to confront the employer without considering the risk of retaliation. My two recommendations are as follows:

### **1) Review of Laws and Regulations in Changing Employers and Work Sectors**

Providing a shelter during investigation until the end of the case proceeding is an option. The shelters can be used to provide a space for workers who flee from their employers due to labour and human rights violations. However, based on the study, the time length of the investigation until the end of proceedings is unpredictable. Although operating a shelter needs continuously and long-term financial support, it can provide space for each migrant worker for at least a certain period of time even in developing countries where public budget is limited. On the other hand, the migrant worker, who has financial responsibility to their household in their country, normally cannot stay without income due to their own and their family's limited resources.

Justified laws and regulations to allow migrant workers to change their employers should be applied. This would benefit the receiving country by ensuring active practical human and labour rights. On the other hand, it will help migrant workers to contribute to the economy of the receiving country.

Currently, in Thailand, regardless entering channels of migrant workers or skill level, in order to change employers, the original employers must sign a transfer form and workers may seek employment in the same economic sector. The migrant workers are permitted 15 days to complete the process of changing employers. Otherwise, they will be regarded as unemployed and must leave the country within 7 days of becoming unemployed. The required documents to change an employer including migrants' identification paper and an identification paper of the new employer/establishment. This requirement implies that the migrant workers must readily have a new employer within a grace period up to 15 days, who provide a job in the same sector.

In Japan, as discussed previously, in theory, a trainee can inform on problems to supervising organisations (whom engage in regular inspection to implementing organisations). The supervising organisations can help solving such problems, including moving that trainee to other implementing organisations. However, in practice, the supervising organisations will recommend the implementing organisations with no enforcement. Consequently, the trainee is normally facing even more difficult working environment. While over-stayers are subjected to deportation, immigrants with false types of visas are facing somewhat flexible regulations due to grace period for departure. If a mid- to long term resident (with work permit) has failed to notify right status, a grace period for departure is up to 30 days. This grace period helps migrant workers fix their status and/or seek for a new employment.

The grace period helps migrant workers in seeking a new employer, including the period of lodging a grievance. According to the quantitative and qualitative analysis, the availability of other job opportunities significantly influences migrants' decisions in taking actions. Job options are important to migrant workers in surviving in the country of destination while seeking for the redress at the end of the procedures.

Therefore, justified laws and regulations that allow migrant workers to change employers and work sectors, while they are facing labour right violations and during the complaints, should be reviewed to ensure a practical measure and to enable migrant workers accessing grievance mechanisms.

## **2) Widening of Job Opportunities in Both Countries of Origin and Country of Destination During the Grievance Handling Procedure**

Effective employment services to widen job options during the complaint procedure for migrant workers will help them survive and empower them to access the grievance mechanisms. Migrant workers usually search for work through their network, especially migrant workers in Thailand, where a large informal market exists. Consequently, they normally obtain work in the same sector and, most of the time, in the same area. Therefore, I recommend that effective employment services will help to reduce the probability of retaliation from employers and increasing their options during filing the grievance. The employment services should be provided by the government for migrant workers with justified reasons to change or transfer to other employers. It should be considered as a part of the grievance mechanisms, as the employment services help increase the possibility for migrant workers in accessing the grievance mechanisms.

In addition, according to the interview, workers often do not know where to find a job with comparable wages in their home country. With the financial difficulties and household responsibility, staying in employment as long as possible is an essential survival strategy. In order to establish a better reintegration, effective public employment services and labour market analysis in the home country will help expand their choices, whether they may file a grievance and remain in the receiving countries or they may return to the home country working in a job opportunity matched by the public employment services. However, this option will be fully effective only if a referral mechanism allows migrant workers to file the grievance before returning home.

## **3) Develop a Referral Mechanism in Filing a Grievance in Countries of Destination**

In order to ensure the possibility of returning to migrants' home countries, a referral mechanism that allows migrant workers to lodge a grievance in the country of destination and continue defending their rights through a proxy, even after they return to the country of origin should be developed. A effective referral mechanism will help them legally engage in the investigation process to ensure that they can seek for the justice everywhere.

### **8.2.2.2 Effective/Informative Network and Consultation Channels**

Though the quantitative analysis demonstrates that networks reduce the probability of workers taking any action following labour-related problems, it increases the probability of migrant workers learning what to do with such labour-related problems. It is clear from the interviews that the matter is not about to have or not to have network, but how the network performs. Once a migrant worker requests consultation for information, the majority of migrants' acquaintances normally recommend to change a job or providing an unclear/or wrong information. Hence, the following recommendations are to ensure an effective an informative network for migrant workers, which require supports from relevant migrant workers:

#### **1) Ensure Accessibility to Effective Informal Support Mechanisms**

Networking helps to empower migrant workers though information sharing concerning labour standards, working environment in other establishments, how to solve labour-related problems, as well as other problems.

The results of the study show that useful information is necessary to ensure the positive impact of right understanding toward grievance mechanisms. The key challenge is to find an effective way to outreach to migrant workers, ideally not *too* formal, and which conform to migrant workers working conditions (i.e. after-hours working or weekend working). Therefore, the strengthening of social partners' network is essential in outreach to migrant workers. In addition, other informal places, in particular religious places, are highly recommended to get involved, together with establishment of Migrant Worker Resource Centres (MRCs) in migrants' intensive areas.

#### **2) Enable Organisational Capacity and Sustainable Support Mechanisms**

Networking through social partners (e.g. NGOs/CBOs/TUs and religious places) is highly recommended, together with establishment of Migrant Worker Resource Centres (MRCs) in migrants' intensive areas. Such networks are challenged by sustainability in term of source of funds and human resources to those social partners. Therefore, it is recommended to support these organisations though activities financial supports, or supports in a form of a public–public partnership (PPP), a partnership project funded by government and private organisations.

#### **3) Organise Inclusive Activities and Participation with all Stakeholders (Including Public Understanding)**

In order to generate the network, activities must be identified and analysed to include all parties to understand and realise the prevalence of such networks to ensure the recognition of these networks. It is also important to maintain a good image of these

social partners and establish public understanding. It helps to encourage migrant workers, regardless of legal status, to seek for or approach this network when they face problems. Inclusive activities should be organised in a way that all people and public party can participate; for example, sport activities, cultural performance.

### **8.2.2.3 Legal Framework on Employment Status: Developing Effective Migration Administrative System**

For migrant workers, holding a proper work permit is key to confidence when filing a grievance. Without a proper working permit, migrant workers are in a highly vulnerable situation. The discussion in this section relates to reducing the share of irregular migrant workers.

This recommendation focuses only on obtaining work permits, since it is a part of the overall immigration policies and law enforcement. Many migrant workers, particularly in Thailand, do not migrate through legal channels, for a number of reasons, e.g the relatively higher costs, time and complexity. Several deadline extensions made and the situation unclear for the authorities and migrant workers alike. Japan's administrative system is different. There is no exemption or relaxation to employ low-skilled migrant workers. Instead, the Japanese government has developed and implemented a trainee training scheme.

It is noticeable that a clear and long-term policy is essential to ensuring that all stakeholders, including migrants and the authorities, have the right understanding of laws and procedures. The scheme should be designed in a way that is not costly or overly complicated. This is to encourage migrant workers to be legalised and gain regular working status, which is less vulnerable than an irregular status.

The study found many migrant workers unaware, and holding fake IDs provided by recruitment agencies. An effort should also be made to eliminate illegal recruitment agencies and control legal recruitment agencies, as they are sources of misunderstanding and corruption in the recruitment.

### **8.2.2.4 Ability to Understand Useful Information**

#### **1) Ensuring Accessibility to Useful Information**

##### **(1) Enabling Practical Accessibility to Useful Information without Languages Barriers**

Based on the interviews, it is clear that learning methods must be developed to ensure that migrant workers fully understand key messages on labour rights and can use such knowledge when needed. For example, even the migrant workers in Japan have passed a pre-arrival training on disaster preparedness. They could not imagine the actual effect of a disaster. Therefore the “understandable” and easy to understand and information are suggested to be produced. Not only multi-language materials, but also simplified

information is necessary for public information (Bhula-or and Ikemoto, 2014). Knowledge about the complaint mechanisms should be provided that are easily understandable and illustrate successful cases in using grievance mechanisms.

Furthermore, dissemination campaigns of government departments will be more effective if they are organised through informal networks, jointly held with social partners, as well as religious places and migrant knowledge centres, because migrant workers feel more comfortable to talk about their work in places other than their workplace<sup>91</sup>. Note that information dissemination and knowledge activities organised by labour unions, though they are not members of labour unions, are also considered to be reliable.

Such activities should be held confidentially from employers and should be arranged only on the migrants' days off. Since NGOs/CBOs have a flexible work schedule and have a better understanding on high-density migrant community, joint activities to disseminate or provide consultation to migrant workers directly should be regularly discussed between government and NGOs/CBOs toward an effective plan. NGOs/CBOs should be funded by the government to coordinate and arrange such information sharing and outreach consultation activities, ensuring sustainable source of funding, productive and continuous works.

Pre-departure training in the countries of origin should be provided by either government of the countries of origins or the recruitment agencies. Free copies of guidelines/documents on labour rights and grievance mechanisms showing the complaint mechanism procedure, contacting details of the office the hotline and local CBOs/NGOs should be disseminated in print and online.

## **(2) Using Information and Communication Technology**

As mentioned previously, ICT is critical for empowering migrant workers. ICT widens their job options in the countries of destination and their home country through the easy and timely accessibility and escalating their skills, ensuring their better job options and better access to information. For the study, currently around 84 and 52 per cent of migrant workers in Japan and Thailand accordingly can be able to reach out via smartphones, resulting in an exposed opportunity for knowledge sharing and information.

In addition to internet and advance technology, a traditional channel is also essential to ensure multiple options to in accessing to information. A single hotline number should be promoted with an easy-to-remember number, which is manned by qualified staff during migrant after working hours or in the weekend, most preferably 24 hours. However, it should be noted that though the hotline is made consultation available and more convenient, migrant workers are likely to be more familiar with and trust in-person consultation than other forms of consultation.

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<sup>91</sup> For a migrant worker who is living in the employers' accommodation

## **2) Enhancing Human Capabilities**

### **(1) Promoting Education**

It is clear that years of schooling enhance the probability to know what to do and attain access to labour-related-problems. However, this factor is largely driven by the different institutional and social backgrounds of migrant workers and inequality across countries in accessing educational attainment. The recommendation is to highlight education in sending countries. It also reflects the importance that educational leads to long-lasting inequality for some workers. The sending countries should ensure nationwide educational accessibility for all people, ensuring that their people, regardless the place of work, can access to grievance mechanisms.

### **(2) Possibility of Higher Skills/Recognised Skills**

It will benefit the countries of destination if they may provide possible channels for career advancement for low-skilled work with high potential<sup>92</sup>. In European countries, the social balance sheets of companies should include indications on the career advancement of migrant workers, appearing in some cases on a voluntary basis (Eurofound, 2007)<sup>93</sup>. The study also suggests that migrant workers believe that they can develop themselves through self-development, group formation, better information accessibility, and human capital accumulation through skills and language training. The opportunity to learn and higher skills of migrants will not only encourage them to increase their capability, but also help generate a better productive economic return in the receiving countries.

This recommendation must make clear that it provides an opportunity for low-skilled migrant workers to develop themselves. This is not in conflict with the view of the government of receiving countries on the principle of preserving jobs for nationals. An occupational test can be organised to ensure that those low-skilled migrant workers can meet national standards of higher capacities in certain occupational demands.

Such skill-development activities must be organised in accordance with migrants' characteristics and working conditions. It is found that workers in the service sector rely largely on informal mechanisms; hence, labour trainings and employment options should be consistently communicated through this channel.

It was also found that a number of migrant workers were reluctant to return to their countries because they did not know what to do. They spent many years in the receiving countries without recognised skills. They know that there will be little for them when they returned to their countries, and so a number of them are taking the risk

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<sup>92</sup> Though the country of origin may be considered as a brain-drain problem, the brain-drains are mostly mentioned in the case where highly skilled workers (or high educated people) are moving to work in highly skilled occupations in other countries.

<sup>93</sup> It also recommends to require companies to show differences between the quotas of non-national workers employed in low-qualified jobs and in high-qualified jobs.

of staying in the receiving countries until they have some saving to start their own business in the sending countries.

### **8.2.2.5 Collective Bargaining: Reviewing Regulations and Encourage Group Formation**

The rate of unionisation of migrant workers is relatively small. Though there is no official statistical evidence, all interviewees and previous literature confirmed the difficulty in joining a union-type group. In the labour context, the gathering and rights of association is key to enabling other labour rights protection.

As mentioned previously, migrants also have limited opportunity to participate in labour unions legally due to the limitation of their working status. The country-specific recommendations are crucial in this area, due to different legal and working environments. In Thailand, the ILO convention on freedom of association has not yet been ratified. Migrants cannot organise their groups freely, unlike in Japan. Therefore, in order to enable the most possibility under the current limitation, it is suggested that at establishment level, unions' regulations should ensure all workers, including migrant workers and dispatched workers to be applicable as a trade unions' member. It is also recommended to include dispatched workers, where the migrants are largely intensive, to be possible<sup>94</sup>.

In Japan all foreigners can organise any organisation. However, as discussed previously, only high-skilled migrants are allowed to work in Japan. As a consequence, low-skilled migrants are automatically excluded from organising their own groups. The best possibility of helping migrants in Japan is to target those of trainee status. In many establishments, trainees can join the establishment's union, though currently there is a limited number joining the trade union. Hence, a review of all establishments' regulations ensuring that there is no limitation in participating in the union is necessary.

## **8.3 Suggestions for Further Study**

This study combines the advantages of quantitative and qualitative approaches in analysing the accessibility of labour rights in practice, using Thailand and Japan as case studies. A larger population is suggested to cover various aspects of comparative studies; for example, a comparative study by ethnic characteristics of migrant workers, which possibly affect migrants' behaviour and responses; a comparative study between migrant/non-migrants; between the Western and the Eastern working conditions; between large and small size of enterprises; and between rural and urban areas.

Furthermore, the quantitative approach can be adapted and applied as an evaluation tool to observe a degree of changes from beneficiaries' points of view. For example, the coefficient of the government mechanism will help indicate any significant effects of government in rights promotion schemes, given individual characteristics' effects

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<sup>94</sup> Some specific conditions may be added; for example, a certain year of employment. Migrant workers who are employed through recruitment agencies are regarded as dispatched workers in the establishments.

are deducted. It will help in indicating and measuring overall changes of the rights promotion schemes as well as the rights promotion projects' implementation.

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## APPENDIX 1 Structural Interview Points

*(Note that this Appendix includes only the English language version)*

- 
- The interview points are developed in order to observe migrants' working conditions, problems at works, and linkages to grievance mechanisms in Thailand and Japan.
  - It will be used to compare migrants' points of view in accessing grievance mechanisms in Thailand and Japan as well as to encourage and empower migrant workers in accessing grievance mechanisms to promote the labour rights in practices.
  - This interview points are also translated into 3 languages: English, Thai and Myanmar. The purpose of the translation is to ensure the right understanding of the interviewee, in case that they may like to observe the points of interview before starting the interview.
  - Please be assured that your responses will be kept strictly confidential and will be reported anonymously. The information that you give will be used solely for the purpose an academic study. Please kindly participate and assist us by providing honest responses to the questions.
- 

### **Working and living conditions in Thailand/Japan of migrant workers/foreign workers**

1) Are you engaged in any work for pay or profit? What was your activity in your last 7 days?

- Currently mainly working
- Currently working besides mainly keeping house
- Currently working besides mainly attending school
- Currently working besides mainly doing something else please specify .....
- Keeping house
- Attending school
- Looking for job
- Other ( Please specify) .....

2) Current occupation/latest occupation .....

3) What type of job do you do .....

4) What is your company/organisation's name?.....

5) What is your company/organisation business? .....

6) Location of work ..... Province/Ku .....

7) Your CURRENT main working activity is?

- Government employee ( **STOP asking**)
- Regular employee  Part-time employee

- Dispatch worker with a temporary employment agency contract
- Contract employee  Entrusted employee
- Director of cooperation  Self-employed without employees
- Self-employed with employees  Doing piece work at home
- Family worker  Members of producers' cooperatives
- Others.....

**8) Immediately BEFORE THIS JOB, in your main activity were you?**

- Unemployed
- In education or training or worked in the following category
- Government employee  Regular employee
- Part-time employee
- Dispatch worker with a temporary employment agency contract
- Fixed-term contract employee and entrusted employee
- Director of cooperation/organisation  Self-employed without employees
- Self-employed with employees  Doing piece work at home
- Family worker  Members of producers' cooperatives
- Others.....

**Your Name..... Surname..... O Actual name O Alias**

***SECTION I. Background data***

- 1.1 Sex  Male  Female
- 1.2 Month and year of birth ..... (month) .....(year)
- 1.3 Is your current house/place located in municipal area?  
Province.....District .....
- 1.4 Marital status
- Single  Married  Divorce
  - Widow (Spouse's dead)  Live together
- 1.5 What level of education have you completed?
- Completed education level.....Total .....years of schooling (Pick one)
- ( ) Lower primary level ( or less than 4 year of study) ( ) Primary level
  - ( ) Lower secondary level
  - ( ) High school level
  - ( ) Vocational school please specify field of your study.....
  - ( ) Higher vocational school please specify field of your study.....
  - ( ) Bachelor degree please specify field of your study.....
  - ( ) Master degree and upper please specify field of your study.....

- 1.6 When did you start living at your present address?  
 Since I was born (Skip to Section 3)  Since year .....
- 1.7 What is the reason that you moved to your present address?  
 To take up a job  As I quit my job  
 Due to transference  For the convenience of family's job/for partners' work  
 To attend school  Marriage  
 Other .....

***SECTION II. Background data of migrant workers***

---

- 2.1 How would you rate your ability to speak Thai/Japanese?  
 (1)  Cannot speak Thai/Japanese  
 (2)  Can speak some Thai words/Japanese  
 (3)  Can speak Thai very well but not as fluently /Japanese  
 (4)  Can speak Thai fluently/Japanese
- 2.2 Is this your first time you have come to Thailand?  
 (1)  Yes  
 (2)  No. How many times have you been here before? ..... times  
 (Including the current stay by excluding short home visits)
- 2.3 How long have you been in Thailand/Japan? ( .....year.....month)
- 2.4 How long have you been **working** in Thailand? ( .....year.....month)
- 2.5 Initially, did you come to work voluntarily?  
 Yes  No
- 2.6 How were you recruited to your current job?  
 (1)  I came here on my own  
 (2)  My parents arranged my work  
 (3)  Friend/s or relative/s arranged my work  
 (4)  A recruiter brought me from my country to this job  
 (6)  I came to Thailand from the training program and then find job here  
 (7)  I came to Thailand to study and aim to find a job here during study  
 (8)  Other (please specify).....
- 2.7 Did you pay the person who arranged the job for you?  
 (1)  Yes How much? ..... Baht/Yen  
 (2)  No  
 (3)  Don't know

2.8 In the case that you wanted to refuse this work, are there any limits/obstacles/threatened that you faced?

1.  Denunciation to authorities
2.  Confiscation of identity papers to travel documents
3.  Sexual violence
4.  Physical violence
5.  Confiscation of money or goods
6.  Threats against family members
7.  Debt to employer and to recruiter
8.  Financial punishment e.g. not paid /deducted wages
9.  Other forms of punishment (specify).....
10.  Difficult to find another job/Nowhere else to go
11.  Never thought to resign
12.  Other (specify).....

2.9 Currently, what types of identity documents do you hold?

- No, I don't have any  
 Yes, I have as listed following  
( Please specify, for example residence card, work permit card, health card)
- |          |          |
|----------|----------|
| (1)..... | (2)..... |
| (3)..... | (4)..... |

**Background Information about hometown**

2.10 Where is your hometown? Province ..... District.....

2.11 Relationship to the head of the household in the country of origin.

- |   |   |
|---|---|
| <input type="checkbox"/> Head                   | <input type="checkbox"/> Spouse of head           |
| <input type="checkbox"/> Son/daughter           | <input type="checkbox"/> Spouse of son/daughter   |
| <input type="checkbox"/> Grandson/granddaughter | <input type="checkbox"/> Father or mother of head |
| <input type="checkbox"/> Other ( specify).....  |   |

2.12 Number of people living in the household (Including you) in your household.....people

2.13 Who are they? Please specify the number of household members \_\_\_\_\_

- |  |  |
|--|--|
| _____spouse/partner                        | _____son/daughter                                  |
| _____ parents, stepparent or parent in law | _____ daughter or son in law                       |
| _____grandchild                            | _____brother/sister (incl. half and step siblings) |
| _____ other relative                       | _____other nonrelative                             |

2.14 Are you the main source of income for your household in the country of origin?

- Yes  No

2.15 Number of people that are currently working in your household in the country of origin.....

2.16 Do you have family in Thailand?

- Yes  No

2.17 Number of people living in the household in Thailand (if any) .....

2.18 How many people that are currently working in your household in Thailand .....

***SECTION III: Working history ( For a person who had previous job)***

---

3.1 Have you ever worked in other countries?

- Yes (in which county \_\_\_\_\_)  No

3.2 What was your previous job?

(Specify your occupation).....and number of working year.....

What is your company/organisation's name/business .....

3.3 Have you ever worked other jobs in Thailand before you started your current job?

- Yes (Specify your occupation).....and number of working year.....  
 No

3.4 Why did you quit you previous job?

- Company bankruptcy/closed down
- Termination of employment contract
- Insecure about the future /Business slump
- Unsatisfactory working condition
- Early retirement
- Mandatory retirement
- Low income
- Marriage
- Child barring/childcare
- Caring an aged or sick family member
- Illness
- I did not like the job
- Job was temporary one from the beginning
- A family member's finding or changing a job
- Other, please specify .....

**SECTION IV: Current work (For all)**

---

4.1 How many employees in your workplace (including you)?  
.....people

( If your workplace is a branch, please specify the approximate number of total employees of the whole company ..... people)

How many non-Thai in your workplace (including you).....people

**Employment Contract ( FOR EMPLOYEE ONLY)**

4.2 Did you sign a work contract?

- 1  Yes please specify the written language.....
- 2  No (Skip to 4.5)
- 3.  Don't know

4.3 If you have signed, what kind of employment contract do you have?

- 1  I don't have one
- 2  An indefinite contract/lifetime employment
- 3  A fixed term contract (specify duration: number of month,year).....
- 4  A temporary employment agency contract (..... month,....year)
- 5  An apprenticeship or other training scheme (..... Month.....year)
- 6  Other (Please specify) .....

4.4 Have you renewed your employment contract in this job?

- 1  No
- 2  Yes how many time.....

4.5 If you do not have a written work contract, do you feel insecure?

- 1  Yes
- 2  No
- 3.  Don't know

**Working hour**

4.6 How many hours do you usually work each week? ..... hours

4.7 What is your start time AND finish time in each day? .....till .....am /pm

4.8 How many hours or minutes rest do you usually have during work time each day?..... (hour /minute)

4.9 How much do you get ..... THB/Yen per hour /per day/per week/per month/per piece/per job

4.10 Do you receive any payment in cash?

- 1.  Yes
- 2. No  please specify .....

4.11 Do you have days off each month?

- 1.  Yes, without pay..... days per month

2.  Yes, with pay ..... days per month

3.  No

4.12 How many times a month do you work more than 10 hours a day( Approximate in the last 12 months) ?

1.  Yes..... days per month without pay

2.  No

4.13 Do you work...?

1 – daily split shifts (with a break of at least 4 hours in between)

2\_ permanent shifts (morning, afternoon or night)

3\_ alternating /rotating shifts

### Multiple job holder

4.14 Besides your main paid job, do you have any other paid job(s)? (IF YES) what is it...?

1\_ No other paid job ( Skip to 4.19)

2\_ Yes, regular. What is the occupation? .....

3\_ Yes, occasional. What is the occupation? .....

4\_ Other .....

4.15 What is the name of the business/organisation of the second job?

.....  
.....

4.16 How many hours/time do you usually work for the second job?

1  Please specify days of working and start and finish time

.....

2  average hours per week .....

4.17 How much do you get ..... Yen per hour /per day/per week/per month/per piece/per job

4.18 Do you receive any payment in cash?

1.  Yes 2.  No please specify .....

4.19 If there is additional hour of work, do you want to work more?

1.  Yes, why

(1) Low earnings

(2) I want to have more money to send back home

(3) Other.....

2.  No, why

(1) My total families' income is sufficient enough

(2) I have family in Thailand to take care of. The number of working hours is sufficient

(3) Other .....

#### 4.20 Benefits from employment

What benefits from your employment?

Benefits	Yes, receive		No, I do not receive	Don't know	Remarks
	Regu- larly	Some times			
1) Uniform/clothing					
2) Accommodation					
3) Food					
4) Health services, please specify .....					
5) Remittance					
6) Registration costs					
7) Loans ( please specify the interest rate.....)					
8) Leisure/recreation facilities e.g. TV, recreation area. Please specify .....					
9) Paid maternity leave (If you have a baby, will you get some days off with pay?)					
10) Paid sick leave (If you are sick, can you take days off with pay?)					
11) Access to health care when I need it (If you get sick, can you get assistance to see a medical staff?)					
12) Do you have voluntary overtime? (only do overtime if you want to)					
13) Do you have annual paid holidays e.g. where you take holiday such as during New Year but are still paid by employer?					
14) Can you take annual holidays without pay? (and still come back to your job later)					
15) Can go to school ( if you want to go)?					
16) Other.....					

4.21 Do changes to your work schedule occur regularly? (IF YES) How long before are you informed about these changes?

1 – No

2 – Yes, the same day

3 – Yes, the day before

4 – Yes, several days in advance

5 – Yes, several weeks in advance

6–Other (Specify) .....

4.22 Over the last 12 months how often has it happened to you that you have worked in your free time in order to meet work demands?

- |                           |                          |
|---------------------------|--------------------------|
| 1 – Nearly every day      | 2 – Once or twice a week |
| 3 – Once or twice a month | 4 – Less often           |
| 5 – Never                 | 7 – Not applicable       |

**Income and expenditure**

4.23 Type of income ( Tick all apply)

- |   |  |
|---|--|
| <input type="checkbox"/> Wage or salary         | <input type="checkbox"/> Business income (including farming) |
| <input type="checkbox"/> Piece work at home     | <input type="checkbox"/> Pension or annuity                  |
| <input type="checkbox"/> Unemployment insurance | <input type="checkbox"/> Remittance from relatives           |
| <input type="checkbox"/> Land or house rent     | <input type="checkbox"/> interest or dividend                |
| <input type="checkbox"/> Other .....            |  |

4.24 YOUR annual income or profit (before tax) per month ..... THB/Yen

4.25 YOUR HOUSEHOLD's annual income or profit (before tax) per month ..... THB/Yen

4.26 Do you think you income is sufficient to your expenditure?

- Yes                       No

4.27 Please approximate your expenditure in percentage breakdown

(summation must equal to 100%)

- |   |                        |       |
|---|------------------------|-------|
| 1) consumption ( eat, use, miscellaneous) ..... | or approximately ..... | THB/Y |
| 2) Accommodation .....                          | or approximately ..... | THB/Y |
| 3) Saving .....                                 | or approximately ..... | THB/Y |
| 4) Send money back home .....                   | or approximately ..... | THB/Y |
| 5) Others .....                                 | or approximately ..... | THB/Y |
| 6) TOTAL .....                                  | 100%.....              |       |

4.28 How often you send money back home? ..... and how (Tick the following choice)

- (1) Not send
- (2) Through my employer
- (3) Through recruiter who brought me to this job
- (4) Through NGO (foundation)
- (5) Through Friends/Workmates
- (6) Through Relatives
- (7) Through Bank
- (8) Through informal remittance service
- (9) other (specify).....

**Risk at work**

4.29 For those who work with machine/tools. Do you think your work may cause a health problem to you?

- 1 – Yes How risk you will rate ? ( ) high risk ( ) Medium risk ( ) low risk
- 2 – No

4.30 Over the last 12 months, did you suffer from any of the following health problems? ( Tick all apply)

- A – hearing problems
- B – skin problems
- C – backache
- D– muscular pains in shoulders, neck and/or upper limbs
- E – muscular pains in lower limbs (hips, legs, knees, feet etc.)
- F – headaches, eyestrain
- G – stomach ache
- H – respiratory difficulties
- I – cardiovascular diseases
- J – injury(ies)
- K – depression or anxiety
- L – overall fatigue
- M – Insomnia or general sleep difficulties
- N – other .....

4.31 Does your job ever require that you wear personal protective equipment?

- 1 – Yes
- 2 – No

4.32 Regarding the health and safety risks related to performance of your job, how well informed would you say you are?

- 1 – Very well informed( with training provided)
- 2 – Well informed
- 3 – Not very well informed
- 4 – Not at all well informed

4.33 Do you think your health or safety is at risk because of your work? Does your work affect your health, or not?

- 1 – Yes, mainly positively
- 2 – Yes, mainly negatively
- 3 – No
- 4 – DK/no opinion

4.34 If you fall sick, who takes care of you? (Tick only one)

- |  |   |
|--|---|
| (1) <input type="checkbox"/> Myself                                | (2) <input type="checkbox"/> Employer         |
| (3) <input type="checkbox"/> Family                                | (4) <input type="checkbox"/> NGO (foundation) |
| (5) <input type="checkbox"/> Friends                               | (6) <input type="checkbox"/> Workmates        |
| (7) <input type="checkbox"/> Relatives                             |   |
| (8) <input type="checkbox"/> Doctor/health worker in the community |   |
| (9) <input type="checkbox"/> Doctor/health worker on site          |   |
| (10) <input type="checkbox"/> Other (specify).....                 |   |

**Section V: Motivation factor**

---

5.1 What do you feel about your current main job?

	Strongly disagree	Dis-agree	Fair	Agree	Strongly agree	No opinion
A – Your colleagues help and support each other						
B – You can have a say/comment your workmates' jobs ( and vis-à-vis)						
C –Your manager helps and supports you						
D – You are consulted before targets for your work are set						
E – You are involved in improving the work organisation or work processes of your department or organisation						
F – You can take a break when you wish						
G – You have enough time to get the job done						
H – Your job gives you the feeling of work well done						
I – You are able to apply your own ideas in your work						
J – You have the feeling of doing useful work						
K – You know what is expected of you at work						
L – Your job involves tasks that are in conflict with your personal values						
M – You like your job and you get emotionally involved in your work						

5.2 In general, your immediate manager /supervisor...

	Yes	No	Don't know
A – Provides you with feedback on your work			
B – have a systematic assessment of work performance			
C – Is good at resolving conflicts			
D – Is good at planning and organising the work			
E – Encourages you to participate in improving work outcome			

5.3 Which of the following alternatives would best describe your skills in your own work? ( Pick one)

- 1 – I need further training to cope well with my duties
- 2 – My present skills correspond well with my duties
- 3 – I have the skills to cope with more demanding duties

**Section VI: Equality at work**

6.1 Which of the following has happened to you/or your friend at your current work?

	Yes	No	Heard about that from workmate	Don't know	Details/remarks
<b>Bad practice at work</b>					
A_ Verbally abused or shouted at by employers /senior workers					
B_ Employer swears at you (uses bad words)					
C_ Power harassment (Overrule beyond necessity of job description)					
D_ Beaten /slapped/hit by employer /senior workers					
E_ Sexual harassment (including unwanted sexual comment or behaviour by employer/senior workers/coworkers)					
F_ Sexual touching that I don't want/agree to					
G_ Rape by employer/senior workers/coworkers					
H_ Bullying by employer/senior workers/coworkers					
I_ Threats and humiliating behaviour by employer/senior workers/coworkers					
J_ Verbally harassed by employer/senior workers/coworkers					
K_ My pay amount is reduced is I make mistakes or do something wrong (payment deduction for mistakes)					
L_ My pay is sometimes paid late (Delayed payment)					
M_ Other (bad practice) please specify.....					
<b>Discrimination</b>					
N – age discrimination					

	Yes	No	Heard about that from workmate	Don't know	Details/remarks
O – discrimination linked to race, ethnic background or colour					
P – discrimination linked to nationality					
Q – discrimination on the basis of your sex					
R – discrimination linked to religion					
S – discrimination linked to disability					
T – discrimination linked to sexual orientation					
U_ other .....					

**SECTION VII: For self-employed only**

---

7.1 Regarding your business, do you agree with the following statements?

	Yes	No	Remarks
A_ Generally, my firm has more than one client			
B_ I am paid an agreed fee on a regular, for example monthly basis			
C_ If my workload requires I could hire employees who work for me			
D_ I make the most important decision on how to run my business			
E_ If I had a long term sickness, I would be financially secure			
F_ I enjoy being my own boss			

**Section VIII: Expectation, satisfaction and Secure at Work**

---

8.1 What do you feel about your current job?

	Strongly agree	Agree	Indifference	Disagree	Strongly disagree	No opinion	Remarks
A_ I feel 'at home' in this organisation							
B_ The organisation I work for motivates me to give my best job performance							
C_ If I were to lose or quit my current job, it would be easy for me to find a job of similar salary							
D_ I am well paid for the work I do							
E_ Overall, I am very satisfied with my job?							

8.2 Did you do any training or self-development for your job during the year?

1.  Yes which was the following
- ( ) 1 On-job training
  - ( ) 2 Lectures at a university or graduate school
  - ( ) 3 Courses of a special training school
  - ( ) 4 Courses of an occupational skills development institution
  - ( ) 5 language school (please specify language .....
  - ( ) 6 Self –education/self-learning about .....

2.  No

8.3 In the future (e.g for the next 5 years) are you willing to stay in Thailand?

1.  Yes                      2.  No                      3.  Not decided

8.4 If yes, will you continue to work in this company?

1.  Yes                      2.  No                      3.  Not decided

8.5 If no what do you plan to do next?

.....  
 .....

8.6 Please compare your job and the job that you expect before work ( FOR ALL )

Compare before work and during work

		No expect ation	Much worse	Worse	As expect ed	Better	Much better	Remarks
1	Working condition							
2	Wages							
3	Working hours							
4	Rest hours							
5	Holiday (received wages)							
6	Welfare/Benefits							
7	Living condition							

***SECTION IX: Government policy and grievance mechanisms***

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9.1 Do you currently belong to any formal or informal groups in the community?

- 1.  Yes, please describe what is the group's name/discussion.....
- 2.  No

9.2 Do you want to be a member of any association ( For example: worker union)?

- 1  Yes, please specify the name and/or type of the group.....
- 2  No
- 3  Don't know

9.3 What sources of information do you have about workers' rights?(Tick all apply)

- 1  Never heard about labour rights
- 2.  NGO
- 3  Labour union
- 4.  Friends
- 5  Media
- 6  Others.....

9.4 Do you think workers' rights were protected enough?

- 1\_  Enough
- 2\_  Not enough
- 3\_  Don't know

9.5 If you have problems at work, who will you talk to? (Tick all that apply)

- 1  No one
- 2  Employer
- 3  Labour Office
- 4  NGO (foundation)
- 5  Friends/workmates
- 6  Relatives
- 7  Other (specify).....

9.6 If there is any complain about labour rights violation/any problem at work, do you know where to get help/consultation?

- 1  I don't know
- 2  I know where, but do not want to because ( please pick one below)
  - 2.1  I don't want problem
  - 2.2  I don't believe that complaint can change situation
  - 2.3  Other reason (Please specify) .....
- 3  I know where. I will go, if there is any problem. Please specify the place/who .....

9.7 In your opinion, which mechanics or means would be the most effective consultation regarding legal, living condition, and general cases effectively?

- 1  Employer
- 2  Authority
- 3  Labour union
- 4  NGO
- 5  Embassy
- 6  National Overseas Employment Administration

7  Other, specify .....

9.8 Have you ever visit or use consultation service of Thai government for foreign workers?

1  Yes( Please specify type of the service) .....

2  No

9.9 Have you ever visit or use service of NGOs for foreign workers?

1  yes (Please specify the organisation.....about.....)

2  No

9.10 Have you ever visit or use service of your national overseas employment administration ( Or other recommendation) in Thailand or elsewhere?

1  yes (Please specify the type of service) .....

2  No

9.11 What do you think about the service?

1  Poor 2  Fine 3  Good 4  other.....

9.12 Would you like to receive any services/joining activities in the following issues (Tick all that apply)

1  Health training

2  Laws regarding labour

3  Training: general laws (eg family laws)

4  Training: Registration/visa

5  Consultation: Workplace problems

6  Some skills occupational training when I return hometown

7  Thai language

8  Other recommendation (specify).....

**SECTION X: ICT as tools for improving the labour rights' accessibility**

10.1 Are you taking any learning/ training course, which course do you currently take?

1  English level \_\_\_\_\_ 2  Thai level \_\_\_\_\_

3  Computer level \_\_\_\_\_ 4  Other level \_\_\_\_\_

10.2 If you are taking a course, where do you firstly know about the CLC ?

1  Friend

2  Internet

3  Poster

4  Other specified \_\_\_\_\_

10.3 Do you have a computer/a laptop with internet connection ? (pick one)

1  yes, how often you use it per week \_\_ 2  no 3  no, I borrow others

10.4 Do you have a mobile phone? (pick one)

1  yes, how often you use it per week \_\_ 2  no 3  no, I borrow others

10.5 Do you have a smart phone/tablet? (pick one)

1  yes, how often you use it per week \_\_ 2  no 3  no, I borrow others

10.6 Do you have a TV? (pick one)

1  yes, how often you use it per week \_\_ 2  no 3  no, I borrow others

10.7 Do you have a radio? (pick one)

1  yes, how often you use it per week \_\_ 2  no 3  no, I borrow others

10.8 If you DO NOT have your own computer and/or a mobile phone, do you have a chance to use it? (pick one)

1  yes, how \_\_\_\_\_ 2  no

10.9 Please select the purpose for using the above device mentioned in 10.3 to 10.8? (select all applicable choices)

1  For entertain specified \_\_\_\_\_ e.g Movies, Songs)

2  For contacting hometown/family specified \_\_\_\_\_ (e.g Parents, sister)

3  For education specified \_\_\_\_\_ (e.g Study Thai)

4  For general knowledge specified \_\_\_\_\_ (e.g about health)

5  For skill development/trainings on \_\_\_\_\_ (e.g how to be an entrepreneur )

6  For finding some other employment chances \_\_\_\_\_ (e.g Finding other jobs in Thailand/Myanmar)

7  For others \_\_\_\_\_

10.10 What are problems/constraint in using the above device mentioned in 10.3 to 10.8?

1  No Burmese font

2  Take times to learn how to use

3  difficult to access to those tools

4  Your supervisor does not allow doing so.

5  others \_\_\_\_\_

10.11 Do you think that the ICT concerns to empowering the human rights? and how?

1  No, why/how \_\_\_\_\_

2  Yes, why/how \_\_\_\_\_

10.12 Do you think that the ICT concerns to empower the labour rights? and how?

1  No, why/how \_\_\_\_\_

2  Yes, why/how \_\_\_\_\_

10.13 Please select the satisfaction level <as 1 is the lowest satisfaction and 5 is the highest satisfaction.>

	<b>1</b> <b>lowest</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b> <b>highest</b>
(1)Level at the current <u>accessibility</u> to devices in 10.3 to 10.8					
(2) Ability of ICT of <u>empowering human rights</u>					
(3) Ability of ICT of <u>empowering labour rights</u>					
(4) Your OVERALL satisfaction					

10.14 Additional comments/policy recommendation.

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## APPENDIX 2 Interviewees Profile

The table below presents a summary of interviewees' profiles. The profiles do not link to the quotations in the text, since they are guaranteed of confidentiality, anonymity and privacy of their participation as well as for their security purpose.

Table: Interviewee profiles

No	sex	Age	Work sector (Manufacturing sector =MS; Service sector =SS)	Working visa	What to do if you face the labour right violations/problems at work?
	Japan				
1	Female	34	MS	Don't have	I don't know
2	Female	37	MS	Have	I don't know
3	Female	44	MS	Have	I know where, will do.
4	Female	38	MS	Have	Afraid of problems
5	Female	48	MS	Have	I know where, will do.
6	Female	37	MS	Have	No change after all
7	Female	39	MS	Have	No change after all
8	Female	38	MS	Have	No change after all
9	Male	42	MS	Have	I don't know
10	Female	38	MS	Have	Afraid of problems
11	Female	37	MS	Have	Afraid of problems
12	Female	31	MS	Have	I know where, will do.
13	Female	37	MS	Have	I know where, will do.
14	Female	44	MS	Have	I know where, will do.
15	Female	38	MS	Have	No change after all
16	Female	48	MS	Have	No change after all
17	Female	37	MS	Have	Afraid of problems
18	Female	39	MS	Have	No change after all
19	Female	37	MS	Have	Afraid of problems
20	Female	37	MS	Don't have	I don't know
21	Female	37	MS	Have	I know where, will do.

No	sex	Age	Work sector (Manufacturing sector =MS; Service sector =SS)	Working visa	What to do if you face the labour right violations/problems at work?
22	Female	44	MS	Have	I know where, will do.
23	Female	38	MS	Have	I don't know
24	Female	48	MS	Have	I don't know
25	Female	37	MS	Have	Afraid of problems
26	Female	39	MS	Have	No change after all
27	Female	38	MS	Have	No change after all
28	Male	42	MS	Have	I know where, will do.
29	Female	38	MS	Have	Afraid of problems
30	Female	37	MS	Have	Afraid of problems
31	Female	33	MS	Have	I don't know
32	Female	37	MS	Have	No change after all
33	Female	44	MS	Have	I know where, will do.
34	Female	38	MS	Have	I don't know
35	Female	48	MS	Have	I know where, will do.
36	Female	37	MS	Have	No change after all
37	Female	39	MS	Have	No change after all
38	Female	38	MS	Have	No change after all
39	Male	42	MS	Have	I don't know
40	Female	38	MS	Have	Afraid of problems
41	Female	37	MS	Have	Afraid of problems
42	Female	30	MS	Have	I don't know
43	Female	37	MS	Have	I know where, will do.
44	Female	44	MS	Have	I know where, will do.
45	Female	38	MS	Have	No change after all
46	Female	48	MS	Have	No change after all
47	Female	37	MS	Have	No change after all
48	Female	39	MS	Have	No change after all
49	Female	38	MS	Have	No change after all
50	Male	42	MS	Have	I know where, will do.

No	sex	Age	Work sector (Manufacturing sector =MS; Service sector =SS)	Working visa	What to do if you face the labour right violations/problems at work?
51	Female	38	MS	Have	Afraid of problems
52	Female	37	MS	Have	Afraid of problems
53	Female	27	MS	Have	I don't know
54	Female	37	MS	Have	No change after all
55	Female	44	MS	Have	I know where, will do.
56	Female	38	MS	Have	I don't know
57	Female	48	MS	Have	I know where, will do.
58	Female	37	MS	Have	No change after all
59	Female	38	SS	Have	No change after all
60	Female	24	SS	Don't have	No change after all
61	Male	37	SS	Have	No change after all
62	Female	38	SS	Have	No change after all
63	Male	42	SS	Have	I know where, will do.
64	Female	38	SS	Have	Afraid of problems
65	Female	38	SS	Have	No change after all
66	Female	24	SS	Don't have	No change after all
67	Male	37	SS	Have	No change after all
68	Female	38	SS	Have	No change after all
69	Female	24	SS	Don't have	No change after all
70	Male	37	SS	Have	No change after all
71	Female	38	SS	Have	No change after all
72	Female	24	SS	Don't have	No change after all
73	Male	37	SS	Have	No change after all
74	Male	37	SS	Have	I don't know
75	Female	38	SS	Have	No change after all
	Thailand				
1	Male	26	MS	Don't have	I don't know
2	Male	28	MS	Have	I don't know
3	Female	23	MS	Have	Afraid of problems

No	sex	Age	Work sector (Manufacturing sector =MS; Service sector =SS)	Working visa	What to do if you face the labour right violations/problems at work?
4	Male	23	MS	Have	I don't know
5	Male	29	MS	Don't have	I don't know
6	Male	33	MS	Have	I don't know
7	Male	26	MS	Don't have	I don't know
8	Male	28	MS	Don't have	I don't know
9	Female	23	MS	Don't have	Afraid of problems
10	Male	23	MS	Have	I don't know
11	Male	29	MS	Have	I don't know
12	Female	28	SS	Have	I don't know
13	Female	19	SS	Don't have	I don't know
14	Female	21	SS	Have	I don't know
15	Female	30	SS	Have	Afraid of problems
16	Male	34	SS	Have	No change after all
17	Female	19	SS	Have	I know where, will do.
18	Male	35	SS	Have	I know where, will do.
19	Female	25	SS	Don't have	I don't know
20	Female	24	SS	Have	I don't know
21	Female	26	SS	Have	I know where, will do.
22	Male	23	SS	Have	I don't know
23	Female	23	SS	Have	I don't know
24	Male	27	SS	Don't have	Afraid of problems
25	Female	35	SS	Have	I don't know
26	Female	23	SS	Have	Afraid of problems
27	Female	21	SS	Have	I don't know
28	Female	21	SS	Have	I don't know
29	Female	26	SS	Don't have	Afraid of problems
30	Female	23	SS	Don't have	I don't know
31	Male	31	SS	Don't have	I don't know
32	Female	28	SS	Don't have	Afraid of problems

No	sex	Age	Work sector (Manufacturing sector =MS; Service sector =SS)	Working visa	What to do if you face the labour right violations/problems at work?
33	Female	23	SS	Don't have	Afraid of problems
34	Female	17	SS	Don't have	I don't know
35	Female	30	SS	Don't have	I don't know
36	Male	19	SS	Have	Afraid of problems
37	Male	21	SS	Don't have	I know where, will do
38	Female	20	SS	Have	I know where, will do
39	Female	17	SS	Have	I don't know
40	Female	24	SS	Have	Afraid of problems
41	Female	19	SS	Have	I don't know
42	Female	21	SS	Have	Afraid of problems
43	Female	26	SS	Have	Afraid of problems
44	Female	25	SS	Have	I don't know
45	Female	19	SS	Don't have	I don't know
46	Female	21	SS	Have	I don't know
47	Female	30	SS	Have	Afraid of problems
48	Male	34	SS	Have	No change after all
49	Female	19	SS	Have	I know where, will do.
50	Male	35	SS	Have	I know where, will do.
51	Female	28	SS	Have	I don't know
52	Female	24	SS	Have	I don't know
53	Female	26	SS	Have	I know where, will do.
54	Male	23	SS	Don't have	I don't know
55	Female	23	SS	Have	I don't know
56	Male	27	SS	Have	Afraid of problems
57	Female	35	SS	Don't have	I don't know
58	Female	23	SS	Don't have	Afraid of problems
59	Female	21	SS	Don't have	I don't know
60	Female	27	SS	Have	I don't know
61	Female	29	SS	Don't have	Afraid of problems

No	sex	Age	Work sector (Manufacturing sector =MS; Service sector =SS)	Working visa	What to do if you face the labour right violations/problems at work?
62	Female	23	SS	Don't have	I don't know
63	Male	31	SS	Have	I don't know
64	Female	28	SS	Have	Afraid of problems
65	Female	23	SS	Have	Afraid of problems
66	Female	17	SS	Have	I don't know
67	Female	30	SS	Don't have	I don't know
68	Male	19	SS	Have	I know where, will do.
69	Male	21	SS	Don't have	Afraid of problems
70	Female	20	SS	Have	Afraid of problems
71	Female	17	SS	Don't have	I don't know
72	Female	24	SS	Don't have	Afraid of problems
73	Female	19	SS	Have	I don't know
74	Female	33	SS	Have	Afraid of problems
75	Female	26	SS	Have	Afraid of problems

## **APPENDIX 3 Memorandum of Understanding Between the Government of the Kingdom of Thailand and the Government of the Union of Myanmar on Cooperation in the Employment of Workers**

THE GOVERNMENT OF THE KINGDOM OF THAILAND AND THE GOVERNMENT OF THE UNION OF MYANMAR, hereinafter referred to as “the Parties”;

BEING CONCERNED about the negative social and economic impacts caused by illegal employment;

DESIROUS of enhancing mutually beneficial cooperation between the two countries;

HAVE AGREED AS FOLLOWS:

### **OBJECTIVE AND SCOPE**

#### **ARTICLE I**

The Parties shall apply all necessary measures to ensure the following:

- 1) Proper procedures for employment of workers;
- 2) Effective repatriation of workers, who have completed terms and conditions of employment or are deported by relevant authorities of the other Party, before completion of terms and conditions of employment to their permanent addresses;
- 3) Due protection of workers to ensure that there is no loss of the rights and protection of workers and that they receive the rights they are entitled to;
- 4) Prevention of, and effective action against, illegal border crossings, trafficking of illegal workers and illegal employment of workers.

This Memorandum of Understanding is not applicable to other existing processes of employment that are already in compliance with the laws of the Parties.

### **AUTHORISED AGENCIES**

#### **ARTICLE II**

For the purpose of this Memorandum of Understanding, the Ministry of Labour of the Kingdom of Thailand and the Ministry of Labour of the Union of Myanmar shall be the authorised agencies for the Government of the Kingdom of Thailand and for the Government of the Union of Myanmar respectively.

#### **ARTICLE III**

The Parties, represented by the authorised agencies, shall hold regular consultations, at senior official and/or ministerial levels, at least once a year on an alternate basis, on matters related to the implementation of this Memorandum of Understanding.

The authorised agencies of both Parties shall work together for the establishment of procedures to integrate illegal workers, who are in the country of the other Party prior to the entry into force of this Memorandum of Understanding, into the scope of this Memorandum of Understanding.

## **AUTHORITY AND PROCEDURE**

### **ARTICLE IV**

The Parties shall take all necessary measures to ensure proper procedures for employment of workers.

Employment of workers requires prior permission of the authorised agencies in the respective countries. Permission may be granted upon completion of procedures required by laws and regulations in the respective countries.

The authorised agencies may revoke or nullify their own permission at any time in accordance with the relevant laws and regulations.

The revocation or nullification shall not affect any deed already completed prior to the revocation or nullification.

### **ARTICLE V**

The authorised agencies may through a job offer inform their counterparts of job opportunities, number, period, qualifications required, conditions of employment, and remuneration offered by employers.

### **ARTICLE VI**

The authorised agencies shall provide their counterparts with lists of selected applicants for the jobs with information on their ages, permanent addresses, reference persons, education, experiences and other information deemed necessary for consideration by the prospective employers.

### **ARTICLE VII**

The authorised agencies shall coordinate with the immigration and other authorities concerned to ensure that applicants, who have been selected by employers and duly permitted in accordance with Article IV, have fulfilled, inter alia, the following requirements:

- 1) Visas or other forms of entry permission;
- 2) Work permits;
- 3) Health insurances or health services;
- 4) Contribution into savings fund as may be required by the authorised agencies of the respective Parties;
- 5) Taxes or others as required by the Parties;
- 6) Employment contracts of employers and workers.

Contract of the terms and conditions of employment shall be signed between the Employer and Worker and a copy each of the contract submitted to the authorised agencies.

### **ARTICLE VIII**

The authorised agencies shall be responsible for the administration of the list of workers permitted to work under this Memorandum of Understanding. They shall keep, for the purpose of reference and review, the lists of workers who report themselves or

have their documents certified to the effect that they have returned to their permanent addresses after the end of the employment terms and conditions, for at least four years from the date of report or certification.

## **RETURN AND REPATRIATION**

### **ARTICLE IX**

Unless stated otherwise, the term and conditions of employment of workers shall not exceed two years. If necessary, it may be extended for another term of two years. In any case, the terms and conditions of employment shall not exceed four years. Afterwards, it shall be deemed the termination of employment.

### **ARTICLE X**

The Parties shall extend their fullest cooperation to ensure the return of bona fide workers, who have completed their employment terms and conditions, to their permanent addresses.

### **ARTICLE XI**

The authorised agencies of the employing country shall set up and administer a savings fund. Workers are required to make monthly contribution to the fund in the amount equivalent to 15 per cent of their monthly salary.

### **ARTICLE XII**

Workers who have completed their terms and conditions of employment and returned to their permanent addresses shall be entitled to full refund of their accumulated contribution to the savings fund and the interest by submitting the application to the authorised agencies three months prior to their scheduled date of departure after completion of employment. The disbursement shall be made to workers within 7 days after the completion of employment.

In the case of workers whose services are terminated prior to completion of employment and have to return to their permanent addresses, the refund of their accumulated contribution and the interest shall also be made within 7 days after termination of employment.

### **ARTICLE XIII**

Temporary return to country of origin by workers whose terms and conditions of employment are still valid and in compliance with the authorised agencies' regulations shall not cause termination of the employment permission as stated in Article IV.

### **ARTICLE XIV**

Procedures and documents required in the application for refund as stated in Article XII shall be set forth by the authorised agencies.

### **ARTICLE XV**

The right to refund of their contribution to the savings fund is revoked for workers who do not return to their permanent addresses upon the completion of their employment terms and conditions.

## ARTICLE XVI

The authorised agencies of the employing country may draw from the savings fund to cover the administrative expenses incurred by the bank and the deportation of workers to their country of origin.

## **PROTECTION**

### ARTICLE XVII

The Parties in the employing country shall ensure that the workers enjoy protection in accordance with the provisions of the domestic laws in their respective country.

### ARTICLE XVIII

Workers of both Parties are entitled to wage and other benefits due for local workers based on the principles of non-discrimination and equality of sex, race, and religion.

### ARTICLE XIX

Any dispute between workers and employers relating to employment shall be settled by the authorised agencies according to the laws and regulations in the employing country.

## **MEASURES AGAINST ILLEGAL EMPLOYMENT**

### ARTICLE XX

The Parties shall take all necessary measures, in their respective territory, to prevent and suppress illegal border crossings, trafficking of illegal workers and illegal employment of workers.

### ARTICLE XXI

The Parties shall exchange information on matters relating to human trafficking, illegal immigration, trafficking of illegal workers and illegal employment.

## **AMENDMENTS**

### ARTICLE XXII

Any amendment to this Memorandum of Understanding may be made as agreed upon by the Parties through diplomatic channels.

## **SETTLEMENT OF DISPUTES**

### ARTICLE XXIII

Any difference or dispute arising out of this Memorandum of Understanding shall be settled amicably through consultations between the Parties.

## **ENFORCEMENT AND TERMINATION**

### ARTICLE XXIV

This Memorandum of Understanding shall enter into force after the date of signature and may be terminated by either Party in written notice. Termination shall take effect 90 (ninety) days following the date of notification. In case of termination of this Memorandum of Understanding by either Party, for the benefit of the workers, the

Parties shall hold consultation on how to deal with employment contracts that are still valid.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed this Memorandum of Understanding.

DONE at Chiang Mai on the Twenty First Day in the Month of June of Two Thousand and Three of the Christian Era, in the Thai, Myanmar, and English languages, in two original copies all of which are equally authentic. In case of divergence of interpretation, the English text shall prevail.

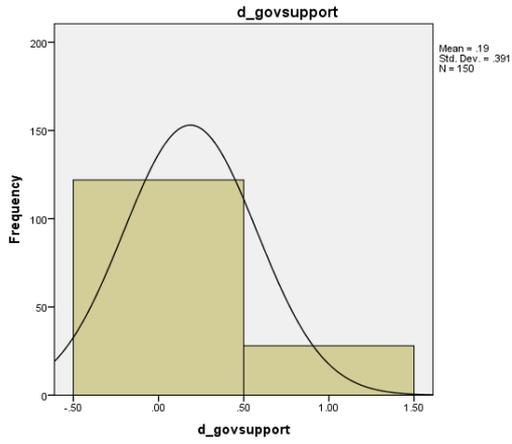
FOR THE GOVERNMENT OF THE KINGDOM OF THAILAND (Surakiart Sathirathai) Minister of Foreign Affairs

FOR THE GOVERNMENT OF THE UNION OF MYANMAR (Win Aung) Minister of Foreign Affairs

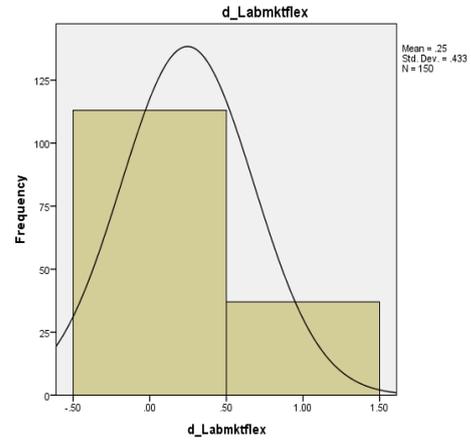
## APPENDIX 4 Distribution of Independent Variable

### Opportunity structure

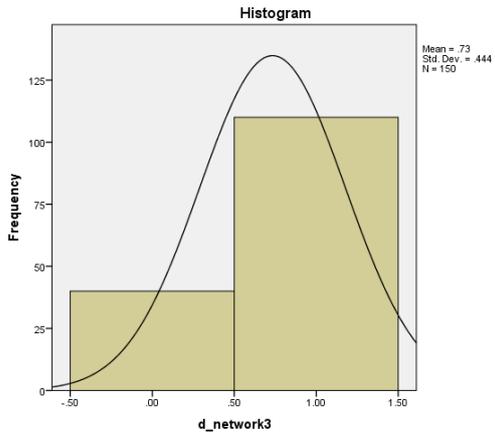
#### 1) Government mechanism



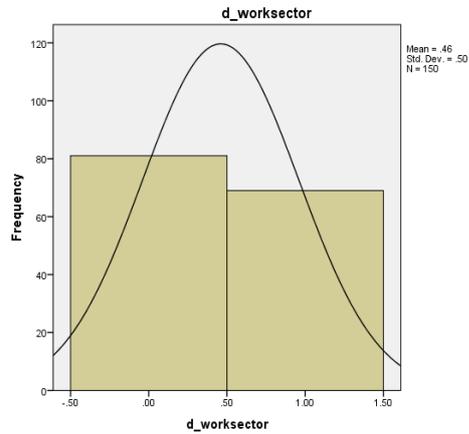
#### 2) Job options availability



#### 3) Consultation channel

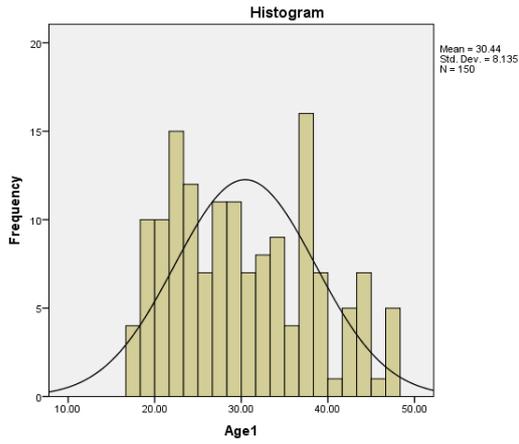


#### 4) Work sector

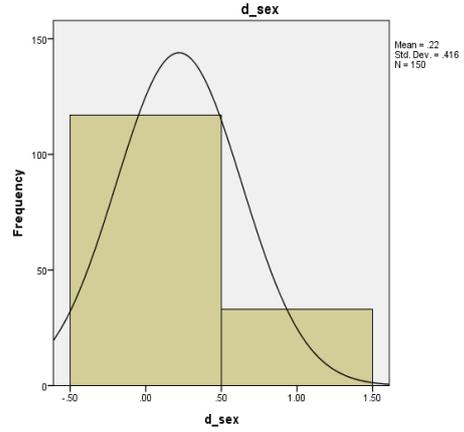


# Agency structure

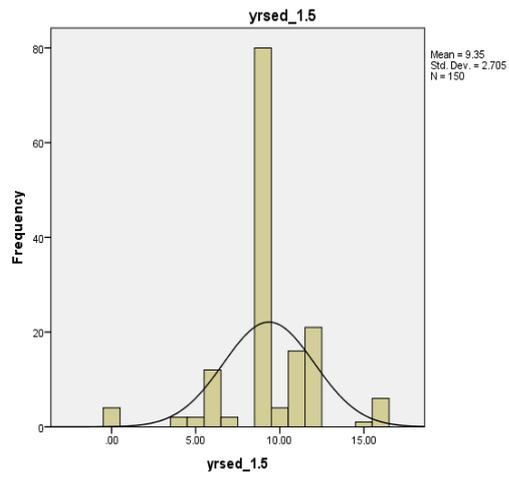
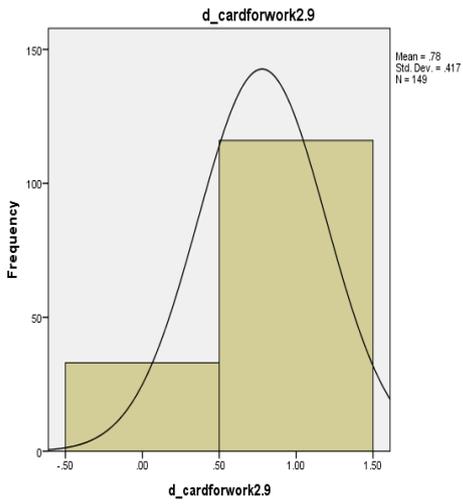
1) Age



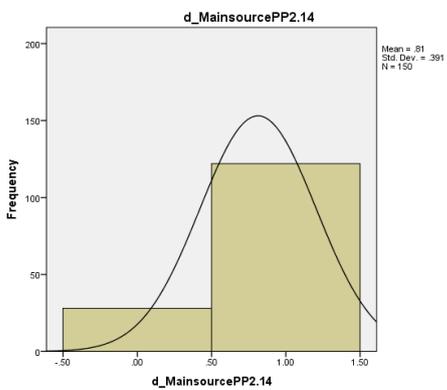
2) Gender



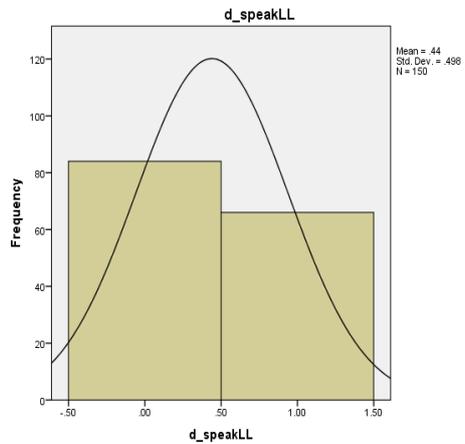
3) Holding a working permit/working visa 4) Years of schooling



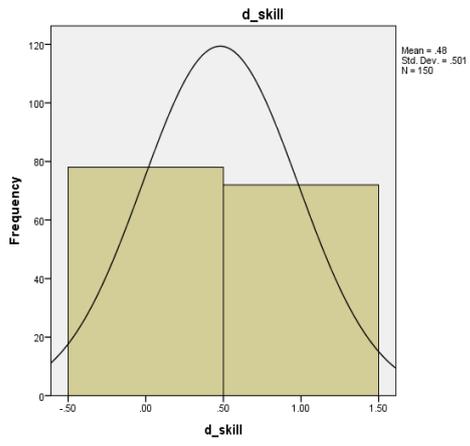
5) Main source of income language



6) Proficiency of speaking local language



### 7) Self-rating working skills



### 8) Experience of bad practice

