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Asia's Labor Migration and Employment Relations Regimes

Scholars writing on temporary labor migration in Europe have long recognized that it is not only the broad socio-political context and migration policy that influence migrant workers' experiences in a destination country. Equally important are the structures of that country's institutional labor market and the readiness of its unions to engage with migrant workers (see, for example, Connolly, Marino, and Lucio 2014; Krings 2009). In the extensive literature on temporary labor migration in Asia, these insights are left largely unexamined and untheorized.¹ While much of this work draws attention to the location of migrant workers in destination-country labor markets, there has been no systematic comparison of the ways in which employment relations regimes of different destination countries intersect with their labor migration regimes. Neither has there been any systematic consideration of how employment relations and the regulation of labor migration condition the responses of local unions to temporary labor migration.

These absences belie the fact that the location of different groups of foreign workers within the political economy of a labor destination country is defined not only by their *migration status* but also by their *labor market position*. The latter determines the extent to which these workers are governed by the laws, institutions, and processes that regulate the relationship between employers and employees—known collectively as the *industrial relations system*. This formal system, in turn, is embedded in a web of informal institutions and norms, which together can be described as the employment relations regime. A country's labor migration and employment relations regimes are not mutually constitutive, but each limits the possible outcomes of the other, and in many cases they are mutually reinforcing. Moreover, both have important consequences for the political opportunity structures available to NGOs or unions—and, indeed, temporary labor migrants themselves—as well as for the targets of different forms of migrant labor activism.

Introducing an employment relations perspective

Scholars of Asian labor migration have drawn attention to the involvement of grassroots migrant worker organizations and labor unions in migrant labor activism, with some calling for more careful analysis of those groups' involvement (Ford 2004, 2006b; Ford and Piper 2007; Hsia 2009; Piper 2006). However, there has been little consideration of the role of unions in the struggle for migrant labor rights in the region.² On the one hand, the paucity of close studies of union advocacy for the rights of temporary labor migrants is due to an emphasis on activism by and on behalf of foreign domestic workers (see, for example, Lyons

¹ Much of this literature focuses on migration policy (for example, Huang and Yeoh 1996; Lu 2011; Oishi 2005) and the experiences of temporary labor migrants (for example, Lan 2006; von der Borch 2008).

² Note, however, that all seven countries are examined in Ruhs's (2013) index of skilled and unskilled migration in forty-six different countries, which covers most of the elements identified here.

2010; Sim 2003).³ On the other hand, unions' absence in the literature on labor migration reflects a disciplinary divide between scholars of migration and scholars of organized labor (Ford 2004). This disciplinary divide has led to a tendency among migration scholars to ignore or gloss over the impact of destination countries' employment relations regimes on the experiences of temporary labor migrants.

If migration scholars have dominated the discussion of migrant labor activism in Asia, the same cannot be said of the literature on migrant labor activism in Europe, where the employment relations perspective is well represented (see, for example, Marino and Roosblad 2008; Bengtsson 2013). Studies deal with themes such as the impact of unions' strength and institutional position on engagement with migrant workers, the potential of migrant worker organizing as a vector for union renewal, and the need to identify and deal with the specific needs of temporary labor migrants. But while this literature provides important insights into unions' motivations for engaging with temporary labor migrants and their strategies for doing so, its conclusions are not immediately applicable to the situation in Asia. Even within the Association of Southeast Asian Nations (ASEAN), the regulations that govern migration are much more varied than in the European Union, which has taken a region-wide approach to temporary labor migration. The far less institutionalized position of unions in Asia also means that their agency is more constrained. In addition, there are restrictions on the political space available to unions and civil society groups in a number of these countries. As a consequence of these and other factors, analyzing union behavior and impact in Asian destination countries is necessarily more complex than in the case of Europe.

The European literature also only speaks in part to the drivers of union engagement. Reflecting not only the dominance of union responses in Europe but also the disciplinary background of the majority of scholars, that literature focuses on unions largely to the exclusion of other CSOs (see, for example, Lillie and Sippola 2011; Bernaciak 2010; Bengtsson 2013).⁴ In Asia, however, NGOs and faith-based organizations have dominated the activist landscape when it comes to migration. Similarly, the literature on Europe may mention bilateral or European-level cooperation, but there is a striking absence of discussion of the role of the global unions (see, for example, Marino, Rinus, and Roosblad 2017b). This is not surprising, since the global unions largely follow Europe's lead. In Asia, however, GUF and SSO initiatives have been the most important factor in convincing local unions that they must act on temporary labor migrants' behalf.

Before turning to the question of migrant labor activism, it is first necessary to determine how a country's migration policies and practices intersect with the institutions, policies, and practices that regulate employment relations to shape the experiences of migrant workers. A useful starting point is to examine the key elements of different destination countries' labor

³ Accounts that consider the contribution of unions include work by Bal (2016), Dannecker (2005), Gray (2006, 2007), and Tierney (2011). See also articles by Ford (2006b) and Piper (2006) in a special issue of the *Asian and Pacific Migration Journal* on the topic of union-NGO collaboration on temporary labor migration. Unions are also mentioned in some articles on civil society responses to temporary labor migration. Examples include work by Elias (2008, 2010) on Malaysia; by Lyons (2009) on Singapore; and by Constable (2009), Hsia (2009), and Sim (2003) on Hong Kong.

⁴ An exception is the literature on community-based organizing in the United Kingdom. See, for example, Fitzgerald and Hardy (2010) and Alberti, Holgate, and Tapia (2013).

migration regimes and how they mesh with the labor migration regimes of the region's countries of origin.

Asia's labor migration regimes

A labor migration regime comprises the regulatory frameworks, institutions, and norms that shape migrant workers' experience of employment abroad.⁵ Since it is inherently transnational in nature, temporary labor migration is governed by the labor migration regimes both of destination countries and of countries of origin. A country of origin's labor migration regime is the strongest influence on migrants' experiences before departure, including both the likelihood of exploitation during the recruitment process and their experiences on returning home. It is, however, the labor migration regime of the destination country that is the strongest determinant of temporary labor migrants' ability to avoid exploitation while in-country and to maximize the financial returns of their time overseas.

The key elements of a destination country's labor migration regime include the extent and nature of labor migration inflows, which reflect its openness and regulatory capacity; the complexity of its labor migration schemes, which determine who may or may not migrate for work and on what basis; and the rigidity of conditions under which labor migrants are employed (see table 1).

Table 1. Variation in labor migration regimes

| COUNTRY | EXTENT AND NATURE OF LABOR MIGRATION | | COMPLEXITY OF LABOR MIGRATION SCHEME | | RIGIDITY OF LABOR CONTRACTS | |
|-------------|--------------------------------------|------------------------------------|--------------------------------------|------------------------------------|--------------------------------------|----------------------------|
| | NUMBER OF REGULAR LABOR MIGRANTS | NUMBER OF IRREGULAR LABOR MIGRANTS | REGULATION OF COUNTRY OF ORIGIN | REGULATION OF SECTOR OF EMPLOYMENT | ABILITY TO RENEW CONTRACT IN-COUNTRY | ABILITY TO CHANGE EMPLOYER |
| Hong Kong | High | Low | Medium | Low | High | Medium |
| Japan | Low | Low | Medium | High | Low | Low |
| Malaysia | High | High | High | High | High | Low |
| Singapore | High | Low | High | High | High | Medium |
| South Korea | Medium | Medium | High | High | Medium | Medium |
| Taiwan | Medium | Low | High | High | Low | Medium |
| Thailand | Low | High | High | Low | Medium | Medium |

Asian destination countries' labor migration regimes share some broad characteristics, most notably a rejection of pathways to permanent migration for low- and semi-skilled temporary labor migrants.⁶ As table 1 shows, they also differ in important and influential ways.

⁵ For other uses of this term in relation to Asian destination countries see, for example, Lu (2011) and Bal (2016).

⁶ The value assigned to a particular country for each of these elements reflects a qualitative assessment of its status in 2015, based on extensive fieldwork and a broad range of primary and secondary sources. Each assessment reflects the relative status of that country on this measure compared to other Asian destination countries, rather than an arbitrary external standard. A rating of "high" may make a positive or negative contribution to the overall assessment of how a country performs in relation to its labor migration regime. For example, high numbers of regular labor migrants are a marker of the openness of the system and are thus a positive influence on a country's overall performance in terms of inclusivity (though not necessarily on the conditions in which migrants are employed). By contrast, high numbers of irregular labor migrants suggest at best regulatory failure and at worst a highly exploitative policy position on temporary labor migration. Similarly, high levels of regulation of the country of origin or the sector of employment have a negative impact on temporary labor migrants' ability to optimize their position in the destination country's labor market. By

Individually and collectively, these elements of each country's labor migration regime constitute the structures that shape the parameters of migrant workers' experiences in that destination country.

Extent and nature of temporary labor migration flows

Large-scale international temporary labor migration has been an important part of the economic and social structures of almost all Asian countries, with millions of low- and semi-skilled temporary labor migrants finding employment in the Middle East and also within Asia itself (see figure 2).

Historically, the Philippines and Indonesia have been the most significant Southeast Asian countries of origin, followed by the Mekong countries. With the exception of India, which has a relatively low percentage of outward flows, the countries of South Asia also have a long history of reliance on temporary labor migration as a source of employment and revenue.⁷ Many of these countries of origin have come to depend on funds remitted by temporary labor migrants. In Nepal, remittances accounted for close to 30 percent of gross domestic product (GDP) in 2013 (World Bank 2015). In the Philippines, which has a much larger economy, remittances accounted for almost 10 percent of GDP in the same year; Sri Lanka and Bangladesh had similar percentages. Although remittances represent a small proportion of the overall economies of other countries of origin like India and Indonesia, they are a vital part of the economic infrastructure of the particular districts from which large numbers of workers migrate.

Country of origin governments play a role in shaping temporary labor migration, sometimes through formal labor export programs intended to promote or control migration flows. They may also seek to protect prospective migrants from exploitation and abuse by ensuring that they have the appropriate skills and linguistic competencies, as well as some awareness of their rights before their departure.⁸ Indonesia and the Philippines both have large, long-standing government-sponsored labor migration programs, but the extent to which these programs determine labor migration flows is quite different. Most Filipinos employed in destinations that have formal agreements with the Philippines government migrate through official channels (Battistella and Asis 2013). By contrast, many Indonesian labor migrants choose to avoid the complexity and expense of the official system—a choice made possible by mismatches between the requirements set by countries of origin and destination and, in some cases, by poor management of their international borders (Ford 2001, 2006c). Attempts to regularize migration to Thailand from other countries in the Mekong subregion have been even less successful, with many migrants choosing to avoid official processes altogether due

contrast, a high ranking on the ability to renew a contract in-country or to change employers has a positive impact on the ability of migrants to respond proactively to the opportunities and challenges that arise in the course of their employment. The performance of a country in relation to each element can, of course, change over time as policies and institutional positions change.

⁷ Increasing numbers of Mainland Chinese are also engaging in temporary labor migration in the region, but these flows remain relatively underdeveloped.

⁸ Over time, countries of origin have also come to provide a degree of servicing in destination countries, generally through a labor attaché or labor department in their embassy or consulate. The function of these agencies varies considerably. Indeed, as Palmer (2012) has pointed out, different approaches may be used even by different representatives of the same country. For details on the number of labor attaches deployed by different countries, see Asian Development Bank Institute 2016.

both to the difficulty of obtaining the necessary government documents and the high costs involved (Chalamwong, Meepien, and Hongprayoon 2012).

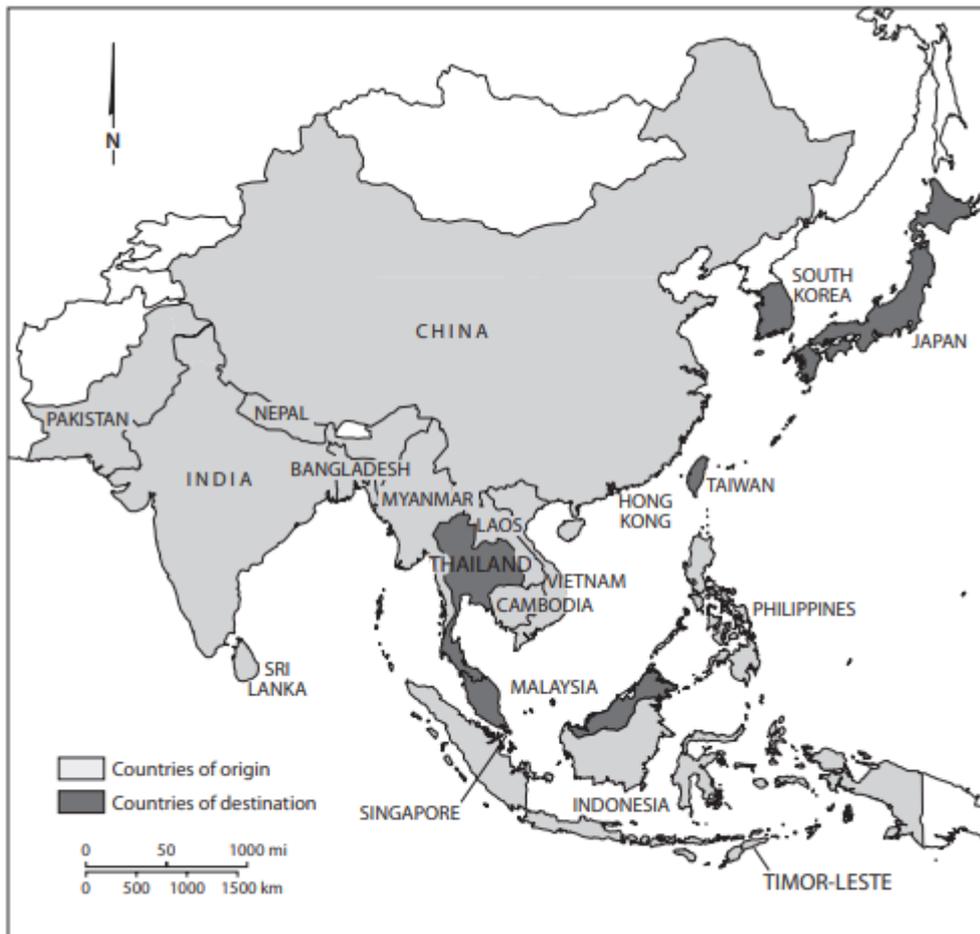


Figure 2. Asia’s main countries of origin and destination

But while participation in a structured program in the country of origin may be considered a necessary precondition to regular migration, regular status is ultimately accorded to those who meet requirements set by the destination country. At the most basic level, destination countries attempt to determine whether—and, if so, how many—foreign workers can enter the country and how long they can stay. Reliance on temporary labor migrants varies greatly from country to country because of their different policies (see table 2). Japan and South Korea have small inflows of regular and irregular labor migrants relative to the size of their populations, even though the numbers have increased in recent decades. But even Taiwan’s numbers are modest compared to those of Hong Kong and the Southeast Asian destination countries, with Malaysia and Singapore the most significant recipients of regular temporary labor migrants in the region. Thailand’s formal intake is relatively small. Like Malaysia, however, it receives large inflows of irregular migrant workers from neighboring countries and is itself a country of origin.

Of the seven countries listed, Japan is the most restrictive when it comes to temporary labor migration, although it is a significant importer of low-skilled foreign labor. Established in 1991, its “trainee” scheme has remained the primary mechanism for de facto temporary labor migration (Hosoki 2016). In South Korea, regular temporary migrant workers were admitted

for many years through its Industrial and Technical Training Program, which was introduced to curb the large number of irregular migrant workers entering the country. This scheme was replaced in 2004 by more liberal arrangements under the Employment Permit System, which provides industry-specific quotas for primary industries, manufacturing, and construction. Unskilled Chinese workers of Korean origin are admitted under a separate “working visa” scheme (Lee and Chien 2016).

Other countries have been more transparent about their reliance on temporary migrant labor. The Hong Kong government has permitted the importation of foreign domestic workers since 1969 (Hewison 2005, 91). The Supplementary Labor Scheme introduced in 1996 permits recruitment of unskilled workers by employers in specified industries who cannot find suitable local employees (Lau 1999). Singapore similarly allows recruitment of unskilled laborers and has been a major destination for foreign workers since the late 1970s, when the government began to encourage their importation to combat a labor shortage and rising wages (Chew and Chew 1989, 54). Taiwan was the last of the Asian Tigers to accept large-scale inflows of temporary labor migrants, amending its Employment Service Act to allow businesses to hire foreign labor in 1992 (Liu 1996). Malaysia, which has long been a destination for undocumented migrant workers from Indonesia, began seeking to regulate inflows in the late 1960s (Kaur 2014). In Thailand, temporary labor migration was formalized much more recently. The Thai government signed its first bilateral agreement endorsing inward temporary labor migration in 2002, but it was not until 2006 that this agreement with Laos and another one with Cambodia were implemented, while the 2003 agreement signed with Myanmar was not operationalized until 2009 (Natali, McDougall, and Stubbington 2014). In any event, the number of workers entering Thailand through these agreements remains small compared to those entering through irregular channels.

Table 2. Reliance on temporary labor migration

| COUNTRY | POPULATION (MILLIONS) | NUMBER OF EMPLOYED PERSONS (MILLIONS) | NUMBER OF REGULAR LABOR MIGRANTS (MILLIONS) | EST. NUMBER OF IRREGULAR LABOR MIGRANTS (MILLIONS) |
|-------------|-----------------------|---------------------------------------|---|--|
| Hong Kong | 7.3 | 3.8 | 0.4 | Low |
| Japan | 127.1 | 63.8 | 0.2 | Low |
| Malaysia | 31.0 | 14.1 | 2.1 | 2.0 |
| Singapore | 5.5 | 3.6 | 1.4 | Low |
| South Korea | 50.5 | 25.9 | 0.7 | Low |
| Taiwan | 23.5 | 11.2 | 0.6 | Low |
| Thailand | 68.0 | 38.4 | 0.5 | 2.5 |

Sources: Hong Kong Census and Statistics Department 2016b, a; Hong Kong Labour Department 2016; Hong Kong Council of Social Service 2016; ILO 2015c; Japan Ministry of Justice 2015; KCTU 2016; Malaysian Economic Planning Unit 2016; Republic of China National Statistics 2016b, a; Republic of China Ministry of Labor 2016; Singapore Ministry of Manpower 2016; Singapore Department of Statistics 2016; Statistics Japan 2016b, a; Statistics Korea 2016, 2015; U.S. Department of State 2015.

Note: Figures are the latest available as of 2015. The figure for regular labor migrants to Thailand excludes foreign workers who achieved regular status in-country.

The presence of large numbers of irregular migrant workers in a particular country may reflect problems with its border control mechanisms. There are, however, many other reasons why a country may become a destination for a significant number of irregular migrant workers, including pressure from employers to guarantee access to cheap labor. Indeed, as the

ILO (2010a, 33) has observed, “Authorities are frequently aware of [irregular labor migrants] but tolerate them for a variety of reasons, including long-established historical patterns of mobility, the usefulness of migrants for certain interest groups and communities, [and] the evolution of often still poorly defined regional free movement regimes.” Thailand and Malaysia may receive the largest numbers of irregular labor migrants, but they are not the only countries in the region to experience large inflows: South Korea’s Ministry of Justice estimates that almost 80 percent of its foreign workforce was undocumented before the Employment Permit System law was implemented in 2004 (Lee 2005). However, Thailand and Malaysia are now set apart from the other Asian destination countries by the extent to which irregularity defines their labor migration regimes.

Countries also differ in the way that they manage irregularity. Malaysia uses punitive measures such as detention and periodic mass deportations to control the number of irregular migrants, interspersed with sporadic amnesty programs that allow irregular migrant workers to legalize their status (Ford 2006a). Similar tactics were used in South Korea in the 1990s (Lee and Yoo 2013). In the Thai case, the government has long favored post facto registration of irregular migrant workers. In 1992, it established a retrospective work permit system that allowed Burmese migrants already in the country to legally seek employment, a scheme that was subsequently expanded to other nationalities and other geographic locations. As of 2012, some 572,468 of the 1.85 million registered migrant workers in Thailand had been regularized through this process, while just 81,246 had entered legally under a Memorandum of Understanding (Thai Ministry of Labor cited in Hall 2012). However, as the cost of becoming and remaining registered is very high (Latt 2013, 48), many migrant workers make a rational economic decision to maintain their irregular status (migrant labor NGOs, interviews, February 2007). In 2014, these irregular migrants began to be arrested without warning, leading to a mass exodus of Cambodian workers (MMN 2014).

This diversity in the management of migrant labor inflows reflects the piecemeal way in which migration policies emerge and evolve over time. But it also reflects countries’ broader economic and political context, and even their geopolitical concerns. Governments harness the *flexibility* inherent in temporary labor migration schemes to respond to changes in the economic climate. In South Korea, for example, quotas are set annually, but are subject to adjustment depending on shifts in the domestic job market and the number of irregular migrants believed to be in the country (Korean Ministry of Employment and Labor 2012). These policy decisions are often at odds with public sentiment. In Thailand, for instance, steps were taken to establish mechanisms by which irregular migrant workers can register, despite widespread popular resistance to large-scale labor migration from Myanmar (NGO activists, interviews, February 2007).

In most contexts, *political considerations* also drive migration policy. Politicians in the Malaysian state of Sabah have been accused of providing identity cards to foreigners in an attempt to boost the Malay vote in this non-Malay state (Sabahan unionists, interviews, February 2007). Sometimes, public dissatisfaction may force governments to step back from implementing controversial policies. In neighboring Singapore—a state known for the tight control of its citizens—a 2007 crackdown on “phantom worker scams” (whereby an employer attempts to increase its quota of foreign workers by pretending to hire more local workers) was prompted “by the state’s need to be seen to be addressing the citizenry’s frustrations” (Ong 2014, 448). In mid-2014, the government again responded to shifting

political sentiment with an announcement that it would reduce the number of foreign workers allowed to enter, despite negative consequences for Singapore's economy (Armstrong and Ingrassia 2014).

International relations can also affect migration policy. For example, “the migrant worker issue, more than any other, has negatively affected the relationship between the citizens and governments” of Malaysia and Indonesia (Clark and Pietsch 2014, 181). During the Asian financial crisis of 1997–1998, the Malaysian government imposed a total ban on new recruitment of foreign workers, a policy mainly targeting Indonesians (Ford 2006a). Its anti-Indonesian stance remained in force into 2000, when it announced a plan to halve the number of Indonesians working in Malaysia. Two years later, the deputy prime minister responded to riots by Indonesian workers with threats to end Indonesian labor migration to Malaysia altogether (Kompas, January 27, 2002). While a total ban was not implemented, Malaysia subsequently announced a “hire Indonesians last” policy, followed by a further series of deportations involving more than 140,000 Indonesians. So high were the tensions between the two countries that both the Indonesian foreign minister and the Malaysian prime minister advised Malaysians to temporarily suspend visits to Indonesia (Pikiran Rakyat, August 29, 2002). Taiwanese authorities have also frequently used the country's labor migration schemes as a way of responding to perceived slights by other countries. In 2003, they barred Thai workers in response to the Thai government's refusal to issue a visa to the Taiwanese minister of labor. In 2013, they implemented a freeze on Filipino workers in response to the murder of a Taiwanese boat captain, until such time as an apology was issued by the Philippines government. A year later, they threatened to exclude Vietnamese workers in response to damage to Taiwanese assets in Vietnam (Chen 2014).

Complexity of the labor migration scheme

One of the reasons it is important to distinguish between regular and irregular labor migration flows is that only regular labor migrants—those migrating for work legally—are bound by the conditions of formal labor migration schemes in the destination countries. Labor migrants' status is determined by a complex and ever-evolving set of migration policies designed to manage the number and type of temporary labor migrants entering through official channels. These intricate policy settings allow destination-country governments to closely control the number and type of temporary labor migrants admitted by imposing strict requirements on the countries from which temporary labor migrants come and the occupations in which they are employed. The policy environment is further complicated by the extent to which the system relies on agents or brokers to manage the day-to-day implementation of different schemes.

Most destination countries in the region have built their labor migration schemes around lists of approved *countries of origin*. South Korea, for example, has signed agreements with fifteen countries, thirteen of which are in South or Southeast Asia (Kim 2014). In Taiwan, only temporary labor migrants from six countries—five of which are in Southeast Asia—are permitted to seek work (Council of Labor Affairs 2014). Those seeking work in Malaysia must come from South Asia, Turkmenistan, Uzbekistan, Kazakhstan, or from the poorer countries of ASEAN (Immigration Department of Malaysia 2015). In Singapore, too, migrant workers are only permitted from particular source countries (Singapore Ministry of Manpower 2015b). Hong Kong works slightly differently, generating a list of countries

whose nationals are not eligible under the supplementary labor scheme (Hong Kong Immigration Department 2014). In Japan, eligibility is not formally tied to nationality except in care worker schemes, but temporary labor migrants are sourced from the small number of countries with which Japan's International Training Cooperation Organization has an internship agreement.

In addition to specifying only certain countries of origin, destination countries often stipulate the *occupations or industries* in which temporary labor migrants can be employed. In Taiwan, for example, foreign blue-collar workers can only be employed in manufacturing, certain kinds of construction work, or specially designated industries such as fisheries and home-based care (Taiwan Ministry of Labor 2015). South Korea's Employment Permit System focuses on manufacturing, construction, and primary industries (with most temporary labor migrants employed in manufacturing), while Malaysia permits the employment of migrant workers in construction, plantations and agriculture, services, manufacturing, and domestic work (Republic of Korea Ministry of Employment and Labor 2010; Immigration Department of Malaysia 2015). Hong Kong is the only real exception to this practice, allowing unrestricted numbers of domestic workers and of workers in any other sector in which an employer can demonstrate that he or she has "genuine difficulties in finding suitable employees" (Hong Kong Immigration Department 2015c, a). Several countries impose *occupation-based restrictions by nationality or sex*. For example, temporary labor migrants from a large number of countries can work in Singapore's construction, marine, and processing industries, but acceptable source countries for manufacturing and services are limited to China, Hong Kong, Macau, Malaysia, South Korea, and Taiwan (Singapore Ministry of Manpower 2015b). Hong Kong's general list of forbidden nationalities is supplemented in the case of domestic work by prohibitions on citizens from China, Macao, and Taiwan (Hong Kong Immigration Department 2015b). In Malaysia, Indian workers may be employed in a limited number of occupations, while Indonesian females can work in manufacturing, but Indonesian males may not (Immigration Department of Malaysia 2015).

Some countries even impose *geographic restrictions* on where migrants can work, reflecting patterns of economic activity, historical arrangements, or political sensitivities. The eastern Malaysian states of Sabah and Sarawak have separate labor migration schemes from Peninsular Malaysia (Ford 2010). Regular labor migration to Sarawak is very tightly controlled, with relatively small numbers of temporary labor migrants permitted to enter the state on a case-by-case basis. Sabah has large numbers of foreign workers, but they are only officially permitted to work in selected primary industries or in manufacturing, construction, or domestic work (Sabah Department of Labour 2015). In neighboring Thailand, irregular migrants from Myanmar were initially allowed to seek employment in twenty-seven designated occupations in four designated border provinces. This policy was extended in 1996 to accommodate Lao and Cambodian migrants in thirty-four designated occupations in forty-three provinces, and again in 1998 to allow them to work in forty-seven occupations in fifty-four provinces. It was not until 2001 that migrants were allowed to seek work in all industries and from 2002 to do so without any geographic restrictions (Chantavanich 2007).

Another element of the system that increases its complexity is the *use of agents* as brokers in the labor migration process. Most destination countries in the region outsource to private entities aspects of the recruitment and/or management of temporary labor migrants. The role of agents in different destination countries— but also in countries of origin—varies in terms

of the degree of formalization, the extent to which authority is devolved to them, and the extent to which they have leeway to abuse their power (Palmer 2016; Spaan and van Naerssen 2017).⁹ Overall, these brokers are poorly regulated, increasing the likelihood that prospective or current labor migrants are not treated according to the letter of the law. Even in Hong Kong, where enforcement of the labor migration regime is relatively strong, brokers regularly violate their legal obligations, for example, by offering Indonesian domestic workers at below the legal minimum wage (Palmer 2013).

These complex labor migration policies are in many cases only partially successful in managing the size of migration flows and the sectors in which migrants work. Despite the strict regulation of occupations, for example, it is not uncommon for workers to be diverted to other jobs. In Taiwan, many women employed as home-based carers are forced by their employers to undertake domestic work (Loveband 2006). This and other forms of noncompliance are generally difficult to police. More generally, the success or failure of policies designed to manage temporary labor migration is determined not only by state capacity but also by the government's willingness to ensure that their different elements are enforced.

Rigidity of migrant labor contracts

The rigidity of migrant labor contracts reflects government policies on the kinds of work that may be undertaken and restrictions on the *duration of employment*. Schemes generally limit the ability of workers to renew their contracts in-country or to change employers, but there is significant variation with regard to contract extension. Taiwan is the only country that does not allow any kind of in-country extension to work permits for blue-collar workers; those seeking extensions must leave the country before they can apply for them (Taiwan National Immigration Agency 2013). The conditions of the Taiwanese scheme are, however, relatively generous: as a result of amendments to the Employment Service Act in 2015, workers in designated sectors can spend a total of fourteen years in the country.¹⁰ In other countries, extensions are difficult to obtain. In South Korea, migrant workers entering through the Employment Permit System are granted visas that are renewable for up to four years and ten months (ILO 2010b, 9–10). Temporary labor migrants can extend their stay in Hong Kong if they continue to meet a need at the time their contract expires, although domestic workers must remain with their original employer (Hong Kong Immigration Department 2014). In Thailand, registered migrant workers from Myanmar, Laos, and Cambodia can use the in-country verification process to obtain a one-year work permit, although citizens of Myanmar without valid identity documents must first return home before receiving one (IOM 2014). Malaysian work visas are valid for twelve months and can be renewed annually by the employer for a maximum of ten years (Immigration Department of Malaysia 2015). Singapore uses a similar system, under which visas are initially valid for up to two years (Singapore Ministry of Manpower 2015a). The maximum duration of an individual's stay

⁹ Brokers also play a very important role in some countries of origin. See, for example, Xiang and Lindquist 2014 and Phuong and Venkatesh 2016.

¹⁰ While Japan and South Korea continue to have highly regulated formal programs, their provisions have become more flexible over time. When traineeships were first introduced in Japan, foreigners were allowed to undertake training for one year, a period that was later extended to allow trainees who passed their final examinations to spend up to an additional two years in-country (JITCO n.d.). In South Korea, too, trainees were initially required to leave when their training contract expired. After the scheme was modified in 1998, they could stay for a further period as fully fledged workers (Lee and Park 2005).

depends on the sector, the nationality of the worker, and his or her level of skill (Singapore Ministry of Manpower 2015b).

But while policies on visa extensions vary, no Asian destination country facilitates the *transfer to a new employer*. Under Malaysia's work permit system, migrant workers are not allowed to leave the employer stipulated in their contract, and visas are automatically canceled with the termination of employment, whether or not the termination was lawful (Immigration Department of Malaysia 2015). In other countries, workers are permitted to change employers in a limited range of circumstances, though it is often difficult to exercise that right where it exists. In Singapore, low-skilled workers can change jobs with their employer's consent. As in Malaysia, however, employers have the right to cancel an employment contract at any time without cause, resulting in the immediate cancellation of a work permit (Singapore Ministry of Manpower 2015d). Migrant workers employed through South Korea's Employment Permit System may also change jobs if they obtain a release form signed by their current employer. But to avoid deportation they must find a new position within three months (Seo and Skelton 2017). Under Taiwan's Employment Service Act, a foreign worker employed in the marine or construction sectors, domestic work, or nursing may be granted permission to change employers for a prescribed number of reasons, including the death or emigration of the original employer, the non-payment of wages, or evidence of physical or psychological abuse (Taiwan Ministry of Labor 2015). In Hong Kong, the only temporary labor migrants who are permitted to change employers during the course of a contract are domestic workers, but they may do so only in exceptional circumstances (Hong Kong Immigration Department 2014, 2015b).

As with border controls, the extent to which the inability to change employers affects the lived experiences of temporary labor migrants depends greatly on monitoring and enforcement of visa stipulations. The Singaporean government is perhaps the most diligent in enforcing visa conditions, requiring security bonds from employers; they must notify the government within a week if a worker is fired or goes missing, or risk fines of up to SGD 10,000 (Singapore Ministry of Manpower 2015c). This threat encourages employers to monitor workers' activities closely. In the case of domestic workers, it sometimes results in what is effectively a form of house arrest involving restrictions not only on their movements but even on their use of mobile phones (Platt et al. 2016). Other countries aspire to these levels of control, but often fall short.

Implications for migrant workers

Asia's destination-country labor migration regimes limit low- and semi-skilled workers' capacity to maximize the opportunities of working abroad by imposing limits on the countries where they can work, the time they can spend in those countries, and the occupations they can take up. They also determine the extent to which migrant workers can seek redress for violations of their contract conditions or extricate themselves from exploitative situations. It is not surprising, then, that migrant labor activists argue that temporary labor migrants would have a better chance of avoiding exploitation if the complexity and rigidity of contracts were reduced, (NGO staff and migrant worker activists, interviews, various years).

Changes in destination-country labor migration policies certainly improve the situation of migrant workers, but piecemeal measures bring limited benefit. For example, revisions were made to Japan's Immigration Control Act in 2007 to address some of the worst excesses of

the trainee system, including the use of double contracts, the “sharing” or “renting” of trainees to other businesses, and human rights abuses (Gaikokujin rōdōsha mondai to korekara no nihon henshūinkai 2009). The act was revised again in 2009, replacing the trainee and technical internship categories with a new visa category called “on the job trainee,” under which foreign workers are protected by the Labor Standards Act and the Minimum Wage Act after completing a two-month training program. However, the impact of these amendments has been at best limited: workers are still only allowed to work for the employer specified on their work permit, and migrants approaching a Local Labor Standards Bureau to report breaches of their contracts risk dismissal and immediate deportation (Bhattacharjee 2014).

Moreover, legislative or policy reform is necessary but not sufficient in cases where exploitation and abuse are prevalent, since legislative and policy requirements are only meaningful if enforced. Exploitation of disadvantaged groups of workers is common even in formal sector workplaces, as evidenced in Malaysia’s electronics factories (Bormann, Krishnan, and Neuner 2010) and Japan’s health care facilities (Ford and Kawashima 2013). It is even more likely when migration policy mandates the employment of temporary labor migrants in informal or semi-formal occupations, which are at best only partially regulated by industrial relations processes and mechanisms. Such occupations, moreover, are much less likely than formal sector occupations to be unionized, meaning that there is even less chance of pressuring employers to comply with prevailing labor standards.

Employment relations regimes

A country’s industrial relations system consists of a regulatory framework and a series of norms (for example, the principle of equal pay for equal work), institutions (such as industrial courts, wages councils, unions, and employer associations) and processes (for example, arbitration) that regulate the employer–employee relationship. This system sits at the heart of any employment relations regime. In theory, employment relations in formal sector occupations are fully regulated, and formal sector workers can seek redress through the industrial relations system if their rights are violated. If a country recognizes the principle of freedom of association, workers are also permitted to unionize and so be represented in national industrial relations institutions or engage in collective bargaining within the workplace. In practice, however, even formal sector workplaces may have no union presence and be subject to little or no regulatory oversight by government, which in turn means that workers may have only limited ability to exercise these rights.

The major elements of the employment relations regime as it pertains to migrant workers are the reach of the industrial relations system, the degree of union influence in the industrial and political realms, and the extent to which freedom of association is available to temporary labor migrants. The first element includes the degree to which migrant-dense sectors are incorporated into the formal industrial relations system and the presence of unions in those sectors. This element overlaps with the level of influence that unions—as recognized representatives of worker interest in the industrial sphere—have on industrial relations policy and practice. Influence, in turn, is determined in large part by unions’ militancy and the position they occupy in their country’s industrial relations system. Finally, it is important to consider the extent of freedom of association available to temporary labor migrants (see table 3).

Table 3. Variation in employment relations regimes

| COUNTRY | REACH OF INDUSTRIAL RELATIONS SYSTEM | | UNION INFLUENCE | | FREEDOM OF ASSOCIATION | |
|-------------|--|--|--|-----------------|--|--|
| | SYSTEM COVERAGE OF MIGRANT-DENSE SECTORS | MAINSTREAM UNION PRESENCE IN MIGRANT-DENSE SECTORS | INTEGRATION INTO THE INDUSTRIAL RELATIONS SYSTEM | UNION MILITANCY | ABILITY OF MIGRANTS TO JOIN MAIN-STREAM UNIONS | ABILITY OF MIGRANTS TO FORM OWN UNIONS |
| Hong Kong | High | Low | Low | Medium | Low | Yes |
| Japan | High | High | High | Medium | Low | No |
| Malaysia | Low | Medium | Low | Low | Medium | No |
| Singapore | Medium | High | High | Low | High | No |
| South Korea | Medium | High | Medium | High | Medium | Yes |
| Taiwan | Medium | High | Medium | Low | Low | Yes |
| Thailand | Low | Medium | Low | Low | Low | No |

Just as there is significant variation in the composition of a region's labor migration regimes, employment relations regimes are also quite diverse. As table 3 indicates, countries differ in the structures of their industrial relations systems, the role of unions within those systems and in the broader society, and the extent to which those unions engage with migrant workers.

Reach of the industrial relations system

Temporary labor migrants' capacity to access their labor rights is constrained by the extent to which the industrial relations system covers the sectors in which they work and the capacity of government agencies to enforce compliance. By definition, compliance is more easily enforced in the formal sector, which is considerably more established in Asia's destination countries than in its countries of origin.¹¹ However, large numbers of foreign workers—irregular and regular—are employed in informal sector occupations, where conditions of employment are unregulated even for local workers. The most visible group in this category comprises live-in foreign domestic workers. Since this group is largely excluded from destination-country industrial relations systems, its members rarely have access to a union. Indeed, although domestic workers are closely controlled from a migration perspective in all seven countries, it is only in Hong Kong that they are recognized as workers. Even there, it is nearly impossible for government officials to monitor their conditions of work (Palmer 2013). Singapore, Malaysia, and Taiwan also admit large numbers of foreign domestic or homebased care workers. However, they are not covered by the labor law and are thus not permitted to unionize. As a result, they have little chance of recourse except in cases of serious physical abuse (Ford 2007; Loveband 2006; Yeoh, Huang, and Rahman 2005).

In contrast to foreign domestic workers, temporary labor migrants employed in informal sector occupations such as petty trade and some forms of agricultural work are recognized as workers. But, since these occupations are effectively unregulated, those employed in them—local or foreign—have little access to unions. Equally important, but perhaps less obvious, is the fact that when migrant workers find work in the formal sector, it is in segments of that

¹¹ In Indonesia and the Philippines, only 30 percent of nonagricultural workers are employed in the formal sector; in India the figure is just 15 percent. In Thailand—the destination country with the lowest rate of formalization in its economy—the figure rises to close to 60 percent (ILO 2015b).

sector that are little touched by industrial relations mechanisms and processes. Across the region, large swathes of the economy, including migrant-dense sectors such as construction, are nominally covered by the industrial relations system, but are in practice subject to minimal regulation or oversight. Among those least subject to regulation are fishermen on Taiwanese-owned commercial fishing trawlers, who are typically recruited from countries such as the Philippines, Indonesia, and Myanmar on the basis of false information about work conditions. They may begin work expecting to spend only limited amounts of time aboard ship, only to find that their vessel remains at sea for more than a year at time (Wise 2013, 439). But even in manufacturing, where employment relations are relatively formalized, temporary labor migrants may be employed in enterprises that escape regulatory oversight. For example, temporary labor migrants admitted through South Korea's Employment Permit System are only permitted to work in small and medium-sized enterprises, which are far less likely to be subject to regulatory oversight or to have a union presence than are large enterprises (Korean Confederation of Trade Unions [KCTU] representative, interview, December 2011).

Asia is not unique in its lack of oversight. There are many opportunities to bypass prevailing regulations even in contexts where industrial relations systems are relatively strong. As Friberg et al. (2014, 40) observed in the case of Iceland, "If the regulations were observed, almost all migrant workers . . . would receive collectively agreed wages." In practice, a significant proportion of companies ignore their obligations. Not surprisingly, the challenges of implementation are far greater in much of Asia. Malaysia and Thailand have neither the ability nor the will to enforce their own labor legislation. Hong Kong, Taiwan, and South Korea have more regulated systems, but high numbers of small and medium-sized enterprises make it difficult to enforce legislation uniformly. Employment relations are more closely monitored in Japan and Singapore, but there remain systemic gaps even in these highly institutionalized contexts.

The second element of systemic reach is the *presence—or absence—of unions in migrant-dense sectors*. Union presence varies even within unionized sectors, since—like national industrial relations systems—union movements are never uniformly strong. In Thailand, for example, a garment industry dependent on Burmese temporary migrant labor developed in the border town of Mae Sot, in a region where Thai unions have no presence (Arnold 2013). Migrant workers are allowed to join a Thai union, but not to form a union of their own. Short of convincing a Thai union to establish a branch in a town where there is effectively no local workforce, it is simply not possible for these migrant workers to unionize. As a consequence, they are necessarily excluded from institutionalized forms of collective bargaining. By contrast, many of the temporary labor migrants working in Japan and South Korea are employed in manufacturing, where they are largely covered by employment law, which guarantees the freedom of association and access through unions to industrial relations mechanisms, such as collective bargaining and representation in tripartite national bodies. Union presence is nevertheless important because it is a significant determinant of the extent to which employer practices are likely to be monitored or challenged. Unions may not always play this role—particularly in contexts where they are weak or captured by management—but in their absence, the enforcement of prevailing labor laws depends on government inspections or NGO monitoring, neither of which is likely to occur on anything more than an incidental basis.

Table 4. Union membership density

| COUNTRY | NUMBER OF UNIONS | NUMBER OF UNION MEMBERS (THOUSANDS) | NUMBER OF WAGED WORKERS (THOUSANDS) | MEMBERSHIP DENSITY (%) |
|-------------|------------------|-------------------------------------|-------------------------------------|------------------------|
| Hong Kong | 819 | 827 | 3,557 | 23.4 |
| Japan | 25,279 | 9,849 | 55,950 | 17.6 |
| Malaysia | 729 | 913 | 10,396 | 8.8 |
| Singapore | 64 | 719 | 2,963 | 24.2 |
| South Korea | 5,305 | 1,905 | 18,429 | 10.3 |
| Taiwan | 5,382 | 3,350 | 8,860 | 37.8 |
| Thailand | 1,536 | 617 | 18,135 | 3.4 |

Note: Figures are the latest available as of 2015 from national statistical agencies and ministries of labor. The number of waged workers in Singapore includes residents and foreign workers.

In terms of membership density, Taiwan, Singapore, and Hong Kong have the largest union presence, including in many migrant-dense sectors (see table 4). Although the relative strength of unions in different sectors has implications for their ability to engage with temporary labor migration,¹² high membership density does not guarantee an effective union presence. In some countries, unions serve a primarily symbolic purpose. This is the case both in Taiwan, where high membership density is a legacy of an authoritarian corporatist system (Minns and Tierney 2003), and in Singapore, where unions are closely controlled by the state (Barr 2000). Thus, even where unions are present in a migrant-dense sector of the economy, there is no guarantee that they can exert influence over employers on behalf of temporary labor migrants, even if they wish to do so.

Union influence

Compared to Europe and North America, Asia's unions are weak and generally quite conservative.¹³ There are, however, important differences between their levels of *engagement in the workplace*. In terms of industrial bargaining power, Japan has a relatively strong commitment to enterprise unionism, although union membership has declined dramatically since the mid-twentieth century (Benson 1996). By contrast, Hong Kong's unions have little industrial leverage because they have no right to engage in collective bargaining, and thus must rely on their ability to exert political pressure (Cheng 2014). In Singapore, membership density may be relatively high, but unions' industrial influence is relatively low. They have little role in private sector collective bargaining and instead focus on the provision of "non-collective bargaining benefits" such as discount groceries and insurance (Beng 2014, 6). Importantly, enterprise unions in Asia may not be in a position to exercise their formal

¹² Less frequently, unions in sending countries engage in advocacy on behalf of migrant workers at home. In Indonesia, for example, the Confederation of Indonesian Prosperous Labor Unions (Konfederasi Serikat Buruh Sejahtera Indonesia [KSBSI]) has lobbied the government to provide better protection for migrant workers and to resolve the many cases involving unpaid wages and abuse, KSBSI representative, interview, June 2005). Along with other unions, it has also pushed the government to advocate on behalf of migrant workers who have been sentenced to death overseas (Lazuardi 2015).

¹³ The weakness of Asia's unions is not an inherent characteristic—indeed, Asia was home to a number of strong labor movements in the first half of the twentieth century. From the advent of the Cold War, however, many unions became tools of authoritarian governments at home or foreign policy targets for the superpowers. For a discussion of the role of the AFL-CIO, including what was then the Asian-American Free Labor Institute (AAFLI), see Garver 1989.

workplace rights. In Malaysia and Thailand, for example, unions' right to engage in workplace bargaining means little in the absence of a culture of workplace organizing (Crisis and Parasuraman 2016; Brown 2016).

Unions' influence at the national level is a vital factor in determining their ability to influence industrial relations policy. Influence at this level is determined by many factors, some of which are path dependent (cf. Deyo 1989). A comparison of Singapore and South Korea illustrates the impact of unions' *militancy* on the labor movement's capacity to effect policy change. Singapore is the only country in the region that currently has a stated commitment to tripartism. But under its semi-authoritarian corporatist model of government, the National Trades Union Congress (NTUC) and its affiliated unions work closely with the ruling party (Beng 2014). Singapore's unions may be integrated into the state apparatus, but their influence is exerted only within government-determined policy directions. By contrast, union density is significantly lower and unions are less well integrated into the formal industrial relations system in South Korea, but they are much more militant. This militancy has prompted repressive measures from government, including raids on the headquarters of the KCTU in 2013 resulting in the arrest of 138 people, among them its general secretary (Vogt 2015). In short, South Korean unions are not in a position to support workers in a broad range of workplaces, but they do have a relatively strong political voice.

Where they are strong, unions have both the capacity to advocate for (or against) the rights of migrant workers and the ability to make themselves heard. Even where unions are weak, a militant stance on an issue such as migration can influence government policy. For example, in the early 1990s, opposition from Hong Kong unions forced the government to scrap a plan to allow the limited importation of skilled workers from Mainland China (Hong Kong Confederation of Trade Unions [HKCTU] executive officer, interview, December 2010). Along with sectoral and enterprise unions, national unions that embrace temporary labor migrants—where they exist—must then decide whether to move beyond advocacy to service or recruit those workers.

Freedom of association

Migrant workers' ability to exercise freedom of association or the right to strike (or stage a protest) is heavily influenced by their migration status. In all seven countries, regular temporary labor migrants employed in formal sector workplaces have the *right to join local unions*—although it is only in South Korea that union membership is open to irregular migrant workers. The capacity of temporary labor migrants to exercise that right is a different matter, since it is dependent not only on the presence of a union prepared to engage with temporary labor migrants but also on whether barriers are imposed by immigration authorities or brokers.

In many of the region's destination countries, access to union membership is determined by the outcomes of jurisdictional contests between government agencies responsible for employment relations and those responsible for immigration. In Malaysia, temporary labor migrants working in the formal sector are allowed to join local unions, but at times their ability to do so has been limited by visa conditions (MTUC officials, interviews, August 2009). In South Korea, it has only been since 2004 that trainees have been afforded the protection of domestic labor laws, including the right to unionize and the right to accidental injury compensation, health insurance, and severance pay (Gray 2006). Although migrant

workers in South Korea are protected by minimum wage and industrial accident laws and are allowed to engage in collective action, their capacity to exercise their labor rights continues to be limited by the fact that they can only change jobs with the permission of their current employers. Meanwhile, successive court rulings recognizing the labor rights of irregular migrant workers have been challenged or ignored by the executive branch of the South Korean government. Similarly, irregular migrant workers have technically enjoyed some labor law protections since 1993, when the Supreme Court ruled that all migrant workers, including those with irregular status, were entitled to severance benefits. Irregular migrant workers injured in workplace accidents have been eligible for compensation since 1994 and have been protected by the Labor Standards Act since October 1998. However, in seeking to access these protections, irregular migrant workers are forced to reveal themselves to authorities, who are then obligated to report illegal activities unless doing so would violate the human rights of the persons involved, leaving those migrants vulnerable to deportation (Migrants Trade Union [MTU] leaders, interview, December 2011).

Jurisdictional contests between the authorities responsible for labor and migration may also compromise the ability of unions to help foreign workers seek redress in cases of unscrupulous employers. Migrant workers forced to leave their jobs because of irregularities in the employment relationship are often compelled to return home before their court cases can be heard; if they are allowed to remain, they may be denied permission to continue working. In January 2000, for example, the U.S.-owned Applied Magnetics Corporation fired two thousand employees, many of them migrant workers, from its Bayan Lepas Free Industrial Zone factory in the Malaysian state of Penang. In clear breach of the prevailing labor law, workers were advised of the company's decision on returning from what they had been told was a month-long vacation while the factory's plant was being overhauled. The state labor minister met with representatives of the immigration department of the Ministry of Home Affairs to discuss the situation of the foreign workers involved, but failed to convince them that the workers should be allowed to find new employment. The immigration department's only concession was to permit the workers to stay until their cases were heard, on the condition that they remain in their hostel, where the union provided them with food and other basic necessities. As a spokesperson for the MTUC observed, "Immigration is more powerful than the labor department because it sits under the Ministry of Home Affairs, which is a very powerful ministry" (MTUC Penang branch vice president, interview, May 2010).

The situation with regard to freedom of association is even more complicated when it comes to the *right to form migrant-only unions*. Migrant-only unions are most developed in Hong Kong, which has a long and inclusive tradition of migrant-only organizing dating to the late 1980s (migrant labor activists, interviews, November 2005 and December 2010). South Korea also has a relatively long history of migrant-only organizing: a migrant-only union was established by irregular labor migrants in 2005 (MTU leaders, interview, December 2011). In Taiwan, where migrant-only unions have been permitted since 2011, the first migrant worker union was registered in 2013 (migrant-only unionists, interviews, January 2014). In Japan, independent migrant-only unions are prohibited, but temporary labor migrants have been accommodated within the foreign worker divisions of small, geographically based unions (Hosoki 2016). By contrast, no Southeast Asian destination country allows temporary labor migrants to form their own unions, and no Southeast Asian destination country union has a migrant-only division.

Implications for migrant workers

As these examples attest, foreign workers' migration status cannot be considered in isolation from their labor market position and the many other factors that affect their ability to access the destination country's industrial relations processes and institutions. A poorly developed formal industrial relations system means that foreign workers have little chance of recourse if their labor rights are violated. In these circumstances, their lack of access results not from their migration status but from the fact that the employment relations regime does not protect the rights of any workers in that particular sector. Similarly, if unions are weak and/or docile, they are unlikely to be effective advocates for foreign workers' rights in the workplace, even if they allow temporary labor migrants to become union members. Even where unions are strong and/or militant, they may not have a presence in migrant-dense sectors of the economy. For example, the South Korean labor movement is much celebrated for its militancy and openness to temporary labor migrants, leading to a perception that temporary labor migrants are well integrated into Korean unions. Yet, despite these characteristics, it becomes clear that South Korea is not as inclusive as it may at first seem. By contrast, the Singaporean union movement is widely criticized for its lack of independence from the government, but that very characteristic explains why it has followed the government's lead in opening its doors to temporary labor migrants.

Finally, regardless of their strength or industrial influence, unions actively choose whether or not to support foreign workers. Where mainstream unions are hostile to temporary labor migration, their opposition undermines both foreign workers' efforts to be treated fairly and NGO campaigns on their behalf. Where unions are sympathetic, they can add their voice to calls for better treatment of temporary labor migrants in government forums and in the public sphere, making it more difficult for governments to ignore or discount these campaigns. Unions may see benefits for local workers in the better treatment of migrant workers, may be ideologically predisposed toward universalist definitions of "the worker"—or may simply be responding to pressure from their allies at home or abroad. What is clear, however, is that there has been a distinct shift in union attitudes toward temporary labor migrants in recent decades that has facilitated unions' adoption of a positive advocacy role in all but two of the destination countries in the region.

Migrant labor activism

Migrant labor activism does not emerge in a vacuum. First and foremost, there must be a sufficient inflow of migrant labor to generate a mass of foreign workers large enough to act collectively or to merit the attention of local activists. The composition of those migrant inflows is also important, because it largely determines which activists respond and how. The problems that activists identify may relate to different aspects of the labor migration regime, such as the costs imposed by brokers or migrant workers' inability to change employers. They may also relate to aspects of the employment relations regime, such as poor working conditions or unpaid wages. Once a problem emerges, however, the availability of opportunities to advocate for a lasting solution is itself determined by various *structural factors*, notably government controls on civil society and the depth of civil society actors' international links (see table 5).

Within the limits imposed by these structures, migrant workers, civil society groups, and local unions exercise agency in deciding whether to engage with migrant labor issues and, if

they do engage, in what way. Under threat of having their visas revoked, most temporary labor migrants are reluctant to challenge exploitative practices or to fight for their labor rights. Even when they choose to do so, their capacity to effect change is limited without support from local allies. Meanwhile, the fact that unions' ability—and, in many cases, willingness—to take up the cause of temporary labor migrants is limited helps explain why NGOs and faith-based groups, rather than unions, have dominated the movement for migrant worker rights in Asia.

Table 5. Migrant labor activism

| COUNTRY | POLITICAL OPPORTUNITY STRUCTURES FOR MIGRANT LABOR ACTIVISM | | NGO AND UNION ENGAGEMENT WITH LABOR MIGRATION | | MIGRANT WORKER CAPACITY TO ORGANIZE AND EFFECT CHANGE | |
|-------------|---|---------------------|---|-------------------------------|---|---------------------------------|
| | STATE CONTROLS ON CIVIL SOCIETY | INTERNATIONAL LINKS | NGO ENGAGEMENT WITH MIGRANT LABOR | MAINSTREAM UNION | MIGRANT WORKER COLLECTIVE ACTION | EFFICACY OF MIGRANT-ONLY UNIONS |
| | | | | ENGAGEMENT WITH MIGRANT LABOR | | |
| Hong Kong | Low | High | High | Medium | High | High |
| Japan | Low | Medium | Medium | Low | Low | n/a |
| Malaysia | Medium | High | High | High | Medium | n/a |
| Singapore | High | High | High | High | Low | n/a |
| South Korea | Medium | High | High | Medium | Medium | Medium |
| Taiwan | Low | Medium | High | Low | Medium | Low |
| Thailand | Medium | Medium | High | Medium | Medium | n/a |

Political opportunity structures for migrant labor activism

The capacity of temporary labor migrants and CSOs to push for changes to elements of a destination country's labor migration or employment relations regime is determined by the *political resources* available to them. It is important to differentiate between the opportunities available to local activists seeking to advocate on temporary labor migrants' behalf and those available to temporary labor migrants themselves, since most Asian destination countries impose restrictions on their right to engage in social or political activism. The impact of such restrictions is illustrated by comparing Hong Kong and Singapore. In Singapore, temporary labor migrants' ability to engage in social or political activism is extremely limited. For example, in 2012, twenty-nine migrant Chinese bus drivers who were involved in a strike were deported, while four received prison sentences. The following year, migrant workers involved in the so-called Little India Riots had their work passes canceled and were repatriated on the grounds that they had ignored police orders to disperse (Neo 2015). In Hong Kong, by contrast, temporary labor migrants regularly participate in public protests and demonstrations relevant to their conditions of work. Sometimes this activism relates to broader social and political issues as well, either in their country of origin or destination (Constable 2009).

Civil society groups, including NGOs and unions, also require sufficient *political space* to mobilize for change. Local civil society groups operate in a relatively favorable context in East Asian destination countries—with the exception of South Korea (Schattle 2015)—but sociopolitical controls are much stronger in Southeast Asia. In Singapore, NGOs are subject to strict external controls (Ortmann 2012). They also engage in self-censorship, with activists

careful to avoid the unwritten “out of bounds” markers that would lead to their being shut down (Lyons 2000). Successive Malaysian governments have attempted to maintain similar levels of control, but have been less effective in the face of increased civil society mobilization and greater support for opposition parties (Rodan 2014). In Thailand, the space available for autonomous organizing—which expands and contracts with monotonous regularity (Hewison 2014)—again contracted in 2014 when the military once more seized control of the country.

In addition to local factors, the political resources available to NGOs, unions, and temporary labor migrants are in part determined by the extent to which they are embedded in *international networks*. Strong linkages of this type allow them to scale up their campaigns and expose them to different ideas; in many cases, they also provide access to financial support.¹⁴ Many NGOs and some migrant worker organizations are engaged in cross-border relationships, which may be bilateral, regional, or global. A large number of the region’s unions also participate in cross-border networks by virtue of their membership of the ITUC or the GUFs. Unions may, of course, also be members of cross-sectoral networks such as Migrant Forum in Asia (MFA), which actively collaborated with the GUFs in the region in the period after 2005 (field observations, July 2005 and November 2006).

Migrant worker capacity to effect change

The ability of temporary labor migrants to advocate collectively for change in the labor migration regime is limited by the precariousness of their position as migrants and as workers. Every day millions of undocumented workers face the risk of being detained or deported. Even if they have the proper documents, their status of temporary labor migrants is uncertain. While some may establish strong social networks, the capacity of others to do so is limited not only by long working hours but also by restrictions on their physical mobility. And although their pay is far better than what they could earn in their country of origin, it is often barely enough to eke out an existence while sending some money home. Many face the added pressure of significant debt, having borrowed heavily to finance their migration. Since a falling out with an employer may mean deportation, the stakes are very high.

Yet, although temporary labor migrants face many disincentives to engaging in activism, different types of migrant-only organizing have emerged in the region’s destination countries. In many cases, it takes the form of small-scale informal associations centered on places of worship or country of origin, although some associations are larger and more formal. It is important to note, however, that large-scale organizations rarely emerge without external support. Hong Kong’s foreign domestic worker unions were formed with the assistance of NGOs, including the Asian Migrant Centre (AMC). In South Korea, Taiwan, and Japan, organizing efforts also began as NGO and community initiatives (Hsia 2008; Hosoki 2016; Kim 2007). Thailand’s Migrant Workers Rights Network (MWRN) was established with support from the Solidarity Center and the Human Rights and Development Foundation (Conradt 2013), while Malaysia’s Nepali Migrant Workers Association (NMWA) was

¹⁴ There has been much discussion of migrant labor NGOs’ cross-border networks and their impact on migrant labor activism internationally and in particular destination countries. See, for example, Ford and Lyons 2016.

initially formed as part of a BWI organizing initiative (BWI gender, migration, and campaigns director, interview, September 2015).¹⁵

In Southeast Asia, these kinds of migrant-only organizations necessarily are at the periphery of the industrial relations systems because it is not possible for them to register as unions. But even in contexts where it is possible to form migrant-only unions, their position in the broader industrial relations landscape is at best marginal. Migrant-only unions are by definition primarily focused on temporary labor migrants' interests, but it is difficult for them to influence workplace or policy outcomes unless they are integrated in some way with mainstream unions. The benefits of integration are shown most clearly in Hong Kong, where domestic workers have leveraged the capacity to register migrant-only unions and their connections with the HKCTU to pressure the government to implement legislative and policy protections for temporary labor migrants. Elsewhere, migrant-only unions have at best had a marginal impact on migrants' ability to influence their employment conditions at any level beyond individual cases—a fact that confirms the importance of mainstream unions' involvement in the fight for migrant worker rights.

Civil society engagement with migrant labor

Civil society groups' interest in temporary labor migration is driven by a broad range of factors, including the extent and nature of the migrant worker presence, public attitudes toward migrants, and the group's ideology and beliefs (Ford 2007). As noted in the introduction, NGOs and faith-based groups focused initially on servicing and advocacy, providing direct assistance to victims of abuse and lobbying governments to reduce the complexity of labor migration programs and improve safeguards for temporary labor migrants. Later, some shifted their focus to organizing, initially through informal associations and then through more formal migrant worker organizations or migrant-only unions.

Migrant labor NGOs have also sought to engage with local unions, which has proved to be a challenging task. As elsewhere, unions have been traditionally hostile toward foreign migrants for fear of unfair labor market competition or sometimes because of xenophobic attitudes (Ford 2006b). Rengō, Japan's biggest union federation, opposed the entry of unskilled migrant workers to Japan during the lead-up to the 1989 revision of the Immigration Act, arguing that members' demands for higher wages would be undermined if temporary labor migrants were accepted. A quarter-century later, it continues to campaign against the widespread acceptance of migrant workers, both those who are unskilled and those arriving through economic partnership agreements (Rengō official, interview, December 2010). In 1998, the Taiwan Labor Front demonstrated outside the headquarters of the Council of Labor Affairs in Taipei, demanding the "humane" repatriation of migrant workers. Two decades later, the Chinese Federation of Labor (CFL) and the Taiwanese Confederation of Trade Unions (TCTU) remain firmly opposed to labor migration (CFL official, interview, March 2016; TCTU general secretary, interview, March 2016). Thai and Malaysian unions have also historically campaigned for the expulsion of migrant workers, whom they view as a threat not only to local jobs but also to the social order (Crisis 2004; Ford 2007). Even the HKCTU, which is arguably the region's most proactive national center on the issue of temporary labor migration, had to struggle to convince its members to

¹⁵ As noted in the introduction, the Solidarity Center is the international wing of the American Federation of Labor and Congress of Industrial Organizations.

embrace migrant workers: in the mid-1990s, its offices were fireballed and covered with graffiti by members unhappy with the use of union resources to help foreigners (Tang 2010).

In several cases, however, national centers and some sectoral unions have shifted their position from outright rejection to recognition of temporary labor migrants as part of their broad constituency (unionists in Hong Kong, South Korea, Malaysia, and Thailand, interviews, various years). But while changes in attitude have brought temporary migrants a welcome ally in the struggle for labor rights, attitudes toward migrants are only one part of a complex array of considerations that inform unions' strategic choices about their engagement with this category of workers (Ford 2013). Union decision-making is heavily influenced by the political, economic, and institutional contexts in which they are located. As argued earlier, these structural constraints help explain unions' reluctance to invest resources in a constituency that is necessarily transitory, especially in a region where unions are relatively weak and heavily focused on workers in "standard" employment. However, their strategic decisions may also be influenced by their exposure and response to arguments made by NGOs or their international allies within the labor movement.

Indeed, a key factor in changing local union responses to temporary migrant labor is the influence of other organizations, be they local NGOs and their international allies or the global unions. In Japan and Taiwan, this influence has consisted primarily of pressure from local NGOs, which have acted independently of reluctant mainstream unions. As a consequence, the Japanese community unions that focus on labor migrants are in many ways more integrated into NGO networks than the mainstream union movement, and Taiwan's only migrant-only union remains isolated from mainstream unions. By contrast, Singapore's NTUC has engaged with regional civil society groupings in an attempt to demonstrate its union credentials (see, for example, MFA and NTUC 2006). In the remaining four destination countries, influence has come not only from local NGOs but also from the SSOs and the GUFs, both of which have found ways to provide financial and other kinds of support for migrant labor initiatives. It is no coincidence that while migrant-only unions also emerged in Hong Kong and South Korea through NGO initiatives, they now have strong links to a progressive national center. Importantly, mainstream unions are more likely to be influenced by changing international norms on migrant labor if they receive funding from international sources. This has been the case for the HKCTU and for national centers and sectoral unions in Malaysia, Thailand, and South Korea, though not in Japan or Taiwan.

Contesting Asia's labor migration regimes

This discussion of the opportunity structures available to migrant workers and their allies in Asian destination countries, and of the agency exercised within them, sets the scene for the rest of the book. The following chapters focus on the ways in which NGO and union strategies—and the extent to which they succeed in promoting pro-migrant change—are shaped both by external influences, including the international labor movement, and by the local economic and political context. As the foregoing discussion has shown, unions' capacity to influence government policy and to engage at the workplace level to improve the wages and conditions of migrant workers is underwritten by their status as formal representatives of workers. At the same time, it is dependent on the influence and militancy of the labor movement and union coverage of migrant-dense sectors of the economy.

In the seven countries under investigation, the incentives for unions to service, organize—or even advocate on behalf of—temporary labor migrants have been limited historically. As argued here, the dominance of NGOs and faith-based organizations in this regard is largely explained by the region’s labor migration and employment relations regimes. Especially important are government restrictions on the sectors in which migrants are employed and the union presence within them, the strength of the labor movement, the ability of migrants to stay for long periods of time in-country, the capacity of migrant workers to join mainstream unions, and, of course, mainstream unions’ willingness to recognize them as workers and fight for their rights. As demonstrated in the next chapter, the extent and variation in NGOs’ patterns of engagement with temporary labor migration in both countries of origin and destination countries have been remarkable, but their efforts to bring local unions along with them have largely failed.