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## **ILO Asia and the Pacific Working Paper Series**

Research on occupational safety and health for  
migrant workers in five Asia and the Pacific countries:  
Australia, Republic of Korea, Malaysia,  
Singapore and Thailand

Kawon Lee, Connor McGuinness, Tsuyoshi Kawakami  
March 2011





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ILO DWT for East and South-East Asia and the Pacific

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## Preface

Cross-border migration has a long history in the Asia and the Pacific region. Over the past two decades, labour migration has increased and there are strong indicators that it will continue to rise further as a result of continued economic disparity, demographic trends, greater integration, etc.

Many migrant workers suffer from hazardous work environments, often at a disproportionately poorer rate than host country nationals. They are prevalent in 3D (dirty, dangerous and difficult) jobs in sectors where labour protection mechanisms have limited reach. This effect can be worsened by poor or negative government policy towards migrant workers due to either neglect or lack of consideration of the particular situation of migrant workers.

It is therefore essential that there is an assessment of the workplace standards for migrant workers in destination countries. The scale and nature of migration is an increasingly important challenge for many governments and societies. Despite these concerns, it is important that nations receiving migrants for the purposes of filling labour shortages, have systems in place that observe national standards. It is very important that migrant workers receive the same standards as host country nationals. There are existing ILO instruments (Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)) that provide that migrant workers should enjoy equal Occupational Safety and Health rights as any other worker in their host country. The rights inherent in similar ILO OSH instruments; Occupational Safety and Health Convention, 1981 (No. 155), Occupational Health Services Convention, 1985 (No. 161), Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), while not referring specifically to migrant workers, envisage that migrant workers enjoy the same rights without discrimination. There are growing efforts to address these issues at both national policy and workplace levels.

Occupational Safety and Health (OSH) is one positive area that governments, employers and workers can all assist in improving. Some countries in the Asia and the Pacific region have better established practices, labour monitoring systems and overall OSH arrangements than others, but challenges still remain. Countries can learn from the good practices and challenges present in the region to better strengthen OSH arrangements for their workforces.

Freedom of Association should be permitted and facilitated for all workers, including migrant workers. Freedom of Association is essential for enabling migrant workers to ensure they are provided with adequate OSH arrangements and conditions, particularly through collective bargaining. Legal recognition of every worker's right to organize can assist the process of standardising OSH and other arrangements that exist for the benefit of migrant workers.

With the increase in the use of migrant labour, governments and employers must have forward thinking policies to meet the new challenges that will arise from a far more diverse labour market. It is an emerging challenge for nations in this decade and beyond to ensure decent work opportunities for all. An excellent way to improve this is to create and maintain equitable approaches to OSH as it applies to migrant workers.

As the economies of countries of origin and destination benefit from migrant labour, it is important that migrant workers and their employers are not left behind with regards to policy. Decent standards, particularly health and safety standards, need to be adopted, implemented and enforced in order to maintain safe and productive workplaces, and protect the rights of all workers.

I hope the analysis of these current OSH arrangements and examples, along with the policy recommendations and the strategic framework presented in this report, will serve as the impetus for policy dialogue and action on OSH in the focus countries. I also hope that other countries that are dependent on migrant workers in certain sectors, similarly review their OSH and other arrangements and make inclusive policy decisions to strengthen these arrangements.

I would like to express my sincere appreciation to Ms Sunan Suthikorncompee for her secretarial assistance to complete this publication.

The ILO would like to extend its sincere appreciation to the United States Department of Labor for providing funding for this publication.

Bill Salter  
Director  
ILO DWT for East and South-East Asia and the Pacific

## Table of contents

	<i>Page</i>
<b>1. Introduction</b> .....	1
<b>2. Australia-OSH for migrant workers</b> .....	2
2.1 Background .....	2
2.2 Legislation .....	4
2.3 Characteristics of migrant OSH .....	5
2.4 Government involvement .....	7
2.5 NGO involvement .....	8
2.6 Trade union involvement .....	9
2.7 Analysis .....	9
<b>3. Republic of Korea-OSH for migrant workers</b> .....	11
3.1 Background .....	11
3.2 Legislation .....	13
3.3 Characteristics of migrant OSH .....	13
3.4 Government involvement .....	16
3.5 NGO involvement .....	18
3.6 Trade union involvement .....	19
3.7 Analysis .....	19
<b>4. Malaysia-OSH for migrant workers</b> .....	21
4.1 Background .....	21
4.2 Legislation .....	22
4.3 Characteristics of migrant OSH .....	23
4.4 Government involvement .....	23
4.5 NGO involvement .....	24
4.6 Trade unions involvement .....	25
4.7 Analysis .....	26
<b>5. Singapore-OSH for migrant workers</b> .....	27
5.1 Background .....	27
5.2 Legislation .....	28
5.3 Characteristics of migrant OSH .....	29
5.4 Government involvement .....	31
5.5 NGO involvement with migrant workers .....	32
5.6 Trade union involvement .....	33
5.7 Analysis .....	33

## Table of contents (continued)

	<i>Page</i>
<b>6. Thailand-OSH for migrant workers</b> .....	36
6.1 Background .....	36
6.2 Legislation .....	36
6.3 Characteristics of migrant OSH .....	37
6.4 Government involvement .....	39
6.5 NGO involvement .....	40
6.6 Trade union involvement .....	41
6.7 Analysis .....	41
<b>7. Conclusion and recommendations</b> .....	43
<b>8. Specific recommendations</b> .....	47
<b>9. Reference</b> .....	49

### List of tables

Table 1 Occupational injuries of migrant workers by country 2009 (Republic of Korea)...	13
Table 2 Characteristics of occupational accidents affecting migrant workers .....	15
Table 3 Breakdown of documented migrant workers by country, February 2010 .....	21
Table 4 Distribution of documented migrant workers by sector, February 2010 .....	21
Table 5 Country of origin of foreign workers in Malaysia by sector, February 2010 .....	22
Table 6 Numbers and growth rate of foreign employment in Singapore .....	27
Table 7 Employment change .....	27
Table 8 Characteristics of patients .....	29

### List of figures

Figure 1 Permanent programme outcomes and temporary entry visa grants 2008-09 in Australia .....	3
Figure 2 Student visa holders in Australia on 30 June each year, 2001-09 .....	6
Figure 3 Number of migrant workers employed in Republic of Korea 2010 .....	12
Figure 4 Number of migrant workers in Republic of Korea .....	12
Figure 5 Reported injuries of migrant workers .....	12
Figure 6 Occupational accidents among migrant workers by employment type, 2009 .....	14
Figure 7 Type of occupational accidents affecting migrant workers, 2009 .....	14
Figure 8 Exposure to dangerous substances at work, difference between locals and migrants .....	15
Figure 9 Number of workplace injuries by industry .....	28
Figure 10 Reason not to have safety training .....	30
Figure 11 Cause of work-related injury of migrant workers .....	30
Figure 12 Potential methods to improve work safety conditions for migrant workers .....	46



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## Abstract

Cross border migration has a long history in Asia and the Pacific and in the 21<sup>st</sup> century labour migration is on the increase. The purpose of this paper is to study Occupational Safety and Health (OSH) conditions for migrant workers in five Asia and the Pacific countries (Australia, Republic of Korea, Malaysia, Singapore and Thailand), in response to growing concern about the improvement of safety, health and working conditions for migrant workers. Migrant labour has become one of the determining factors in the economic sustainability of these countries and is increasingly relied upon, especially in the so-called 3D (dirty, dangerous and difficult) sectors which are generally labour intensive, hazardous and offer low wages. This working paper presents trends and facts relevant to the five target countries' OSH environments for migrant workers, with the long term aim of raising awareness of workplace safety for migrant labour forces and instilling the significance of sound OSH practices at work in all stakeholders, including governments, employers, workers and NGOs.

### About the authors

Kawon Lee was an intern at the ILO with a focus on OSH. Connor McGuinness was hosted by the ILO as part of the Australian Youth Ambassador for Development Programme. Tsuyoshi Kawakami was the Senior Specialist on OSH of ILO DWT for East and South-East Asia and the Pacific – Bangkok, Thailand until March 2011.

*The responsibility for opinions expressed in articles, studies and other contributions rests solely with their authors, and publication does not constitute an endorsement by the International Labour Office of the opinions expressed in them, or of any products, processes or geographical designations mentioned.*

# 1. Introduction

The purpose of this paper is to study conditions of Occupational Safety and Health (OSH) for migrant workers in five – Pacific countries: Australia, Republic of Korea, Malaysia, Singapore and Thailand. This paper is in response to the growing concern on the improvement of safety, health and working conditions for migrant workers.

These countries were selected as the incidence of migrant labour is significant in each of the focus countries. The group represents a sample of labour sending, and labour receiving countries. Similarly the group represents a spread with regards to levels of economic development. They also represent a good geographic balance of Asia and the Pacific. Migrant labour has become a structural feature of these economies, especially in so called 3D (dirty, dangerous and difficult) sectors which are generally labour intensive, hazardous and low wage jobs.

Often these migrants are depicted as a burden on society, when in fact their contribution to their host economy is often underestimated. Often they are filling labour shortages by working in jobs shunned by local workers. In a 2010 survey on public attitudes toward migrant workers, members of the public were asked whether migrants make a net contribution to the economy; respondents in Republic of Korea and Singapore were twice as likely to agree with the statement (83 per cent and 78 per cent respectively), than respondents in Malaysia and Thailand (37 per cent and 40 per cent respectively).<sup>1</sup>

With the various misunderstandings and misconceptions surrounding migration, it can be difficult to lobby support for improved working conditions for migrant workers. Moreover, labour migration is typically based on a bilateral relationship between sending and receiving countries, and there are various sensitivities to consider in the management of a foreign labour force. In this sense, without coherent legislation and policies that take into account the vulnerabilities of migrant workers and their contribution to society, decent work and specifically effective OSH at work for migrant workers is difficult to achieve.

Occupational accidents and injuries are generally concentrated in the industries where migrant workers in target countries are employed, such as the construction, manufacturing, agriculture and fishing sectors. The primary objective of OSH for migrant workers is to prevent accidents at the workplace and reduce workplace danger at the source. In order to make workplace conditions as safe as possible, the host country must recognize the importance of OSH for migrant workers.

Of particular concern is the presence of migrant workers below minimum working age standards in some target countries. For example, there are reports of migrant children working on plantations in Malaysia<sup>2</sup> and on fishing boats in Thailand<sup>3</sup> – which can be hazardous and have an impact on their development. Younger workers are particularly vulnerable to OSH related incidents and diseases, similarly they may not notice or be able to trace symptoms due to their age and capacity to move frequently between employers spread across large geographic distances. This is very significant as many occupational diseases and injuries have high latency periods resulting in younger workers not being affected until long after they have left the employer, region or country where they were exposed to occupational hazards.

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<sup>1</sup> ILO Regional Office for Asia and the Pacific: *Public attitudes to migration and migrant workers: Thailand, Malaysia, Republic of Korea and Singapore* (Bangkok, 2011).

<sup>2</sup> Discussion on Convention No. 138 on *Minimum Age in Malaysia, Conclusion of the Committee of Experts on the Application of Conventions and Recommendations*, International Labour Conference, 2009.

<sup>3</sup> S. Punpuing and E. Pearson: *The Mekong challenge, underpaid, overworked and overlooked: The reality of young migrant workers in Thailand* (Bangkok, ILO, 2006).

Moreover, labour inspection; while not covered in any exhaustive capacity in this paper continues to be challenged by the issue of migrant labour. Labour inspectorates, in general, are experiencing downwards pressure with relation to funding and in some instances their remit is being expanded to include duties that are traditionally more of an immigration function. Limited funding has led to an incidence of inspector to workforce ratios, that can be broadly estimated at 1 per 5,000 workers in highly industrialized countries, to 1 per 20,000 and 1 per 40,000 workers in developing and least developed countries respectively.<sup>4</sup> The expansion of mandate of certain inspectorates to incorporate immigration laws and regulations can be problematic in creating conflicts of interests. Combining the two roles compromises the core function of a labour inspector, as the worker may not be able to expose or resist abusive conditions in the workplace as the result from the worker's perspective, may appear comparatively worse e.g. deportation versus compensation. There is potential that this could cause an issue in countries such as Australia whereby certain immigration inspection powers may be devolved to officers of the federal labour inspectorate (see page 12 and *Analysis*).

This paper presents trends and facts within the five target countries' OSH environments for migrant workers. Its long term aim is to raise awareness of workplace safety for migrant labour forces and instil the significance of sound OSH practices at work for all stakeholders including governments, employers, workers and NGOs.

## 2. Australia-OSH for migrant workers

### 2.1 Background

In 2008-09 Australia's migration programme saw the arrival of 171,318 migrants of which there are three streams<sup>5</sup>:

- 1) The skill stream – targets migrants who have skills, a proven entrepreneurial capability or outstanding abilities that will contribute to the Australian economy.
- 2) The family stream – enables the migration of immediate family members such as spouses, children, parents and certain other extended family members.
- 3) The special eligibility stream – facilitates the entry of people who meet specified criteria or resolve the status of groups allowed to remain in Australia as long-term temporary residents on humanitarian grounds.

The skill stream accounted for 67 per cent of the total migration programme or equivalent to 114,777 places.<sup>6</sup>

This of course is not representative of Australia's total migration spectrum nor wholly representative of its migrant workforce, the majority of which arrives as temporary labour. As illustrated in Figure 1, it can be seen that 101,280 Business Long Stay (457) and 194,103 Working Holiday Makers visas were granted.<sup>7</sup> In addition 320,368 Overseas Student visas were also issued in this period, of which holders may have the right to work, albeit with specified parameters pertaining to duration of working hours per week.

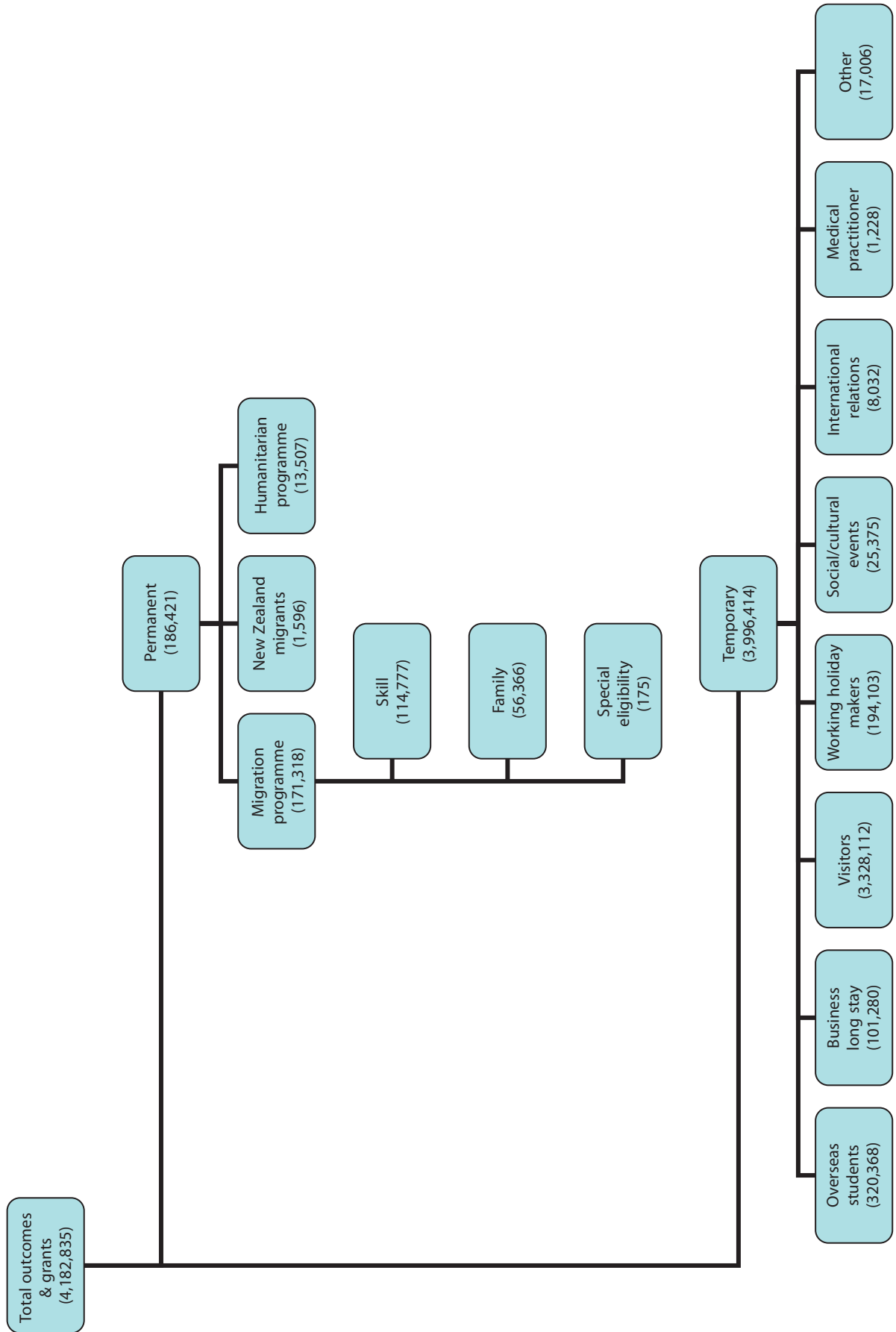
<sup>4</sup> T. De Meyer, J. Richotte and T. Kawakami: *Labour inspection*, presentation (Bangkok, ILO), 24 Feb. 2011.

<sup>5</sup> Department of Immigration and Citizenship: "Chapter 2 Migration program", in *Population flows: Immigration aspects 2008-09 edition* (Commonwealth of Australia), p. 29.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid: p. 30.

Figure 1. Permanent programme outcomes and temporary entry visa grants 2008-09 in Australia



## 2.2 Legislation

OSH legislation and regulations currently operate in nine separate jurisdictions in Australia representative of the division of powers between the Commonwealth (Australian/Federal), State and Territory Governments of Australia.

With the exception of Commonwealth legislation which primarily covers employees of the Commonwealth, OSH legislation is principally the responsibility of the States and Territories.

Each of Australia's State and Territory OSH legislation (listed below) provide protections for any worker in Australia irrespective of residency status and whether they are working in what is commonly known as the informal "cash-in-hand" economy.

It is important to note that this legislation has not necessarily been intended to extend to undocumented migrant workers working in the informal economy. Nor has it been necessarily unintended. Due to Australia's unique division of constitutional responsibility, the States and Territories do not have powers to manage immigration and income taxations matters, consequently the legislation in each State and Territory is broad and inclusive in their definition of "worker", "employee" or "other persons"<sup>8</sup>. As such while migrant workers, particularly temporary migrant workers, are granted the same or similar OSH provisions under the law, difficulties are easily foreseen in the instance that a worker is unlawfully staying and/or working in Australia. Such a discovery by Commonwealth authorities may perceivably produce a worse outcome for that worker than being able to exercise rights or claims under OSH legislation.

### Legislation by State and Territory

- 1) **New South Wales**  
Occupational Health and Safety Act 2000  
Workers' Compensation Act 1987
- 2) **Victoria**  
Occupation Health and Safety Act 2004  
Accident Compensation (Work Cover Insurance) Act 1993  
Accident Compensation Act 1985
- 3) **Queensland**  
Workplace Health and Safety Regulation 2008  
Workplace Health and Safety Act 1995
- 4) **Australian Capital Territory**  
Work Safety Act 2008
- 5) **Tasmania**  
Workplace Health and Safety Regulations 1998  
Workplace Health and Safety Act 1995
- 6) **Northern Territory**  
Workplace Health and Safety Regulations 2010  
Workplace Health and Safety Act 2009

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<sup>8</sup> For a detailed description see R. Guthrie and M. Quinlan: "The occupational safety and health rights and workers' compensation entitlements of illegal immigrants: an emerging challenge", in *Policy and Practice in Health and Safety*, Vol. 3, No. 2, 2005, pp. 69-89, esp. p. 74.

- 7) **South Australia**  
Occupational Health, Safety and Welfare Regulations 1995  
Occupational Health, Safety and Welfare Act, 1986
- 8) **Western Australia**  
Occupational Safety and Health Act 1984

While the above jurisdictions and legislation are numerous they broadly provide similar if not the same protections for workers with regards to OSH and its enforcement. Notwithstanding, there are some inconsistencies in the approach and application of OSH legislation.

As such Safe Work Australia has been established as an independent statutory agency with primary responsibility to improve occupational health and safety and workers' compensation arrangements across Australia. This was agreed between the Commonwealth (Australian/Federal) Government and all State and Territory Governments at the Council of Australian Governments meeting held 3 July 2008.<sup>9</sup> Each State and Territory together with the Commonwealth have formally committed to the harmonisation of work health and safety laws to the effect that work health and safety laws are similar in each jurisdiction.

It is important to note that Safe Work Australia does not assume the position of being a national regulator of OSH legislation. The Commonwealth and each State and Territory will continue to have their own regulators to administer laws in their jurisdiction.<sup>10</sup> There is however draft legislation (Work Health and Safety Act) that will act to serve as a model standard for each jurisdiction's OSH legislation to reflect.

Recently the Commonwealth introduced legislation (Migration Legislation Amendment (Worker Protection)) Act 2008 specifically for the purposes of temporary sponsored migrant workers. The legislation allows the Minister for Immigration and Citizenship to appoint inspectors to conduct site visits and request documents from visa sponsors (the employer). These inspectors share similar powers as those of the Fair Work Ombudsman (FWO) and may indeed be an officer of the FWO exercising powers under this act. These inspectors may observe questionable OSH practices and refer these to relevant State and Territory agencies for investigation.<sup>11</sup> The Department of Immigration and Citizenship may also take complementary sanction against the visa sponsor (i.e. the employer).

### 2.3 Characteristics of migrant OSH

Unlike other countries in this study (with the possible exception of Republic of Korea) Australia does not have an unskilled labour stream for legitimate migration. With the exception of the Pacific Seasonal Worker Pilot Scheme (which as the names suggests is a small scale, and demand driven initiative), Australia's migration regime primarily and (in theory) exclusively targets skilled labour to fill domestic demand.

Of this skilled migration, there has been a steady increase in the levels of temporary migration, or more specifically grants of the Business Long Stay visa commonly termed the 457 visa. It should be noted that in 2008-09 some decrease was observed due to demand resultant from economic conditions

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<sup>9</sup> *Safe Work Australia*, <http://www.safeworkaustralia.gov.au> (accessed 14 June 2010).

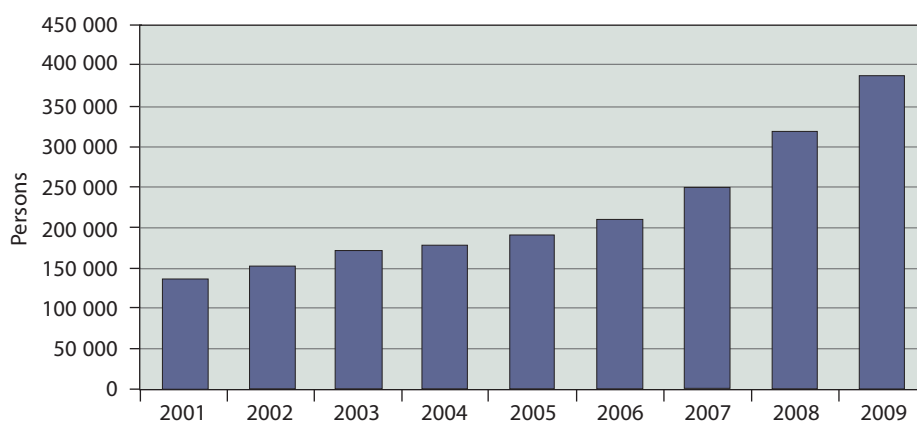
<sup>10</sup> *Ibid*: FAQs (accessed 14 June 2010).

<sup>11</sup> Migration Legislation Amendment (Worker Protection) Act 2008, Commonwealth of Australia.

and visa processing times.<sup>12</sup> A condition of this visa is that the holder must maintain sponsorship from an employer to fill a nominated position. In the event the visa holder ceases employment, they must not do so for more than 28 consecutive days. If this was not able to be secured the worker would most likely have to return to their home country.<sup>13</sup>

Similarly the number of overseas students in Australia has been increasing on an annual basis as is illustrated in the below Figure 2.<sup>14</sup>

**Figure 2. Student visa holders in Australia on 30 June each year, 2001-09**



The number of student visa holders in Australia changes continually due to their frequent arrival and departure from Australia. The stock data provides a ‘snapshot’ of the estimated number of overseas students in Australia on 30 June each year.

*Source:* Department of Immigration and Citizenship, Australia

Most overseas students since 2008 have been automatically granted permission to work, previously they were required to apply for this provision, although it was often granted. Legally they may not undertake work until they have started their course in Australia. They are limited to 20 hours work per week while their course is in session, and may work full-time during formal holiday periods.<sup>15</sup>

Student visa holders found to be working in excess of their limited work rights are subject to mandatory visa cancellation.<sup>16\*\*</sup> While the numbers of overseas students working in excess of their visa conditions is unknown, anecdotal evidence suggests that employment in excess of the conditions allowed, is widespread particularly in the hospitality industry.<sup>17</sup>

<sup>12</sup> Department of Immigration and Citizenship: *Annual report 2008-09 1.1.5 Temporary residents (economic) – Trends in the subclass 457 business (long stay) visa program to March 2009* (Commonwealth of Australia) p. 2.

<sup>13</sup> *Visa obligations for migrant workers in Australia*, <http://www.immi.gov.au/skilled/skilled-workers/sbs/obligations-employee.htm#a> (accessed 25 June 2010).

<sup>14</sup> Department of Immigration and Citizenship: *Annual report 2008-09 1.1.4 Students* (Commonwealth of Australia).

<sup>15</sup> *Overseas students*, <http://www.immi.gov.au/media/fact-sheets/50students.htm> (accessed 25 June 2010).

<sup>16</sup> Ibid: \*\*The term “work right” here refers to student visa holders’ right to undertake employment according to the conditions of their visa class and does not imply that they possess less rights under Australian industrial relations law.

<sup>17</sup> R. Guthrie and M. Quinlan: “*The occupational safety and health rights and workers’ compensation entitlement of illegal immigrants: An emerging challenge*”, in *Policy and Practice in Health and Safety*, Vol. 3, No. 2.



- Case study

#### Case 1

In 2006 an investigation by *The Age* newspaper found that an employer (sponsor) of a Chinese citizen, Zhihong Fu, on a temporary 457 visa, forced Fu to return to work after breaking his right wrist and also to apologise to the company for causing trouble.<sup>18</sup> He later broke his other wrist and had his employment terminated while on sick leave.

Fu's contract also stipulated that he could not join a union, despite such a restriction being illegal in Australia. Similarly it was reported the type of work Fu was instructed to undertake was different to that which his contract stipulated.<sup>19</sup>

#### Case 2

In 2007 a Sydney District Court ordered that the employers of a temporary 457 visa worker (Jae Sik Kim) to pay over 96,000 Australian dollar (US\$106,024) in compensation to Kim. Kim had severely injured his back and when he approached his employers he was reported as a visa overstayer and was deported.

The court found that Kim had been falsely imprisoned by his employers and they also assaulted him.

In granting this civil compensation claim, Justice Christ Geraghty said Kim was very vulnerable as he did not speak English and was completely reliant on his employers.<sup>20</sup>

#### Case 3

Also in 2007 an investigation by the *Sydney Morning Herald* highlighted three workplace deaths of temporary migrants on 457 visa:

- Pedro Balding was killed when thrown off the back of a utility truck travelling at high speed;
- Guo Jian Dong was killed when felling a tree whilst logging, Guo had no experience with a chainsaw before arriving in Australia; and
- Wilfredo Navales was crushed at a stonework, his family reported that he was doing labouring work as opposed to using the skills for which he was brought to Australia.<sup>21</sup>

## 2.4 Government involvement

The issue of regulating and enforcing OSH legislation and requirements in the workplace is arguably emerging as a significant challenge for governments in Australia where migrant labour (legal or otherwise) is present. It poses a challenge for the relevant inspectorates as some of the issues involved such as illegal migrant labour and/or the informal “cash-in-hand” economy are also transgressions in the Commonwealth jurisdiction. It is therefore difficult to afford the same protections for all migrant workers due to a lack of a coherent approach to the issue of migrant labour.

<sup>18</sup> M. Bachelard: “Migrant caught in company’s visa loophole”, in *The Age*, Wed. 11 Oct. 2006.

<sup>19</sup> Australian Broadcasting Corporation: “Unions say 457 visa used to exploit workers”, in *The World Today, ABC Radio Broadcast*, Wed. 11 Oct. 2006, 12.26 pm.

<sup>20</sup> Australian Broadcasting Corporation: “457 Visa worker awarded AU\$96k kidnapping compensation“, in *ABC News*, article 21, Sep. 2007.

<sup>21</sup> M. Know and M. Moore: “Exploitation of skilled migrants exposed – Dead men working”, in *The Sydney Morning Herald*, Tue. 28 Aug. 2007.

Notwithstanding, there has been some attempt by some State authorities to target areas prone to OSH infringements particularly where migrant labour is present. In 2001 a multiagency project in New South Wales, South Australia and Victoria, known as “Fruitlink”, aimed to develop OSH training for transient workers, often including numbers of migrants, along the “harvest trail” using mobile facilities.<sup>22</sup>

Broadly however, State Government OSH agency activities in relation to migrant workers have largely been confined to the provision of multilingual information and interpreters.<sup>23</sup> Under Safe Work Australia, it is possible that governments, both State and Commonwealth, will augment their approach to OSH legislation and protections to better meet the challenge of migrant and itinerant labour. Even if this does occur, it would appear that a greater strategic approach needs to be taken by each domestic agency to ensure the provisions of legislation are adequately enforced.

The Commonwealth has also been made aware of the issues relating to OSH regulation and enforcement with regard to temporary migrants. On 14 April 2008, following concerns raised about the Subclass 457, visa programme the Minister for Immigration and Citizenship, announced the establishment of an independent integrity review process to be conducted by industrial relations expert Ms Barbara Deegan. The final report was completed in October 2008.

During the course of the integrity review’s analysis, Ms Deegan noted that “in relation to workers’ compensation the situation of subclass 457 visa holders who are sponsored by overseas sponsors ... is less clear.”<sup>24</sup> The review goes on to note that the NSW Government has stated that “it is almost impossible for OHS regulators to follow-up a breach of workplace safety legislation when the sponsor is located offshore.”<sup>25\*</sup>

Along with increasing sponsor obligations, the Commonwealth has implemented some recommendations that allow for information sharing across government agencies (Commonwealth, State and Territory) which may lead to increased worksite observation and compliance monitoring where temporary migrants are present. However, there is little observable government action on the issue of temporary migrant workers’ reluctance to raise OSH issues. Their reluctance is based on a fear that as a consequence of raising OSH and work related matters their employment may be terminated by their sponsor, and thus their action would precipitate an early, costly and unwanted return to their country of origin.

## 2.5 NGO involvement

Outside of trade unions, there is limited direct Australian-based NGO representation for migrant workers in Australia. However some organizations have advocated for increased representation and rights for migrant sex workers, such as the sex industry focussed Scarlett Alliance.

Scarlett Alliance has argued that due to Australia’s limitations on the type of industry/work that an employer may seek to sponsor migrants for (i.e. seeking to sponsor a person for sex work), has produced an environment in which persons migrate to Australia to undertake sex work under unfair

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<sup>22</sup> R. Guthrie and M. Quinlan: “*The occupational safety and health rights and workers’ compensation entitlements of illegal immigrants: An emerging challenge*”, in Policy and Practice in Health and Safety, Vol. 3, No. 2.

<sup>23</sup> Ibid.

<sup>24</sup> B. Deegan: *Visa subclass 457 integrity review, final report October 2008* (Commonwealth of Australia), p. 56.

<sup>25</sup> Ibid: \* “OHS” is the shortened version of Occupational Health and Safety in Australia. The term is synonymous with “OSH”.

contractual arrangements. The net effect being that these sex workers are not considered to be migrants for the purposes of work and thus have limited to no access to any of the services that are afforded to other (legally employed) migrant workers. The Scarlett Alliance has recommended that the sex industry be fully decriminalised in order to maximise OSH, industrial and other regulatory mechanisms.<sup>26</sup>

Other organizations such as Amnesty International have advocated for Australia's ratification of International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.<sup>27</sup>

## 2.6 Trade union involvement

Trade union advocacy on the fair and equitable treatment of migrant workers in Australia has been strong particularly in regards to temporary employer-sponsored migrant workers. This is evidenced in the Australian Council of Trade Unions (ACTU) submission to the Visa Subclass 457 Integrity Review.<sup>28</sup> This submission went so far as to suggest that temporary migrants on 457 visas should have access to the federal health care system "Medicare" and access to social security services when these workers were "between" employers. Unions such as the ACTU, Australian Workers' Union (AWU) and the Maritime Union of Australia (MUA) have also called on the Australian Government to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.<sup>29</sup>

The AWU has actively supported the regional unskilled seasonal labour pilot programme known as the Pacific Seasonal Worker Pilot Scheme and has urged other unions to stop opposing migrant work schemes, with the caveat that they are conducted with sufficient labour market testing and that migrant workers receive the same pay and conditions as any other worker in Australia.<sup>30</sup>

## 2.7 Analysis

A key feature of OSH regulations, protections and conditions for migrants in the Australian context is that permanent migrant workers to Australia are less likely to be as vulnerable to negative OSH practices as their residency in Australia is not tied to their employment status. As such these migrants can feel relatively free to raise any issues and claim their rights without fear of deportation and are less susceptible to intimidation from unscrupulous employers. As high standards of English proficiency are mandatory prior to becoming a permanent migrant worker, it is less likely that the language barrier will be an issue for permanent migrant workers. However this is not to discount a barrier remaining or cultural differences presenting a barrier to equitable treatment.

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<sup>26</sup> *Scarlett Alliance*, <http://www.scarlettalliance.org.au> (accessed 5 July 2010).

<sup>27</sup> *Amnesty International*, <http://www.amnesty.org.au/refugees/comments/20435/> (accessed 5 July 2010).

<sup>28</sup> Australian Council of Trade Unions: *Response to issues paper # 3: Integrity/exploitation, visa subclass 457 integrity review*, 7 Oct. 2008.

<sup>29</sup> ACTU and Amnesty International: *Joint letter calling for greater protection of migrant worker rights and ratification of Convention to the Minister for Immigration and Citizenship*, 28 Oct. 2009, <http://www.memberconnect.com.au/Campaigns/International/InternationalSolidarity/Lettercallingforgreaterprotectionofmigrantworkerrightsandratificationofconvention.aspx> (accessed 7 July 2010), <http://www.awu.net.au/523234.html> (accessed 7 July 2010) and <http://www.mua.org.au/news/mua-joins-push-for-govt-to-sign-migrant-workers-co/> (accessed 6 July 2010) respectively.

<sup>30</sup> P. Howes "Unions must stop opposing work schemes", in *The Australian*, 2 May 2008.

Notwithstanding, it can be argued that temporary migrants would be far more reluctant to raise issues regarding OSH and other work rights due to the asymmetrical nature of their employment relationship. As their right to reside in Australia is tied to maintaining employment with their sponsor, they are therefore in an unbalanced position vis-à-vis their employer who could exert undue pressure upon them to not assert their rights under OSH legislation.

The visa subclass 457 Integrity Review recommended that 457 visa holders who cease employment with their sponsor should be granted a 90 day period in which to find another sponsor as opposed to the 28 day period.<sup>31</sup> This recommendation was not implemented by the Commonwealth. An increased period to change employers may afford these temporary migrant workers more flexibility when they consider it necessary to do so as a result of unsatisfactory or substandard working conditions.

In theory and practice Australia has a high standard of OSH legislation, practices and competent enforcement agencies. However, migrant workers, particularly temporary migrant workers are not as well placed to be able to assert their rights or complain about poor OSH practices compared to Australian nationals. Undocumented workers, (i.e. those who do not have a right to work in Australia, work more than they are allowed and/or do not have a right to reside in Australia), have less avenues in order to seek redress for poor OSH practices. Each State and Territory statutory agency has confirmed that for the purposes of OSH legislation that residency or being part of the “cash-in-hand” economy does not derogate an employer’s responsibility to provide a duty of care regarding OSH, however this is not always the case.<sup>32</sup> Many migrants working contrary to their visa status may face a double jeopardy arising from their breach of immigration legislation<sup>33</sup>, as seen in the case of

Australia Meat Holdings Pty Ltd. – v – Kazi in the Queensland Supreme Court, which held that an unlawful non-citizen at the time of sustaining [an] injury at work was not a “worker” within the meaning of the relevant Queensland workers’ compensation legislation.<sup>34</sup>

However through Safe Work Australia, an approach may be adopted whereby migrant workers’ OSH rights are better enforced by statutory agencies. Should each State and Territory enact legislation that reflects the model legislation developed by Safe Work Australia, it is likely that migrants performing work contrary to their visa status would still be afforded protection in theory, as they would be in “employment-like” relationships.<sup>35</sup>

Although, considering Australia’s immigration and taxation compliance frameworks it would be difficult and improper for State and Territory OSH statutory agencies to not report migrant workers who were part of the “cash-in-hand” economy despite legitimate OSH infringements against them. Moreover these workers would be highly unlikely to seek redress for poor working and safety conditions out of a fear of punitive measures as part of working unlawfully.

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<sup>31</sup> Deegan: *Visa subclass 457 integrity review*, p. 13.

<sup>32</sup> Emails from Safe Work (South Australia): NT Work Safe (Northern Territory), Work Cover Authority of NSW (New South Wales), Work Safe (Western Australia) 15 June 2010, Workplace Standards Tasmania (Tasmania) 18 June 2010, Office of Regulatory Services/Work Cover (Australian Capital Territory) 21 and 22 June 2010, Work Safe Victoria (Victoria) 28 June 2010, Workplace Health and Safety Queensland (Queensland) 2 July 2010.

<sup>33</sup> R. Guthrie and M. Quinlan: “*The occupational safety and health rights and workers’ compensation entitlements of illegal immigrants: An emerging challenge*”, in *Policy and Practice in Health and Safety*, Vol. 3, No. 2.

<sup>34</sup> *Ibid*: p. 77.

<sup>35</sup> “National OHS Review: *Panel’s first report to the Workplace Relations Ministers’ Council*”, in R. Johnstone: *Regulating occupational health and safety for contingent and precarious workers: The proposed Australian “Primary” duty of care*. Working paper 70, (Canberra, Australian National University, 2009), p. 16.

Finally Robert Guthrie and Michael Quinlan make the pertinent observation that

Leaving aside the question of formal liability, the employment of illegal workers raises a number of concerns in terms of the practicality of implementing OSH standards...as contractors, leased or temporary employees [they] may be exposed to a wider array of physical, chemical and organisational hazards...They are less likely to be aware of hazard exposures or be able to associate a health issue with a particular job or task.<sup>36</sup>

Furthermore

...it is more likely to be that the unwillingness of workers to report OSH problems means that, in the absence of a serious and conspicuous incident, the breach will remain undetected.<sup>37</sup>

It is apparent that the issues surrounding undocumented/semi-documented migrant workers will be present for some time. However, it is likely that an improvement could be made for temporary documented migrant workers, such as those employed under the 457 visa arrangement, should they be provided similar pre-departure training as occurs for temporary migrants in Republic of Korea and Singapore.

### 3. Republic of Korea-OSH for migrant workers

#### 3.1 Background

Recent estimates by the Korea Immigration Service suggest that the number of unskilled foreign persons residing and working in the Republic of Korea is 513,621, with 465,302 persons working with proper documents and the remaining 48,319 persons living as undocumented migrant workers. Of the 513,621, the labour flow estimates consist overwhelmingly of Chinese (284,145 this includes the ethnic Korean-Chinese population), followed by Vietnamese, and Filipino nationals (Figure 3). With the growing number of migrant workers, the number of occupational accidents and injuries involving them are also on the rise (Figures 4, 5). From 2007-09 around 14,500 migrant workers were injured at work. Compared to around 8,700 between 2004-06, an increase of around 166 per cent.<sup>38</sup> Unskilled migrant workers in Republic of Korea are likely to be working in high risk sectors such as construction and manufacturing industries, increasing migrant workers' occupational accident and fatality rates, which continues to draw attention in Korean society.<sup>39</sup>

The legal employment of foreign workers in Republic of Korea is managed under the system known as the Employment Permit System (EPS) which allows employers in Republic of Korea to use foreign labour in a systematic manner and to solve manpower shortages in sectors where employers have a domestically unmet demand for labour. The EPS benefits migrant workers in that those who are registered enjoy the benefits of the provisions of labour related laws, including the Industrial Safety and Health Act (1990). With respect to OSH, the EPS has been contributing to awareness raising of OSH issues among foreign workers through the provision of pre-departure training which covers issues such as physical intensity of work, working hours, communication, risk of injury and cultural

<sup>36</sup> R. Guthrie and M. Quinlan: "The occupational safety and health rights and workers' compensation entitlements of illegal immigrants: An emerging challenge", in Policy and Practice in Health and Safety, Vol. 3, No. 2.

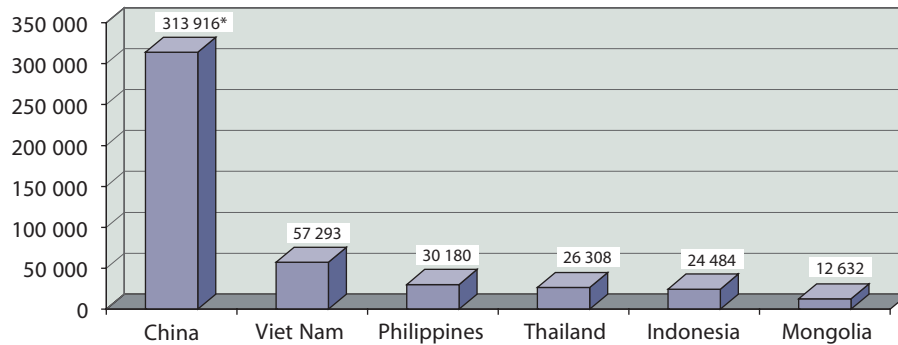
<sup>37</sup> Ibid.

<sup>38</sup> Yonhap News Agency: *Migrant workers deaths, injuries at workplaces rise, report*, 7 June 2010.

<sup>39</sup> To the extent that a hospital for migrant workers has been built from private donations. See "Migrant worker hospital waits for miracle", in *The Chosun Ilbo*, 22 July 2005, [http://english.chosun.com/site/data/html\\_dir/2005/07/22/2005072261016.html](http://english.chosun.com/site/data/html_dir/2005/07/22/2005072261016.html) (accessed 3 Sep. 2010).

differences. In terms of undocumented migrant workers' OSH, the Ministry of Employment and Labour (previously Ministry of Labour) maintains that migrant workers without proper documentation would also be entitled to the provisions of OSH related laws during their residency in Republic of Korea so that they can enjoy the same protections as other workers.

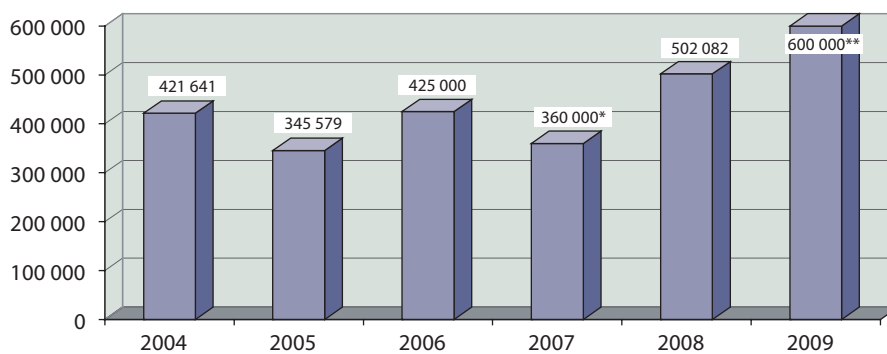
**Figure 3. Number of migrant workers employed in Republic of Korea 2010**



\*284,145 are ethnic Korean-Chinese

Source: Korea Immigration Service, Republic of Korea

**Figure 4. Number of migrant workers in Republic of Korea**

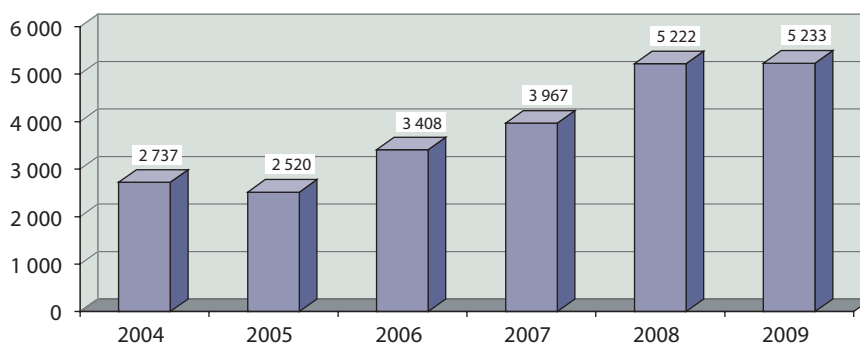


\* Rounded, to August 2007.

\*\* Rounded estimate in 2009.

Source: Korea Occupational Safety and Health Agency (KOSHA), Republic of Korea

**Figure 5. Reported injuries of migrant workers**



Source: KOSHA, Republic of Korea



### 3.2 Legislation

The Ministry of Employment and Labour has stated that migrant workers, including undocumented workers, are entitled to equal treatment under occupational safety related legislation. The Korea Occupational Safety and Health Agency (KOSHA) is responsible for ensuring and promoting the safety and health for every worker at every workplace in Republic of Korea. The bureau carries out enforcement governed by the following legislation:

1. Act on the Prevention of Pneumoconiosis and Protection, etc. of Pneumoconiosis Workers 1984 (amended 2008)
2. Industrial Safety and Health Act 1990 (amended 2002)
3. Enforcement Decree of the Industrial Safety and Health Act 1990 (amended 2004)
4. Occupational Safety and Health Act 1990 (amended 2009)
5. Enforcement Decree of the Occupational Safety and Health Act 1990 (amended 2010)
6. Industrial Accident Compensation Insurance Act 1994 (amended 2008)
7. Enforcement Decree of the Industrial Accident Compensation Insurance Act 1995 (amended 2008)

### 3.3 Characteristics of migrant OSH

According to research “Study on migrant workers’ health condition and health care measures” released in 2007 by KOSHA, most unskilled foreign workers in Republic of Korea are from Asian countries (more than 95 per cent migrant workers injured at workplaces in Republic of Korea are from Asian countries). More recent information shows that the highest proportion of workplace injuries affecting migrant workers is among the Vietnamese, Chinese and Sri Lankan populations respectively.

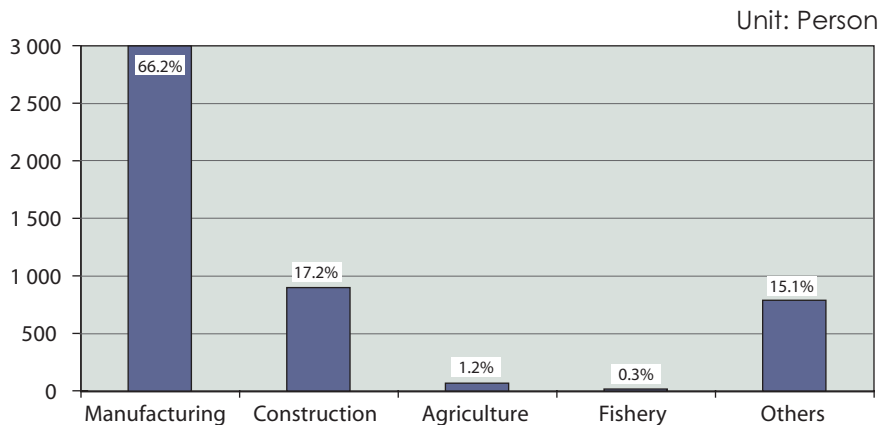
**Table 1. Occupational injuries of migrant workers by country 2009  
(Republic of Korea)**

Nationality	(Number, %)			
	2009 Disease deaths	2009 Accident deaths	2009 Occupational patients	2009 Accident injuries
Viet Nam	0	5	7	567
China	3	7	9	436
Sri Lanka	0	1	8	263
Indonesia	0	4	2	246
Thailand	0	3	1	184
Philippines	0	0	5	164
Mongolia	0	4	5	173
Pakistan	0	0	11	118
Bangladesh	0	1	1	68

Source: KOSHA “OSH for migrant workers”, Republic of Korea

Figure 6 also shows that the majority of occupational accidents occurred in the manufacturing and construction sectors.

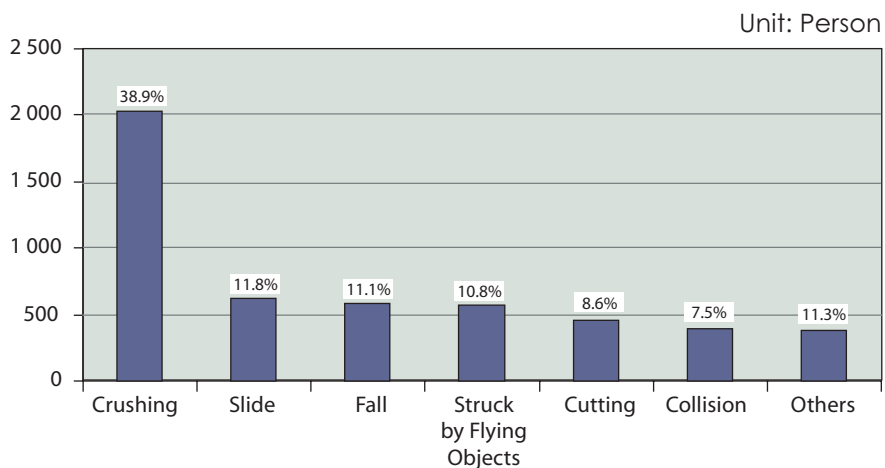
**Figure 6. Occupational accidents among migrant workers by employment type, 2009**



Source: KOSHA “OSH for migrant workers”, Republic of Korea

In 2009, 39.9 per cent of all occupational accidents reported as occupational injuries caused by crushing followed by slides (11.8 per cent) and falling from heights (11.1 per cent), (Figure 7).

**Figure 7. Type of occupational accidents affecting migrant workers, 2009**



Source: KOSHA “OSH for Migrant Workers”, Republic of Korea

The male migrant worker population constituted 86.7 per cent of the occupational accidents sustained by migrant workers and reported in 2009 (Table 2). Workplaces with less than 50 workers were disproportionately affected with 89.2 per cent of all accidents occurring in these workplaces. Similarly workplace experience appears to be a factor, with migrant workers with less than 2 years and below experience having the highest reported cases of accidents.



**Table 2. Characteristics of occupational accidents affecting migrant workers**

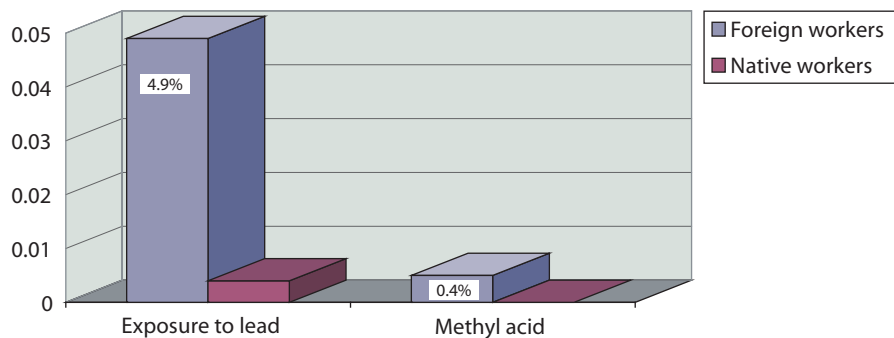
		2009	
		Number	Per cent
Sex	Male	4 536	86.7%
	Female	6 967	13.3%
Workplace size	1-4	2 050	39.2%
	5-49	2 615	50.0%
	50-99	281	5.4%
	100 and over	287	5.5%
Accidents by service period (experience at workplace)	Less than 6 months	3 483	66.6%
	Less than a year	828	15.8%
	Less than 2 years	611	11.7%
	Less than 3 years	205	3.9%
	Less than 4 years	55	1.1%
	More than 4 years	38	0.8%
	N/A	13	0.3%

Source: KOSHA “OSH for Migrant Workers”, Republic of Korea

- Exposure to dangerous substances at work

As a proportion, migrant workers’ blood-lead level has been reported at 4.9 per cent (38 per 788) compared to native workers at 0.4 per cent (7 per 1,581). Exposure to lead at work has been known to cause disorders and diseases such as anaemia, peripheral nerve disorder and also stomach-aches. In terms of exposure to urinary methylhippuric acid, which is known as a cancer causing agent, 0.5 per cent of migrant workers (6 per 1,109) are at above urinary methylhippuric suspension levels while there are no reported Korean workers above these levels.

**Figure 8. Exposure to dangerous substances at work, difference between locals and migrants**



Source: KOSHA “Study on migrant workers’ health condition and health care measures”, Republic of Korea

- Case study

In 2005, eight Thai women migrant workers working at a company – Donghwa Digital – which made components for plastic frames for liquid crystal displays (LCD) monitors suffered serious injuries as a result of prolonged exposure to toxic chemicals. The workers showed multiple nerve damage symptoms after being exposed to normal-hexane and they became paralyzed from the waist down.<sup>40</sup>

The women came to Korea in 2003 and worked at the manufacturing factory in Hwaseong, Gyeonggi province. They had been known to wash electronic parts with normal-hexane for twelve hours per day without any personal protective equipment (PPE). From November 2004, paralysis in the lower half of their bodies began to take effect.

The owner of the factory did not allow them to seek proper medical treatment and reportedly confined them to their dormitory for 40 days and prevented them from going out for treatment or meeting other people. Five of the women escaped from the dormitory with the help from the Ansan Migrant Workers' Center. The workers were all entitled to receive industrial accident and compensation insurance and were treated at the Ansan Central Hospital for a year. However, the employer returned three other workers to Thailand before they could receive treatment.

These workers later returned to Korea to receive appropriate treatment as well. The Gyeonggi provincial government joined with the civic groups in supporting the women, providing them with living expenses and a place to stay. Gyeonggi province provided them with an apartment and 300,000 Korean Won per month for expenses until they were fully recovered. Following their recovery they returned to Thailand as their visas had expired.

The employer had apparently ignored warnings about the dangers of normal-hexane given by industry security inspectors. The President of Donghwa Digital was arrested in 2005.

*Source:* Amnesty International, Republic of Korea: *Briefing to the UN committee on the elimination of discrimination against women: Women migrant workers' discrimination in Employment*, July 2007; Office of the High Commissioner for Human Rights, Republic of Korea (South Korea): "Migrant workers are also human beings"; "Thai workers return home healthy after laboratory poisoning" in *The Hankyoreh*, 26 June 2006.

### 3.4 Government involvement

- Agreement between KOILAF and KOSHA

On 13 February 2007, the Korea International Labour Foundation (KOILAF) and the KOSHA signed an agreement on industrial safety cooperation for foreign workers in an effort to establish a close cooperation system through raising safety perceptions amongst foreign workers staying in Republic of Korea and for the prevention of industrial accidents.<sup>41</sup> The two organizations have

<sup>40</sup> Amnesty International: *Republic of Korea: Briefing to the UN committee on the elimination of discrimination against women: Women migrant workers' discrimination in employment*, July 2007 (AI Index: ASA 25/005/2007) p. 6-7; Office of the High Commissioner for Human Rights: *Republic of Korea (South Korea): 'Migrant workers are also human beings'* p. 10; and "Thai workers return home healthy after laboratory poisoning" in *The Hankyoreh*, 26 June 2006. See also K. Misun: "Women Migrant Workers Right to Health: Experience and Perspective of a Korean NGO on Migrant Health", paper presented to the *International Conference on Gender Migration and Development: Seizing Opportunities, Upholding Rights*, 25-26 Sep. 2008, Manila, The Philippines, p. 7.

<sup>41</sup> *Agreement on industrial safety cooperation for foreign workers*, [http://www.koilaf.org/KFeng/eng/Whatnew/bbs\\_read\\_dis.php?board\\_no=126&page=1&keyField=&keyWord=&keyCode1=5](http://www.koilaf.org/KFeng/eng/Whatnew/bbs_read_dis.php?board_no=126&page=1&keyField=&keyWord=&keyCode1=5) (accessed 5 July 2010).

maintained close cooperation in industrial safety projects since 2007 when 43,000 Korean workers including foreign nationals were educated in industrial safety and health, and 1,800 foreign workers at manufacturing and construction industries were trained through peripatetic education on industrial safety.

- Pre-departure job training under EPS

As mentioned earlier, the foreign labour force in Republic of Korea is managed under the EPS, which permits Korean companies to hire foreign workers legally when they cannot acquire labour from within the domestic workforce. The Korean government has concluded MOUs with 15 countries including Bangladesh, Cambodia, China, Indonesia, Kyrgyzstan, Mongolia, Myanmar, Nepal, Pakistan, The Philippines, Sri Lanka, Thailand, Timor-Leste, Uzbekistan, and Viet Nam. Nationals from these countries are required to undergo 85 hours of training incorporating OSH and Korean language training. Prior to commencing work, migrant workers are also required to have medical checks.

- Post-arrival training under EPS

Once migrant workers arrive in Republic of Korea under the EPS, they must commence employment within 15 days. Job training for four sectors: manufacturing, construction, agriculture and fisheries are conducted by five designated institutes:

- **Agriculture**  
*National Agriculture Cooperation Federation*
- **Construction**  
*Construction Association of Republic of Korea*
- **Manufacturing**  
*Republic of Korea International Labour Foundation* (workers from China Mongolia, Thailand and Viet Nam)  
*Republic of Korea Federation of Small and Medium Business* (workers from Bangladesh, Cambodia, Indonesia, Kyrgyzstan, Myanmar, the Philippines, Nepal, Pakistan, Sri Lanka and Uzbekistan)
- **Fisheries**  
*National Federation of Fisheries Cooperation*

The substance of the training incorporates Korean language, Korean culture, OSH, related labour laws, information on insurance and medical arrangements. The training is over 20 hours and is conducted in the native languages of the workers.

- Safety training at the enterprise level

Further training at the enterprise-employer level gives workers a sense that their employer is concerned for their well-being and can be an effective and efficient OSH prevention strategy, e.g. Lotte Engineering and Construction and KOSHA jointly held OSH training for the first time in 2007 in an effort to prevent accidents at the company's construction site and reduce misunderstanding due to language barriers between workers and employers. The training was joined by safety inspectors and interpreters to make the training efficient and practical. Three hundred migrant workers attended total of 8 sessions per training module.

- Distribution of occupational safety and health material

KOSHA provides safety guidelines for foreign workers in 10 different languages including Bangla/Bengali (Bangladesh), Chinese, English, Indonesian, Mongolian, Russian, Sri Lankan, Thai, Urdu (Pakistan) and Vietnamese of which 78,500 copies have been distributed. It also offers an electronic guide book and 11 kinds of audio-visual materials on its website.

- Online service for consultation

For migrant workers who have encountered various difficulties due to the language barrier and who lack an effective communication system to acquire health information, KOSHA set up an online programme in 2006 to enable more effective direct contact with foreign workers through consultation regarding their work environments and health in relation to their jobs. The service provides consultation on OSH concerns including substances hazardous to health at work, proper usage of anti-gas and dust masks, and suspicious symptoms of diseases and side effects caused by occupational hazards.

- Free interpretation and counselling service for migrant workers

KOILAF offers a free interpretation and counselling service for foreign workers about labour-related issues such as wages, change of workplace, labour contract, industrial safety, accident compensation and issues related to living to Republic of Korea including entry and departure, medical services, remittance laws and regulations. The service is provided in 7 different languages including Chinese, English, Indonesian, Mongolian, Russian, Thai and Vietnamese.

- Medical subsidy by the Ministry of Health and Welfare

In 2005 the Ministry of Health and Welfare announced that 4.6 billion Korea won had been set aside from the Lottery Fund to provide subsidies to medical institutions that had been giving free medical treatment to foreign workers and to others in need.

- Seoul Medical Centre

The Seoul Medical Centre which is supported by the Seoul Metropolitan Government provides access to its medical clinic to migrant workers residing in Republic of Korea and provides medical consultations and treatment at reasonable prices. The centre recruits volunteer interpreters to provide better medical treatment to foreign workers.

### **3.5 NGO involvement**

- Migrant Workers' Hospital

The non-profit Migrant Workers' Hospital was founded by Reverend Kim Hea Sung in 2004 and has provided free medical treatment, interpretation and counselling. The hospital files for compensation on behalf of migrant workers and provides shelters for those who come across the border without proper documentation or overstay visas. The hospital provides services not only to migrant workers looking for free medical care but also for those who seek free meals and accommodation. Since the hospital is maintained by donations and not government assistance, they experience financial constraints that affect the running of the hospital.

### 3.6 Trade union involvement

The Migrant workers' Trade Union (MTU) was established on 24 April 2005 by migrant workers residing and working in Republic of Korea. It provides a voice for migrant workers to speak out against harsh working conditions. All migrant workers can join the trade union regardless of status. However, the Government of Republic of Korea refuted its legitimacy as a trade union arguing that irregular migrant workers cannot form a trade union under existing legislation. Meanwhile, the High Court ruled in 2007 that migrant workers have a right to form a trade union and that also undocumented migrant workers can join the trade union as well. The Government has since appealed and a decision from the Supreme Court on this matter is still pending.<sup>42</sup>

One alarming development has been the arrest, detention and deportation of senior leaders of the MTU. Amnesty International has argued that "the targeted nature of these actions seems to indicate that the authorities are attempting to stop the MTU from conducting its legitimate union activities."<sup>43</sup>

The Korean Confederation of Trade Unions (KCTU), for its part, had submitted a complaint to the ILO's Committee on Freedom of Association (CFA) with respect to the Government's refusal to register the MTU and, more generally, the discrimination faced by migrant workers. In its most recent examination of the case (November 2009), the CFA urged the Government to immediately proceed with the MTU's registration and further requested it to undertake an in-depth review of the situation concerning the status of migrant workers so as to fully ensure and safeguard the rights to freedom of association and collective bargaining of all migrant workers, including those in an irregular situation.<sup>44</sup>

### 3.7 Analysis

As the concern on migrants' safety and health at work has deepened, KOSHA and the Korean Government has taken steps to promote a safe working environment by publishing and distributing materials on OSH in the languages of foreign workers, offering free medical services and providing nationwide safety training. In addition, the government has extended the application of the OSH related laws including the Industrial Safety and Health Act to undocumented migrants so that migrant workers including ones without proper documentation can receive equitable compensation and treatment as Korean nationals. However, the government needs to further develop coherent OSH policies on issues relating to undocumented migration; on the one hand, it provides support for several medical services for migrant workers including irregular workers to promote safe and healthy working conditions, while conversely it disputes the right of migrant workers to create their own trade union, inclusive of undocumented workers to further improve their OSH situations.

Even though the idea is pervasive amongst public institutions that the improved OSH of migrant workers is achievable through safety training and information dissemination activities under the

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<sup>42</sup> This was confirmed on 23 June 2010 in an interview with Ihntaek Hwang, former journalist at the *Korea Times*, who informed the ILO that the MTU had stated to him that the case was still undecided by the Supreme Court and also by the recent article published by Jeong Young Seop "Migrant workers union repression and misrecognition" in *Nodong News*, [http://www.nodongnews.or.kr/\(X\(1\)A\(wL8YPjUIzAEkAAAANGE0NDU0ZDEtOWQ3Ni00YTIILTgzODQtZGQ0NTYzYmU5MmNholLwwUYeDr7UMGPs0nULnS4Q8MI1\)S\(k55ck555gstovi45m0b0kqud\)\)/News/View.aspx?pdsid=4909&page=1&type=lbr&totalid=7415&keyword&keyfield&AspxAutoDetectCookieSupport=1](http://www.nodongnews.or.kr/(X(1)A(wL8YPjUIzAEkAAAANGE0NDU0ZDEtOWQ3Ni00YTIILTgzODQtZGQ0NTYzYmU5MmNholLwwUYeDr7UMGPs0nULnS4Q8MI1)S(k55ck555gstovi45m0b0kqud))/News/View.aspx?pdsid=4909&page=1&type=lbr&totalid=7415&keyword&keyfield&AspxAutoDetectCookieSupport=1), (accessed 21 Feb. 2011).

<sup>43</sup> Amnesty International: *Disposable labour: Rights of migrant workers in South Korea*, International Secretariat 2009, p. 92.

<sup>44</sup> <http://webfusion.ilo.org/public/db/standards/normes/libsynd/index.cfm?Lang=Eng&chdroff=1> (accessed 11 Mar. 2011).

auspices of KOSHA, the wider coverage of the systematic prevention measures should to be further expanded by the government for the benefit of irregular migrant workers.

The Employment Permit System (EPS), while recognized as having improved the management of migrant labour, places workers in a vulnerable situation as workers are dependent upon their employer to continue their stay in Republic of Korea or to be released to change employers.<sup>45</sup> Employers may also immediately terminate an employment contract which effectively removes a migrant worker's right to stay in Republic of Korea. This affords a potentially disproportionate amount of influence to the employer and may be exploited by unscrupulous employers to dismiss migrant workers with claims, concerns or disputes related OSH and other industrial matters. This unstable status of migrant workers could adversely affect their OSH situation since migrant workers seem to have fewer systemic opportunities to have proper OSH training and instruction and discuss their OSH concern and disputes with their employers.

Moreover it has been noted that migrant workers experience a far greater risk of OSH hazards:

“For a combination of reasons, including lack of training, language barriers, discrimination and restrictions on changing employers, industrial accidents, including fatal accidents, are disproportionately greater among migrant workers than among South Korean workers. In 2008, the Ministry of [Employment and] Labour documented 5,221 cases of industrial accidents involving migrant workers, compared to 3,967 in 2007. This means that from 2007 to 2008, there was a 34 per cent increase in injuries among migrant workers. Among these injuries, there was only a 5 per cent increase in injuries among South Korean workers.

...And as many industrial accidents involving migrant workers go unreported, the true number is likely to be substantially higher.”<sup>46</sup>

Similarly positive developments such as the IACI are not as inclusive as they first appear, as employees in workplaces of less than five workers do not qualify for the IACI.<sup>47</sup> Employers in this instance are only required to “pay 60 per cent of injured workers average wages as compensation during the period of medical treatment.”<sup>48</sup>

Meanwhile numerous NGOs have involved themselves in promoting the welfare of migrant workers in Republic of Korea by providing free medical services, shelter and legal consultation services. However, as they are limited in budget, NGOs tend to focus on post-incident treatment after occupational accidents rather than focusing on preventing occupational accidents and diseases in the workplace. Preventative efforts can be more cost effective compared to post-incident assistance. NGOs, in cooperation with trade unions, should play an increasing role in providing OSH training focusing on prevention directly to migrants through their grassroots networks. Employers and the Government can provide their resource support to increase the scale of such grassroots training activities.

There are an increasing number of enterprise level initiatives to improve OSH and create productive and efficient working environments for migrant workers. An example of this practice is the construction company, Lotte Engineering and Construction. It has provided migrant workers with regular safety training in an effort to create better working conditions leading to better performance of workers and better productivity. It is intended that by this action the company will motivate other construction companies hiring unskilled migrant workers to pay more attention to migrant workers' well-being at work.

<sup>45</sup> Ibid: pp. 6-7 and Report of the special rapporteur on the human rights of migrants, mission to the Republic of Korea, 5-12 Dec. 2006, UN Doc A/HRC/4/24/Add.2, 14 Mar. 2007, para. 18-20.

<sup>46</sup> Amnesty International: *Disposable labour*, p. 68.

<sup>47</sup> Ibid: p. 69.

<sup>48</sup> Ibid: p. 76.



## 4. Malaysia-OSH for migrant workers

### 4.1 Background

The total workforce in Malaysia is about 10.9 million out of a total population of 27.17 million. In 2010, estimates by the Ministry of Home Affairs placed the number of documented migrant workers working in Malaysia at just over 1.8 million.<sup>49</sup> Significant numbers of these migrant workers are from South and South-East Asia.

**Table 3. Breakdown of documented migrant workers by country, February 2010**

Country	Number of workers
Indonesia	917 932
Bangladesh	307 366
Nepal	175 810
Myanmar	140 260
India	113 797
Viet Nam	74 842
Philippines	18 640
Pakistan	22 989
Thailand	7 102
Others	24 522
<b>Total</b>	<b>1 803 260</b>

Source: Immigration Department, Malaysia

Foreign labour is concentrated in five sectors: manufacturing, construction, domestic work, service and agriculture; and tends to be more present in small and medium sized factories and the informal sectors.

**Table 4. Distribution of documented migrant workers by sector, February 2010**

Sectors	2010
Maid/domestic service	12.45%
Manufacturing	38.20%
Construction	16.01%
Service	10.03%
Plantation	14.22%
Agriculture	9.09%

Source: Immigration Department, Malaysia

<sup>49</sup> More recent information places the number in 2010 to be around 1.9 million; however a detailed breakdown was unavailable at the time of writing. For more information see A.H. Abdullah Sani: "Foreign worker levy hike in 2011", in *The Malaysian Insider*, 20 May 2010.

**Table 5. Country of origin of foreign workers in Malaysia by sector, February 2010**

Country	Domestic	Con- struction	Manu- facturing	Service	Plan- tation	Agri- culture	Total
Indonesia	203 225	192 789	198 643	38 684	202 156	82 435	917 932
Bangladesh	18	61 303	170 332	27 002	30 599	18 112	307 366
Nepal	84	3 785	135 764	26 901	1 621	7 655	175 810
Myanmar	118	13 542	92 135	22 654	2 211	9 600	140 260
India	236	5 002	13 866	47 021	16 675	30 997	113 797
Viet Nam	901	3 021	68 433	2 018	28	441	74 842
Philippines	9 657	1 031	1 915	2 994	1 489	1 604	18 640
Pakistan	11	5 922	2 217	1 593	1 244	12 002	22 989
Thailand	346	811	893	4 588	57	407	7 102
Cambodia	9 166	92	2 353	218	137	125	12 091
China	15	1 303	935	6 592	36	13	8 894
Sri Lanka	753	69	1 382	665	128	417	3 414
Lao PDR	2	7	16	3	1	28	57
Uzbekistan	0	0	0	4	0	0	4
Kazakhstan	1	0	0	0	0	0	1
Others	11	45	2	3	0	0	61
<b>Total</b>	<b>224 544</b>	<b>288 722</b>	<b>688 886</b>	<b>180 890</b>	<b>256 382</b>	<b>163 836</b>	<b>1 803 260</b>

Source: Immigration Department, Malaysia

## 4.2 Legislation

- Occupational Safety and Health Act (OSHA) 1994
- Workmen's Compensation Act 1952 (only for foreign workers)
- Petroleum Act (Safety Measures) 1984
- Factories and Machinery Act 1967 (Revised – 1974)

Under Malaysia's OSH legislative framework, all workers including foreign workers have an equal right and opportunity to work in a safe and healthy workplace. However, this is not the case with regards to compensation for occupational hazards and injuries. Migrant workers are covered by the Workmen's Compensation Act 1952, while Malaysian workers are covered by a system known as the Social Security Organization Coverage Scheme, which is enforced under the Employees' Social Security Act 1969. Under the Foreign Workers' Compensation Scheme administered under the Workmen's Compensation Act, migrant workers can only receive up to 25,000 Malaysian ringgit (US\$8,610) in cases of permanent injury or death.

It is mandatory for employers of foreign workers to contribute to or pay an insurance premium of 86 Malaysian ringgit (US\$28) a year per worker. When the employers are found guilty of not buying insurance for workmen's compensation, they are subject to imprisonment for up to two years or fine of 20,000 Malaysian ringgit (US\$6,500). However, some unscrupulous employers illegally deduct the insurance premiums from workers' salaries. Even documented migrant workers are vulnerable to being dismissed by their employer and subsequently deportation should they make complaints over unfair employment arrangements.<sup>50</sup>

<sup>50</sup> P.S. Robertson Jr.: *Migrant workers in Malaysia – Issues, concerns and points for action*; (Fair Labor Association 2008), pp. 6-7.



### 4.3 Characteristics of migrant OSH

#### Case 1

In March 2008, three Indonesian workers working on a construction site in Kampung Sungai Sering fell from a height. The Department of Occupational Safety and Health (DOSH) investigated and found that the safety measures were not properly followed. The accident was due to one of the four metal cables holding the gondola becoming loose, causing the gondola to tilt and slip. The Minister for Human Resources Datuk Dr S. Subramaniam told the press that the gondolas were supposed to have a braking system as a safety measure in case the cables broke, but it seems that the braking system was also not functioning.

*Source: The Star Online*

#### Case 2

A Nepalese national working at a spraying company became exposed to chemicals and fell very ill. It later became clear that OSH procedures were not being properly followed. Timber Employees Union Peninsular Malaysia lodged several complaints to the Labour Department of Peninsular Malaysia and DOSH. The authorities eventually took action by conducting inspections of the workplace. DOSH issued a “stop work” order to a specific department within the factory that was in clear violation of OSH regulations, including non-compliance in the provision of Personal Protective Equipment (PPE). DOSH also issued a warning letter to the company.

Meanwhile, the victim was finally diagnosed with tuberculosis which was different from the prior diagnosis of bronchopneumonia. Bronchopneumonia is categorized as an occupational disease whereas tuberculosis is not. Due to the sudden change in the diagnosis, he was not entitled for compensation under the Foreign Workers’ Compensation Scheme.

After the worker was discharged from the hospital, the company sent him back to his home country. In theory, DOSH should have conducted a medical examination by the state’s occupational doctor but this was not performed because he was no longer in Malaysia. Neither DOSH nor the Labour Department of Peninsular Malaysia had the power to keep the worker in the country for further observation. The case clearly demonstrated a loophole in the OSH management system for migrant labour.

*Source: Friedrich Ebert Stiftung Philippines Office*

### 4.4 Government involvement

- Induction courses for foreign workers

All foreign workers who intend to legally travel to, and work in, Malaysia are required to attend an induction course on workplace communication skills, Malaysian culture, laws and regulations. This requirement came into effect on 1 November 2004. The course is not applicable to workers from Indonesia as ‘the two dialects spoken in the neighbouring countries are similar.’<sup>51</sup>

The Malaysian authorities have also developed a ten-day pre-departure training course for first time migrants on basic communication skills in English or Malay, Malaysian culture, laws and regulations.

<sup>51</sup> “Malaysia requires foreign workers to take induction course for visa”, in *The Jakarta Post*, 6 Mar. 2008.

The course covers comprehension and oral expression in formal and informal language forms, such as demonstrations of instructions, warnings, physical conditions, work related progress, job-related problems, incidents and accidents.

In theory, the training can protect migrant workers from accidents at the workplace. However, in practice recruitment agencies in countries of origin complain that the length of the course is burdensome, as it adds to the recruitment costs.

- Construction Industry Development Board (CIDB) Green Card

The CIDB Green Card is an integrated programme that involves the registration and accreditation of construction personnel (including foreign workers) to enhance safety levels at construction work sites. The training course involved in achieving accreditation under the programme broadly consists of safety and health in the workplace and the wider construction sector.

- Introduction of compulsory health insurance for migrant workers.

The Government of Malaysia has declared that from 1 January 2011 all foreign workers in Malaysia (except those in domestic work) are compelled to be medically insured. The measure involves the payment of 120 Malaysian ringgit (US\$39) as annual premium per worker, although it remains unclear who will bear this cost.<sup>52</sup> It does appear that there is an understanding that the responsibility for payment does fall on the employer, but it remains to be seen whether employers attempt to deduct this as an expense from migrant workers' salaries and what will be the legal implications of such an action.<sup>53</sup>

## 4.5 NGO involvement

- Tenaganita

Tenaganita is an organization with a focus on the struggles faced by women in Malaysia, including foreign women. The organization has since 1996 extended its services to include foreign workers in Malaysia. Due to limited funding, there is no ongoing OSH training. Tenaganita continues to assist migrant workers via the Legal Aid Centre (Bar Council) in case migrant workers are looking for legal advice when they raise a grievance or claim compensation. In addition to the Legal Advice Centre, the organization is also advocating for a review of the Workmen's Compensation Act which it views as out-dated and discriminatory.

According to Tenaganita, most accidents occur in the timber, steel and construction industries, which are considered as some of the most dangerous industrial sectors. The organization maintains that employers' negligence on workplace safety, lack of training and protective measures increases the incidence of occupational accidents among migrant workers.

Tenaganita conducted capacity building on occupational hazards and training on health related issues, such as sexually transmitted diseases and HIV/AIDS. The project was conducted with workers on their days off, not as a joint project with their employer. The migrant advocacy organization also campaigns for a ban on paraquat and conducts training on the risks of paraquat caused by its use in pesticides.

<sup>52</sup> "Insurance for foreign workers long overdue", in *The Star Online*, Sun. 28 Nov. 2010.

<sup>53</sup> E. Devadson: "Policy chaos of migrant workers in Malaysia", in *East Asian Bureau of Economic Research (EABER) and South Asian Bureau of Economic Research (SABER) Newsletter*, Jan. 2011, p. 2.

## 4.6 Trade union involvement

- Malaysia Trade Union Congress (MTUC)

Under the Trade Union Act (1959) and the Industrial Relations Act (1967), a foreign worker is not prohibited from being a trade union member and, under the Employment Act; workers are entitled to join a trade union. Article 28 (a) of the Trade Union Act requires that any union officer must be a citizen of Malaysia, effectively disqualifying migrant workers from serving as leaders of a union.

However, the Immigration Department issues work permits under the Immigration Act, which stipulates a series of conditions, including a prohibition on the joining of any association. Employers have interpreted this provision to mean that migrant workers are forbidden to join unions, and the Ministry of Home Affairs (MOHA) has declined repeated appeals by the MTUC to make a judgment on the employers' interpretation of this policy. Most contracts therefore specify that foreign workers are not permitted to join a trade union or participate in any political activities in relation to trade unions in Malaysia. Violation of the terms of the contract is an offense that can be punished by termination and therefore deportation. This is a clear violation of article 8 of Employment Act of 1955, which states that no provision of a service contract may restrict the employee's right to join and participate in the activities of a union or associate with others for the purpose of organizing a trade union.

There has been growing concern within the MTUC about migrant workers whose rights are not fully protected by the laws of Malaysia, which in principle ban discrimination against foreign labour. In response to those discriminatory practices against migrant workers, the MTUC has undertaken action to encourage migrant workers to participate in trade unions and urged government, NGOs and other stakeholders to work in close cooperation to enhance the rights of foreign workers. In line with their activism for migrants' rights, the congress also addresses the specific risks for foreign workers working in high risk sectors. They deliver training to migrant associations and have set up help-desks for migrants to receive legal advice and information.

Furthermore, the MTUC has signed Memorandum of Understanding (MOU) with its counterparts in Indonesia (the largest labour sending country to Malaysia), as well as Nepal, Viet Nam, etc. to cooperate on issues related to the protection of migrant workers.

- Other efforts

Timber Employees Union Peninsular Malaysia (TEUPM) and the Central Union of Painters, Plumber, Elector and Construction Workers (CUPPEC) (both affiliated with Building and Wood Workers' International (BWI)), the General Federation of Nepalese Trade Unions (GEFONT) have executed an MOU on migrant issues to work in partnership to ensure that the rights of migrant workers are protected and actively recruit migrant workers into trade unions. Both unions (TEUPM and CUPPEC) strongly stressed that the MOU was not merely a "piece of paper" but a commitment that the two unions would actively work in partnership to ensure that the rights of migrant workers are protected and actively recruit and organize migrant workers into trade unions.<sup>54</sup>

BWI is also involved in advocacy events and support services. For example, in 2007, BWI and its affiliates held "Day of action to stop exploitation of migrant workers in the Asia-Pacific region" which included activities in Malaysia. The TEUPM along with other members of the Emergency Taskforce

<sup>54</sup> "BWI unions in Nepal and Malaysia agree to work jointly on migration issue", <http://www.bwint.org> (accessed 11 Mar. 2011).

on Stranded Bangladeshi Workers – civil society groups, migrant rights organizations, and trade unions – helped Bangladeshi workers to submit claims against their employer from the PTC Asia Pacific. BWI reported that at least 100 Bangladeshi workers had fled slavery-like working conditions at PTC Asia Pacific owned factories and had gone on a hunger strike in front of the Bangladeshi High Commission office in Kuala Lumpur to protest their working conditions.<sup>55</sup>

## 4.7 Analysis

While the Occupational Safety and Health Act is theoretically applicable to foreign workers in Malaysia, in practice they have not been properly protected in the workplace. With a sustained high dependence on foreign labour, the government has to strengthen and implement practical policy for the well-being of all persons while they are living and working in the country.

Occupational safety and health remains a major concern for a vast number of migrant workers in Malaysia. Employers need to spend further efforts to properly protect migrant workers to ensure proper safety and health procedures. Further effective measures are needed for monitoring employers' proper compliance of their duties in OSH, and obligations related to the payment of insurance coverage for migrant workers. It is equally important to provide practical support to employers on how to improve OSH and working conditions of migrant workers. There are many practical, easy-to-implement ways and good practices to improve OSH of migrant workers. Stronger and enforceable measures against employers who violate the law are required.

Further attention needs to be paid to those working in Malaysia without proper documentation, and who thus do not receive clear OSH protection measures. The number of irregular foreign workers is estimated at well over 1 million.<sup>56</sup> Undocumented migrant workers are at greater risk of having accidents due to an increased lack of proper OSH training and support than migrants with proper documentation. Not surprisingly undocumented migrant workers' OSH rights are at greater risk being neglected or exploited than migrants with proper documentation.

Trade unions and NGOs are active in helping to improve the OSH conditions of migrant workers. For trade unions, the situation is more complex as migrant workers are at the same time guaranteed and prohibited from joining trade unions. The Ministry of Human Resources has continued to state that migrant workers are allowed to join trade unions while the Ministry of Home Affairs has refused to clarify the apparent ambiguity between the Employment Act, Trade Union Act and the Immigration Act. However, trade unions and NGOs could continue their effective dialogues with employers to improve the OSH of migrant workers and also provide direct support and assistance to migrant workers for their immediate needs. Worsening matters, migrant workers can experience discouraging attitudes that may prevent them from joining a trade union or even intimidated to not participate in trade union activities.

It is encouraging that, the MTUC has signed an MOU with trade unions in migrant sending countries and continues to advocate on behalf of migrant workers in an effort to better protect their basic rights at work. Furthermore, trade unions can lodge a complaint to the Government about violations of OSH regulations on behalf of migrant workers who suffer occupational accidents due to a lack of knowledge about their own rights at work.

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<sup>55</sup> "Day of action to stop exploitation of migrant workers in the Asia-Pacific region", <http://www.bwint.org> (accessed 11 Mar. 2011).

<sup>56</sup> Sri Wahyono: "The protection of migrant workers' rights: Experiences in Malaysia and learning from the Philippines" in *Are We Up to The Challenge?: Current Crisis and the Asian Intellectual Community, The work of the 2005-06, API Fellows*, p. 4.

## 5. Singapore-OSH for migrant workers

### 5.1 Background

Today, Singapore is heavily reliant on sources of foreign labour. Approximately 35 per cent of the total workforce in Singapore consists of foreign labour.<sup>57</sup> It is estimated that as at December 2010 there were 1,113,200 foreign workers employed in Singapore.<sup>58</sup> Most migrant workers are unskilled and household labourers. The foreign employment change in percentage terms were 17.4 per cent in 2008 and -0.4 per cent in 2009. The foreign workforce has been growing much more rapidly than the local workforce (Table 6). Following a decline of 4,200 less foreign workers in 2009, the level of foreign workers increased in 2010 by 59,700 (54,400 excluding foreign domestic workers).

**Table 6. Numbers and growth rate of foreign employment in Singapore**

		In thousands	
		2008	2009
Employment	Total	2 952.4	2 990.0
	Local	1 894.7	1 936.5
	Foreign	1 057.7	1 053.5
Growth rate (%)	Local	3.5%	2.2%
	Foreign	17.4%	-0.4%

Source: Ministry of Manpower, Manpower statistics in brief, Singapore 2010

Foreign workers in Singapore increased by 382,300 from 2006 to 2009, with a modest decrease of 4,200 in 2009. Table 7 shows that numbers of migrant workers have increased in three major industries; construction, manufacturing and services.

**Table 7. Employment change**

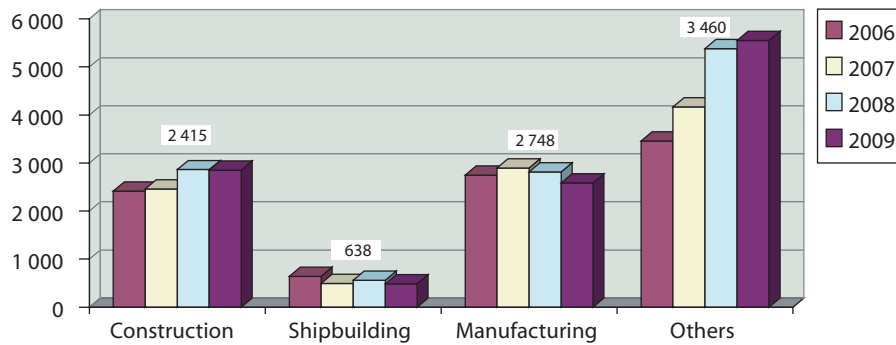
							In thousands	
		2006	2007	2008	2009	2010	Employ- ment level as at Dec. 10	Ratio (%)
Manufacturing	Local	11.0	7.3	-4.6	-9.4	-0.5	276.1	51%
	Foreign	30.6	42.0	24.1	-34.3	-0.7	261.9	49%
Construction	Local	5.3	4.4	5.2	5.4	-1.5	122.4	31%
	Foreign	15.2	36.0	58.9	19.7	4.1	273.2	69%
Services	Local	73.7	77.2	63.1	45.2	55.0	1 578.4	73%
	Foreign	39.0	65.9	73.4	10.4	56.0	574.5	27%
Overall	Local	90.9	90.4	64.7	41.8	56.2	1 992.7	63%
	Foreign	85.1	144.5	156.9	-4.2	59.7	1 113.2	35%
	Total	176.0	234.9	221.6	37.6	115.9	3 165.9	100%

Source: Ministry of Manpower (Singapore), Labour Market 2010

<sup>57</sup> Ministry of Manpower (Singapore): "Excluding foreign domestic workers the foreigners' share of employment was 31.4%", in *Labour Market 2010* (Singapore, 2011), p. 4.

<sup>58</sup> Ibid.

**Figure 9. Number of workplace injuries by industry**



Source: Ministry of Manpower (Singapore), Occupational Safety and Health Division, Workplace injuries by industry and degree of disablement 2006, 2007, 2008, 2009

The number of workplace accidents in general decreased in 2008-09 yet construction and manufacturing remain high risk sectors.<sup>59</sup> Given that a vast number of migrant workers are working in these accident-prone sectors, migrant workers are believed to be more vulnerable to occupational accidents in those sectors than their local counterparts.<sup>60</sup>

## 5.2 Legislation

- Workplace Safety and Health Act 2006

The Ministry of Manpower adopted the Workplace Safety and Health Act on 1 March 2006, which replaced the Factories Act. The Act defines an employee as “any person employed by an employer to do any work under a contract of service”. In theory this ensures that every worker including migrant workers at every workplace is to be covered by legislation regarding occupational safety and health. However, it is not clear whether foreign domestic workers who are not covered by the Employment Act are eligible to the provisions under this act.

- Workplace Safety and Health Subsidiary Legislation

In line with the WSHA, there are 7 pieces of subsidiary legislation under the new Act.

- Work Injury Compensation Act 2008

The Work Injury Compensation Act replaced the Workmen’s Compensation Act on 1 April 2008. It provides a simple, low-cost and no-fault system that benefits both employees and employers. Employees can receive compensation quickly without having to prove fault, and employers’ liability can be capped. Compensation also includes medical expenses and medical leave wages. Importantly self-employed persons, independent contractors and domestic workers are not eligible to the provisions of this Act.<sup>61</sup>

- Employment of Foreign Manpower Act 2007

<sup>59</sup> Ministry of Manpower (Singapore): *Occupational Safety and Health Division Annual report 2009: WSH Performance report*, p. 54.

<sup>60</sup> In Dec. 2006 foreign workers constituted 60 per cent of the labour in the construction sector, see Ministry of Manpower, *Employment of Singapore citizens, permanent residents and foreigners, 1997-2006* (Singapore, 2008), p. 5.

<sup>61</sup> Ministry of Manpower (Singapore): *Work Injury Compensation Act, A guide to the work injury compensation benefits and claim process*, p. 3.



### 5.3 Characteristics of migrant OSH

According to a wide-range of questionnaire-based surveys conducted between April and October 2002 in the Emergency Department of a secondary level hospital of which at least 15 per cent of patients were foreign workers, a total of 5,851 foreign workers visited the hospital for medical consultation over the six-month period. Of these, 2,739 had traumatic injuries and 1,910 were work-related. 321 of the patients who were injured at their workplace had participated in the survey and 285 patients completed the questionnaires. The survey noted that 54.2 per cent of patients answered “better pay” as the main reason for working in Singapore while only 6.5 per cent responded that Singapore as “safer place to work” was their motivation to work in Singapore. (Table 8)

Although the data in this survey is almost a decade old, it provides a useful insight into the employment seeking behaviours of migrant workers and the issues which are of a stronger concern for them. It is important to note that Singapore has made further progress in the field of OSH since this data was collected.

**Table 8. Characteristics of patients**

		Number	Per cent
Nationality	Bangladeshi	84	26.2%
	Indian	131	40.8%
	Chinese	34	10.6%
	Thai	12	3.7%
	Others	24	7.5%
Reasons to work in Singapore	Better pay	174	54.2%
	Better job prospect	34	10.6%
	Safer place to work	21	6.5%
	Good work experience	15	4.7%
	No work experience	21	6.5%
	Others	20	6.3%
Years worked in Singapore	0-2	149	46.4%
	2-5	91	28.3%
	More than 5	45	14.0%

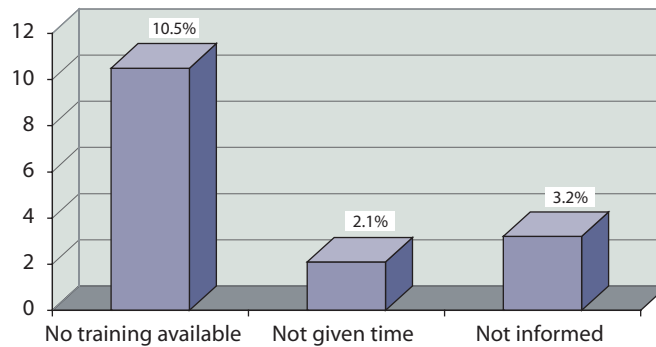
*Source:* Ong V.Y.K., Habibah A.K., Lee F.C.Y., Singapore Medical Association, Safety among foreign workers and impact on emergency medicine services in Singapore 2006

Nearly 74 per cent of the foreign workers agreed that they had received some form of training for the job they do. 250 patients or 78 per cent answered “yes” to receiving safety training for their work. For those who had not have safety training, the survey demonstrates that the major being that “no training [was] available” (10.5 per cent), followed by “not given time off for training” (2.1 per cent) and “not informed of training” (3.2 per cent). (Figure 10)

It is important to highlight that all foreign workers in the construction and marine sectors must attend the Construction Safety Orientation Course and Shipyard Safety Instruction Course respectively before a valid work pass during their employment in Singapore is issued.

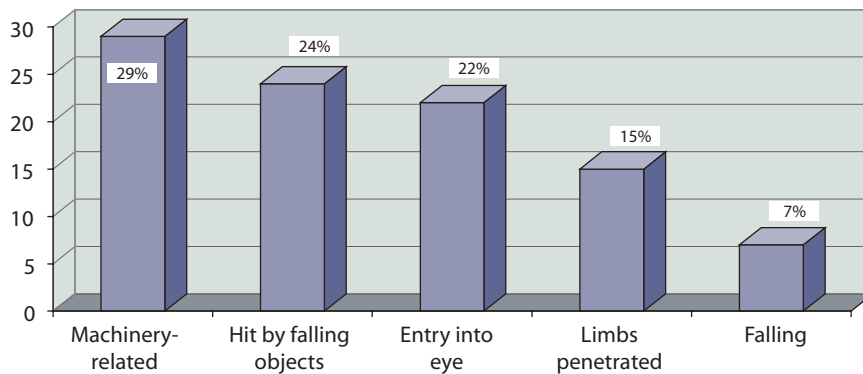
The occupational injuries among migrant workers were mainly caused by machinery-related accidents (29 per cent) followed by being hit by falling objects (24 per cent), entry into eye (22 per cent), penetration by objects into the limbs (15 per cent) and 7 per cent of injuries resulted from falling from heights.

**Figure 10. Reason not to have safety training**



Source: Ong V.Y.K., Habibah A.K., Lee F.C.Y., Singapore Medical Association, Safety among foreign workers and impact on emergency medicine services in Singapore 2006

**Figure 11. Cause of work-related injury of migrant workers**



Source: Ong V.Y.K., Habibah A.K., Lee F.C.Y., Singapore Medical Association, Safety among foreign workers and impact on emergency medicine services in Singapore 2006

- Case study

Case 1

Chelladurai, an Indian shipyard labourer in his mid-thirties, related that he was locked up in a room for about four hours after he was injured in an accident that happened to him while working. When his injury became worse he was finally taken to a private clinic. The supervisor instructed him to lie to the doctor that his injury did not result from a workplace accident but was instead caused by a lorry accident. His supervisor also took his work permit away and threatened to sack him should he tell others about the workplace accident.<sup>62</sup>

Source: Humanitarian Organization for Migrant Economics.

<sup>62</sup> Humanitarian Organization for Migrant Economics: *Justice delayed, justice denied: The experiences of migrant workers in Singapore*, (Singapore, 2010), p. 19.



## Case 2

Zakirul, a 29 years old welder from Bangladesh, broke his big toe after a colleague accidentally dropped a huge metal welding coil on it. He was hospitalized for three days and the doctor told him that his injury may not heal completely. Instead of being sympathetic, Zakirul's employer was extremely unhappy with him for getting injured. When he was discharged, Zakirul returned to work but was unable to perform as well as before. He could not work the usual hours without needing frequent rests which made his employer unhappy with him. His employer then instructed him to carry out light duties and refused to let him rest completely. They also threatened that he would be sent back to Bangladesh without his work injury compensation (which was still being processed) if he stopped work. Zakirul decided to leave the company and sought the help of a lawyer to process his work injury claim at the MOM.<sup>63</sup>

*Source:* Humanitarian Organization for Migrant Economics.

## 5.4 Government involvement

- Occupational Safety and Health Division (Ministry of Manpower, Singapore)

The Occupational Safety and Health Division (OSHD) promotes occupational safety and health at the national level. OSHD works with employers, employees and all other stakeholders to identify, assess, and manage workplace safety and health risks so as to eliminate death, injury and ill-health. The Work Injury Compensation Department in OSHD administers the Work Injury Compensation system to assist injured employees and dependants of deceased employees in claiming work injury compensation. It also administers the Incident Reporting system for reporting of workplace accidents, dangerous occurrences and occupational diseases.

- Foreign Manpower Management Division (FMMD) (Ministry of Manpower, Singapore)

The FMMD under the MOM is responsible for the well-being of foreign workers during their employment in Singapore. FMMD has been playing a major role in protecting and managing foreign manpower with its four departments such as Employment Inspectorate Department, Well-Being Department, Planning & Organization Development Department and Corporate Management Department. The Well-Being Department is particularly focussed on the areas of working conditions and physical well-being of foreign human resources in Singapore.

All foreign workers in the construction and marine sectors must attend the Construction Safety Orientation Course and Shipyard Safety Instruction Course respectively before a valid work pass during their employment in Singapore is issued. These courses cover topics such as common safety requirements and health hazards in their respective industries, prevention of accidents and diseases, and rights and responsibilities under the employment law.

The training incorporates the Workplace Safety and Health (WSH) 2018 Strategy with the ambitious goal to reduce the occupational fatality rate to 1.8 per 100,000 workers by 2018. It also provides information on existing occupational safety and health related acts and regulations. Moreover, participants of the training learn about risk management, risk assessment on mechanical and falling hazards and control measures for chemical movement and isolation.

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<sup>63</sup> Ibid.

The courses are conducted in 7 languages including Bengali/Bangla (Bangladesh), Burmese (Myanmar), Chinese, English, Malay, Tamil, and Thai. For those who cannot read their native languages they are provided audio instruction.

- Safety Awareness Course for foreign domestic workers

The Safety Awareness Course (SAC) is a 4 hour training course which provides foreign domestic workers with basic information on domestic safety, legal rights and obligations during their employment in Singapore. The training is compulsory for those who have not worked in Singapore before.

- Outreach programme

The FMMD and the Outreach programmes are now run by Workplace Safety and Health (WSH) Council, a statutory body formed under the WSH Act, jointly run a foreign workers outreach programme. The programme has three aims; 1) to promote cooperation and harmony between foreign workers of different nationalities, 2) to educate foreign workers on workplace safety and health, and 3) to increase their awareness of employment issues. Most outreach efforts take place in dormitories where migrant workers live and conducted in the form of road shows where OSH messages are delivered in a fun and educational way by providing the participants a comedy skit, various stage games and attractive prizes. Public campaigns have also been organized to promote OSH. Posters on OSH have been translated to various languages to increase the foreign workers' understanding of OSH.

## **5.5 NGO involvement with migrant workers**

Active involvement in the well-being of migrant workers is glimpsed through NGOs activities in Singapore. Foreign domestic workers comprise a large minority of foreign labour in Singapore (18 per cent) and are not covered by the Employment Act, and instead covered by the Employment of Foreign Manpower Act. A number NGOs have focused upon their well-being by providing various services ranging from language courses to skills training.

- Archdiocesan Commission for the Pastoral Care of Migrants & Itinerant People (ACMI)

ACMI has been playing an importing role in promoting lives of migrant workers in Singapore by providing legal information, language courses, skills training for domestic workers in particular, free meals, 24-hour hotline/counselling, and shelters. It has also been active to raise funds to assist migrant workers who are diagnosed with cancer or injured at workplaces.

- Migrant Workers Centre (MWC)

In April 2009, the Government supported the creation of a bipartite Migrant Workers Centre by the National Trades Union Congress (NTUC) and the Singapore National Employers Federation (SNEF). This Centre plays an important role in looking after the welfare of foreign workers including the provision of humanitarian assistance and shelter for foreign workers in need (this is fully-funded by the Government). MWC also provides free advice to foreign workers on their employment rights via its hotline and service centre that also operates on weekends.

- Humanitarian Organization for Migration Economics (HOME)

HOME has empowered migrant workers by running programmes to provide skills training, language courses, workshops and seminars on labour laws and legal rights. The organization has offered free medical treatment and shelters for migrant workers who have suffered injuries caused by work-related accidents.

- St. Francis Workers' Centre

The centre assists both local and foreign workers by providing work related information including on industrial accidents, claims of workmen compensation and labour laws. It runs specific programmes to raise awareness about labour laws to claim wages, overtime and compensation for accidents. Counselling is also provided via e-mail. Since the centre is a member of Migrant Forum in Asia (MFA), migrant worker issues are raised by the centre in the forum.

## 5.6 Trade union involvement

Sixty-nine of the seventy-two registered unions are affiliated with the Singapore National Trades Union Congress (SNTUC). Since migrant workers are able to join trade unions in Singapore, concern about migrant workers' welfare and their safety has recently been made a topic of interest within the federated union. The overall non-Singaporean membership on labour unions in Singapore is about 17.5 per cent or 74,000 foreign workers of the 500,000 work permit holders. The Keppel shipyard union has the largest proportion of foreign labour at about 70 per cent, followed by the Sembawang shipyard union at 50 per cent, the UWEEI an electronics sector union at 40 per cent and BATU's (Building, Construction and Timber Industries Employees Union) at 20 per cent or 22,000.<sup>64</sup> However, the recruitment of foreign workers as members of unions is focused mainly on those who are hired in shipping and construction industries. Given this situation, small and medium-sized enterprises must be encouraged to increase union membership so that the proportion of migrant workers is better represented and thus migrant workers will be better placed to claim their rights with the added strength of through trade union support.

SNTUC has designated officers who are responsible for training migrant workers, information dissemination, policy advocacy and recruitment of members. Coupled with the activities of these officers, the Migrant Workers Forum (established in 2002) and has been involved in raising migrant workers' rights as well. However, migrant workers themselves have no representatives on the board. Active recruitment of foreign members on the board should be pursued to assist migrant workers to speak out for their rights and improve their working conditions.

## 5.7 Analysis

According to the Ministry of Manpower, the fatality rate increased by 0.1 in 2009 to 2.9 workplace fatalities per 100,000 persons employed but improved in 2010 to a rate of 2.2.<sup>65</sup> The rate is relatively low compared to that of the other focus countries and it indicates that the government and industry

<sup>64</sup> N. Piper: *Migrant labour in South-East Asia, country study: Singapore* (Singapore, Asia Research Institute National University of Singapore), p. 19.

<sup>65</sup> Ministry of Manpower (Singapore): *Manpower statistics in brief 2010*, p. 4 and advice from Workplace Policy and Strategy Division, Ministry of Manpower received 9 May 2011.

Well manage workplace safety.<sup>66</sup> However, given that 30 per cent of the Singaporean workforce consists of foreigners, consideration of OSH for migrant workers continues to be an important matter that needs to be further addressed. An overall research project into the OSH situation of migrants' workplaces would be invaluable in assisting specific and systematic action to implement improved safety performance in the workplace and to prevent potential occupational accidents. There is evidence to support the view that while this rate is low in comparison to other focus countries, that the rate of occupational injuries and fatalities is disproportionately higher in industries with high concentrations of migrant workers.<sup>67</sup> Although it should be noted that these industries also suffer from higher rates of occupational incidents generally.

In principle, the Government of Singapore ensures that all migrant workers are treated equally before the law like any other native born worker; however, not all migrant workers are equally protected by the law given that foreign domestic workers, who form a large part of the unskilled foreign labour force, are not covered by the Employment Act. The Act guarantees workers' basic rights at work. Further practical assistance is needed to address OSH issues of migrant workers since migrant workers are less likely to seek formal redress for work related incidents than their Singaporean counterparts. It appears, as in the case of Australia, that migrant workers have an asymmetrical relationship with regard to their employer. Their employer does not have to provide a reason for terminating a contract for a foreign worker.<sup>68</sup> In doing so, a foreigner worker must be repatriated. Migrant workers may also be 'blacklisted' through reports on negative performance by employers and prevented from seeking employment in Singapore in the future.<sup>69</sup> The potential imbalance presented by the type of employment relationship may increase the reluctance of migrant workers to assert their OSH rights.

This can have a deterrent effect on any migrant worker wishing to speak up for their OSH rights. It almost certainly dramatically reduces their capacity to seek legal redress for any workplace related incident, including OSH.<sup>70</sup> Furthermore, many migrant workers in Singapore have very limited mobility and cannot change employers without their current employer's consent. This creates an imbalanced employment relationship that potentially could see migrant workers staying in unsafe

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<sup>66</sup> **Australia** – has a rate of 3.5 deaths per 100,000 according to the Australian Bureau of Statistics; *Australian Social Trends, 2007*. However, the *Compendium of workers' compensation statistics Australia 2007-08* (Jan. 2010), p. 35, puts the incident rate at 2.4 deaths per 100,000; Safe Work Australia notes that this publication relies on workers' compensation claims it is known to understate the actual number of workers who die from work activity each year. (Australia does not have a single source of information that captures all work related deaths in Australia).

**Republic of Korea** – While the overall number of occupational accidents has increased since 1998, the overall rate of fatalities per 10,000 has decreased since 1994 to a rate of around 1.5 per cent or around 15 per 100,000. See KOSHA, *The beacon of safety and health at work, Korea Occupational Safety and Health Agency annual report 2009*, p. 65.

**Malaysia** – Reportedly had a rate of 26 deaths per 100,000 in 2003 with aims to reduce this to 17 per 100,000 in 2010. See 'Malaysian construction – safety first' in *New Straits Times*, 16 Nov. 2010. According to the Ministry of Resources' *Occupation safety and health master plan for Malaysia 2015* the rate is stagnant at 12.8 fatalities per 100,000.

**Thailand** – has a limited representation in workplace injury reporting. The National Injury Surveillance (NIS) system reported a decreased fatality rate of 2.5 per cent in cases reported in 2004 with a four year average of 2.8 per cent. See Phayong Thepaksorn and Chantana Padungtod, "Occupational accidents and injuries in Thailand" in *International Journal of Occupational and Environmental Health*, Vol. 13, No. 3, Jul./Sep. 2007. It should be noted that this only covers a small fraction of the Thai labour force and certainly none of the migrant labour force, rates are therefore suspected to be much higher.

<sup>67</sup> A. Chan: *Hired on sufferance, China's migrant workers in Singapore*, (Singapore, 2011), p. 37.

<sup>68</sup> *Ibid*: p. 41.

<sup>69</sup> *Justice delayed, justice denied*, p. 1.

<sup>70</sup> Chan: *Hired on sufferance*, p. 37.

workplaces as they may not legally change employers and seek employment at safer and healthier workplaces.<sup>71</sup>

Notwithstanding, the Government has taken migrant workers' safety and health at work into account by providing safety training for migrants in certain industries in which their occupations are regarded as dangerous and demanding. The MOM has also paid much attention to the safety of foreign domestic workers by providing the Safety Awareness Course which is compulsory for all first-time foreign domestic workers (FDWs). In addition to the safety training, further efforts are needed to ensure, as the basis of safe working conditions. Currently all domestic workers including FDWs are excluded from effective consideration under the protections in line with the Employment Act. Such provisions include a minimum of one rest day per week, a maximum of forty-four hour working week and fourteen days of paid sick leave. Moreover, domestic workers do not currently enjoy the benefits of the Work Injury Compensation Act. However, FDWs are accorded specific protection under the Employment of Foreign Manpower Workers Act, and if they suffer abused, their abusers face enhanced penalties under the Penal Code. Employers of FDWs are required to purchase a Personal Accident Insurance (PAI), with a minimum sum insured of 40,000 Singapore dollar, for each worker. Smoother procedures for domestic workers to receive immediate assistance to treatment and necessary compensation in case of occupational accidents and diseases should be further pursued with reference to, and in consistency with the Work Injury Compensation Act.

Employers' organizations have been strengthening their practical measures for high-level OSH standards of migrant workers. Good OSH conditions immediately link to efficient and productive work environments. In order to promote a climate of workplace safety for migrant workers, trade unions in Singapore have further potential to play an increasingly important role to address the OSH needs of migrant workers. Migrant workers are generally guaranteed the right to membership and participation in existing trade unions; however, they are generally restricted from taking executive positions within a union. Under Section 30 of the Trade Unions Act, trade union officers who are not Singapore citizens are required to seek approval from the Minister of Manpower before assuming responsibilities. It is difficult to envisage that this is an efficient manner in which to create more representative composition of trade union executives, given that over 35 per cent of the workforce in Singapore consists of foreigners. The rights of migrant workers could be further promoted. A well-balanced trade union composition and constituency *across* sectors would further enhance active participation of migrant workers to improve OSH. Migrant workers in big companies in the shipping and construction industries are highly likely to participate in current OSH activities with trade unions. Furthermore, measures should be taken to involve migrant workers in small and medium-sized companies and domestic workers in trade union OSH activities. Many NGOs have been working on promoting the standard of living of migrant workers. It is expected that such NGOs could pay more attention to the field of OSH since NGOs can play significant roles in improving the OSH of migrant workers through their grassroots networks.

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<sup>71</sup> Ibid: p. 41 and *Justice delayed, justice denied*, p. 1.

## 6. Thailand-OSH for migrant workers

### 6.1 Background

Though estimates vary, more than 2 million migrant workers are living in Thailand.<sup>72</sup> Major labour source countries are the neighbouring countries of Myanmar, Cambodia and Lao PDR. Among the low-skilled migrant flows into the country, workers from Myanmar are estimated to constitute at least 80 per cent of the total foreign labour population. They are mostly unskilled workers employed in 3D jobs, which are shunned by Thai counterparts.<sup>73</sup> Data from the Ministry of Labour (MOL) in 2010 identifies the top five sectors in which registered migrant workers have been granted work permits: agriculture and livestock (171,857 or 18.4 per cent), fishing and seafood processing (130,767 or 14 per cent), manufacturing (115,062 or 12.3 per cent), construction (148,211 or 15.9 per cent), (101,849 or 10.9 per cent), domestic work (87,926 or 9.4 per cent) and services (79,017 or 8.5 per cent). It is important to keep in mind that these figures do not take into account unregistered migrants, who are particularly prevalent in fishing and seafood processing, for example.

Since the types of work migrants undertake on a daily basis are characteristically dirty, dangerous and difficult, OSH matters need to be properly tackled at policy and workplace levels.

### 6.2 Legislation

Specific OSH legislation has yet to come into force in Thailand. However, the Occupational Safety, Health and Environment Act is anticipated to be effective from 16 July 2011. The proposed Act has yet to be disseminated and its impact and implementation has yet to undergo significant scrutiny. Concurrent to this Act, MOL will be establishing a special technical entity (the Institute for the Promotion of Occupational Safety, Health and Environment) to promote and support occupational safety, health and environment in Thailand. However, this has yet to occur and for the purposes of this discussion the below labour laws presently incorporate occupational safety and health related issues in Thailand.

- Workmen's Compensation Act B.E. 2537 (1994)
- The Factories Act B.E. 2535 (1992)
- The Hazardous Substance Act B.E. 2535 (1992)
- Labour Protection Act B.E. 2541 (1998)

Every worker in Thailand is in theory entitled to the protections afforded under Thai labour law. However, in practice, utilizing the legislation to protect migrant workers from OSH infringements remains a considerable challenge. There is yet to be a clear example where a migrant worker has been compensated through the MOL's Workmen's Compensation Fund (WCF) in case of accidents caused by their occupation.

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<sup>72</sup> For detailed estimates see Rosalia Sciortino and Sureeporn Punpuing: *International migration in Thailand 2009*, UN Thematic Working Group on Migration in Thailand, p. 16. Note that this is an approximate figure for the number of migrant workers in Thailand and that this number does not fully incorporate family members and others who may have travelled to Thailand with these workers.

<sup>73</sup> International Organization for Migration: *Labour migration in the Greater Mekong Sub-region, synthesis report phase 1* (2006), p. 27.



Migrants without work permits (including those who have not completed the national verification process) are not entitled to access the WCF, despite their presence in construction and other hazardous occupations. An official ILO ruling declared that this discrimination against migrants constitutes a breach of ILO Convention 19 on Equality of Treatment (Accident Compensation), signed by Thailand in 1968.<sup>74</sup> Instead, private insurance alternatives have recently been promoted by the MOL.

Even though the Workmen's Compensation Act does not prevent migrants, excluding those in domestic work (although by law it should be both regular and irregular – see the definition of employee under section 5) access to social security and work accident compensation schemes, most employers are unlikely to pay contributions.

According to the Workmen's Compensation Act, all employers are obligated by section 44 of the Act to pay contributions to the WCF (through the Social Security Office). Yet, a number of test cases show that migrants face a number of obstacles in obtaining access to the fund (see Case 1). These include lack of enforcement by officials, non-compliance of employers, migrants' limited knowledge, and negative attitudes towards migrants.

The Labour Protection Act encourages representatives from employees and employers to participate in OSH committees. However, more proactive policy is required to involve workers and employers to establish and participate in these committees in practice.

### 6.3 Characteristics of migrant OSH

Unskilled migrant workers in Thailand are generally working in the agriculture, construction, domestic work, manufacturing, seafood processing and fishing industries. Since there have not yet been specific policies focused on migrant workers' occupational safety and health, migrant workers often face a variety of challenges due to a lack of legal support and the inadequate application and enforcement of regulations. This has contributed to poor working conditions and raised the incidence of work-related accidents, injuries and fatalities.

- Case study

#### Case 1

Nang Noom a registered Shan female migrant worker appealed the Chiang Mai Administrative Court's refusal to rule on her discrimination claim against the Social Security Office. The office denied her compensation for injuries caused by an accident at her workplace on a construction site.

Nang Noom was working on a Shangri-La brand hotel construction site. On 4 December 2006, she was struck by a large piece of concrete mould that fell from the 12<sup>th</sup> floor while she was working on the second floor. After the accident, she spent 11 months in hospital and was diagnosed as 70 per cent disabled with paralysis of the legs.

The Social Security Office (SSO) initially denied compensation for her injuries on the basis that she had entered the country illegally even though she had a work permit while she was working at the construction site. The SSO then stated that it was the responsibility of the employer to compensate Nang Noom and that it could only direct the employer to do so.

<sup>74</sup> State Enterprises Workers' Relations Confederation (SERC) press release: 2 Mar. 2010. See also CEACR: Individual Observation concerning Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19) Thailand (ratification: 1968) Published: 2010.



The SSO has never openly acknowledged her rights to compensation under the Workmen's Compensation Act B.E. 1994 but ordered the employer of Nang Noom to pay monthly compensation to her outside of the Workmen's Compensation Fund (WCF). Nang Noom appealed this order to the SSO WCF Committee claiming it removed the responsibility for compensating her from the SSO's WCF and placed the responsibility instead on her employer.

Since the WCF Committee dismissed her appeal, Nang Noom's case has become a test case on whether the government compensates the (migrant) victims of occupational accidents and injuries in the future.

*Source:* Erika Fry "Failed safety net", in *Bangkok Post*, Sunday 28 October 2007

#### Case 2

Zaw Tsun, a construction worker from Myanmar, works on a five-story house complex at a site outside of Bangkok. He spends most of time in the air, balanced on bamboo scaffolding.

He has seen friends fall and has nearly slipped himself. There are no safety belts used at his site. He has never received safety training and he considers jeans and boots to be protective gear.

*Source:* "Migrants short-shifted on OSH", in *Bangkok Post*, Sunday 9 December 2007

#### Case 3

Thet<sup>75\*\*</sup>

Thet was working as a labourer in a wooden-door factory in Samut Sakhon province in 2010. He was conducting his usual task of carrying materials to the transport vehicle when a forklift driven by his employer collided with him causing his leg to break.

He was driven by his employer to the hospital for treatment; however, after providing an initial sum of 1,000 Thai baht (US\$33), his employer has subsequently refused to pay for treatment or compensation for Thet being unable to work. The Labour Rights Promotion Network (LPN), an NGO in Samut Sakhon, paid for initial treatment and the hospital providing treatment has been keeping a record of the remaining treatment costs. They are assisting him to prepare a civil case to receive compensation from his employer.

Complicating Thet's recovery is a general lack of nutrition which is, at the time of interviewing, inhibiting the ability of the metal rod now in his leg to fuse properly with the bone structure. At this time (2 months after treatment) his leg remained visibly warped.

Thet described a general lack of OSH provisions in the factory; no personal protective equipment was provided, training was very limited and occupational, safety and health was not discussed with workers at all. Thet further noted that accidents in this workplace are very frequent but usually involve accidents from heavy objects falling and accidents during manufacturing such as when drilling wood (hands pierced by drills). It was common for workers to incur irritation in their eyes from sawdust.

It is important to note that in Thet making a case to receive compensation from his employer he has identified himself to be unlawfully in Thailand and will subsequently be deported following the outcome of his case, despite having lived in Thailand for seven years.

<sup>75</sup> Interview conducted by author and other ILO officials on 2 Aug. 2010 with Thet at Labour Rights Promotion Network (LPN) office, Samut Sakhon. \*\*Thet's official name has been omitted due to the sensitive nature of his residency status and the fact that his claim is ongoing at the time of writing.

## 6.4 Government involvement

- Ministry of Public Health (MOPH)

The MOPH is the main body responsible for all public health issues in Thailand. It also plays an important role in occupational safety and health in all sectors through its technical unit and health care network system. The Bureau of Occupational and Environmental Diseases is under the Department of Disease Control. MOPH are also key actors in migration policy dialogue at central and local levels.

Primary Care Units (PCUs) promote public health at the national level. The Ministry provides these services free of charge and every person living in Thailand has access to these units – including migrants and migrant workers. Presently, there are around 9,791 local health centres and 364 PCUs providing integrated primary health care but there are limits in terms of reaching those who require more than primary medical care.

- Ministry of Labour (MOL)
- Department of Labour Protection and Welfare (DLPW)

The DLPW is granted authority by the MOL to legally enforce employer compliance with OSH standards prescribed under the Labour Protection Act. The DLPW launched its first Master OSH Plan of Thailand in 2002 to strengthen the National OSH System referring to relevant ILO OSH standards. This Plan has served as a good model to other ASEAN countries. One of the main issues mentioned in the Master Plan was to strengthen OSH protection of vulnerable groups of workers such as workers in small workplaces, informal economy workplaces or rural sectors.

- Occupational Safety and Health Bureau

The Occupational Safety and Health Bureau (OSH Bureau) is an agency under the DLPW with the responsibility of developing OSH standards and networks. The OSH Bureau has been actively extending their OSH protection activities to many vulnerable groups of workers at grassroots level including small enterprises, small-scale construction sites where many farmer construction workers are working, home workplaces, and farmers by applying ILO's participatory training programmes like WISE (Work Improvement in Small Enterprises). It is largely expected that these grassroots training experiences can be practically applied to assist migrant workers and their employers in improving their OSH.

DLPW has also been developing sector-based OSH standards to strengthen their specific OSH protection activities. Further, DLPW has been upgrading OSH inspection services through training to be even more strategic by mobilizing their (limited numbers of) inspectors. The introduction of the Occupational Safety, Health and Environment Act on 16 July 2011 will further address these issues, which directly relate to the OSH of migrant workers. However, both the DLPW and the OSH Bureau will still face challenges given the low inspector to worker ratio and potential lack of industry preparedness to meet the obligations of the new act.

## 6.5 NGO involvement

In response to the growing number of migrants living and working in Thailand, numerous NGOs have become actively involved in all aspects of migrants' rights protection. Since unskilled migrant workers are employed in 3D jobs, they are very vulnerable to occupational accidents and injuries. Not many organizations prioritise OSH for migrants, but a few NGOs have been running OSH programmes or training in an effort to raise awareness of safety at work among migrant workers and to prevent occupational accidents and injuries.

- Human Rights Development Foundation (HRDF)

The Human Rights Development Foundation, based in Chiang Mai, is one of the most active migrant advocacy organizations in Thailand. The organization ran a project known as Making Migrant Safety at Work Matter (MMSAWM) until 2008, which is now known as the Migrant Justice Programme. During MMSAWM the organization performed OSH training on a monthly basis. The training consisted of a one-day course, and mainly dealt with three topics: electronics, chemicals and machinery. Almost 25 migrant workers were trained at a time and they repeated the session until they fully understood the OSH issues. The participants learned about the potential effects of their work through body mapping – where migrants mark the part of body that could be affected by their work. HRDF encouraged those trained migrant workers to work as safety instructors for other migrant workers in the workplace.

In March 2008, a three-days workshop took place for migrant workers, accident victims and government officials. Prior to the workshop, MMSAWM volunteers spent months conducting a needs assessment in construction sites and agricultural fields. The assessment showed severe work-related injury rates and ill-health among migrants.

Besides the training, the organization has produced safety materials in Shan and Burmese languages for agricultural and construction workers and has distributed these in Chiang Mai, Mae Sot and Samut Sakhon provinces.

- Raks Thai Foundation

The Raks Thai Foundation and the Samut Sakhon Hospital jointly run a mobile clinic for migrant workers. The foundation provides Burmese speaking health personnel while the hospital provides medicine and treatment for foreign workers. The clinic runs five days a week, at five different venues near the migrants' workplaces. The services start after factory working hours, to make it easy for the workers to access them.

The foundation also runs a day clinic at its office a few steps away from Talad Kung Mahachai, where migrant workers work in the shrimp industry. The clinic offers basic health care and serious cases are referred to the Samut Sakhon Hospital, complete with the patients' medical history.

Besides both day and evening clinics, Raks Thai also performs peer education programmes by training health volunteers among the migrant population so they can help the community with first aid, free distribution of birth control pills, and safe sex education.

- MAP Foundation

The Migrant Assistance Programme (MAP) Foundation is based in Chiang Mai and advocates for migrant workers' human rights and labour rights. MAP runs a project called Promoting Occupational Safety and Health or POSH in Chiang Mai and Mae Sot.

POSH has a long term aim to develop migrant safety officials who will train migrants as focal points on different worksites in the construction, agriculture and manufacturing industries.

POSH is running three-day training courses every three months. Around 20 migrants attend the training in each area. The training covers safety issues and basic knowledge of first aid. In addition to the training, one-day workshops are held in each area on a monthly basis.

In order to strengthen the communities and provide a space for migrants to share knowledge and to distribute publications, the organization supported migrant communities to build a community hut, which they call “POSH corner” where migrant workers gather and collect OSH information. MAP is currently running 10 POSH corners.

- Project for the Well-being of Migrant Workers Ethnic Minorities, Refugees and Stateless Persons.

This project funded by the Thai Health Promotion Foundation, manages projects on labour, education and health for vulnerable populations in Thailand and contributes to the SHIELD project funded by the United States Agency for International Development (USAID). In an interview with the ILO in August 2010, the project identified seasonal workers as having potentially high risk of poor OSH due to the short and itinerant nature of their work which takes place primarily in agriculture.<sup>76</sup> Such work may involve dangerous substances with effects that are only noticed after the worker has moved on. Similarly the project noted that the widespread use of contractors can significantly decrease accountability in this sector.

## 6.6 Trade union involvement

Trade unions have the potential to represent the interests and protect the rights of migrant workers. Migrant workers are often powerless to negotiate their terms of employment including OSH and vulnerable when speaking out against challenges they face at work. The role of a trade union is critical in these instances.

Migrants can join trade unions, but the Labour Relations Act 1975 stipulates in Article 101 that committee or sub-committee members of a trade union must be of Thai nationality by birth. As a result, migrant workers in Thailand can neither form a trade union by themselves nor be a representative for existing Thai trade unions outside of general membership.

Compared to trade unions in other destination countries in the Asia and the Pacific region, Thailand's unions are smaller in scope and membership and generally sector based. Importantly, Thailand is not a party to the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) and the Right to Organize and Collective Bargaining Convention, 1949 (No. 98). This has a limiting effect on trade union involvement in migrant labour and other labour related issues. As such, Thai trade union activities generally lack a representation of the interests of migrant workers.

## 6.7 Analysis

The dependency on foreign labour in Thailand is highly likely to continue, given the structure of the economy, demographic dynamics and economic disparity between Thailand and its neighbouring

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<sup>76</sup> Interview with Adisorn Kerdmongkol on 3 Aug. 2010 at the offices of the Project for the Well-being of Migrant Workers Ethnic Minorities, Refugees and Stateless Persons.

countries. OSH of migrant workers will continue to be an important issue. Since Thailand has been broadly successful in addressing OSH in small enterprises through the training, safety officer activities and OSH committees. These practical experiences at the workplace level should be largely applied for improving the OSH of migrant workers and their employers.

Despite Thai labour legislation being applicable to migrant workers in theory, the labour laws are often not adequately applied in practice. In reality, migrants tend to accept, with little alternative, substandard OSH conditions. They often have to accept long hours of work for higher income to support their families and suffer from poor general health conditions. Moreover, workers in the agriculture, domestic work and fishing sectors are not covered by the Labour Protection Act. Other limitations on migrants' basic rights result from several provincial decrees limiting their freedom of movement, expression, association and assembly. Also many migrant workers often have to share lodgings, with many sharing the same room in order to save on living costs. This retards recovery from fatigue after work and can increase the risk of infectious illnesses. For example, if someone is infected with influenza, other workers with whom they reside will have a higher risk of infection.

There are a number of instances where undocumented migrant workers come into Thailand with their children. The minimum working age is 15 in Thailand, and it is to be regulated for those between 15-17 years old. As it is often difficult for the children of migrant workers to have access to the Thai education system, these children commonly work alongside their parent(s) in 3D and sometimes hazardous jobs. Enforcement of regulations concerning young workers continues to be a challenge in Thailand.

There has been a growing concern on the manner in which the Thai government copes with migrant workers who are injured in the workplace. In the wake of Nang Noom case, it has become clear that migrant workers are denied access to the social security system. Most migrant workers are unable to receive direct compensation or assistance from the Social Security Office (SSO) in the event of an OSH related incident. In 2010, the ILO Committee of Experts on the Application of Conventions and Recommendations observed that:

With regard to the situation in law, the Committee observes that, while the Workmen's Compensation Act (WCA) grants foreign workers the right to equality of treatment, the Social Security Office circular RS0711/W751 subjects the exercise of this right to fulfilment of certain conditions, which in the current situation effectively deprives migrant workers of protection by the WCF enjoyed by the Thai workers. With respect to the Government's statement that foreign workers who are thus deprived from compensation by the SSO, are entitled instead to an equal compensation from their employer, the Committee notes that the Government does not contest the fact that, in practice, as explained by the State Enterprises Workers Relations Confederation (SERC), the SSO orders obliging the employer to pay compensation directly to the worker concerned are usually ignored, as migrant workers are unable to engage in costly and lengthy judicial proceedings necessary to enforce the SSO orders.<sup>77</sup>

In addition, migrant workers' restricted activities in trade unions have made OSH conditions for migrant workers less regulated. However, there is growing awareness among Thai trade unions of the issues. The SERC's initiative mentioned above is a good example. Thai trade unions have the further potential to address OSH of migrant workers at work and to involve them in OSH training activities and OSH committee activities as important partners.

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<sup>77</sup> CEACR: Individual Observation Concerning Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19) Thailand (ratification: 1968) Published: 2010.

In addition, migrant workers' restricted activities in trade unions have made OSH conditions for migrant workers less regulated. Thai trade unions may not be fully aware of the issues or do not have the capacity to address migrant workers' rights at work, because, in general, they have not made an effort to organize migrant labour. Under these circumstances a sound workplace could hardly be cultivated by migrant workers themselves unless greater opportunity and power are afforded to migrant workers in trade unions.

Meanwhile, some NGOs have developed projects to assist migrant workers to become safety conscious employees, with a view that they also become focal points for others who are beyond the reach of safety training. They have also been working together often with employers migrants to find the ways to address this common interest. These growing practical experiences among NGOs could be the good resource for Thailand to further address the OSH of migrant workers and establish workable national policy which can benefit both migrants and their employers.

In December 2010, the ILO carried out two pilot training courses to address OSH of migrant workers in two seafood processing factories in Samut Sakhon province. Employers welcomed our assistance.<sup>78</sup> It was encouraging to see the cooperation between employers, Thai workers and migrant workers. All of them exhibited a keen interest in improving OSH. It was an important opportunity to provide practical and easy-to-apply training programmes to meet their immediate workplace improvement needs. Notably, the government and many employers in Thailand already have a number of positive experiences in using ILO's WISE training programmes to address grassroots OSH needs. It would be desirable should Thailand take the further positive steps to address the OSH of migrant workers by applying these accumulated experiences in participatory, practical training programmes.

## 7. Conclusion and recommendations

The demand for migrants in these five countries has been gradually increasing and is expected to continue for many years to come. With respect to occupational safety and health, migrant workers often appear to be the most vulnerable. Several factors contribute to the greater risk and incidence of occupational injuries and disease among migrants compared to local workers.

Firstly, legal protection for migrant workers needs to be further strengthened to prevent workplace accidents and diseases. In the five focus countries, each has its own OSH related laws in which each government expressly or implicitly states that every worker including migrant workers shall be entitled to certain rights and protections. However, the implementation of these laws needs to be strengthened in each country. For example, in Thailand migrant workers do not enjoy direct access to the Workmen's Compensation Fund. As most do not satisfy the criteria to apply for access to this fund, they are overly reliant on their employers compensating them in proportion to the provision of the Workmen's Compensation Act. Migrant workers' access to compensation in Thailand is still very difficult on the grounds that often migrant workers entered the country without proper documentation. Some employers abuse the relatively unstable status of migrant workers to avoid their responsibilities. Breaches of OSH laws are not subject to tough penalties and therefore the law does not provide sufficient deterrent or motivation to other employers. It is important that governments take strong measures to ensure that all employers understand and implement their responsibility for the workplace safety of migrant workers. Furthermore, in countries where migration is facilitated by private

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<sup>78</sup> C. McGuinness and T. Kawakami: "Participatory approaches to improving occupational safety and health and preventing influenza of migrant workers in Thailand", in *Asian Pacific Newsletter*, 2011 (forthcoming), (Finnish Institute of Occupational Health).



employment agencies, ratification of the Private Employment Agencies Convention (No. 181) would significantly contribute to the protective regulatory framework for migrant workers. Convention No. 181 contains specific provisions directly relating to the OSH of migrant workers, requiring for instance that States party ensure adequate protection in respect of occupational safety and health for the workers employed by private employment agencies.

Three of the focus countries in this paper are ASEAN members states (Malaysia, Singapore, and Thailand) and it is encouraging to see the introduction of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers in January 2007. This declaration can be useful in complementing existing international conventions and agreements if and when they are adopted by these member states (see section 8, Specific Recommendations).

Secondly, practical support to prevent occupational accidents and diseases should be provided to both migrants and their employers. There are many simple, low-cost methods to improve safety and health. These can be very useful for improving productivity and the reputation of employers and the industry. Prevention should always come first in the field of OSH on the basis that occupational injuries and diseases are avoidable when a sound OSH culture is cultivated and maintained.

A prominent reason for migrant workers experiencing a greater risk of OSH related injuries and accidents compared to local workers is their lack of language (communication) skills and perceived cultural differences. Therefore, before and after employment, systematic and comprehensive safety training would be of benefit to migrant workers. From a national perspective, the governments of Republic of Korea and Singapore have developed comparatively good systems to promote and achieve workplace safety specifically for migrants. Migrant workers entering Republic of Korea under the Employment Permit System (EPS) must go through pre and post arrival training before employment, which provides lingual and cultural training as well as medical check-ups. The Government of Singapore has also made efforts to prevent OSH incidents from occurring by providing safety orientation to migrant workers in certain industries including the metal, manhole and tunnelling industries.

Thirdly, trade union support to migrant workers could be further strengthened. There are encouraging examples in Republic of Korea and Japan. Though migrant workers in the five target countries can theoretically join trade unions, their participation in trade unions can be very limited in their ability to claim their rights by their own determination. This is partly because few trade unions have organized labour within the sectors or the small and medium-sized enterprises where migrant workers are more likely to be employed. Migrant workers are usually restricted from holding office within trade unions and from forming their own trade unions. In one of the focus countries, Republic of Korea, a migrant workers' union was formed but local authorities denied its legitimacy and a Supreme Court decision on the legitimacy of this union is still pending.<sup>79</sup> In Malaysia, labour laws allow for migrant workers to join trade unions, while certain immigration regulations prohibit them from doing so. Absent full enjoyment of the right of association, migrant workers will continue to be deprived of the ability to directly secure adequate OSH protections through collective bargaining. More broadly, the curtailment of freedom of association rights also frustrates the effective application of such OSH-directed standards as the Occupational Safety and Health Convention (Convention No. 155), which contains provisions requiring cooperation and consultation with workers' organizations to ensure a national OSH policy, and also provides workers with the right to remove themselves from work situations that present a serious and imminent danger to their life or health.

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<sup>79</sup> See footnote 37.



Good practices in terms of the OSH of irregular migrant labour should be collected and disseminated. These examples would provide practical and encouraging measures for employers to establish productive work environments that are good for their businesses. Based on the fact that irregular migrants meet the demand for labour to varying degrees in each target country, each government should work on devising methods to direct undocumented migrants into legal channels and work to protect the basic rights denied to them as part of their irregular status. However, irregular migrant workers will continue to experience difficulty in seeking formal assistance due to their irregular status. Though legal tools for undocumented migrants are scarce, some NGOs in the target countries are trying to address the plight of irregular migrant workers and carry out ambitious activities such as the provision of free medical services, interpretation and OSH training. Some NGOs in Thailand have been running projects to develop safety conscious, experienced and trained employees so that they can play a role as focal points and reach out to other migrants. However, due to the nature of NGOs, which rely heavily on external funding, their capacity to deliver and maintain OSH related training and awareness is often limited.

Meanwhile, the effort to promote the rights of irregular migrant workers has been observed in the public sector in Republic of Korea. Irregular migrant workers in Republic of Korea have benefited from subsidies provided by the Ministry of Health and Welfare to health care providers. The Primary Care Units (PCU) under the Ministry of Public Health of Thailand also provides access to reasonable medical services to everyone in the community including migrants.<sup>80</sup> This is to minimise the negative effects of the fact that irregular migrant workers are often reluctant to seek medical treatment due to a fear of being caught by the authorities. The approach by the Republic of Korean government is, however, at best, conflicted. On the one hand, it provides subsidies to medical services for migrant workers including irregular workers to promote safe and healthy working conditions, while conversely it disputes the right of migrant workers to organize their own trade union. This is similar as in the instance of Malaysia. The Ministry of Human Resources acknowledges the presence of migrant workers in trade unions while Ministry of Home Affairs permits an effective ban on migrant workers from joining trade unions on the basis of the conditions of their work permit.

Younger migrant workers also represent a particularly vulnerable group within an existing vulnerable population. For children (under the age of 18), OSH risks are increased through a lack of experience, lack of physical development, education and willingness to question or assert their rights in the workplace. Even in a country with sophisticated OSH monitoring systems/practices, as present in Australia, international students and young migrants are at a higher risk due to a lack of knowledge and support. Young migrant workers, of legal working age (as prescribed by host country legislation), could benefit from specific OSH training and arrangements particular to their employment status and levels of physical development.

While the governments in the five focus countries are enhancing efforts to improve migrants' employment conditions, more attention must also be given to their OSH. A safer workplace for migrant workers can only be achieved when all stakeholders are actively involved in making the workplace safe. In order to do so, labour related laws must be equally applied to all migrant workers and local workers in practice. Initiating new legislation and regulations incorporating OSH for all workers inclusive of migrant workers should be considered. Furthermore, migrant OSH support systems in well-funded NGOs and trade unions should be encouraged at the grassroots level under fully implemented OSH related legislation and regulations. Roles of employers' organizations are equally important. They can help employers hosting migrants to learn from good OSH practices and

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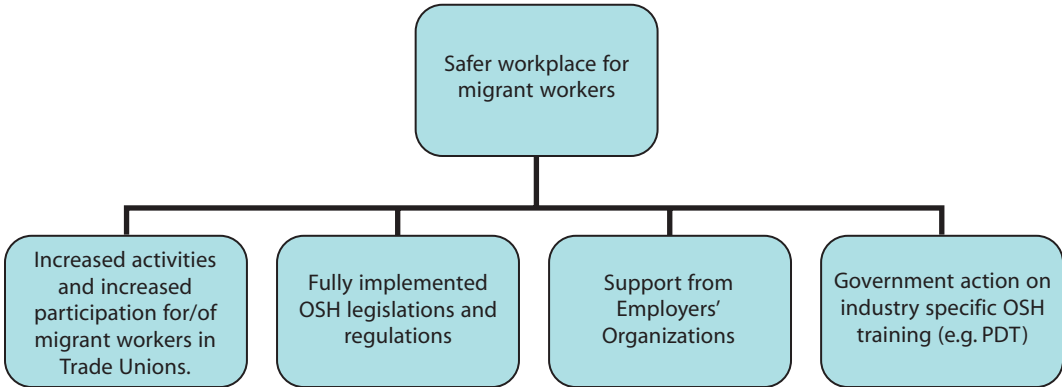
<sup>80</sup> S. Siriruttanapruk, K. Wada, T. Kawakami: "Promoting occupational health services for workers in the informal economy through primary care units", ILO Asia and the Pacific working paper series (Bangkok, ILO, 2009).

create competitive business environments. Many employers, in particular small businesses, need practical measures and support in this regard.

As mentioned in the introduction of this paper, the issue of labour inspection has not been covered in an extensive capacity. However, labour inspection has a great deal of potential for addressing many of the concerns outlined in the body of this research, particularly those relating to the enforceability of, and compliance to (or lack thereof), the law. Each focus country in this paper could benefit from a strengthened coherence of and increased support (physically, materially and technically) for their labour inspectorates. In particular labour inspectorates in these and other countries need to have a coherent, effective and fair approach to migrant labour to minimize workplace issues such as efforts on preventing OSH incidents and enforcing standards when it is necessary. Industry and workplace self-inspection could be encouraged in certain areas where there is a “convergence of interest” such as on OSH.

Some countries’ efforts in this study have gone further than others and similarly some countries also have protections inherent in their legislative and structural frameworks that theoretically already afford equal treatment for migrant workers, notably Australia, Republic of Korea and to a lesser extent, Singapore. That stated there is a common theme of vulnerability in all focus countries. Migrant workers are more vulnerable to exploitation and consequently are more likely to suffer from substandard OSH conditions. Moreover, in practical terms, they have less access to redress on this issue than do host country nationals. More effort needs to be taken at government, industry and worker representation levels, especially as the reliance on migrant labour will almost certainly continue to increase. The continued demand for labour can and will overwhelm existing mechanisms, (effective or otherwise), designed to manage and implement occupational safety and health. Positive experiences and achievements in the region in terms of providing migrants with safe, healthy and productive working environments will certainly promote encouraging business models to the other parts of the world.

**Figure 12. Potential methods to improve work safety conditions for migrant workers**



## 8. Specific recommendations

### All focus countries

1. Ratify; the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990; the Migration for Employment Convention (Revised), 1949 (No. 97); the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143).
2. Assist migrant workers to access free or fairly subsidised medical services, particularly with regard to occupational accidents and diseases.
3. Permit all workers including migrant workers to collectively organize in an industrial capacity. Allow migrant workers to form and fully participate in trade unions including on the boards of unions.
4. Allow workers, irrespective of visa status, to remain in the host country until any claims relating OSH and industrial disputes are settled. This will deter employers from attempting to forcibly remove employees prior to any resolution of workplace disputes.
5. Consider partnerships with trade unions and NGOs as they tend to be more effective at prevention training at the “grassroots” level.
6. Implement strict penalties for employers who knowingly engage in exploitative labour practices especially those who attempt to alter identification documents or attempt to forcibly remove workers from the host country with whom they have an industrial dispute.
7. Ensure that all workers are considered equal in regards to all industrial arrangements, such as equal pay, leave, protection from exploitative practices and redress, just as any other host country citizen.
8. Permit workers to change employers in industries with a demonstrated unmet demand for labour. These industries can be identified through labour market testing conducted prior to workers being mobilised to host countries.
9. Recognize the presence of young migrant workers in the workforce and design and implement OSH arrangements specific to their unique vulnerability and with careful consideration of their physical development.

### Australia

1. Initiate pre-departure training and/or on-arrival training, incorporating basic OSH, industry specific training, workplace rights and responsibilities and points of contact for all temporary migrant workers similar to the positive examples seen in Republic of Korea and Singapore. Voluntary enhanced English training would also be a positive step in increasing workplace safety.

### Republic of Korea

1. Ratify the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) and the Right to Organize and Collective Bargaining Convention, 1949 (No. 98).
2. Permit migrant workers to collectively organize in an industrial capacity. Recognise the right of the Migrant workers’ Trade Union (MTU) to exist and engage them in discussions on how to further improved OSH practices.

## **Malaysia**

1. Ratify the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87).
2. Strengthen measures to increase the enforceability of legislation that directly affects OSH standards for migrant workers.
3. Permit and encourage migrant workers to fully participate in any capacity in trade unions.
4. Legislate that all workers in Malaysia, including migrant workers, are eligible for the same workplace compensation arrangements.

## **Singapore**

1. Ratify the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87).
2. All workers in Singapore including Foreign Domestic Workers should receive the same consideration, protections and benefits afforded by legislation including, but not limited to the Employment Act and the Work Injury Compensation Act.

## **Thailand**

1. Ratify the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) and the Right to Organize and Collective Bargaining Convention, 1949 (No. 98).
2. Streamline government responsibility for migrant workers. Policies and practices may be strengthened if migrant labour issues can be better coordinated. They can be considered as a permanent policy feature at the national level which can be expressed through being incorporated into the agendas of National Economic and Social Development Plans (NESDP).
3. Consultation should also be considered with agencies and institutions that do not have an implementation role in migration but are an end user/beneficiary of migrant labour e.g. Ministry of Agriculture and Cooperatives, Employers' Confederation of Thailand.
4. Establish more independent controls for OSH claims, including but not limited to independent medical assessments to limit potential conflict of interests.
5. Impose greater (and mandatory) monitoring of funds utilized under Compulsory Migrant Health Insurance (CMHI) scheme to ensure that funds are being used as efficiently as possible and being allocated in a prioritized manner.

## **Trade Unions**

1. Encourage the active participation of migrant workers in trade union activities.
2. Develop training activities and programmes that incorporate local and migrant workers joint participation. This will encourage greater cooperation and solidarity for common goals.

## **NGOs**

1. Take the initiative on OSH training programmes. Identify other NGO and industry partners to coordinate efforts and identify efficiencies in resources (joint ventures, etc.) to organize and maintain OSH assistance initiatives.

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## **Research on occupational safety and health for migrant workers in five Asia and the Pacific countries: Australia, Republic of Korea, Malaysia, Singapore and Thailand**

Cross border migration has a long history in Asia and the Pacific and in the 21<sup>st</sup> century labour migration is on the increase. The purpose of this paper is to study Occupational Safety and Health (OSH) conditions for migrant workers in five Asia and the Pacific countries (Australia, Republic of Korea, Malaysia, Singapore and Thailand), in response to growing concern about the improvement of safety, health and working conditions for migrant workers. Migrant labour has become one of the determining factors in the economic sustainability of these countries and is increasingly relied upon, especially in the so-called 3D (dirty, dangerous and difficult) sectors which are generally labour intensive, hazardous and offer low wages. This working paper presents trends and facts relevant to the five target countries' OSH environments for migrant workers, with the long term aim of raising awareness of workplace safety for migrant labour forces and instilling the significance of sound OSH practices at work in all stakeholders, including governments, employers, workers and NGOs.

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