



LUND
UNIVERSITY

WPMM31 – Master Thesis in Welfare Policies and Management
Major in Social Work (30 credits)
Spring Term 2013
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Is Sweden looking for people or labour?

- a study on the situation for third-country national
migrant workers in Sweden

Abstract

This thesis targets the Swedish labour immigration law for third-country nationals (TCNs): persons coming from outside the EU, ESS, and Switzerland. The reform, implemented in 2008, aims to positively influence circular migration. This study sets out to analyze strengths and flaws of the new system, through investigating the perception of actors in contact with the current legal labour migrant situation. The study is based on qualitative interviews with seven actors in contact with labour migration, as well as document analysis on debate articles selected from Swedish newspapers. The theoretical framework, consisting of closure theory and the concepts of exploitation and commodification, is operationalized by analysing the policy from the starting point of the vulnerable situation migrant workers might experience in a host country. When linking the discourse of the various actors to the analytical framework, the findings of the study indicate that the Swedish labour immigration law for TCNs is including to the extent that there now is an easy way to legally enter Sweden to work, but excluding features in the form of various restrictions are also incorporated in the legal framework. Irresponsible employers¹, exploiting migrant workers, are an existing complex problem. Still, it is unclear to what extent the legal framework is responsible for that. The findings show a lack of comprehensive information for migrant workers on the legal framework. This, in combination with the visa status, may lead to extra-exploitation on the Swedish labour market. Irresponsible employers may both exploit and commodify migrant workers in various ways. However, the legal framework with its restrictions directed towards TCNs is designed for migrant workers to not enjoy free movement on the labour market. Thus, it is possible that they are, due to state regulations, not commodified enough.

Key words: Third country nationals, closure theory, exploitation, commodification, Sweden, migrant workers

Word count: 20 916

¹ Employers exploiting migrant workers are in the Swedish debate called 'oseriösa', which will be translated to 'irresponsible employers' throughout this thesis.

List of abbreviation

TCN – Third Country National

EU – European Union

ILO – International Labour Organization

UN – United Nations

EWA – Environmental Work Authority

SNIA – Swedish National Insurance Agency

Contents

1. Introduction.....	1
1.1. Background	1
1.1.1. Terminology	4
1.1.2. Swedish legal framework	5
1.1.3. Job application process	7
1.1.4. The Swedish social insurance system for TCNs	8
1.2. Problem area.....	9
1.2.1. Citizenship.....	9
1.2.2. Vulnerability	11
1.2.3. Exploitation	13
1.3. Purpose of study.....	15
1.3.1. Research question	16
1.4. Limitations	16
2. Theoretical framework.....	17
2.1 Exclusion and exploitation.....	17
2.1.1. Closure theory.....	17
2.1.2. Exploitation	20
2.2. (Re)commodification	23
2.2.1. Labour as a commodity	23
2.2.2 Commodification – Decommodification – Recommodification	24
2.3. Analytical framework.....	27
3. Methodology.....	29
3.1. Data collection.....	29
3.1.1. Text analysis	29
3.1.2. Selection of interviewees.....	31
3.1.3. Interviews	32
3.2. Quality criteria.....	33
3.3. Reflection on the methods.....	34
4. Analysis.....	35
4.1. Exclusion.....	35

4.2. Exploitation	42
4.3. (Re)commodification	50
5. Conclusion	57
5.1. Summarizing discussion.....	57
5.2. Limits and weaknesses	60
5.3. Final remarks.....	60
6. Executive summary.....	63
Bibliography	65
Appendix A. Interview guide (in Swedish and English)	70
Appendix B. List of interviewees.	73
Appendix C. List of debate articles.....	74

Acknowledgements

I wish to thank Professor Max Koch, my research supervisor, for his patient guidance, encouragement and critiques of this study. I would like to offer my special thanks to the interviewees for participating in the study and for sharing their time and knowledge.

I would like to express my special gratitude to family and friends who have supported me throughout writing this thesis. Your support, advice, and love have been encouraging and incredibly helpful.

1. Introduction

In this thesis I will examine the Swedish labour immigration law for third-country nationals, TCNs, persons coming from outside the EU, ESS, and Switzerland. The legal framework changed in 2008, with the intention to positively influence circular migration, provide the Swedish labour market with the skills needed, target demographic challenges and benefit migrant workers. The purpose of the study is to give an indication of possible consequential tendencies of the new legal framework. This section will provide an introduction to the field of the thesis including, in the following order, background, previous research, purpose of study, research question and limitations.

1.1. Background

Labour migration has become a global issue with significant ramifications, affecting an increasing number of nations worldwide (ILO, 2006), additionally “the regulation of labour immigration is one of the most important and controversial public policy issues in high-income countries” (Anderson and Ruhs, 2010: 1). Both labour migration in general (Anderson and Ruhs, 2010) and seasonal labour migration trends are growing internationally (Reilly, 2011), which, according to Attas (2000: 73) has become a “permanent phenomenon for the relationship between developed and developing countries”. Even though the migrant worker flows include both low-skilled and highly skilled workers and there has been an increase in the latter, still, low-skilled workers dominate the migrant workforce (ILO, 2006). According to the International Labour Organisation, ILO, both the host countries and the countries of origin may benefit from the migrant workers contribution to development in addition to their remittances (ILO, 2006).

While the definition of a guest worker has been conflated with everything from foreign workers to “our maids” (Hahamovitch, 2003: 70), what they have in common is temporary authorized work across borders. “Guest worker”, which comes from the

German word Gastarbeiter, implies that these workers are not illegally staying in the country but are guests, desired to eventually leave (Hahamovitch, 2003). The idea behind guest worker programs is the notion that migrant workers will return to their country of origin after their temporary work contract expires (Bauböck, 2011). The guest worker schemes are often justified by the argument that it is ultimately a beneficial situation for all parties involved:

The migrant labourer has access to new employment opportunities, the chance for higher paid work than is available at home and the attainment of new skills. The [Australian] employer has access to an increased pool of labour to supplement the domestic labour market. Sending states potentially benefit from remittances, which are of major significance in [Pacific Island] economies and they potentially benefit from the increased skill set of the labourers if they return home. Receiving states benefit economically from the influx of a secure and potentially cheap source of labour (Reilly, 2011: 131)

In the late 19th and early 20th centuries comprehensive state regulations were imposed on migration. The building of welfare states, bringing with them more services to their citizens, gave rise to incentives to define who was qualified for these services. Crossing borders became more difficult, and even in some cases criminalized. It was under these circumstances that temporary worker programs were born, and today they are still in practice, often said to be a strategy to discourage illegal immigration (Hahamovitch, 2003). However, some scholars claim the opposite, that the programs have indeed increased illegal immigration. According to Hahamovitch (2003) these programs have been a complete failure when it comes to making immigration temporary, but a success to supply labour for rich countries relying on migrant workers performing hard work their own citizens are not inclined to do. Castles (2006) points out that within Europe, there was a demand for low-

skilled guest workers from 1945 to 1970, and the labour migration policies were designed for the purpose filling that demand. During the 1990s national immigration restrictions were put into use. However, due to various factors including globalization and demographic changes, these restrictions have started to loosen. Today, the desired target group is the highly skilled migrant workers (Castles, 2006). Highly skilled migrant workers hold a degree, from college or university, or have the corresponding work experience (Asiedu, 2010). Policies are designed to welcome highly skilled migrant workers, but to restrict entry for less skilled workers (Castles, 2006). Shachar (2006) calls this phenomenon “competitive immigration regimes” (Shachar, 2006: 153) and “the race for talent” (Shachar, 2006: 155), a strategy to “retain or gain an advantage in the new global economy” (Shachar, 2006: 148). Highly skilled migrant workers can also be referred to as “reflect a transnational elite” (Kiwon, 2010: 339).

Due to the topic's importance, there have been wide debates on policy making, including how to “link the admission of migrant workers to the 'needs' of the domestic labour market and the national economy more generally” (Anderson and Ruhs, 2010: 2). According to Anderson and Ruhs (2010), two contrasting discourses can be distinguished. First, one discourse arguing that migrant labour can fill labour and skill shortages. This is connected to support of economic growth and competitiveness, via admission of highly skilled migrant workers and human capital. The second discourse says that employers only are looking for cheap and exploitable labour. ILO points out that it is often the low-skilled workers who suffer from abuse (ILO, 2006).

In 2008 Sweden changed its labour migration law for TCNs (see section 1.1.2.). There has been a shift to an employer-driven policy, and the policy framework does not discern between low-skilled and highly skilled labour immigration. Berg and Spehar (2013) point out that the emphasis on immigration in the Swedish political debate has gone from a social and human rights focus to an economic problem solving focus on how labour migration as such can contribute to the Swedish economy, such as business demands and demographic challenges. Commissioned by

the Swedish government, The Organisation for Economic Co-operation and Development, OECD, evaluated the Swedish migrant labour reform. The evaluation resulted in the report “Recruiting Immigrant Workers, Sweden”, issued in December 2011. According to the report, Sweden currently has the most open migrant labour framework among the OECD countries. However, one weakness of the legal framework is the lack of supervision of the promised labour conditions. Berg and Spehar (2013) mention exploitation of foreign labour and call attention to the importance to investigate the consequences of the 2008 policy changes. For example it is needed to further explore the “conditions, rights and citizenship rules for migrants” (Berg and Spehar, 2013: 157).

1.1.1. Terminology

There are various terms connected to migrant workers. This section sketches an outline of a few of the common definitions. First, there is the difference between a migrant worker and a seasonal worker. The United Nations, in its International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, define a migrant worker as “a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national” (UN, 1990a), and a seasonal worker as “a migrant worker whose work by its character is dependent on seasonal conditions and is performed only during part of the year” (UN, 1990b). The ILO (1949), in the Migration for Employment Convention defines the term ‘migrant for employment’ as “a person who migrates from one country to another with a view to being employed otherwise than on his own account and includes any person regularly admitted as a migrant for employment”. Further, Attas (2000:73) defines the term ‘guest workers’ as:

an intermediate category of foreign workers somewhere along the line between an illegal immigrant at one end and a permanent settler, a resident in the process of naturalisation, at the other. The guest, or contract, worker is a legally residing non-national, working under

permit of various restrictions, particularly attachment to a specific project, employer, sector or industry, type of occupation and/or duration of stay.

In sum, guest workers are defined commonly as temporary work migrants (Oke 2012; Hahamovitch 2003). According to Walzer, the guest worker is more of a worker than a guest or tourist. They are in the host-country on the basis to work (Attas, 2006). Castles (2006) speaks of recruitment of foreign workers, migrant workers, and guest workers, but uses the words interchangeably. What the terms have in common is a person working in a country of which s/he is not a national, and the job position is temporary.

This thesis, when applied to the case of Sweden, will speak of labour migrants and labour migration referring to TCN, coming to Sweden to work, short term or long term, on a work permit including restrictions of various kinds. However, when analysing previous research, the terminology used by the various authors will be applied.

1.1.2. Swedish legal framework

The legal framework concerning labour immigration for TCNs is long and complex, and the following description refers to what is most relevant for this study². In 2008, the Swedish Government, in agreement with the Swedish Green Party, changed the labour immigration law for TCNs, with the goal to increase the positive effects of circular migration to and from Sweden. The old authority based labour market trial ceased. Instead, the new legal framework is employer demand oriented, implicating that the employer best knows the current recruitment needs. Reasons behind the change of the legal framework were demographic challenges, revitalise the labour market, and an existing mismatch between labour demand and supply. Labour shortages and unemployment may occur concurrently. Moreover, it would make it easier for legal employment in Sweden and thus decrease work in the black market

² See bill 2007/08:147 for full information

where employees tend to be most vulnerable. The reform is supposed to have a positive effect; to provide the Swedish labour market with workers and to enrich the migrants' countries of origin with new knowledge and experience (prop. 2007/08:147).

Under this framework the Migration Board, instead of the Swedish Employment Agency as before the reform, checks that the employment exists and that the standards, according to Swedish collective agreements, are followed. To avoid irresponsible employers and the driving down of wages, the requirements for work conditions of migrant labour are the same as for the domestic workforce. If the work conditions do not fulfil the requirements, the Migration Board will deny the work permit application. Also, the unions shall look over the work conditions. Included in the application screening process is an inspection of the work place through affirmation that the work conditions can be maintained. Once the employee is in Sweden, it is the police, Swedish Tax Agency, the Work Environment Authority, WEA, and the unions who are responsible to oversee if the contracts³ are being respected. If the contract is not respected, both employer and employee risk punishment of six months in prison or a fine. When and if an extension of the stay is applied for, the Migration board checks again if the conditions were fulfilled (prop. 2007/08:147).

The time frames for the work permit have been pro-longed. Initially the work permit is connected to only one work section and employer. Subsequently after the first two years, the permit can be prolonged for another two years, but then the permit is only connected to one work section. A permanent residence permit can be issued after four years of residence in Sweden (prop. 2007/08:147).

A trial period of three months if being un-employed has been put into practice. The employee does not automatically lose the residence permit if fired or decides to leave the employment; instead there is a three month trial period when s/he can look for a new job. The idea behind this rule is to decrease the dependency on the employer. But

³ See 1.1.3. for the basics of a contract

the residence permit ceases to be valid if the worker has not found new employment within three months (prop. 2007/08:147).

Employees may bring their family with them. The family members allowed to accompany an employee include: the spouse, common-law spouse, or registered partner, unmarried children of the employee or partner. If the children are over the age of 21, they need to be financially depended on the employee or the employee's partner to come with. If the family is allowed to accompany the employee, they get a permit for the same period of time as the employee (Migration Board).

After twelve months of work and stay in Sweden a person can be nationally registered and then inherent, almost, the same rights and obligations as national citizens (prop. 2007/08:147).

1.1.3. Job application process

On their website, the Swedish Migration Board informs TCNs, about the application procedure for a Swedish work permit. First, it is necessary to have a work offer, and the work permit needs to be ready before moving to Sweden. The potential employee needs to hold a valid passport, has been offered work with work conditions equal to Swedish collective wage agreements or what is customary within that specific area of work, and been offered to earn at least 13 000 SEK per month before taxes. For some work areas, such as cleaning, hotel jobs, construction work, agriculture, service jobs, etc., different rules apply. The control mechanism for the employer has been tightened up to approve a work permit application. The employer needs to be accountable for how to pay the employee's salary, and also provide the Migration Board with a tax bank statement for the last three months. The employer needs to offer a work proposal including information on insurance, time for the employment and the salary offered. If getting a work permit valid for longer than three months, the employee will also get a residence permit card. Second, the relevant union needs to comment on the offer. And finally, the employment offer and comments from the union will be sent by the employer to the employee. The work permit is valid for working with the employer and occupation mentioned in the application for the first

24 months. If the employee/worker finds a new job, a new permit will have to be issued. After the 24 months, the employee may switch employer without issuing a new work permit. However, the employee still needs to work within the same occupation. The offer of employment is, however, not a legally binding work contract, and instead a real work contract will be issued once the employee has arrived in Sweden. There is a work application fee of 2,000 SEK. Additional fees may be added, in cases of extension of the permit, permits for family members, or fees for particular occupations.

1.1.4. The Swedish social insurance system for TCNs

The regulations for the Swedish social insurance system are to be found in Socialförsäkringsbalken (2010:110). Also, since Sweden has signed conventions with various countries regarding social insurance there may be regulations to be found for respective country. Each convention looks different depending on the agreement between Sweden and that specific country (SKV 405).

The SNIA administers and verifies social insurance entitlements: there are employment-based and residence-based entitlements. An employee taking part in the Swedish labour market is covered by the Swedish social insurance system since the employer pays social security contributions (SKV 345B). The employment-based insurance ceases to be valid three months after the employment ends. However, the time limit may be subjected to change; it can both be longer and shorter (FK 4068_Fa). Thus, when working in Sweden an employee is entitled to employment-based social benefits (sickness benefits, parents' allowance, pension and occupational injuries benefits). Still, to be covered by the social insurance system, Sweden should be the primary place of work. The SNIA decides if this is the case (SKV 345B). Also, each benefit has its own requirements that have to be fulfilled (FK 4068_Fa).

If coming to Sweden for work purposes only there is no constraint to register at the SNIA. To apply for employment-based entitlements one does not have to be nationally registered. Yet, if wanting to apply for employment-based entitlements one has to contact the SNIA for an evaluation of the situation (FK 4068_Fa). If residing in

Sweden for a period of one year or longer one should register oneself at the Swedish Tax Agency (SKV 703-5B). If working with a work permit issued for less than one year, and therefore not being nationally registered, an employee is not entitled to health care compensation and should therefore provide a private health insurance from the country of origin (SKV 345B).

1.2. Problem area

This section will present a brief overview of previous research conducted in relation to migrant workers, focusing on migrant workers coming from developing countries to the western countries. This is of more relevance for this study than focus on certain other migrant worker flows, such as highly skilled migrant workers from developed countries employed in the USA, Canada etc. The previous research section is categorized according to three themes: citizenship, vulnerability and exploitation, which were found as the main threads throughout the various articles. Sometimes the categories overlapped within previous research. If so, a judgment has been made where to best fit the research. Due to the currently absence of academic research on these three themes in relation to the new Swedish regulatory framework, there will not be references made to migrant workers in Sweden within the three sub-sections this section. The selected articles refer in general to migrant workers from developing countries, but also make references to specific contexts such as the United States, Canada, Mexico, Australia, and the Pacific. The aim of this section is to provide a short overview of how the migrant workers situation looks in general. It is difficult to indicate to what extent its relevance is for migrant workers coming to Sweden.

1.2.1. Citizenship

Walzer argues that guest workers are hired for positions that the host nation's citizens do not want, or find unpleasant, and therefore create a situation which he describes as “a family with live-in servants” (Reilly, 2011: 136). Attas (2000: 83) outlines the guest worker's general situation as follows:

Guest workers contribute in various ways to the well-being of the host

society. They participate in the co-operative productive process, creating goods and services that cater for various needs and tastes; as consumers they contribute to the creation of more jobs; they pay taxes which are spent on vital social institutions and economic infrastructure; they have an enriching cultural influence on their surroundings. Yet they are deprived of the chance politically to participate in the design and shaping of the social environment in which they live, work and contribute, as well as being denied many of the advantages of membership.

Migrant workers actually often are prepared to accept lower work conditions in exchange for a higher salary than in their country of origin (Reilly, 2011). This should not justify poorer working conditions for migrant guest workers willing to take on jobs rejected by the nation's citizens especially since they often receive comparatively low wages and are regarded to have a lower status (Mayer, 2005). Walzer claims that the readiness to take on these jobs comes from the "difference in power and opportunity associated with different citizenships" (Reilly, 2011:136). If guest workers were granted improved working conditions, they would, as the national citizens, not take on the jobs (Reilly, 2011).

The status of a non-citizen depends greatly between different national contexts, and between groups. Gibney (2009) distinguishes between two groups of non-citizens; highly skilled migrants and guest workers (which he places side by side with asylum seekers and undocumented migrants). The first group might enjoy various political and social rights, sometimes even the right to vote in local elections. The access to these rights facilitates integration. Gibney calls the second group "precarious residents" (Gibney, 2009:2) as they lack voice and security, and therefore, are excluded "from two of the benefits of citizenship" (Reilly, 2011: 146). This lack of voice means not having a political voice to influence public discussions on government policy and cannot participate in the creation of policies concerning their

own situation and the regulatory framework. Bauböck (2011) outlines a similar argument, saying that temporary migrants are only partial citizens since they do not enjoy all employment benefits and social rights, and also they do not enjoy the possibility of political participation or representation. Security is also a matter of importance within this discourse as Gibney defines secure as “freedom from the risk of deportation” (Reilly, 2011: 147). The migrant worker would not only lose the employment but also risk deportation if fired (Reilly, 2011). Gibney states that when holding a secure residence status, one’s rights are more reachable (Reilly, 2011). Kiwan (2010) also writes about the difference in conditions between highly skilled migrant workers and low-skilled workers. The former often enjoy “more attractive conditions with respect to settlement, naturalisation and integration” (Kiwan, 2010: 335) due to the competition for their skills, but they may suffer from exclusion and discrimination on the labour market due to “their actual or perceived color, religion or origin” (Syed, 2008: 30).

Guest workers are exposed to various restrictions that other workers are not, for example, the duration of stay and restriction to a particular for example sector, industry or employer. The restrictions are legitimized on a basis of nationality of the worker (Attas, 2000). Therefore the guest workers cannot “compete freely” (Mayer, 2005: 315) in the host labour market. Freedom of occupation is not respected, and Mayer (2005) reasons that exploitation could be avoided if guest workers were not restricted in this way, but instead were free to apply for whatever job they desired and thus could compete on the labour market with the other workers.

1.2.2. Vulnerability

Seasonal labour migration is often said to be connected to a relationship between the employer and the employee, characterized by vulnerability for the latter. The guest worker is vulnerable due to the status as non-citizens of the society, and also due to the power of inequality with the employer (Reilly, 2011). However, Reilly (2011) does not discuss how this power imbalance differs from the usual power relationship between employers and employees. Mexican migrant workers in Canada are

frequently deprived of at least some of their rights, and this often depends for example on their lack of support and knowledge of the legal framework, and poor communications skills (Basok, 2004). Highly skilled migrant workers might not be as vulnerable as low-skilled workers, since the latter often have more at risk due to difference in visa status. However, the legal framework must be taken into consideration when assessing and analysing the bargaining position of the workers (Oke, 2012).

Even if the guest worker is free to return to the country of origin at any time, this might be difficult in reality due to the migrant worker has often invested a lot when taking a job abroad. With that much invested in migrating due to an employment it might not, in practice, be easy to leave the position. Thus, the workers find themselves in a vulnerable position. According to Phillip, “there is a further obligation on government to ensure that the migrant worker is not subject to the possibility of domination” (Reilly, 2011:143). Many scholars argue that there is a lack of bargaining power as well as voice for temporary migrant workers. The guest worker is often tied to a certain employer which binds the worker to a vulnerable situation. The workers will have to stand the employer for better or for worse, if they want to keep their legal standing, continue making a living, or at least cover the expenses for having travelled to the host country (Attas, 2000). Attas (2000:89) even calls this the resemblance of “a master and slave relationship”.

Smith (2007) describes the situation for the guest workers, in the United States, as characterized by high precarious and vulnerability since the guest worker cannot change job and frequently is indebted due to an economical investment in getting the job. Smith (2007) also points out that the worker might be deprived of the right salary because of lack of oversight. White (2007), as well speaking of the United States, points out that workers have been deprived of their salaries and exposed to abuse due to lack of supervision of the regulations. Smith (2007:73) even uses the term “bondage like system” when describing the migrant worker's situation. Often the guest workers want to work as much as possible so that they can ”return home as

quickly as possible” (Reilly, 2011: 133), and they also accept bad working conditions for the restricted period of time working abroad as long as this benefits the possibility of improved living standards when going back to the country of origin (Bauböck, 2011). However, Bauböck (2011: 667) argues that this cannot be seen as a reason for exploiting their labour, but instead ”they must be clearly included when assessing a system of rights by a criterion of social justice, such as Rawls’ difference principle that considers how the system affects the worst off group”.

Pajnik (2012) outlines a comparative perspective of TCNs coming to six EU member states, Cyprus; Finland; Germany; Hungary; Italy and Slovenia, to work. The migrants are often living under precarious economic conditions; “high level of job insecurity, low payment and a low level of social benefits, and where they face de-skilling, language barriers, and discrimination of the workplace” (Pajnik, 2012: 152). These conditions contribute to that the European countries, may they vary in requirements for entry and stay, “produce 'conditioned lives” (Pajnik, 2012: 153) for TCNs meaning “forced flexibilization of migrants that serves the needs of global capital” (Pajnik, 2012: 154) through an un-stable labour market and work relations, as well as legal status. Pajnik (2012) discovered that many migrant workers had a forced relationship to their employer, due to the lack of knowledge about their rights as well as the migrants’ vulnerable status. The employer took advantage of this.

1.2.3. Exploitation

The guest workers are often recruited to work in so called 3D jobs: dirty, dangerous and/or demanding (Attas, 2000). The wage received, for these jobs, will be higher than in their country of origin and instead of the possibility of being unemployed they will have a job. The salary will probably be lower than what the domestic workers consider enough, since they do not take the jobs (Attas, 2000). However, Attas (2000) contests if [highly skilled] guest workers are really to be considered lacking something. The option would be to stay in the country of origin and make a living there. Attas (2000) raises two questions to consider in the relation between guest workers and exploitation: whether the guest worker receives a just wage and whether

the guest worker is forced to take on the job.

Walia (2010: 71) defines temporary migrant workers as a “disposable workforce”, and thus “perfect workforce” (Walia, 2010: 72), highly exposed to exploitation in the Canadian labour market, due to their lack of being able to demand their rights thus becoming “commodified and exploitable; flexible and expendable” (Walia, 2010: 72). Walia (2010) writes that demanding rights in the Canadian context lead to, because of the vulnerability connected to the temporary legal status, deportation. Castles argues that the potential host-countries look for “labour, not people” (Reilly, 2011:145). Garcia (2006:28) even holds that there should be a “democratic deficit”, lack of democratic accountability, due to the workers being treated like commodities and lacking bargaining power. It is argued that the migrant worker is exploited as cheap labour due to the uneven bargaining power (Reilly, 2011). Somerville and Walsworth (2009) draw attention to the increased risk of exploitation when the work permission is based on the employment with a specific employer. This might also affect highly skilled migrant workers, and “it is probable that they suffer from some degree of exploitation” (Somerville and Walsworth, 2009: 156).

The threat of being deported, from Canada, creates a group of a exploitable employees whom the employer can fire without consequences (Walia, 2010). This can influence immigration statuses, result in the increase of power inequality, which can in turn be used as a control mechanism (White, 2007). Garcia (2006), focusing on the United States, argues that guest workers fit perfectly in the neoliberal paradigm, that is based on the idea that anything can freely bought and sold; “guestworkers are commodified because they are treated as articles of trade without bargaining power or voice in the substantive transaction” (Garcia, 2006: 28). Even so, Garcia (2006: 36) goes on to say that “based on the apparent need for guest workers to fill jobs within this country [USA], temporary workers would seem to have a great deal of bargaining power”.

Guest workers may be legally enjoying full employment protection under national regulatory frameworks, but the awareness of the specific legal rights and on how to

defend them is most likely small. Even though they would be aware of their rights they could be too scared to stand up for them, due to consequences from the employer's side (White, 2007). White (2007) would want to see the control mechanism developed, used and working to avoid generating two distinct classes of employees; migrant workers as being considered second class and thus easier to exploit. Also, White (2007) argues that the guest worker program, in the United States, needs discrimination protection and the inherent possibility for workers to present legal claims and rights.

The concept that competition between guest workers and the domestic workforce would weaken labour standards and lower wages for all workers has distressed labour unions (White, 2007), and Smith (2007: 72) holds that "historical studies show that unrestricted access to guest workers has the potential to dilute labor standards for all workers". Smith (2007) discusses how to protect the local workers when hiring other workers and also how to "serve business's need for workers, but control its desire for cheap labor" (Smith, 2007: 70); the issue arises of how to stabilize labour rights versus the business world.

Pajnik (2012) concludes that TCNs coming to Europe to work are often hired for low-skilled labour that the domestic workers do not wish to take on, the 3D jobs, "where exploitation of workers is not uncommon" (Pajnik, 2012: 153). They are not able to freely move on the labour market since the work permit is connected to a certain employment. Pajnik (2012) suggests that the labour market in the EU is segmented and migrants are offered the low-skilled works. The policy frameworks make it difficult to change occupation. Also, the migrant workers' various rights are connected to the permit. TCNs are often exposed to inequalities and bad working conditions.

1.3. Purpose of study

As we can see from the previous sections, widespread abuse of migrant workers is not uncommon, which can lead us to question if abuse has also infiltrated the Swedish labour market, and if so, how? The legal framework changed a few years

ago, and it is of the utmost importance to investigate the strengths but also the flaws of the new system. Even more important is to examine the conditions for the migrant worker due to the vulnerable situation many migrant workers may experience. It is therefore crucial to investigate the practical side of the regulatory framework for migrant workers in Sweden.

This study is interested in the welfare of TCNs coming to work in Sweden, how various actors in contact with labour migration perceive the changes in the legal framework and how the framework has influenced the conditions for TCNs migrant workers. The purpose of the study is not to generalize the findings, but instead to give an indication of possible consequential tendencies of the new legal framework.

1.3.1. Research question

How can the Swedish legal framework for labour immigration regarding TCNs be understood from the perspective of actors in contact with labour migration?

1.4. Limitations

As was stated above, there has been little academic research conducted to follow up on the 2008 changes of the Swedish labour migration management policy. Due to time and budget limitations, it is not intended for this study to be all-encompassing. Instead, it sets out to give an indication of what is highly important to further investigate in the topic. It is not within the scope of this study to show the reality of migrant workers from their own perspectives, since the study has not had the opportunity to access migrant workers, due to time and resource limitations. The decision was made to not include undocumented migrants, but only those coming to work having obtained a Swedish work permit since the purpose is to investigate the changes of the legal framework.

2. Theoretical framework

This section will present a theoretical discussion of three theories focusing on relations in the labour market between employees and employers. The theories are closure theory, exploitation and (re)commodification. Following this, the analytical framework for the study will be presented.

2.1 Exclusion and exploitation

2.1.1. Closure theory

Closure theory originates from Max Weber, who focuses part of his research on “the different forms exclusion takes at the level of the distribution of social wealth and in non-economic social fields” (Koch, 2006: 9). According to Murphy (1983: 643) closure theorists focusing on analyses of property, such as Parkin, are “heavily indebted to Marx” for some of their ideas, but many claim that the Marxist theory is incomplete for studying social closure in today's society. Marxist theory and closure theory are not in disagreement; Murphy (1983) says they overlap, even if there is disagreement between theorists. Both have in common that property as capital plays a significant role. However, for Marx the class struggle was irresolvable, but for the Weberian tradition it is manageable (Murphy, 1983). Also, closure theory uses double enlargement, meaning that it focuses on two things: what a person/group is excluded from, and of what the monopolization is. Closure theory widens the focus from only one aspect of domination to various forms of monopolization and exclusion (Murphy, 1986). Features of all kinds’ such as religion, gender, language, and lack of education can be used as grounds to close entry for outsiders (Murphy, 1983). Weber argues that “the unequal distribution of property 'excludes the non-wealthy from competing for highly valued goods; it favours the owners and, in fact, gives to them a monopoly to acquire such goods” (Murphy, 1983: 633). Monopolization assures that certain groups are able to make “profitable deals in the market” (Murphy, 1983: 633), and closure theory analyses power and domination, focusing on the “monopolization of opportunities in the market” (Murphy, 1983: 633).

Weber introduces two opposite relationships: open and closed. The former is including and the latter excluding. In an open relationship anyone is welcomed to join and participate, and in the closed relationship, “participation of certain persons is excluded, limited, or subjected to conditions” (Koch, 2006: 9). The excluded individuals are denied access to privileges and life chances and are denied entry to social and economic opportunities, named *rights* by Weber (Murphy, 1983). The monopolization of rights is created by the excluding group(s) to gain advantages over the excluded, and to acquire monopoly of the rights. The inequalities are kept in place by groups trying to preserve or increase their privileges and social status (O'Brien, 2010). O'Brien (2010: 592) writes that if a relationship will be open or closed depends on “tradition, sentiment, or [...] rational pragmatism” and “on which type best meets the needs of the dominant social group” (O'Brien, 2010: 592). The owners of property are in power since they may reject the terms of the exchange. Those without property must sell their labour power to the property owners and thus are put in an inferior position. The terms are set by the owners of property. Once again, monopolization comes into the picture. In sum, the dominating group closes the entry for others (Murphy, 1983).

Exclusion and domination are interrelated. The use of exclusion is a way to examine “structured social inequality” (Murphy, 1986: 27) and “domination is examined through the analysis of the power and control relations contained in the rules and codes of exclusion” (Murphy, 1986: 27). Society is governed by these rules. Although closure theory originates from Weber, the theory has been developed by others. Frank Parkin introduces exclusion and usurpation, strategies that can be applied to either increase or decrease power (Murphy, 1986). These are two opposite strategies to either increase or defend a group’s privileges and opportunities (Murphy, 1983). Usurpation is the reaction, by the excluded, contra the exclusion. This non-dominant group is thus in pursuit of the privileges they are excluded from (Koch, 2006). In exclusionary closure the dominating group exercises power downwards to deny other groups’ access to the advantages. Thus, the excluded are subordinated

groups that the dominated group characterizes to be inferior (Murphy, 1983). It is about subordination (Murphy, 1986), perceiving the others as a secondary group being lower in status than one's own. In usurpationary closure, a group exercises power upwards to increase their own opportunities and advantages. They try to obtain the dominated group's advantages (Murphy, 1983). The two strategies for power are either exclusionary or based on solidarity. As an example, O'Brien (2010) identifies the nation state as using both of these strategies. The nation state includes its members, but excludes non-members. Dual mode of closure means that middle groups in the stratification system use both modes of closure; excluding and usurpation. The reaction of an already excluded group is to exclude an inferior group through "mobilizing power in a downward direction" (Murphy, 1986: 31). For the most part, one of the strategies, exclusion or usurpation is used, but as a complement the middle groups also use the other strategy to achieve their goals. Various conflicts between groups within the working class can illustrate an example. This could be compared with how the working class was created in the first place, through exclusion and also exploitation (Murphy, 1986). Exclusion is connected to a time frame; a specific form of exclusion can be legitimate and accepted during a certain period of time, with necessity as its justification. But exclusion patterns always change due to resistance and thus usurpation strategies. What was accepted as being excluded at one point does not mean that this will always be the case: take for example race and gender (Murphy, 1986).

Closure theory is relevant to migrant workers since they appear to regularly be subjected to exclusion in various ways. Previous research, as shown in sections 1.2.1. and 1.2.2., indicates that migrant workers often are excluded due to their status as non-citizens. Migrant workers are employed for low-skilled positions that are not attractive for the citizens of the host country. Migrant workers also run the risk of being excluded from voice and security, political participation, and are subjected to various restrictions based on their nationality. Many are under the risk of deportation,

and even if there are legal rights assuring their safety, there is a great uncertainty that people are aware of these rights, much less how to defend them.

2.1.2. Exploitation

Exploitation, a concept originating from the early 19th century, refers to a certain relationship between people, namely when a person is being used in an unjust manner. When someone is being taken advantage of (Nielsen and Ware, 1997) the fairness required in the exchange is not respected (Mayer, 2007). The theory of exploitation is a theory with many dimensions, and it has a long and comprehensive tradition in political theory. What fairness requires is regarded differently, and therefore different theories of exploitation have developed.

Within neo-classical theory, the equilibrium price is seen as being fair; thus, market exploitation occurs if prices and wage diverge from the perfect equilibrium price. The perfect equilibrium price is set by consumer demand and producer supply when in perfect competition. Difference from the equilibrium price means unequal exchange (Mayer, 2007).

Karl Marx spoke about capitalist exploitation of workers. According to Marx, the workers “became wage slaves alienated by the productive process” (Nielsen and Ware, 1997: ix). Within Marxism, property should be owned collectively as for it to be as fair as possible, thus capitalism will always be exploitative; there is no equal access to the means of production (Nielsen and Ware, 1997). The owners of means of production exploit the workers through the surplus value; the employer extracts surplus value and profit when the workers work longer than necessary. This is possible since the workers do not have access to the means of production. Collective ownership of the means of production would end capitalist exploitation (Roemer, 1985). In Koch (2006) Erik Olin Wright, based in Marxian theory, argues that exploitation is a form of exclusion: “exclusion denotes a situation in which the material benefits of one group are acquired at the expense of another group, coercive practices being an essential part of the process” (Koch, 2006: 7).

Within exploitative exclusion, the exploiters extract labour power from the exploited, and within “non-exploitative exclusion there is no labour transfer from the excluded to the excluding group” (Koch, 2006: 7). The Marxian tradition views exploitation and exclusion as inherent features of capitalist societies, focusing on the process of production of wealth, when speaking of exploitation and exclusion (Koch, 2006). Within a capitalist society, the employer and employee find themselves in different bargaining positions. The latter possesses more power than the former, and uses this power to gain advantaged over the employee. The unequal bargaining power is exploitative (Nielsen and Ware, 1997) and influences the work contract, which Wood (1997) denotes as a main vulnerability for workers.

Exploitation may also be referred to in a normative manner, as the use of power by one person over another who is in a less powerful situation, thus there is a relationship of unequal power (Nielsen and Ware, 1997). Exploiters gain at the expense of others. Even when both parties involved gain on the exchange, exploitation arises if one party is “failing to benefit the disadvantaged party as fairness requires” (Mayer, 2007: 137). Taking unfair advantages is cheating. The exploited may encounter beneficial cheating: the disadvantaged party gains less on the exchange than it should for the transaction to be fair; employed workers might be better off than being unemployed, but if not enough compensated, they are exploited since the exploiter then gains on their expense. From the point of view that exploitation fails to benefit one party as fairness requires, Mayer (2007: 142) sets up three cases of exploitation; “exploiters either (1) do not benefit their victims at all, or (2) do not benefit them sufficiently, or (3) do not benefit them authentically”. Thus, exploitation harms the disadvantaged party. This is what Mayer (2007) points out as being fundamentally wrong in exploitation. But even if it is agreed on that exploitation is wrong, there are various thoughts on why it is a wrongful act. Exploitation can be coercive, when “the exploited are forced to benefit others, and that is not just” (Mayer 2007:137). It can also be degrading, when the exploited

person is “treated as means” (Mayer, 2007:137). Others claim that exploitation is bad since it contributes to people not protecting the vulnerable (Mayer, 2007: 137).

For persons to be exploited they need to be vulnerable in some way: physically, psychologically, emotionally, economically, or politically. The exploiter then takes advantage of the vulnerable person with the intention to gain something. Wood (1997: 15) suggests that exploitation is wrong when “proper respect for others is violated when we treat their vulnerabilities as opportunities to advance our own interests or projects. It is degrading to have your weaknesses taken advantage of, and dishonourable to use the weaknesses of others for your ends”. Taking unfair advantage of someone could lead to objectifying and treating that person as a tool, for example to reach profit, and thus not treating that person with respect (Nielsen and Ware, 1997).

Attas (2000) outlines two aspects of exploitation; unequal exchange and forced exchange. An exchange is unequal and therefore “exploitative if and only if one party (the exploited) receives a payment of lower value in return for the goods and services he supplies” (Attas, 2000: 75). Furthermore there must also be misleading information, deception and/or force (Attas, 2000). An exploited person would, if possible, not participate in the exchange, knowing that there was an inequality in the exchanged values. Meaning, if the person was fully aware that the exchange terms were not equal, participation in the exchange would be renounced. From this, Attas (2000) proposes that the questions to be asked, regarding if an exchange is exploitative or not, are if the wage is just and if there are other reasonable options for the workers, or if they are restricted with no real choice. Force, Attas (2000) explains, can occur in three ways. First, brute force involves selling something one wishes not to sell, or to sell that something to someone one wishes not to sell it to. Second, forcing terms of exchange means that the terms of exchange are conditioned from one party of the exchange. This is sufficient for it to be exploitative. Third, conditional force means “*if* a worker (or trader) wants to exchange their labour (or goods) then they must obey certain conditions other than the obvious condition of consent to pay

the agreed price” (Attas, 2000: 77). The conditions are restrictions of varying kind, imposed individually or politically.

Exploitation is a complex issue for policymakers; “if they prohibit the transaction they may worsen the plight of the disadvantaged party. By contrast, if the authorities permit the transaction they make it possible for advantaged agents to gain at the expense of the vulnerable” (Mayer, 2007:147). Exploiters might sometimes be operating within a legal framework, thus, “their cheating is structural” (Mayer, 2007: 148). Authorities then need to come up with solutions on the structural level (Mayer, 2007). Nielsen and Ware (1997) propose that either society could make it more difficult for potential exploiters to use their power for exploitation purposes of those in vulnerable situations, or it could try to empower people so they are less vulnerable to begin with, and hence less susceptible to exploitation.

The concept of exploitation is relevant to migrant workers since they appear to frequently be subjected to exploitation when considering the findings from prior research, sections 1.2.2. and 1.2.3: Migrant workers are repeatedly found working in low-skilled jobs, exposed to inequalities on the labour market. Migrant workers are often subjected to inferior working conditions than their locally born counterparts. They tend to be vulnerable and the vulnerability is connected to the terms upon which they are allowed to stay in the country, for example their employment is often connected to a specific employer and sometimes they face deportation when a contract is terminated. Consequently, there is an unequal bargaining power between the employer and migrant worker. The apparent lack of awareness concerning their rights and how to defend them leads to them being easier to exploit as cheap labour.

2.2. (Re)commodification

2.2.1. Labour as a commodity

Both the UN and the ILO have promoted the opinion that labour differs from commodities, and that it should not and cannot be reduced to a commodity (Taksa and Groutsis, 2010). However, Varoufakis and Groutsis (2010: 1) argue that “to the extent that labour is a commodity, its characteristics are arguably, in a league of their

own”. Labour as such can think for itself and it can never be completely controlled and secondly, has characteristics which distinguishes it from other commodities. Those characteristics include “agency, group identity, and action which challenge the notion of the workplace as a realm of consensual or pure exchange” (Varoufakis and Groutsis, 2010: 2).

Karl Polanyi, author of *The Great Transformation*, where he laid out the emerging development of market society (Papadopoulos, 2007), calls labour a *fictitious commodity* that is separated from other commodities as “human activity cannot be completely subordinated to the logic of the market” (Rosewarne, 2010: 105). Labour is a fictitious commodity, according to Polanyi, “because it is not manufactured to be sold on the market: people do not reproduce with the intention of providing more labour power” (Bandelj et. al., 2011: 814). Bandelj et. al. (2011: 814) also writes that “if human labor were to be treated as any other commodity to be sold on the market, then there would be no limit to the kinds and extent of its use by employers, resulting in exploitation and over exhaustion”.

2.2.2 Commodification – Decommodification – Recommodification

The transformation in society, which Polanyi speaks of, lasted from the 19th century until the mid-20th century. The transformation was “guided by a deliberate strategy, led by financial capital, to create a *market society* where workers were left unprotected and subject to unbridled market forces” (Standing, 2007: 41). Everything, even labour, was attempted to change into a commodity supported by financial capital as more and more powerful (Standing, 2009). Economy was to dominate society and according to Bandelj et. al. (2011), commodification goes hand in hand with market society, the capitalistic society, and its characterized competitiveness and search for greater profits. Polanyi perceives the market society strategy to be untenable, and that policymakers need to protect people from the exuberance of the capitalist system, through for example policies (Papadopoulos, 2005). For the labour power to live when not being used in the labour market there needs to be “non-commodified support systems” in place (Holden, 2003: 303).

Approaches to do this would be through establishing social protection, managing market forces etc. These are the building blocks of welfare states today, however differently outlined they may be (Standing, 2007).

Decommodification is often used to explain why the welfare state is to be found in the capitalist society. Decommodification can be seen as a counterbalance strategy by the state against self-reliance on the market (Holden, 2003). According to Gøsta Esping-Andersen, author of *The Three Worlds of Welfare Capitalism*, it is a way for the individual to exist outside the labour market without being totally left alone (Papadopoulos, 2007). There is the promotion of the self-regulated market but at the same time there are institutional arrangements in order to protect the person (Rosewarne, 2010).

Esping-Andersen analyses the modern welfare states through the concept of decommodification, which “occurs when a service is rendered the individual to exist from as a matter of right, and when a person can maintain a livelihood without reliance on the market” (Holden, 2003: 311). “Decommodification frees people from the market” (Holden, 2003: 304) in the sense that they are able to live a life separated from the market. Even though labour is commodified it can partly also become decommodified through access to various state benefits (Holden, 2003).

Esping-Andersen argues that employers never have promoted decommodification since it empowers the worker while decreasing the employers' power (Holden, 2003). Generally one could say that decommodification empowers the citizen against the market, and “decommodified social policies” (Holden, 2003: 304) ensure that people can make their own choices, independent from the market. Decommodification empowering workers “in transactions regarding their own labor” has decreased over the last fifty years (Garcia, 2006: 29). Garcia (2006) finds it hard to think of anything that is not being commodified, that cannot be bought and sold. Today there is a shift towards recommodification; “workers are seen as articles of commerce without bargaining power” (Garcia, 2006:29).

Since the middle of the 1970s recommodification is occurring (Standing, 2007); there have been changes in the world economy, from the Keynesian welfare state (KWS) to the Schumpeterian workfare state (SWS) (Garcia, 2006). KWS was prominent during the 1950s to the 1970s, and was characterized by welfare and national territory orientation, a mixed economy of market and state and a “relatively closed national economy” (Jessop, 1999: 350). The change to SWS is a change towards a post national competitive workfare model. Neo-liberalism is the hegemonic version of SWS (Jessop, 1999). The welfare state is “being replaced by social policies emphasising (re-)commodification” (Dingedley, 2007:823). The state, within the SWS, still has an intervention role, but the character of that role has changed (Papadopolous, 2007). There are more strategies for “restricting the alternatives to participation in the labour market” (Papadoplous, 2005:7). The welfare state has become the competitive state (Holden, 2003). The shift to recommodification signifies to Holden “‘a race to the bottom’ as far as social policies are concerned” (Holden, 2003: 306). Social policy is subordinating the needs of labour market flexibility and international competition, and making labour a commodity. Therefore “the state is ‘a commodifying agent’ rather than ‘a decommodifying agent’” (Holden, 2003: 307). Safeguards, such as policies and institutions, implemented to give labour a certain security has been dismantled (Garcia, 2006). Weakened labour laws have resulted in the voice of employees being undermined (Standing, 2009). Garcia (2006) claims that today almost everything can be offered on the market and it can be difficult to resist commodification in the globalized world.

Workers have gained more bargaining power over the terms and conditions of their employment over the last two centuries. However, this is threatened by “increased trade and manufacturing in areas where economic deprivation has decreased workers' bargaining power” (Garcia, 2006: 35). Today commodification is viewed upon as existing everywhere, but to various extents. What is important is the transactions and the bargaining power of the parties involved (Garcia, 2006). The new “comparative advantaged” is cheap labour (Garcia, 2006: 29); a country can

produce a commodity cheaper than another country and in turn exchange it for the other country's comparative advantage. In the end everyone benefit from the trade. Ultimately, all workers sell their labour power but it should be made as fair as possible for the parties involved to be able to have the possibility to protection (Garcia, 2006), and “the test of commodification is the extent to which workers have bargaining power and voice over substantive terms of their employment” (Garcia, 2006: 36).

The concept of (re)commodification is relevant to migrant workers since previous research, in sections 1.2.2. and 1.2.3, suggests that migrant worker appear to often be treated as commodities. They have a lack of voice and are subjected to uneven bargaining between themselves and the employer. Often they do not enjoy free movement on the labour market. They are said to be a disposable workforce and admitted only when needed in a host country, and that in the end countries are looking for “labour, not people“ (Reilly, 2011: 145).

2.3. Analytical framework

The starting point for this study is the practical side of the migrant labour policy change in 2008: what the consequential flaws and strengths are as considered by actors in contact with migrant labour policy, and how these factors influence the situation, living and working conditions for migrant workers in Sweden today. The research question is, as previously stated in section 1.3.1:

How can the Swedish labour immigration law for TCNs be understood from the perspective of actors in contact with labour immigration?

The theoretical framework, as presented in this chapter, guides the interpretation and reflections of the gathered data to understand the current situation for TCN migrant workers in Sweden. The analytical framework is divided into three parts reflecting the three theories presented in the theoretical framework.

The idea of the analytical framework is to investigate if and how the chosen theories, closure theory; exploitation; and (re)commodification, can be applicable in the Swedish context. The theories were chosen after considering the findings in the sections 1.1. and 1.2.. First, closure theory was selected due to the tendency for migrant workers to be excluded in society grounded in their status as temporary residents. Migrant workers are here on a permission connected to work, including various restrictions. Second, exclusion could lead to exploitation if migrant workers are in a vulnerable situation. It appears as though exploitation is prevalent when it comes to migrant workers on the labour market. This study proceeds from the Marxian tradition denoting that workers in a capitalistic society are exploited. Then it depicts the normative concept of exploitation focusing on the unequal relationship between employer and employee. Third, the dialectical form of commodification – decommodification – recommodification is connected to migrant workers being in Sweden for work, and work purposes only. The rise in recommodification implicates unequal bargaining power, unfairness of transactions and a lack of voice. By exploring the perspective of actors in contact with TCNs migration workers, this thesis strives to contribute to the academic understanding of strengths and flaws of the new system.

3. Methodology

After presenting the theoretical framework, the methodological considerations for producing the data for the analysis will now be outlined. Two methods were used, semi-structured interviews and discourse analysis. These methods will be discussed and also a reflection of the study will be provided. The process of the final product, the thesis, has developed into a reflection between previous research, theory and the produced data. The thesis is derived from the idea of combining interests in labour market policies and migration policies. Due to that there is a lack of research regarding the 2008 changes to the legal framework; the idea of conducting research within the Swedish context came about.

The structure of the chapter is as follows: text analysis, selection of interviewees, interviews, quality criteria, and reflection on methods.

3.1. Data collection

The notion behind the thesis is to investigate possible consequences of the change in the legal framework for employment in Sweden for employees from a third country. The chosen methods for this qualitative study, interviews and discourse analysis, complement each other and generate comprehensive data concerning various impacts of the new law. Text analysis based on debate articles relevant to this study's purpose were used to gather foundational material for the analysis, alongside the conducted interviews. Also, the interviews were interpreted as part of the discourse analysis.

3.1.1. Text analysis

To create a well-grounded base for producing data, both debate articles and interviews were used. The debate articles are thought to provide a further understanding of how different actors conceive the consequences of the changed legal framework. Discourse analysis is a way of understanding how “socially produced ideas and objects that populate the world were created in the first place and how they are maintained and held in place over time” (Philips and Hardy, 2002:6). Texts are meaningful first when connected to other texts, to distinguish different discourses

(Philips and Hardy, 2002). Bryman (2012) points out that documents cannot be considered an objective truth of what they report. They have an ulterior purpose; “documents are significant for what they were supposed to accomplish and who they are written for” (Bryman, 2012:555). The context of the articles is always important to get an understanding of their purpose and to whom they are directed (Philips and Hardy, 2002). Documents should be “viewed as a distinct level of 'reality in' their own right” (Bryman, 2012: 554).

In this study, the ten debate articles⁴ chosen comment on the public political debate on migrant workers and migrant work. The articles were chosen from bigger Swedish newspapers with the general Swedish public as the intended audience. Ultimately, the articles were taken from two newspapers. This was not intentionally, but due to that the articles perceived to be relevant were published in these newspapers. It is compelling to analyse texts that “are produced by the most powerful actors, transmitted through the most effective channels, and interpreted by the most recipients” (Philips and Hardy, 2002:75). Thus, a selection of contributions to the discussion on labour immigration by TCNs to Sweden, through various debate articles published in bigger Swedish newspapers was carried out. The articles were written by representatives from various political parties, labour unions, trade industry, and the Migration Board. In 2012, the Migration board implemented more restrictive regulations effecting employers and labour standards. This motivated a sample including debate articles only written sometimes during the time-frame 2012 and 2013 to capture the latest debates on labour migration in Sweden.

There exists an enormous amount of contributions to the discussion, and for this thesis it would be too lengthy a procedure going through each and every one of them. Relevant articles were selected but time and space limitations restricted the sample. It can be difficult to identify texts that are both relevant and manageably for the purpose of the analysis (Philips and Hardy, 2002). However, the selected articles were regarded as sufficient to address the purpose of the study and to “justify an interesting

⁴ See Appendix C. for list of debate articles

argument” (Philips and Hardy, 2002: 74). Since the objective of the study is to raise awareness to the issue, articles from various significant actors were chosen in order to analyse the opinions (Philips and Hardy, 2002).

Both debate articles and interviews were coded into categories generated when analysing the rhetoric. Through the systematic separation of statements into these categories, patterns in speech developed identifying the ways in which participants themselves actively construct and employ categories (Philips and Hardy, 2002). The underlying themes deriving from the findings were analysed in relation to the applied theories. Because of the political context of the study, and therefore also the selected articles, critical discourse analysis was applied to “focus more explicitly on the dynamics of power, knowledge, and ideology that surrounds discursive processes” (Philips and Hardy, 2002: 20).

3.1.2. Selection of interviewees

The study is a qualitative study including seven semi-structured interviews with participants from; two labour unions, *Kommunal, the Swedish Municipal Workers’ Union* and *The Swedish Trade Union Confederation*; one employer organization, *The Confederation of Swedish Enterprise*; one NGO, *Caritas*; the *Migration board*; the *Department of Justice*; and one interviewee preferring to be anonymous. The strategic reasoning behind the selection of interviewees was to give a voice to various relevant actors in contact with questions relating to labour migrants coming to Sweden from third countries. The purpose of the thesis gave an indication of what actors could be potential interviewees providing the needed data for answering the research question. Therefore, proceeding from the purpose of the study, the selection of interviewees came about from purposeful sampling (Bryman, 2012). The priority was given to actors who were thought to possibly provide varying opinions and attitudes on the matter. This could then produce conflicting data (Yin, 2013), and allow, for the exploring at similarities and differences between the various interviewees (Bryman, 2012). The idea was to, by including diverging viewpoints; a nuanced picture of the consequences caused by the change of law would be presented.

3.1.3. Interviews

To obtain purposeful and comprehensive data to answer the research question, the use of qualitative interviews complemented the document analysis. Qualitative interviews have potential to provide rich and comprehensive answers, focusing on the interviewee's understanding of the issue. Also, in contrast to quantitative interviews, they allow the interviewer to move away from the interview guide and follow-up the answers of the interviewee (Bryman, 2012). The purpose was to understand the legal framework's advantages as well as disadvantages through comparison of the interviews. Even though flexible, it is possible to compare answers due to the built-in structure of the interview guide (Bryman, 2012).

To accomplish the purpose of the study, seven qualitative interviews were held with actors⁵ providing data on various issues concerning the new legal framework on labour immigration in Sweden. The interviews provided relevant and pertinent information that gave needed context that has otherwise not been explored within the setting at hand.

The interview guide⁶ was first constructed based on the proposition made by the government and the Swedish Green Party. The suggestions made by Kvale (Bryman, 2012) on how to produce an interview guide was taken into consideration. Additionally, the idea was to cover aspects of the theoretical framework within the guide. As a result, it is possible to apply and test the selected theories in relation to the findings from the interviews. However, the intention was not to construct detailed questions regarding the whole law. Instead it was meant for the interviewees to speak freely about their experiences and understandings on the new law. But as to have an arrangement to fully cover the intended areas of interest for the study, the interview guide was used during every interview.

The interviewees were informed about the study through an informational sheet on the notion behind the study and terms of participation. Before conducting the interviews the participants were asked to sign a consent explaining their voluntary

⁵ See Appendix B for list of interviewees

⁶ See Appendix A for interview guide

participation, the possibility to discontinue the participation at any time, the right to the final transcription of their own interview, and the choice to be anonymous or not. The last few minutes of the recording of one interview were unexpectedly lost because of unknown reasons. However, this should not have affected the total impression of the interview since it was just the very last few minutes that were not recorded. All interviews were held in Swedish at the interviewees' workplaces. All quotes used from the interviews were approved by the interviewees to guarantee integrity and authenticity. Since English is not the first language of the researcher, proof readers assisted to achieve correct translations of the quotes.

3.2. Quality criteria

How to assess quality criteria for qualitative research is widely debated (Bryman 2012; Marshall and Rossman, 1999; Flick 2006). It might be objected that reliability and validity are not criteria belonging in qualitative research. However, the important factor is to assess the production and presentation of data (Bryman 2012; Flick 2006). The researcher will influence the collection, coding and presentation in one way or another (Flick, 2006).

When it comes to validity, referring to “whether the researchers see what they think they see” (Flick, 2006: 371), signifying if the constructions deriving from the collected data “are grounded in the constructions of those whom they studied” (Flick, 2006: 371). The findings should be well-founded in the produced data. The interpretations in the analysis are the researchers' own perception of the produced data. Also, a decision is made concerning what data to use in the analysis. Another researcher might make other choices. However, the bias and influence can be somewhat limited. What the researcher can do to increase validity is to follow the guidelines for analysing interviews and articles through text analysis, and also reflect upon the findings in relation to theory.

It is important to be aware of one's biases as to address, question, and counter act them as much as possible. The researcher can move past bias, critically review literature and interpret generated data by being aware of wearing 'biased lenses'.

3.3. Reflection on the methods

The researcher, when performing qualitative research, cannot escape influencing the work. Therefore it is important to reflect upon the researcher's role within the study. First, there could be noticed a difference between the first and last interview. This could be connected to the knowledge gained through the interview process itself. Limitations as an interviewer were noticed when transcribing the interviews. Potential follow-up questions and new ideas were developed when reflecting on the already conducted interview. This should, however, not be an issue since the interviews were semi-structured. All interviews were conducted originating from the interview guide, and as far as possible the areas were covered. Two interviews did not provide as much information as the rest since the interviews; two officials could not, due to their positions, answer emotive questions. Questions had to be reformulated for them to answer. It would have been ideal to also conduct interviews with political party representatives, but due to time limitations this was not possible. As a means to still include political view points, articles were selected to cover some of the parties' views and opinions on the matter. It is, however, impossible to capture all aspects of the discourse.

4. Analysis

This section presents the results and analysis connected to the analytical framework and follows the same order as section 2. on the theoretical framework: exclusion, exploitation and (re)commodification.

4.1. Exclusion

The 2008 change in the Swedish labour immigration law framework introduced a law that is not only inclusive of EU citizens, but also TCNs. Many sources point out that there are various problems connected to the new legal framework, but that this is not a reason to return to the old legislation that is said to have been more excluding. Exclusion is often connected to a certain time frame (Murphy, 1986), and it could be that the reason for inclusion to a certain extent has to do with the expressed need and importance of competitiveness. Sweden has now opened up its labour market for TCNs and there seems to be the need for highly skilled migrant workers, and consequently increasing the country's competitiveness. The idea appears to be inclusive, to introduce an open relationship (Koch, 2006), to a certain extent, through opening up the Swedish borders and labour market for TCNs. The new Swedish legal framework is demand driven and it is inclusive of both highly skilled and low-skilled migrant workers. The majority of the data sources mentioned this aspect in one way or another, repeatedly focusing on the fact that employers today can decide for themselves which employees are best for the purpose at hand. For the employer, this is pointed out to be a positive change:

“What works much better than before is that the employer decides whom to recruit irrespective of which country they originate from. We think that this is incredibly important, because it is actually only the person responsible for this employment who can anticipate both the short and long term needs, as well as know who you can chose from [to employ]” (Ekenger, Interview. 24 April 2013).

This discourse⁷ is in line with that on so-called competitive immigration regimes⁸ (Sachar, 2006). Sweden is a developed country in search of highly skilled migrant workers. However, the legal framework welcomes both highly skilled and low-skilled migrant workers; thus Sweden appears to differ from Sacher's (2006) discourse on competitive immigration regimes. One reason emphasized in the data explaining why employers employ migrant workers is that the labour supply in Sweden does not match the labour demand. Employers want to hire the person most suitable for the job, for the business to develop and expand.

“One has to be aware of that there may exist unemployment in a country, but still exist a lack of labour within certain occupations or sectors, especially if you look at geographical parts of Sweden. [...] labour migration constitutes an important part as a complement to the labour market”. (Firpo. Interview. 26 April 2013).

Interviewees and debate articles point out that when and if everything works according to the rules, then there is freedom of movement and this is in favour of all parties involved; the employer can employ the person best suited for the job, Sweden can stand strong against future expected demographic challenges, the mentioned mismatch in the labour market is targeted, positions are filled that Swedish workers are less willing to take, and the employees are said to have the opportunity to develop their skills⁹ and also receive a higher income than would be possible in the country of origin:

⁷ A contrasting discourse expressing that employers actually are looking for cheap labour is discussed in sections 4.2 and 4.3.

⁸ See section 1.1. for more information on 'competitive immigration regimes'

⁹ It is not clear from the data if developing skills include both highly skilled and low-skilled workers. Generally, the generated data refers to migrant workers as a homogeneous group. Sometimes it is explicitly referred to highly skilled or low-skilled workers.

“It is about mobility, mobility across borders contributes in the long run to a development and equalization that we actually want. A positive equalization, actually meaning that people earn money that they otherwise would not have.”
(Ekenger. Interview. 24 April 2013).

Still, much of the emphasis is focused on the benefits for Sweden and the importance of the reform for the country's competitiveness.

The new legal framework implies that it is much easier to become employed in Sweden, and this development is said to have decreased the black labour market that, according to the sources, was widespread before 2008. Today migrant workers enjoy the possibility and legal right to be employed under decent work conditions. Once in Sweden, the migrant worker is allowed to change both work and employer¹⁰. A new work permit application has to be filled out, but this can be filed in Sweden. The change in labour immigration law has thus recognized the existence of labour mobility, opened up for what is referred to as free movement, and is said to have decreased the incentive to work illegally. According to one interviewee, Sweden differs from other countries in the sense that other countries might have an inability to admit the need for legal ways to enter a country to work. If there is no easy legal way to enter, the risk for migrant workers to be exploited might increase.

The legal framework allows and makes it easier to include TCNs, in the Swedish labour markets, who to a certain extent are employed on the same conditions as Swedish workers. However, the legal framework is not without various restrictions for TCNs. It implies certain exclusionary features (Murphy, 1983) towards TCNs, and thus, the Swedish government is practicing exclusionary closure. However, according to O'Brien (2010), it is nothing unusual for a nation state to exclude non-members while fully include its members. Through restrictions TCNs are legally being made inferior by the Swedish government. They are subordinated Swedish workers. Consequently, migrant workers are subjected to exclusion through distinct conditions

¹⁰ see section 4.2.

and limitations on the labour market, which the Swedish workforce is not bound to. First, the migrant worker is supposed to be tied to one occupation for the first four years of working in Sweden, while for the first two of these four years, it is required to stay tied to the same employer. Second, if migrant workers, would like to, or find themselves impelled to change employers, they have three months to do so, after leaving the original place of work. If three months would pass without finding new employment, the migrant worker has to leave the country and if not, stay in Sweden on an illegal basis. Third, after four years, migrant workers may apply for permanent residency.

TCNs are excluded, through the mentioned various restrictions, from the labour market for the reason that they are not Swedish citizens. Migrant workers are accepted on the grounds of various restrictions that the domestic workforce is not subjected to. Migrant workers are subjected to exclusion since they are in Sweden under a temporary residence permit connected to the work permit. Thus, they are residents destined for the labour market under restrictive conditions (Attas, 2000). But the exclusion is not insuperable since they do have a chance to obtain a permanent residence permit after four years of stay.

“That is great. Possibly, one could apply earlier. Now it is four years. As a result of getting a permanent residence permit one has exactly the same rights as a Swedish citizen, except for the right to vote in the parliamentary election. It is possible that four years is too long of a time to wait for that, [...] because then you have the safeguard that you can stay here. Then you are no longer dependant on having employment for staying [...]” (Ekenger. Interview. 24 April 2013).

However, the rule appears complex, since others express that if the working conditions during the four years have not been met according to the rules, then it appears to be difficult to acquire the permit. It is suggested in one debate article that

the employee should, together with the employer, decide on the salary, instead of following what is the norm in Sweden. The writers assert that this would make it easier for the migrant worker to enter the Swedish labour market. However, they do not discuss the bargaining position of the migrant worker in relation to the employer. The quote below illuminates what is expressed to be an issue when trying to acquire the residence permit after four years of work:

“The salary must comply with the collective agreements after four years, so even though you've gotten a salary of 17700 that four years ago complied with the collective agreements, if you have not received any raises then you are out of luck. [...] It's not just salaries, but all the employment conditions, so it's also insurance and that stuff. And if you have an employer who has not paid the insurances then you haven't worked during these four years according to the rules. You can stay, but you cannot count that [those four years]. Either the employer has to pay retroactively or you have to start working and hope you make the next four year trial. [...] It is terrible.” (Ingesson. Interview. 25 April 2013).

A migrant worker in Sweden is legally not dependant on or bound to an employer in practice. Yet, it is clear from the data that the various actors think that this is not working in practice. They express the idea that migrant workers might not fully be aware of the laws: that they do have the legal right to change employer. Unclear information on the rules may create dependency for the migrant workers on their employer. Today there is a rule saying that migrant workers are supposed to be four years in the same occupation, and during the first two years with the same employer.

”I hope and believe that one will reconsider this [...]. For the sake of the individual to have the possibility to vote with one's feet, if not given the promised conditions, then that is a great strength if having the possibility to

continue searching [for work]. Now there is such a possibility to resign and search for a new job during three months [...] That makes it even more confusing to have this rule to be bound to the first employer.” (Ekenger. Interview. 24 April 2013).

The three months rule implies a risk of deportation. The risk of deportation if not employed could, in practice, make the employee dependant on the employer's good will. It can be difficult to find a new job and thus, the employee prefers to stay in an unsatisfactory employment. Migrant workers are in Sweden on basis of the work permit, and if the permit is withdrawn and they cannot find another job, they have no legal right to stay in the country. However, the migrant worker is free to find a new position and employer.

“A labour migrant who leaves the employer does not automatically loose the residence permit. If giving notice there is the possibility to stay three months in Sweden to search for a new job. Only then the permit may be revoked. That possibility, to stay and search for a new job during three months, is regarded by the government as well balanced, which among other things is made clear by the bill to the current law” (Firpo. Interview. 26 April 2013).

The actors expressed different opinions about the three months rule. Some thought it was too long, and some too short. Some did not know how long it should be, but that it should change. Some thought the current situation is okay since it actually is the same timeframe for an EU citizen coming to Sweden in search for work.

“I had wished for a bit more than three months because one has to find a new job and that takes time.” (Joseph. Interview. 25 April 2013).

“That [3 months] is a bit too long time for a person who has been here such a

short time and who has been exploited and not gotten his or her salary: that person has no one. To be here during three months living under bridges, as they do in Stockholm, creates misery and unbelievable suffering for people. They might not have money; they might not be able to get home. And then it is a failure to come home, it can be relatives and friends who have saved money to send one person here as for that person to then bring home money. People commit suicide in Sweden because they failed, such horrible stories are documented, they do not dare to come home and tell this to family and friends.” (Olsson. Interview. 18 April 2013).

“You have come here, and you have three months to find a new real job that you have to state in the application, you have no Swedish work experience, you have maybe come to the hotel- and restaurant profession where the unemployment is 9,10 %, and you will fight with all the others [about the jobs]. No, that is difficult.” (Ingesson. Interview. 25 April 2013).

There appears to be a lack of informing TCNs about the legal framework¹¹. Unawareness of the rules could lead to exclusion since they would not know what rights they are entitled to claim. TCNs should enjoy the same labour market conditions as Swedish workers. Still, it appears as though large parts do not.

It is suggested that the relationship between an employer and a TCN can be unequal if the latter is in a vulnerable situation. Thus, the relationship can be characterized by dominance and power (Murphy, 1983) on the expense of the migrant worker. For example, uninformed migrant workers might have little voice when it comes to the bargaining position. Moreover, the employer is in charge of the employment for the migrant worker who is in Sweden due to the job. It may be expressed that irresponsible employers exercise power downwards to exclude migrant workers from their legally entitled work conditions (Murphy, 1986). They are

¹¹ see section 4.2

subordinated the employers, and thus the employers may make profitable deals in the labour market if not meeting the legally correct work conditions. It is suggested that this would be cheaper for the employer than to employ on decent work conditions. The stay in Sweden is based on being here to work. If not having an employment there is legally no reason for the migrant worker to stay. It is expressed in the data that there is a risk that irresponsible employers take advantage of this situation and practice power and dominance on the expense of the migrant workers.

4.2. Exploitation

Speaking of words connected to abuse of migrant workers by irresponsible employers in Sweden, the data demonstrates: *abuse or exploitation*¹², *job trafficking*, *cynical treatment*. Every source touched upon this topic, but emphasized it to different extents: *some occupations, the majority follow the rules, a small part is irresponsible, both irresponsible and responsible employers*, and that *a shadow society has developed*. Further there are descriptions of migrants as *vulnerable*, *without legal rights*, or *enslaved*. Thus, it is expressed in the generated data that exploitation of migrant workers does exist in the Swedish labour market. There appears to be cheating by irresponsible employers taking advantage of the legal framework and consequently also of the migrant workers.

It is pointed out that many migrant workers benefit from coming to work in Sweden. They have the possibility to develop their skills and other positive opportunities. However, the data suggests that migrant workers, often with a seasonal job, seem vulnerable and exposed to exploitation on the Swedish labour market.

However distinct the views on the spreading of irresponsible employers in Sweden, it was expressed that they do constitute a problem leading to the risk for certain migrant workers to be exploited in various ways. Migrant workers are at risk to be subjected to worse work conditions than is stated in the offer of employment:

¹² 'utnyttjande' in Swedish

they can be forced to work for free, and even be exposed to job trafficking. Irresponsible employers seem to regularly take advantage of certain migrant workers since they fail to compensate them as fairness requires (Mayer, 2007): they are deprived of their rights and salary (Basok, 2004). The data expressed that all workers in Sweden should enjoy the same working conditions, and that there should absolutely not exist two separate models: one for Swedish workers and one for migrant workers. However, there are migrant workers who appear to be insufficiently compensated, cheated on, and in the end it is the employer who gains in the un-fair exchange. Thus, according to Mayer (2007), the migrants are exploited.

It is pointed out that abuse and cheating the system have always existed. The difficulty to criminalise irresponsible employers is expressed. Different from the old legal framework is that now there is an easy and legal way to access the labour market that should decrease the incentive to work illegally. This is also said to bring with it diminishing abuse since it is easier to discover if migrant workers do not enjoy the right working conditions. Still, it is pointed out that exploitation exists because employers now have the discretion when deciding who can come to Sweden to work. It is pointed out by one interviewee that it is a flaw not to know the reason behind why employers take in TCNs.

Some migrant workers appear to be exposed to exploitation due to unequal power between them and the employer. They are being used in an unjust manner (Nielsen and Ware, 1997). According to the Marxian tradition workers are exploited in general. This is an inherent feature of capitalism (Nielsen and Ware, 1997; Koch, 2006). It appears as though migrant workers in Sweden risk to be exposed to extra-exploitation; they tend to end up in a vulnerable situation and are hence easy targets for exploitation. Migrant workers are new in Sweden, and if not aware of the rules, their rights and obligations connected to their stay, due to lack of information or misleading information, there is a risk for exploitation. On the other hand some migrant workers know that they earn less than the rules allow, and that they are subjected to bad working conditions. They do accept this since they earn more in

Sweden than they would in their country of origin. It is suggested that these are both highly skilled migrant workers, but also low-skilled migrant workers, who know where to get current and valid information.

“They want to provide for their family, so it is essentially about, even though knowing it is not good paid, the norm, they are not happy with this, they know they work many hours per day. But the salary they can collect may help their family, that is decisive.” (Joseph. Interview. 25 April 2013).

Thus, it appears as though some migrant workers participate in the exchange even when they know it is wrong. It is pointed out that they subordinate themselves to these working conditions as their salary is better in Sweden than in their country of origin, and the point of migrating for work is to work, and often to save money to benefit the families and relatives back home. However, un-fair exchange is exploitative even if both parties benefit from the exchange (Attas, 2000; Mayer, 2007). For the migrant workers to have the possibility to enjoy a fair exchange and have the chance not to be exposed to exploitation, they need to know the legal framework and terms for decent work conditions. Due to lack of information and vulnerability, sometimes migrant workers are forced to work a period of time without payment when arriving to Sweden. This is said to sometimes occur within some occupations, such as care companies and cleaning companies. It seems that some migrant workers are unaware of the rules, and think they are completely dependent on the employer, who they do not dare oppose:

“Since many of the employees do not know their rights, they think they are totally dependent on the employer. They do not dare to oppose their employer. How often does a regular Swedish employee oppose their employers? [...] Most people [Swedish employees] do not dare to do it, then think about someone coming from outside without knowing anything about the cultural- and legal

contexts in Sweden. Often, the information he or she gets is based on wrong information that is conveyed via a recruitment agency or the person using them.” (Joseph. Interview. 25 April 2013).

There does not seem to be a comprehensive information network for migrant workers about their rights and obligations. Certain actors have their own information channels to reach migrant workers with the purpose of informing and clarifying the rules to them, but they do not have the resources to reach out to each and every one. Many of the authorities in Sweden, such as the Migration Board, the Swedish Tax Office, The Swedish National Insurance Agency, provide information. But it seems that some migrant workers do not fully take part of this information. The lack of comprehensive information reaching the migrant workers about their legal rights is a contributing factor to the risk of exploitation. This is systematically pointed out in the data. The lack of knowledge is taken advantage of by irresponsible employers providing misleading information, informing wrongly about current rules or not informing at all, and thus depriving the workers of their rights. Unawareness of the legal framework is used by irresponsible employers as a means of pressuring migrant workers to work under working conditions not in line with what is praxis in Sweden.

The threat of deportation also contributes to a vulnerable situation for the migrant worker (Reilly, 2011; Walia, 2010) who might surrender to bad working conditions. They might be aware of that it is wrong and unfair but they cannot find a new job, where the legal framework is respected, within three months. Or it might be so that they are actually not aware of the fact that they legally have the right to give their notice and to stay in Sweden during three months.

“It often happens that they do not know. That's what we have seen under the new law as well, attempts to exploitation [...] If the employee wants a job, they will accept any conditions [...].” (Joseph. Interview. 25 April 2013).

What appears to be a prime problem and flaw in the legal framework is the relation between the legally non-binding offer of employment on which the work permit is based and the legally binding work contract that is signed once in Sweden.

“A problem is that many employees are exploited by irresponsible employers. One part of the problem is that one has to present an offer of employment when applying [for the work permit]. The offer is not binding. For many it means that you come here with an offer that, once in Sweden, changes to an employment contract. The content might then be different. That the offer has the logotype of the Migration Board can surely make many people believe that it is a binding, official document.” (Lindberg. Interview. 8 May 2013).

The difference between the work offer and work contract appears to confuse workers, and irresponsible employers cheat the confused employees out of work conditions they legally are entitled to. The data suggest that certain actors think the offer of employment should be legally binding. However, it is expressed that there are problems with having binding contracts. Due to long administrative waiting times, often several months, it is difficult to sign a legal contract, not even knowing if the permit will be issued. Then the conditions should be exactly the same when coming to Sweden, which could be after several months; if the employment even still exists. The business company might not be able to guarantee the same work conditions for a longer period of time. It is pointed out that running a company is a risky business. It might not even be clear for how long the company will exist. If the work terms have changed or if the employment has ceased to exist, it is a problem for the employee, not the employer, and the three months rule applies. When coming to Sweden and realizing that the offer of employment is not legally binding puts many migrant workers in a vulnerable situation. They might have highly invested for making it possible to come to Sweden to work, and now they might be in the hands of an irresponsible employer who then sets new and un-fair terms of exchange conditions.

“This risk division, the reasonable thing is that all three [employer, employee and society] shall share the risk. Today 100 % is placed on, as we see it, the employee. Often it is they who have paid for the flight ticket; maybe they have quit their old job in their country of origin, which there are lots of costs associated with, so they can never be free from the risk. But then we say that the employer must take some of the risk, and then we say binding employment contracts, not just this offer of employment that is not legally binding.” (Ingesson. Interview. 25 April 2013).

From the generated data it is not possible to know to what extent force (Attas, 2000) is included when making migrant workers work under other conditions than firstly stated. Neither is it possible to say how frequent it is for the stated work conditions in the offer of employment to change. Still, it appears that migrant workers can be vulnerable due to the confusion caused by the legally non-binding offer of employment. However, the vulnerability and change of contract varies from case to case.

A visible gap in the legal framework expressed in the data is the control mechanism for making sure that the working conditions for TCNs are followed as they should. The lack of oversight may result in migrant workers being deprived of their salary and other rights that they should enjoy when working in the Swedish labour market. Some actors, employer organizations and labour unions appear not to have legal rights to do random controls once the worker has arrived to Sweden.

The labour unions are allowed to do check-ups if the employment is under a collective agreement. If there are collective agreements in a company, or if the migrant worker is a union member, the union is then able to review if salaries have been paid according to the union agreements:

“We say that if you [the migrant workers] want to become a member [of the

union] then you are most welcome, so we can help you. Because those who we can help are our members. We helped many non-members at first, but then we had so much to do just with our own members who are not getting their conditions met, so we have had to prioritize a little.” (Olsson. Interview. 18 April 2013).

Employer organizations also do check-ups in case they hear of any irregularities connected to the employment. Other than that, the same supervision as for other Swedish workplaces applies; the Work Environment Authority (WEA), Tax Office, and the Police are in charge. If migrant workers are not members of a union, they may turn to a private lawyer for assistance in case they would like to pursue a cheated salary. Also, they can always turn to the WEA if the work problems have to do with the work environment. The WEA is also the supervisory authority when the work place does not have a collective agreement, and the workers have worked too many hours. Thus, if migrant workers want to file a complaint against an employer, they could talk with the unions, their employer organization, or other authorities, depending on the problem. They do have the possibility to demand their legal rights. The difficulty is that migrant workers might not be aware of this:

“What knowledge does an employee from Cameroon have about that we have a Work Environment Authority.” (Olsson. Interview. 18 April 2013).

As mentioned, controls are done if an issue arises. However, interviewees indicate the controls as currently being insufficient for overcoming exploitation:

“You know who is committing the crime, plain and clear, but still we do not have a legislation to get those who publicly are exploiting. Everyone is perplexed and cannot do anything.” (Joseph. Interview. 25 April 2013).

Since 2012, stricter controls of the working conditions are implemented by the Migration Board due to noticed cheating and many migrant workers being deceived of their salaries. The authority verifies if there is any activity in the company and employers are obliged to demonstrate that they have the financial means to pay the salary stated in the offer of employment:

“We chose certain occupations where we could see many problems. We then placed higher demands on these occupations. This is really a natural way to work and gives bigger effect than random controls. The new demands play an important role in the work to protect people from exploitation by companies who do follow the rules. Since the demands were adopted there has been a decrease in the number of granted applications for the work permits within many of the occupations included by the stricter demands.” (Lindberg. Interview. 8 May 2013).

The Migration Board has a new feature called 'certification,' which means that certain companies that have proven that they do not cheat the rules are certified and the turnover time for them when employing TCNs is five days. One interviewee claimed, however, that the recruitment need has to be at least 25¹³ employees to become certified, and stressed the unfairness for small or new companies who are in an expansive period. The new rules are said to have improved the work conditions for certain occupations, such as berry pickers. Now the employer has to guarantee a salary according to collective agreements. However, cheating still exists:

“Despite the increased control it is working far from perfect. We still see that there appears to be cheating and that the employee is exploited in the Swedish labour market.” (Lindberg. Interview. 8 May 2013).

¹³ The mentioned figure has not been verified by the author. For further information on certified companies, please visit www.migrationsverket.se

"It is not possible to criminalise dishonesty; if one is dishonest one usually finds ways to exploit someone else". (Joseph. Interview. 25 April 2013).

Controls might be thought of as something positive that should be in favour of the migrant worker. However, when controlling the work conditions and finding out that they are not in accordance with the promised deal on which the work permit was issued or what is the norm in Sweden, the worker risks losing the employment if the employer does not change the conditions. The worker then loses the job due to poor work conditions, and has to find new employment within three months.

"[...] many react to that no one is controlling [the working conditions/salaries], but with the current legal framework then I do not see that it would help a damn much to check. One would not charge the employer for anything, but the employee would be out [of Sweden]." (Ingesson. Interview. 25 April. 2013).

4.3. (Re)commodification

The new legal framework is said to be a great reform for Sweden as a country, increasing competitiveness with the possibility to employ highly skilled migrant workers who are needed in the Swedish labour market. This goes hand in hand with the notion of the competitive state in the neo-liberal paradigm, where it is said to be difficult to resist commodification (Garcia, 2006; Bandelj 2011).

As mentioned before, the data suggests that work is what legitimizes the stay for the migrant worker in Sweden. From the data, it may be suggested that migrant workers in Sweden are commodified to the extent that they are here for work purposes only. However, it could still be expressed that they are not commodified enough for the labour market since they, to a certain extent, are not permitted to freely compete on the Swedish labour market. They are supposed to be connected to one employer or at least one occupation for two consecutive years, and the following two

years to a distinct occupation. Migrant workers have the right to be a part of the labour market, but are subjected to limited access and thus excluded to fully take part. Within the neo-liberalism everything is supposed to be sold and bought without restrictions (Garcia, 2006). The idea to be destined to one work sector alone seems not to correspond well with the capitalistic competitive thought of an open market.

There are conflicting ideas in the data concerning the demand for migrant workers, and migrant workers being perceived as commodities. There are two contrasting discourses to be found: first, the idea that certain migrant workers are being treated as cheap labour, and that employers, see an opportunity to access docile labour instead of employing Swedish workers:

“The employer knows that they [migrant workers] are prepared to work 12 hours. A Swede is not allowed to do that, because one does not have the strength to do that. They do it, they can work 7 days a week. If it rains or snows or whatever. That is to say, they earn so enormously much more than what they get in the country of origin so they are prepared to subject themselves to bad conditions [...] and if they get sick then they do not demand, they do not know all their rights. [...] I am pretty sure one gets out more work from them than what one gets from someone living in Sweden, per worked hour.” (Olsson. Interview. 18 April 2013).

“It has for us, since the law changed, been obvious that employers see their chance to get hold of cheap and docile labour to their activities” (Bengtsson and Ojanne. Debate article. 2013).

The second expresses the idea that the employers, and Sweden as a nation, are in need for qualified and suitable employees and that migrant workers then have the opportunity to legally come to Sweden to earn a living or develop their skills, exemplified by the quote below:

“It is about individuals choosing to come to Sweden to work under a longer period or shorter period of time. That is a choice you make in relation to what one would be able to achieve in one’s home state” (Ekenger. Interview. 24 April 2013).

Within the concept of (re)commodification it is important to consider the fairness of the transaction and the relation in bargaining power between the parties involved (Garcia, 2006). It could be suggested that migrant workers are more exposed to greater vulnerable situations than the regular Swedish worker due to lack of information and consequently, lack of voice in the bargaining situation with the employer. As expressed in earlier parts of the analysis, it is suggested that certain migrant workers are vulnerable, and that they are in an inferior bargaining position in relation to their employer. It is expressed in the data the employers look both for low-skilled and highly skilled migrant workers. The low-skilled occupations are sometimes referred to as jobs which the Swedish domestic workers are not willing to accept: low-skilled jobs where the unemployment rates are high. It may be, for example, that the jobs are located in less attractive geographical parts in the country. Due to the described circumstances migrant workers could be thought of to be in a great bargaining situation. However, the expressed lack of voice for certain migrant workers might be decreasing their bargaining power (Garcia, 2006).

The level of voice migrant workers have over their own employment terms can be discussed. They might or might not know the rules. It seems that the case can be that either they are not happy with the terms but accept it, and thus subordinate themselves, anyways. Or they know that they have the right to stay three months in Sweden in the search for a new job and can then say no to unfair deals. The complex situation arises when they are not aware of their rights. This could implicate that they do not have a strong voice when it comes to the terms for their work conditions, and are thus situated to a great extent in the paradigm of re-commodification. Without a

voice over their own employment terms it could be speculated if it is more accessible to treat migrant workers as a commodity. As mentioned in section 4.1., one debate article expressed the idea that migrant workers would agree upon a salary together with the employer, irrespective of the collective agreements. This would make it easier for the migrant worker to access the Swedish labour market. It is also expressed that the salary should still be big enough so that the migrant worker would decide to come to Sweden to work. The question is how big of a voice the migrant worker actually possesses, and how great the bargaining power is if not having a norm to lean against. Other data suggests that the offered salary in Sweden might be good, in comparison with the salary in the country of origin, but that it can be considered a 'starvation salary' for a Swedish worker. Hence, drawn from the theoretical concept of (re)commodification this would make the migrant worker a commodity for the labour market.

However, it is implicated that the current legislation for migrant workers in Sweden does take into consideration that migrant workers are persons that are not treated as if being pure commodities. Besides from having the right to almost the same working conditions as Swedish workers, they also enjoy the right of family reunification.

“The law does not just take into consideration that we need their labour, but also to protect the basic rights of the individual, for example the right to a family life. The right to family reunification is included. There are not such restrictions: once you have gotten your permit in Sweden everyone are treated equally. That is missing in most countries: they need employees, no one else. Then we are not thinking about that he or she have a family, the same dreams and expectations as everyone else [...] but in our debates and discussion it does sound as if the law is grounded almost in evil, which is a bit strange, then we have not seen the positive in the legislation [...] every state has different approach to migration [...] we want your labour, when it is not needed, go

home. On the basis of that context Sweden has another viewpoint.” (Joseph. Interview. 25 April 2013).

Exploitation of migrant workers is expressed to have occurred even before the change in the legal framework. However, it is now said to be easier to access a work permit in Sweden, and this could also be a potential gateway to access the rest of Europe. It is suggested that consequently today there exists a market where work permits are being bought and sold, and also where organised crime takes advantage of the expressed few controls on the reasons behind an employer or employee are applying for the work permit. It is also said that few sanction possibilities towards cheating contribute to cheating. The notion of trafficking persons for work purposes is expressed in the data. It is not indicated if this phenomenon is widespread, but it is indicated as existing. People are tricked to pay fees for a work permit, to a kind of middleman between the Migrant Board and the employee, even though this does not exist legally. They are then promised different kinds of work conditions but in the end this is not fulfilled. Once in Sweden the migrant worker is used as labour power or for sexual abuse, Also, they are sometimes forced to work for free. It is suggested that migrant workers destined for the Swedish labour market have been sold as labour power in Europe. Thus, the migrant workers become a commodity on the Swedish and European labour market.

“They [Hotel & Restaurant Union] have met employers who have said: ‘We get offers for labour market immigrants all the time. Also, people come here saying that, you can buy chefs from me, you can rent them, and then they have invited restaurant staff (to Sweden) that becomes some sort of black employment agency. They are selling them, not as a real recruitment agency but they are cheap and they are worth money because they are cheap. Then they are sold to the next employer. That is trafficking, trade with people. And that absolutely happens” (Ingesson. Interview. 25 April 2013).

“It [the current legal framework] has also opened up for job trafficking and exploitation of migrant workers. The information on the extent of the criminal trade of work permits that has established in Sweden is alarming”. (Lindholm et al. Debate article. 2013).

“[...] it is a human right to work. But it is not a human right to own and have at one's disposal the labour of others”. (Bengtsson and Ojanne. Debate article. 2013).

When residing in Sweden for twelve months or longer, a non-citizen may be nationally registered and is then entitled to enjoy almost the same rights, both employment-based and residence-based, as a Swedish citizen. From the data it is not possible to distinguish how the situation looks concerning migrant workers and their livelihood without reliance on the labour market (Holden, 2003) when not nationally registered. As seen in section 4.1, it was suggested that some migrant workers do not have enough resources to maintain a living if they would lose their job. Some actors expressed that this is an issue and pointed out that migrant workers might only be protected, in the sense to maintain a living outside the labour market, if having their own private insurance. However, according to section 1.1.4., migrant workers should be covered by employment-based benefits as Swedish workers, and the insurance is valid during three-months after finishing working. Migrant workers staying in Sweden for less than a year are not entitled to health care compensation and should therefore sign their own insurance. From the data it is not clear to make statements about to what extent migrant workers take part of employment and residence-based benefits and allowances. However, from the collected data irresponsible employers seem to intentionally hide information about working and residing in Sweden from certain migrant workers. Employers might not pay the insurance fee, or not pay the right amount. Also, one interviewee mentioned migrant workers who live in misery

when not having a job. There is a risk that they have not been informed about the rights to benefits. They are exploited, due to unawareness, on the Swedish labour market and not aware of their entitlements and thus, cheated on benefits and allowances. By law, migrant workers are entitled to take part of employment and residence-based benefits. What benefits they are entitled to depends on the lengths of their stay, income and for how long they have working in Sweden, but they have the same rights as Swedish workers. However, if not being aware of the rules, not registered and thus not applying for benefits, how is a migrant worker supposed to maintain a living outside the labour market?

5. Conclusion

5.1. Summarizing discussion

This study has investigated the Swedish labour immigration law for third-country nationals, TCNs, who are persons coming from outside the EU, ESS, and Switzerland. Data, generated through conducted interviews and document analysis, shows how certain actors in contact with the issue perceive the current situation for TCNs. The produced data was then examined through the lenses of the analytical framework, consisting of closure theory, exploitation and (re)commodification.

First, Sweden wants to participate in the search for highly skilled migrant workers to address the mismatch in the labour market, and also to contribute to competitiveness on a global scale. The Swedish immigration law is therefore, to an extent, inclusive for TCNs. However, Sweden practises exclusion for migrant workers and the terms for their participation are set by the Swedish government. Migrant workers might legally be entitled to the same working conditions as Swedish workers, but they are excluded from taking part in the Swedish labour market on the same conditions as Swedish workers. The idea to return to the former system is mentioned in the data, but others think that would be a step in the wrong direction claiming that inclusiveness is better, but that improved control mechanisms needs to be developed. The employer seems to dominate the relationship due to the various restrictions in combination with lack of awareness of the rules. Thus, it could be that the employer, if irresponsible, sets the terms for the exchange differently from what is in the offer of employment.

Second, irresponsible employers are a main focus throughout the data. They constitute a complex problem indicating that it is possible to take advantage of migrant workers within the current Swedish system. Certain migrant workers tend to be vulnerable and subjected to unequal bargaining positions as a result of their visa status on the labour market. Lack of awareness of the legal framework and thus their rights and obligations could make migrant workers believe they are not allowed to

stay in the country in search for a new employment. Instead, they are possibly vulnerable victims exposed to exploitation by irresponsible employers treating them as commodities, and not sufficiently rewarding them. There are many authorities to which the migrant worker can file a complaint if being exploited. However, if not aware of the rules it is difficult to know where to turn. The whole situation causes that some migrant workers are subjected to what could be called extra-exploitation, when departing from the Marxian analytical concept of exploitation. A big issue appears to be the offer of employment which causes confusion since it is not a legally-binding contract. However, it is pointed out that there are difficulties connected to making an offer binding: long administrative handling processes and also, companies might not be able to promise conditions for a time-period of two years, not even knowing they will exist in two years' time. Stricter controls to discourage exploitation appear to hit the migrant worker who will be subjected to the three-month rule if authorities find out the work conditions are not in accordance with what is the norm in Sweden. It is pointed out that the risk dichotomy is only on the employee. There are appeals for the possibility to sanction against irresponsible employers.

Third, there is a risk for migrant workers to be treated as commodities in the Swedish labour market due to their indicated un-equal bargaining position in relation to the employer. Also, their status in the country is based on being in Sweden for work purposes only. However, by law they are supposed to be de-commodified to the same extent as a domestic worker. The framework of this thesis does not allow for an investigation how that works in practice. Some migrant workers on work purpose visas appear to be exposed to cheating and the loss of voice and bargaining power over their own employment terms. Migrant workers are entitled to both employment-based and residence-based benefits and allowances. However, the benefits depend on the salary and how long the person has worked in Sweden. Thus, the possibility to survive outside of the labour market differs between individuals. However, it seems that certain migrant workers are not aware of how the Swedish system works due to

irresponsible employers. Would they apply for the benefits they are entitled to? From the data it is expressed that they do not enjoy their entitled benefits. However, this theme needs to be investigated further. For those planning to work a shorter period of time the recommendation appears to be to buy private health insurance. Once again, they are here to work and there might not be alternatives for them to the labour market. Decommodified or not, in the sense of being able to maintain a living outside the labour market, it can be argued that migrant workers are not commodified enough since they cannot freely move and compete on the labour market. In the neo-liberal paradigm everything is supposed to be sold and bought but migrant workers in Sweden are subjected to various restrictions limiting them to sell their labour power as they like. The employers then miss out on what could have been a good match for a job position. Is Sweden, with the objective to be competitive on the global market, looking for a commodity: highly skilled migrant workers? It appears that certain migrant workers in Sweden are used for sexual abuse and being exploited as commodities on the Swedish labour market. They are denied the promised conditions. The work permit is suggested to be a gateway into Sweden for other purposes than stated in the work permit application. The market for work permits is mentioned and as well as how organised criminals use the system for criminal activities.

The Swedish legal framework for labour immigration for TCNs can be understood as a complex policy according to actors in contact with labour migration; it has both flaws and strengths. The results of the study indicated two distinct discourses: the employer's right to self-determination and the assumption of various problems in the legal framework. However different emphasis on discourse between actors the data systematically opposes irresponsible employers taking advantage of the system and migrant workers. It seems to be difficult to overcome the complexity of problems connected to this, since it currently appears to be the migrant workers who carry the major part of the risk when denouncing exploitation.

5.2. Limits and weaknesses

This study contained a limited number of participants and a limited selection of articles. It would have been a strength to have collected data from a wider group of participants plus analysing other documents than newspaper debate articles. The study would also have gained on a further developed interview guide and deeper interviews. This is a qualitative study which purpose is not to make broad generalisations. Instead, this is an introduction towards further investigations on related themes. However, due to time and budget limitations, as well as space limitations, it was not possible to expand and further develop the study.

Unresolved questions have been raised during the process of this study. These themes were beyond the framework for this study, but could be suggested for future research. First, to involve TCNs in a study would be beneficial as to provide an insight on how individuals themselves understand their current situation in Sweden. That would enable investigations on flaws and strengths regarding their understanding of the legal framework, and could lead to possible suggestions for policy development. Second, it could be constructive to research attitudes of political parties in connection to closure theory, to see how to further develop an inclusive policy that currently appears to be contradictory. Third, this study does not explicitly differ between highly skilled and low-skilled migrant workers or long-term employees and seasonal workers since the data did not explicitly give that much information to differ between the groups. They are legally subjected to the same conditions, but how does that look in practice? More in-depth research on various categories and variables in relation to closure theory, exploitation and (re)commodification is to ask for to map the strata of migrant workers in Sweden.

5.3. Final remarks

Labour migration is a growing global issue; labour migration is here to stay and the relevant question is not if people will come to Sweden to work, but how to treat them. Globally, the most sought-after group is the highly skilled migrant workers. Sweden is therefore an interesting case since we do include highly skilled and low-skilled

migrant workers on the same conditions. This is important and sends out signals that people are welcome here, not just highly skilled, but everyone. This indicates that Sweden is a progressive country. However, it could be argued that TCNs are allowed to come to Sweden to work due to reasons of competition between countries, not due to solidarity, and to be treated as equals on the labour market. Thus, to what extent is Sweden different from other countries? Labour exploitation and exclusion are unpleasant issues but it is clear from the present study that this happens in Sweden today. The concept of exploitation may be connected to commodification in the labour market: are migrant workers exploited, by the Swedish government, since they are subjected to restrictions?

The discussion competitive country versus cheap labour is also prevailing in Sweden. It is essential to investigate the consequences of the employer-driven policy since TCNs are exposed to various restrictions which are legitimized on the basis of their nationality. As in many other countries, seen in sections 1.1. and 1.2., the life situation for some migrant workers in Sweden may be characterised with vulnerability and lack of bargaining power. It is not my intention to reduce migrant workers to powerless and helpless victims without having a voice of their own. However, it appears that some of them are exposed to wrongful treatment in the labour market and that should be enough to be considered a problem requiring to be targeted. The data is not explicitly focused on that migrant workers currently should be subordinated Swedish workers. Still, since some migrant workers are assigned jobs that domestic workers are unwilling to take these persons are consequently perceived as inferior. The Swedish system might be characterised by openness compared to other countries. Yet, migrant workers are not employed on the same basis as Swedish workers, and it is a challenging thought to imagine a reality where they were. Instead of returning to the old system, more ways should be developed than those already in place for migrant workers to access essential information concerning their stay and some kind of operative and effective control mechanism should also be implemented. Even more measures than already taken are needed to

further decrease the risk of migrant workers being viewed as commodities ready for exploitation on the labour market. However, it can be asked if it is an obligation for the employer to inform the employee about everything connected to the Swedish labour market, or if it is up to the individual to actively search for that information. In the neo-liberal era cheap labour is sought-after and irresponsible employers will pursue this. They will always try to cheat the system. This does not necessarily denote that the legal framework is altogether weak, but policymakers should consider ways of how to empower migrant workers to be more in charge of their own lives. It is also not possible to know, from this study, to what extent the legal framework facilitates cheating. However, a greater challenge is how to be even more inclusive towards TCNs since that would imply to have the rights to fully entering the Swedish labour market.

6. Executive summary

In 2008 the Swedish government and the Swedish Green party reformed the Swedish labour immigration law for third-country nationals, TCNs. The reform entailed a changed focus to an employer-driven policy, where no difference is made between high-skilled and low-skilled migrant workers. This implies a changed emphasis to an economic problem solving focus. Reasons behind the change in the legal framework were demographic challenges, revitalisation of the labour market, and an existing mismatch between labour demand and supply. Labour shortages and unemployment may occur concurrently. Moreover, it would make it easier for legal employment in Sweden and thus decrease work in the black market where employees tend to be most vulnerable.

Previous research indicates an existence of abuse of migrant workers in various contexts and countries. This knowledge guided this study with the intention to investigate if abuse also has infiltrated the Swedish labour market. It is important to investigate the practical side of the new system and examine the conditions for the migrant worker due to the vulnerable situation many migrant workers may experience. This study investigates how distinct actors in contact with labour migration perceive the changes in the legal framework and how the framework has influenced the conditions for TCNs migrant workers. The purpose of the study is to give an indication of possible consequential tendencies of the new legal framework.

The analytical framework consists of three theories: closure theory, exploitation, and (re)commodification. First, closure theory was selected due to the tendency for migrant workers to be excluded in society grounded in their status as temporary residents. Second, exclusion could lead to exploitation if migrant workers are in a vulnerable situation. Third, the dialectical form of commodification – decommodification – recommodification is connected to migrant workers being in Sweden for work, and work purposes only.

This is a qualitative study including seven semi-structured interviews, and a discourse analysis on ten newspaper articles from two bigger Swedish newspapers.

The findings of the analysis show that there is a lack of comprehensive information on the legal framework in regards to migrant workers; this in turn may lead to migrants being extra-exploited on the Swedish labour market due to the various circumstances surrounding their situation in the country. In theory, the legal framework is designed for migrant workers to enjoy movement on the labour market, but they are at the same time supposed to be tied to the same occupation. Thus, they are not commodified enough for participation in the Swedish labour market.

In conclusion, Sweden might be on the way towards an inclusive immigration labour policy framework but there are problems within the current framework. This does not indicate that it should be better to return to the former legislation and increase the difficulty for migrant workers to enter Sweden. The challenge is how to include people in the labour market and for them to be treated equally as the Swedish workforce.

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Appendix A. Interview guide (in Swedish and English)

Uppvärmning

1a. Skulle du kunna säga ditt namn och vilken organisation du arbetar för?

1 b. Vilken position i organisationen innehar du?

Tema 1. Arbetsplatsen

1 a. Kan du berätta hur du och din organisation har kontakt med arbetskraftsinvandring?

1 b. Vilka är dina uppgifter och ansvarsområden på arbetsplatsen när det gäller kontakt med arbetskraftsinvandring?

2. Har du även haft kontakt med säsongsarbetskraftsinvandring och hur skiljer sig denna från annan arbetskraftsinvandring?

3 a. Finns det något som fungerar särskilt bra när det gäller dina arbetsuppgifter där du har kontakt med arbetskraftsinvandrare?

3 b. Vilka svårigheter känner du att du stöter på när det gäller dina arbetsuppgifter med arbetskraftsinvandrare?

Tema 2. Nuvarande situation

1 a. Vilka svagheter ser du med den nuvarande lagstiftningen?

1 b. Vilka styrkor ser du med den nuvarande lagstiftningen?

2. Det finns arbetslöshet i Sverige, hur kommer det sig, tror du, att arbetsgivare ändå anlitar arbetskraftsinvandrare?

3 a. Vilka är fördelarna för arbetskraftsinvandrare att bli anställda i Sverige?

3 b. Vilka är nackdelarna för arbetskraftsinvandrare att bli anställda i Sverige?

3 b. Vilka är fördelarna för arbetsgivare att anställa arbetskraftsinvandrare?

3 c. Vilka är nackdelarna för arbetsgivare att anställa arbetskraftsinvandrare?

4. Har du någon fundering på hur man bättre skulle kunna samordna arbetsförslaget i hemlandet med arbetskontraktet här i Sverige?

5. Vad anser du om tidsfristen på tre månader som den anställda har på sig för att hitta nytt jobb ifall en anställning skulle upphöra?

6 a. Idag är den anställda kopplad till en viss arbetsgivare eller bransch de två första åren, och därefter till en viss bransch under ytterligare två år. Varför tror du att det bestämts?

6 b. Vad anser du om detta?

7. Hur skulle du säga att användandet av arbetskraftsinvandrare påverkar den svenska arbetsstandarden och de svenska arbetsvillkoren? Har det någon effekt?

8. En del anser att systemet med arbetskraftsinvandring och säsongarbete globalt leder till att arbetskraft blir betraktat som vilken handelsvara som helst. Vad anser du om hur läget är i Sverige?

9. I dagsläget finns det i Sverige en möjlighet att efter två års arbete få ytterligare två års förlängt arbetstillstånd. Därefter kan man bli erbjuden permanent uppehållstillstånd. Anser du att detta är ett bra tillvägagångssätt eller finns det något

som skulle kunna förbättras?

10. För att bli folkbokförd som invandrare, och då kunna ta del av svenska välfärdssystemet, krävs att man stannar i Sverige minst tolv månader. Vad betyder detta för en person som är här säsongarbetnad anställning?

Tema 3. Kontrollmekanism

1. Dagens lagtext framhäver vikten av lika arbetsvillkor för arbetsinvandrare som för de inhemska anställda, hur tycker du att detta fungerar i praktiken?

2 a. Vilken sorts tillsyn över arbetsvillkoren och standarden finns i nuläget?

2 b. Hur genomförs tillsynen?

3 a. Hur blir arbetarna informerade om sina arbetsrättigheter? (tillgång till information)

3 b. Vad anser du om detta?

4 a. Om det uppstår problem mellan en anställd och arbetsgivare, hur tar man itu med det?

4 b. Vad anser du om detta?

5 a. Vad händer ifall en anställd klagar över sin arbetssituation?

5 b. Till vem kan de vända sig med klagomål?

5 c. Vilka är styrkorna och svagheter med hur det fungerar för nuvarande?

6. Hur skulle den anställda bäst kunna bli skyddad mot diskriminering och utnyttjande?

Warming-up

1 a. Could you state your name and what organisation you work for?

1 b. What position in the organization do you have?

Theme 1. The work place

1 a. Could you tell me how you and your organization are in contact with labour migration?

1 b. What are your tasks and areas of responsibilities when it comes to contact with labour migration?

2. Have you also had contact with seasonal labour migration and how does that differ from other labour migration?

3 a. Are there anything that works especially well when it comes to your work tasks when in contact with labour migration?

3 b. What are the difficulties when it comes to your tasks with labour migration?

Theme 2. Current situation

1 a. What are the flaws, as you see it, with the current legal framework?

1 b. What are the strengths, as you see it, with the current legal framework?

2. There is unemployment in Sweden. How come, do you think, employers still hire labour migrants?

3 a. What are the advantages for labour migrants to be employed in Sweden?

- 3 b.** What are the disadvantages for labour migrants to be employed in Sweden?
- 4.** Have you any wonderings of how the offer of employment in the country of origin could be better coordinated with the employment contract in Sweden?
- 5.** What is your opinion about the timeframe of three months that the employee has for finding a new employment in case the first employment would cease?
- 6 a.** Currently the employee is bound to a certain employer or occupation during the first two years, and then to a certain occupation during further two years. Why is that so?
- 6 b.** What is your opinion about this?
- 7.** How would you say that labour migration affects the Swedish labour standard and the Swedish labour conditions? Does it have an effect?
- 8.** Some people thinks that the system with labour migration and seasonal labour globally leads to labour being seen upon as a commodity as any other. What is your opinion on this in Sweden?
- 9.** Currently there is in Sweden the possibility to, after two years of work, obtain additionally two years of work permit. Then a permanent residence permit may be offered. Do you think this is a good procedure or is there something that could be improved?
- 10.** To be nationally registered as an immigrant, and then take part of the Swedish welfare system, it is required to stay in Sweden at least twelve months. What does this mean for a person with a seasonally job?

Theme 3. The control mechanism

- 1.** The current law highlights the importance of equal work conditions for labour migrants as well as for domestic workers, how do you feel that this is working in practice?
- 2 a.** What kind of supervision over the work conditions and the standard is there currently?
- 2 b.** How is the supervision carried out?
- 3 a.** How are the workers informed about their labour rights? (access to information?)
- 3 b.** What is your opinion about this?
- 4 a.** If a problem between the employee and the employer arises, how is it dealt with?
- 4 b.** What is your opinion about this?
- 5 a.** What happens if an employee complains about the working situation?
- 5 b.** To whom may they complain?
- 5 c.** What are the strengths and flaws with how it currently is functioning?
- 6.** How could the employee best be protected against discrimination and abuse?

Appendix B. List of interviewees.

Ekenger, Karin. [The Confederation of Swedish Enterprises]. 24 April 2013. Stockholm.

Firpo, Alejandro [Department for Migration and Asylum Policy, Ministry of Justice]. 26 April 2013. Stockholm.

Joseph, George. [Caritas]. Interview. 25 April 2013. Stockholm.

Ingesson, Thord. [The Swedish Trade Union Confederation]. Interview. 25 April 2013. Stockholm.

Lindberg, Åsa. [The Swedish Migration Board]. 8 May 2013. Malmö.

Olsson, Lars-Göran. [Kommunal, the Swedish Municipal Workers' Union]. 18 April 2013. Lund.

Appendix C. List of debate articles.

Axén, Gunnar & Cederbratt, Mikael, 2013 ”Vi ska inte ha en utländsk och en svensk modell” *Svenska Dagbladet*. Brännpunkt 31-03-2013

Bengtsson, Jenny & Ojanne, Katja, 2013 ”Folk nyttjas som slavar – med lagen som stöd” *Aftonbladet* 06-02-2013 Hotel & Restaurant Union

Ekenger, Karin & Fogelberg, Anders, 2012 ”Migrationsverket går för långt” *Svenska Dagbladet*. Brännpunkt 25-01-2012

Engblom, Samuel & Hallsten, Sonja, 2013 ”Vi måste agera mot de som inte följer reglerna” *Svenska Dagbladet*. Brännpunkt 7-02-2013

Ferm, Maria, 2013 ”Så måste vi reglera arbetskraftsinvandringen” *Aftonbladet*. Debatt 14-02-2013

Lindgren, Jonas, 2012 ”Vår satsning hindrar att människor far illa” *Svenska Dagbladet*. Brännpunkt 30-01-2012 SvD

Lindholm, Johan; Niia, Ella; Lindgren, Lars; Sjöo, Per-Olof, Granlund, Lenita, 2013 ”Vi kräver schyssta villkor – även för migrantarbetarna” *Aftonbladet* 02-04-2013

Månsson, Ola; Novák, Katarina; Östling Ollén, Eva; Ågren, Christer, 2013 ”Vi har en bra modell för arbetskraftsinvandring” *Svenska Dagbladet*. Brännpunkt 06-02-2013

Sjöstedt, Jonas, 2013. ”Så hindrar vi att arbetskraftsinvandrare utnyttjas. *Aftonbladet*. Debatt 14-02-2013

Wagenius, Hanna; Pierini, Leo; Askeljung, Alfred, 2012 ”Facket får inte avgöra vem som ska stanna” *Svenska Dagbladet*. Brännpunkt 24-04-2012