

THE FIVE CORRIDORS PROJECT - CORRIDOR 1

Myanmar to Thailand: Fair recruitment in review

OCTOBER 2021



ABOUT THIS DOCUMENT

The Five Corridors Project is an initiative led by FairSquare Projects, which aims to identify key measures that governments can take to ensure that migrant workers can migrate safely and with dignity. FairSquare Projects is a non-profit human rights organisation that tailors rigorous research with communication and advocacy work to promote systemic change. The Five Corridors Project is supported by Open Society Foundations, Humanity United and Porticus. The organisations that funded this project played no role in the design or execution of the research, and our conclusions and recommendations may not necessarily reflect the viewpoints of Humanity United, OSF or Porticus.

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Cover photograph: Workers from Myanmar at a Mae Sot factory, 2020. © Jittapron Kaicome

Assessment against the Five Corridors indicators:

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1. National migration policy

“One thing I don’t like in this MOU system is not being able to mobilize - move to another job - because we used to be able to move freely and earn more... The MOU system is like you are tied up and beaten up. For me, I did not have a good working relationship with the employer and still could not change to another job.” 45-YEAR-OLD FACTORY WORKER FROM MON STATE, MYANMAR

Summary

The economies of Thailand and Myanmar are heavily reliant on migrant workers: for labour and remittances respectively. Despite that, a long-term national migration policy and migrant workers and their rights are not a particularly high priority in either country. At least three million workers from Myanmar work in Thailand - an upper estimate is five million - although official figures on both sides are lower. Overseas migration for work is now largely viewed by the Myanmar authorities as a means to help the state achieve national development goals, reduce poverty and relieve pressure on the domestic labour market. In Thailand’s booming economy - where most the migrants are unskilled workers from neighbouring countries and many are irregular/ undocumented - they are pragmatically tolerated but often face discrimination. The focus of the Thai government remains controlling irregular migration through a carrot and stick policy of regularisation and deportation. Controlling the flow from Myanmar however is particularly difficult given the long and porous borders between the two countries which facilitates easy informal migration - within an entire system of brokers and payoffs.

Given the reality that migration is a long-term scenario for both countries, they have been independently attempting to develop migration

policies and strengthen the largely inadequate legal and regulatory framework, working closely with ILO and IOM. Progress however has been patchy: a lack of coherence and clarity remains endemic, amidst a general lack of consistent enforcement. In recent years there has been a renewed focus - led by Thailand - on formal recruitment of workers based on a 2016 MOU and agreement. Although at times represented as a Government-to- Government process, this is largely an umbrella bureaucratic framework for private sector recruitment agencies to match workers to jobs. With the military playing a prominent role in governance in both countries, security concerns/ agencies invariably dominate the discussion on migration. This is also reflected in the burdensome emigration/ visa processes in both countries. In Thailand, job mobility for migrant workers is very restricted and there is virtually no pathway to citizenship. Both countries also place restrictions on migration. In a bid to restrict numbers of unskilled workers, Thailand only allows them from the bordering states (Myanmar, Cambodia and Lao PDR) and Vietnam. Myanmar officially allows workers to migrate to only some countries, largely in Southeast, East Asia and the Middle East, although irregular migration to China is significant and appears to be largely ignored as that to Thailand. Previous restrictions on Myanmar women domestic workers going to Singapore and Hong Kong - largely due to protection concerns - have now been removed.

Recommendations to the National Unity Government of Myanmar

- Conduct and publish an independent and detailed review of the national migration policy that will provide a fact-based analysis of the extent to which migrant worker welfare and rights are prioritised over the country’s economic development.

- Ensure that the national migration policy includes greater gender focus, including emphasis on the particular situation of domestic workers.

Recommendations to the Royal Thai Government

- Remove all legal restrictions and complex bureaucratic processes on workers changing employers before the ends of their contracts,

including any requirement of refunding fees to the former employer under the current five permissible circumstances laid down by the Ministry of Labour.

- **Conduct a formal, independent review of Thailand’s national migration policy in relation to its foreign workforce. The review should solicit views from a wide range of stakeholders and should address issues including gender sensitivity, the impact of foreign workers’ job mobility, the complexity of the MOU hiring process, and the potential and feasibility of a government to government recruitment model based on an ‘employer pays’ principle.**

1.1 Does the government work to ensure coherence between labour recruitment, migration, employment and other national policies?

Myanmar

According to the Myanmar 2014 census, 4.25 million Burmese worked abroad, of whom approximately three million were in Thailand.¹³ This figure increased subsequently given the significant economic and cultural changes in the country in the past few years.¹⁴ In 2018, there were an estimated five million Myanmar workers (four million regular and one million irregular) in Thailand.¹⁵ While there have historically been various push factors including lack of opportunities in the countryside, and displacement due to conflict and natural disasters, the key pull factor for individuals is significantly higher wages: the minimum wage in Thailand is approximately three times higher.¹⁶ Migrant remittances are a significant economic benefit for Myanmar, with 2015 estimates of 3.5 to eight billion.¹⁷

Myanmar’s main migration instrument - the Law Relating to Overseas Employment (LROE) - was enacted in 1999.¹⁸ A number of Ministerial regulations have been introduced since, to regulate migration. Since 2013, there have been two five year National Plans of Action (NPA) on the management of international labour migration - the current NPA runs from 2018 to 2022. The primary agency responsible for managing international labour migration is the Ministry of Labour, Immigration, and Population (MOLIP). It implements the LROE and chairs two inter-ministerial committees, including the Overseas Employment Supervisory Committee (OESC) which supports coordination and supervision of migration policy implementation. The other committee - the Overseas Employment Central Committee (OECC) - designed for policymaking - appears to be defunct. The NPA implementation is coordinated by the Ministry’s Department of Labour, which also created the Migration Division in 2012 to lead on the administration of international migration.

The NPA highlights the Government’s recognition of “the important role of international labour migration in addressing the lack of employment opportunities, promoting economic and social development and alleviating poverty.”¹⁹ It seeks therefore to harmonise labour migration policy with the country’s development plan, and aims to set in place a whole-of-government coordinated approach. The Government foresees increasing out-migration from Myanmar over the next three decades due to the continuing rise in rural/agricultural population, an increase in the proportion of the population in prime working age (15-64) and a high unemployment rate.²⁰ The likelihood of increased female participation in the labour force is also likely to increase migration.²¹

Although the NLD government took initial steps since 2016 to reach out to migrant workers in Thailand and has undertaken some practical improvements,²² overall progress with respect to a more comprehensive migrant

13. ILO Myanmar, “Migration Data for Policy Development,” (2018): 3.

14. Government of Myanmar - Ministry of Labour, Immigration and Population, “Second Five Year National Plan of Action on The Management of International Labour Migration (2018-2022),” (undated): 1.

15. Issara Institute, “Developing a Financially Viable Ethical Labour Recruitment Model: Prospects for the Myanmar-Thailand Channel,” (2018): 13.

16. Asean Trade Union Council, “Minimum wages in Asean: How are they calculated?,” (14 January 2020).

17. International Growth Centre, “Myanmar Remittances,” (October 2017): 3.

18. ILO Myanmar, “Building Labour Migration Policy Coherence in Myanmar,” (2017): 11.

19. Government of Myanmar - Ministry of Labour, Immigration and Population, “Second Five Year National Plan of Action on The Management of International Labour Migration (2018-2022),” (undated): 1.

20. Ibid, 2.

21. Ibid, 3.

22. Pen Dali, “The road to helping Myanmar migrant workers,” *The Global New Light of Myanmar*, (27 July 2019).

policy and improvements in administration has been patchy.²³ The LROE has been undergoing review and revision for many years and does not appear to be a priority.²⁴ According to a leading civil society migration expert in Myanmar, this is reflective of the overall situation where issues surrounding migrant labour in general seem to not be a priority for the government at this point, even after four years in power.²⁵ Such a situation is arguably consistent with the reality that while improving the lot of migrant workers is the long-term objective stated in the NPA, in the short and medium term, migrant workers are seen largely as tools to help “Myanmar achieve its national economic development goals, reduce poverty and relieve pressure on the domestic labour market.”²⁶

Thailand

In 2015 the ILO noted: “despite becoming increasingly reliant on migrant workers in certain low-skilled and labour intensive sectors, and despite expectations that this trend is expected to continue given the now shrinking working age population and rising education levels, Thailand is yet to formulate a coherent long-term policy on labour migration, including a vision on the utility of labour migration to Thailand’s economic and social outlook.”²⁷ In 2016, the Thai cabinet adopted a National Strategy for Migrant Worker Management for 2017-2021 which consisted of five key strategies: “devise a standard for migrant worker employment by 2017; reduce the dependency of unskilled migrant labor by 2017; develop an organization by 2017 to effectively manage the migrant worker situation; promote all migrant workers to be employed through MOUs by 2020; and monitor, assess, and evaluate the labor management situation twice yearly to make sure global standards are met.”²⁸

Given its porous land borders with Myanmar, Cambodia and Laos, the Thai approach to migration has been

historically dominated by security concerns and is often built around attempting to limit irregular migration. Following the national strategy, the Foreign Workers Ordinance was issued in 2017-2018. As the UN has noted with respect to this Ordinance: “what the law made most clear was that strict enforcement against irregular migration was to be used as the key policy approach to convince migrants to use regular channels.”²⁹ MOUs with most origin states were also revised in 2015-2016; however as the World Bank has noted, Thailand’s MOUs “have also been criticized for focusing more on the procedural aspects of migration and on preventing irregular migration and less on filling labor market shortages.”³⁰ The UN noted similarly in 2019: “the development of the MOU agreements was managed by the Ministry of Labour, in consultation with the Ministry of Foreign Affairs. However, the initial impetus for the MOUs largely came from the National Security Council of Thailand, resulting in a heavily security-driven approach to labour migration. Priority was given to admissions procedures, prevention of irregular migration and repatriation of migrant workers rather than labour market efficiency or upholding the protection of migrant workers’ labour rights.”³¹

While the use of the MOU process is a key strategic objective of the Thai authorities, two features have dominated migrant lives in practice: large-scale crackdowns on irregular workers and occasional amnesty schemes to regularize such workers.³² The crackdown against irregular migrants in 2014 and 2017 led to thousands of migrants fleeing Thailand and significant problems for Thai industry and employers.³³ On the other hand, the demands of the labour market have also led to reliance on amnesty/ regularisation schemes, in the agricultural sector.³⁴ In addition to such regularisation schemes, border pass schemes (which allow limited rights to work in Thailand for Myanmar/ Cambodian/Lao nationals living in border provinces)

23. Nyan Lynn Aung and Htoo Thant, “NLD takes first steps on migrant policy,” *Myanmar Times*, (7 April 2016).

24. Shin Min, “We reevaluate labour laws that are no longer relevant and work to amend them according to International Labour Organization standards,” *The Global New Light of Myanmar*, (10 January 2020).

25. Name and organisation withheld, interview, 9 January 2020.

26. Government of Myanmar - Ministry of Labour, Immigration and Population, “Second Five Year National Plan of Action on The Management of International Labour Migration (2018-2022),” (undated): 7-8.

27. ILO Asia-Pacific, “Review of the effectiveness of the MOUs in managing labour migration between Thailand and neighbouring countries,” (2015): 17.

28. Royal Thai Government “Thailand’s Country Report on Anti-Human Trafficking Response” (1 January – 31 December 2016), (Undated): 9.

29. United Nations Thematic Working Group on Migration in Thailand, “Thailand Migration Report 2019,” (2019): 3.

30. World Bank Group, “Migration Policy in Sending Countries,” (2017): 213.

31. United Nations Thematic Working Group on Migration in Thailand, “Thailand Migration Report 2019,” (2019): 31.

32. Article 17 of the Immigration Act, 1979 gives Thailand’s Minister of the Interior the authority to grant persons or groups of people who have entered Thailand irregularly permission to stay in the country under certain conditions, subject to the approval of the Thai cabinet.

33. Amy Sawitta Lefevre, “Thailand’s new labour rules send thousands of migrant workers fleeing”, *Reuters*, (3 July 2017).

34. Mekong Migration Network, “Migrant Agricultural Workers in Thailand,” (2020): 16.

are also being relied on by the fishing sector, given that the bilateral MOU processes are not popular with either workers or employers due to the bureaucratic, costly and lengthy processes.³⁵

1.2 Does the government restrict countries that some or all workers can migrate to/ from?

Myanmar

According to a World Bank study, Myanmar only officially permits workers to migrate to Thailand, Malaysia, Korea, Japan, Singapore, the United Arab Emirates, Qatar, and Jordan.³⁶ However this appears to have little bearing as recruitment agents in practice send workers to 16-18 countries. From December 2016 to January 2018, Myanmar also temporarily suspended sending migrant workers to Malaysia after a diplomatic dispute over the Rohingya,³⁷ although 'security' of migrant workers in Malaysia was also cited as a reason.³⁸ According to a World Bank study, the effectiveness of restricting destination countries is limited: despite China being excluded, it has become a prominent destination for Myanmar migrants.³⁹ There were also reported restrictions on migrants working in the fisheries sector, but this is now permitted for Thailand and Korea.⁴⁰

Until 2009 Myanmar officially banned women from registering to work abroad.⁴¹ In 2011 the Government permitted women to work overseas in factories where five or more other Myanmar women were working.⁴² This has been increased to ten women in the Malaysian state of Johor. The 2011 order apparently prohibited

Myanmar migrant women working in cleaning/ domestic settings and entertainment.⁴⁴ However the general ban on domestic work/ cleaning appears to have been removed sometime after that. In 2014 there were bans on Myanmar women going for domestic work to Hong Kong,⁴⁵ and Singapore due to concerns of their ill-treatment.⁴⁶ This expanded later in the year to a generalised ban on migration for domestic work to any country for first-time migrant domestic workers.⁴⁷

According to a MOLIP representative, the ban was to remain until the destination country came up with a comprehensive MOU - following international standards and domestic law - to protect Myanmar women.⁴⁸ According to a UN Women-ILO study, in addition to the political leverage towards MOUs, there were external factors (a high profile case of abuse of an Indonesian domestic worker in Hong Kong) and internal factors (calls from a prominent conservative Buddhist group in Myanmar) for the ban, but the elections and domestic political expediency may have also ended up being a factor.⁴⁹

According to an ILO representative, since March 2019 domestic work by Myanmar women has officially been permitted in Singapore, Thailand, Hong Kong and Macau, but no agreement/ mechanism has yet been put in place for such workers to migrate formally.⁵⁰ The impact of such bans in limiting migration of women domestic workers is unclear.⁵¹ However, UN agencies and civil society groups agree that the official bans on women working as domestic workers only worsened the situation for such women who were then forced to become irregular migrants and placed in a more precarious situation.⁵² Reports also indicate that the women had to pay higher fees for such irregular migration due to the ban.⁵³

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35. Seafood Working Group, "[Comments Concerning the Ranking of Thailand by the United States Department of State in the 2020 Trafficking in Persons Report](#)," (10 March 2020): 27.
 36. World Bank Group, "[Labor Mobility As a Jobs Strategy for Myanmar](#)," (2020): 108. Recruiters have also mentioned sending workers to Macau.
 37. Reuters Staff, "[Myanmar stops migrant workers going to Malaysia after Rohingya row](#)," *Reuters*, (7 December 2016)
 38. Zaw Zaw Htwe, "[Myanmar lifts worker ban to Malaysia](#)," *Myanmar Times*, (11 January 2018)
 39. World Bank Group, "[Labor Mobility As a Jobs Strategy for Myanmar](#)," (2020): 110.
 40. *Ibid*, 108.
 41. ILO and UN-Women, "[Protected or put in harm's way? Bans and restrictions on women's labour migration in ASEAN countries](#)," (2017): 11.
 42. ADB et al, "[Gender Equality and Women's Rights in Myanmar: A Situation Analysis](#)," (2016): 72.
 43. World Bank Group, "[Labor Mobility As a Jobs Strategy for Myanmar](#)," (2020): 108.
 44. ADB et al, "[Gender Equality and Women's Rights in Myanmar: A Situation Analysis](#)," (2016): 72.
 45. Mekong Migration Network, "[Safe from the Start: The Roles of Countries of Origin in Protecting Migrants](#)," (2017): 38.
 46. Terry Xu, "[Myanmar continues its ban on domestic workers leaving to work in Singapore](#)," *The Online Citizen*, (5 July 2015).
 47. ILO and UN-Women, "[Protected or put in harm's way? Bans and restrictions on women's labour migration in ASEAN countries](#)," (2017): 18.
 48. *Ibid*, 25.
 49. *Ibid*, 25.
 50. An ILO official, ILO Myanmar, interview, 11 March 2020.
 51. ILO and UN-Women, "[Protected or put in harm's way? Bans and restrictions on women's labour migration in ASEAN countries](#)," (2017): 33-48.
 52. Mekong Migration Network, "[Safe from the Start: The Roles of Countries of Origin in Protecting Migrants](#)," (2017): 38.
 53. Katie Arnold, "[From village to victim, Myanmar women fear ban on working as foreign maids puts them at risk](#)," *Reuters*, (6 June 2016).

Thailand

Thailand does not have any specific ban against origin countries, however according to the Thai authorities, low-income migrant workers will only be hired through MOUs agreed with Cambodia, Lao PDR, Myanmar and Vietnam (in addition to border employment schemes with Cambodia, Lao PDR and Myanmar) and no further amnesty schemes will be announced.⁵⁴ Such a move is however believed to be aimed at limiting irregular migrants instead of limiting the number of origin countries.⁵⁵ As the UN has noted, the MOU process however does not appear to be popular amongst migrant workers as it “largely fails to align with the interests of migrant workers themselves, many of whom see it as easier, quicker, cheaper and more flexible to enter and work in Thailand without documents and legal status.”⁵⁶

1.3 Does the government have a stated or observed preference/tendency towards government- to- government (G-to-G) recruitment agreements?

Myanmar

Myanmar has had a government-to-government migration system with South Korea for low-skilled workers since 2007. The Korean ‘Employment Permit System’ is viewed as an example of global good practice.⁵⁷ Workers are hired in Myanmar by the Government Overseas Employment Agency of the Department of Labour and the entire process, including worker recruitment and intermediation services is managed through a government-to-government arrangement.⁵⁸ According to a representative from a Migrant workers association: “I think G-to-G with Korea is more or less successful, partly because the other

side has a good plan... We can say that Korea one is working well. I also heard during the last meeting with the ministry that they are planning to have G-to-G with Japan.⁵⁹ Currently, this is the only fully G-to-G system in place and therefore only a very small percentage of workers are hired through it. According to an ILO representative, the Myanmar government would prefer G-to-G processes, but not all destination governments are keen, e.g. Singapore.⁶⁰ A trade union representative also supported more G-to-G systems.⁶¹

Thailand

There is no ongoing government-to-government migration programme in Thailand, although the MOU schemes are sometimes represented as such.⁶² However, the Thai Government informed the ILO committee in 2017 of a Government to Government pilot project to hire workers from Cambodia in the fishing sector (in collaboration with IOM).⁶³ This involved the Thai Government guaranteeing “a minimum salary of THB 12,000 per month, payment of wages by bank transfer, appropriate accommodation and food, as well as health insurance and accident coverage”. The progress of the scheme is not known, but Thai media reports suggest that parties could not agree on the conditions of employment.

1.4 Does the government take gender and gender identity into account when formulating and implementing migration policy?

Myanmar

The Myanmar government has previously instituted bans on women working as migrant domestic workers, ostensibly in order to protect them from ill-treatment/

54. ILO Regional Office for the Asia and the Pacific, “[TRIANGLE in ASEAN Quarterly Briefing Note: Thailand July-September 2019](#),” (2019).

55. Penchan Charoensuthipan, “[Govt reinstates unskilled workers ban](#),” *Bangkok Post*, (28 December 2018).

56. United Nations Thematic Working Group on Migration in Thailand, “[Thailand Migration Report 2019](#),” (2019): 19.

57. See e.g. World Bank Group, “[Bilateral Arrangement of Temporary Labor Migration: Lessons from Korea’s Employment Permit System](#),” (2018).

58. Government of Myanmar - Ministry of Labour, Immigration and Population, “[Second Five Year National Plan of Action on The Management of International Labour Migration \(2018-2022\)](#),” (undated): 6.

59. An MWRN official, Migrant Workers Rights Network, interview, 18 February 2020.

60. An ILO official, ILO Myanmar, interview, 11 March 2020.

61. Name and organisation withheld, interview, 25 March 2020.

62. Royal Thai Government, “[Country Report on Anti-Human Trafficking Efforts](#) (1 January – 31 December 2018),” (undated): 46.

63. ILO Committee, “[Observation \(CEACR\) - adopted 2017](#),” (2018).

abuse (see 1.2). According to a senior MOLIP official, a 2018 MOU process directive for recruitment agencies also states that women not be placed in any work-setting where there would be less than five women working.⁶⁴ These appear however to be relatively sporadic decisions and gender does not appear to be a significant area of discussion in the migration context, as evidenced in the NPA 2018-2022 where gender dimensions are conspicuously absent. An ILO representative also noted that the MOU and its associated agreement also does not make any special provision for women workers.⁶⁵ Reportedly, the National Strategic Plan for the Advancement of Women (2013–2022) mentions female migrants in sections on research and policy making.⁶⁶

On the ground, the absence of a woman labour attaché in Thailand has been identified as a key failure by civil society representatives. Given that half of the Myanmar migrant workers in Thailand are women, this may also be leading to many women workers not making complaints to the male labour attachés.⁶⁷ A trade union representative also highlighted that there are no specific guidelines for agencies on hiring/ sending women and much of the logistical arrangements in reception camps (transit venues near the border crossing) also do not consider the needs of women.⁶⁸

Thailand

There is no indication that the Thai policies factor in specific gendered impacts of migration policies. Women form approximately over half (52%) of the migrant population in Thailand but significantly lesser amongst formal MOU migrants (43%). According to a UN study, women are “overwhelmingly segregated in low-skilled sectors of work that are associated with lower wages and weaker labour protections.”⁶⁹ The UN recommends that “feminized sectors of work – such as domestic work,

care work and entertainment - should be brought within the MOU process to increase women’s access to regular migration pathways.⁷⁰

1.5 Does the government significantly regulate the process for a worker to obtain a visa to migrate/ employer to obtain a visa to hire a worker? (i.e. does the worker/ employer need multiple permissions at different levels of the state to migrate/ recruit?)

Myanmar

The LROE requires prospective migrant workers to register (Chapter V). An overseas jobseeker registration card - valid for one year - is obtained after such registration at the local Labor Exchange Office.⁷¹ Although this is supposed to be free of cost, according to a trade union representative, small bribes of 500 - 1000 MMK are commonly demanded.⁷² To obtain this document, the individual needs to show their National Registration Card (NRC) - many in Myanmar do not have such a document, particularly members of ethnic minority groups.⁷³ This overseas jobseeker card - along with the NRC and household registration documents - is required to obtain the ‘PJ (job) passport’ from the nearest passport office.⁷⁴ Although the cost for the passport is fixed at MMK 25000, a MWRN representative pointed out that there are invariably additional payments for ‘checking’ and passport photos.⁷⁵ Most individuals obtain passports and other required documents either through local brokers or then through registered sub-agents of recruitment agencies who intend to hire them for specific jobs.⁷⁶

64. Daw Aye Aye Moe, MOLIP - Migration Department, “Presentation - Impact of Existing Migration Mechanisms on Migrants’ Access to Social Protection,” (16 September 2019), on file.

65. An ILO official, ILO Myanmar, interview, 11 March 2020.

66. World Bank Group, “Labor Mobility As a Jobs Strategy for Myanmar,” (2020): 97.

67. Name and organisation withheld, remote interview, 26 February 2020.

68. Name and organisation withheld, remote interview, 26 March 2020.

69. United Nations Thematic Working Group on Migration in Thailand, “Thailand Migration Report 2019,” (2019): 145.

70. Ibid, 153-4.

71. ILO Myanmar, “Migration Data for Policy Development,” (2018): 27.

72. Name and organisation withheld, remote interview, 26 March 2020.

73. This could be either because they are not considered an official ethnic/ national group or because they are areas not fully under central government control.

74. An ILO official, ILO Myanmar, interview, 11 March 2020.

75. An MWRN official, Migrant Workers Rights Network, interview, 18 February 2020.

76. Issara Institute, “Developing a Financially Viable Ethical Labour Recruitment Model: Prospects for the Myanmar-Thailand Channel,” (2018): 42

Once a job has been identified, workers are required to undertake a health check/ medical examination as part of the selection process - this is usually arranged by the recruitment agency. Once a job is confirmed and contract signed, the worker must also obtain the Overseas Worker Identification Card (OWIC, also sometimes referred to as the overseas labour card) prior to departure. This card includes the migrant's passport number, the name and address of the Myanmar recruitment agency, type of work, the Thai employer/ agent and place of work. The OWIC can be obtained at the Migrant Worker office in Myawaddy - near the crossing point into Thailand - or the Migrant Worker Division office in North Dagon, Yangon. The MOLIP 'Safe migration page' on Facebook reiterates the importance of this card: "When you are to be sent legally but do not get this card before leaving to foreign country, you can be warned that you are being sent regard through an informal channel."⁷⁷

Other documents required for departure include a copy of the approved demand letter and a pre-departure training certificate (not required for Thailand) - these are usually provided by the recruitment agent.⁷⁸ In practice, the recruitment agency shepherds the workers through the medical, interview-contract and OWIC phase. As MMN has noted: "For those who do choose to migrate formally, obtaining the necessary identification is a difficult and confusing process. Long passport application processing times, unclear costs and other complications make formal migration burdensome."⁷⁹ One part that appears wholly redundant is the initial overseas jobseeker registration card, particularly as potential migrant workers also obtain a passport and the OWIC.⁸⁰

Another report highlights that workers often have to make at least 2-3 trips to Yangon to process the employment contract and MOU-related documents and that the overall procedure of sending workers to Thailand takes about 45-90 days.⁸¹ One civil society representative pointed out that the direct link between time taken and increased debt for prospective workers:

"when they want to migrate they have to borrow money to pay for the expenses. Since this process is lengthy, the interest they have to pay is adding up every month. To cut those, they want to migrate as quickly as they can. That is one of the main reasons why the brokers can cheat the workers easily. The government should reduce some unnecessary processes and work more effectively..."⁸²

Myanmar nationals who live in frontier/ border districts can also obtain border passes to cross into Thailand border provinces, including for daily or seasonal work. Although such passes are ordinarily valid only for 2 weeks per visit, once the worker has completed formalities on the Thai side for daily/ seasonal work, they can stay for up to 30 days per visit.⁸³ Border passes are valid for up to 2 years and can be extended for similar lengths.⁸⁴ To obtain such a pass, applicants need to show NRC/ Household registration at Myanmar immigration offices and pay between 500-2,000 MMK.⁸⁵

Thailand

According to the Royal Ordinance Concerning the Management of Employment of Foreign Workers 2017 (Foreign Workers Ordinance or FWO, significantly revised in 2018), in addition to having valid residence permits (visa etc), all foreigners need a work permit in order to work in Thailand (Section 8). Working without a permit - or in a work category beyond what the permit provides - can lead to a fine from THB 5,000 to 50,000 and/or repatriation (Section 101). Similarly, no employer can take on a worker without a work permit (Section 9). Penalties include a three-year ban and a fine of THB 10,000 to 100,000 per foreign worker. For a repeat offender, up to one-year imprisonment and/or a fine from THB 50,000 to 200,000 per foreign worker is possible (Section 102. See also 110/1).

Section 41 of the FWO provides some details of the process for workers hired through MOUs. Employers can either hire workers directly or through a licensed

77. MOLIP [Safe migration facebook page](#), on file.

78. World Bank Group, "Labor Mobility As a Jobs Strategy for Myanmar," (2020): 110.

79. Mekong Migration Network, "Safe from the Start: The Roles of Countries of Origin in Protecting Migrants," (2017): 38.

80. World Bank Group, "Labor Mobility As a Jobs Strategy for Myanmar," (2020): 112.

81. Plan International and FairFish, "The Report on the Route of Migration from Myanmar," (2020): 8.

82. Name and organisation withheld, interview, 20 February 2020.

83. Agreement between the Government of the Kingdom of Thailand and The Government of the Republic of the Union of Myanmar on Border Crossing Between the Two Countries, Article 7, 24 June 2016.

84. Ibid, Article 6.

85. Verité, "Thailand Bound: An Exploration of Labor Migration Infrastructures in Cambodia, Myanmar, and Lao PDR," (2019): 43.

recruitment agency. A Thai employer seeking to hire migrant workers begins by submitting a demand letter - directly or through a Thai recruitment agency - to a Provincial Employment Office (PEO).⁸⁶ After this is checked, it is forwarded to the central Department of Employment (DOE). The DOE will then forward the request to the Myanmar Government via the Embassy in Bangkok. Once the Myanmar recruitment agency provides the list of workers to the Thai employer - verified by the Myanmar Labour Attaché - it is the employer's responsibility (in effect the Thai agency) to submit the list to the DOE, along with a copy of the original approved demand letter. The DOE then informs the Myanmar Embassy in Bangkok on the selection of the candidates and informs the Immigration Bureau for granting 'Non-LA' (Non Immigrant - Labour Approved) visa and permission to enter Thailand - this is issued at the immigration checkpoint in Mae Sot/ Ranong. Once in Thailand, a worker is required to undergo a medical examination and submit the application for the work permit at the PEO or special Post-Arrival and Reintegration Centres.

The visa/ work permit process is fairly lengthy and time-consuming. The work permits are issued for two years - the length of the employment contract as per the MOU - and may be extended once. Beyond that, workers are required to return home and can re-apply for jobs after a 30-day break (Article 6, MOU agreement). This means further costs and loss of income for workers. As a result, there is a disincentive for workers to use the MOU system who often prefer to migrate informally instead, relying on amnesty processes to subsequently receive a work permit once in Thailand.

Workers living in border regions of Myanmar can also legally do "daily or seasonal work" in border provinces of Thailand under the border-pass agreement between the two countries (Article 3).⁸⁷ Section 64, FWO provides for work permits to be given to such workers in Thailand. These permits are usually valid for 3 months (although workers are technically required to go back to

Myanmar after every 30 days) and the process is much less complicated than under the MOU scheme. Where employers seek to hire workers via the border pass scheme, they must provide the Provincial Employment Office (PEO) of the name list of the workers along with details of the employers. The certification provided by the PE is submitted by the employer to the Immigration Checkpoint which then issues the border pass/ visa accordingly. Employers are then required to take the workers to the public hospital for a check-up and for purchase of health insurance card, following which they are taken to the PEO which issues the work permits. It is also common for workers from Myanmar to subsequently move into other provinces or other employment or continue in Thailand without renewal of the border-pass work permit, thereby becoming irregular.

Local groups have reported that the seasonal border pass system is also being abused - in practice - to hire factory workers,⁸⁸ and fishing workers.⁸⁹ Regardless, another specific route for migrant workers to obtain a work permit in the fishing sector is via Section 83 of the Fisheries Ordinance 2015, where the Director-General of the Department of Fisheries has the power to issue temporary work permits and other necessary documents (seamen book) to foreign workers. This route has been highlighted by the Thai authorities as key to covering the labour shortage in the fishing sector in recent years. In 2018, they announced that all those whose work permits under this provision were expiring in September 2018 would be allowed to continue for a further two years, and migrant workers who had nationality documents could also register using the same provision.⁹⁰ As of 2020, the Thai authorities appear to continue to rely on Section 83 to cover the ongoing labour shortage in fishing.⁹¹ Civil society groups have pointed out that migrant workers usually have to rely on their employer to register them, and therefore workers get charged illegal costs resulting in increased debts to employers.⁹² The ILO has called on the Thai authorities to end use of this "loophole... that allows vessel owners to bypass regular migration procedures."⁹³

86. Issara Institute, "Developing a Financially Viable Ethical Labour Recruitment Model: Prospects for the Myanmar-Thailand Channel," (2018): 11.

87. Agreement between the Government of the Kingdom of Thailand and The Government of the Republic of the Union of Myanmar on Border Crossing Between the Two Countries, 24 June 2016.

88. Human Rights and Development Foundation, "Statement: A call for the enforcement of Thailand's Social Security Act towards employers of migrant workers in the Special Economic Zone," (10 August 2020).

89. Seafood Working Group, "Comments Concerning the Ranking of Thailand by the United States Department of State in the 2020 Trafficking in Persons Report," (10 March 2020): 27.

90. Ministry of Labour Public Relations Department, "Extending Work Permits for Migrant Workers in the Fisheries Sector," (1 September 2018).

91. Migrant Working Group, "Update on the management of foreign workers policy (January-March 2020)," (undated).

92. The Freedom Fund, "Thailand Hotspot Annual Report," (2020): 2.

93. ILO, "Endline research findings on fishers and seafood workers in Thailand," (2020): 23.

Over the years, Thailand has also announced a number of regularisation schemes by which irregular workers who were able to confirm their nationality via documentation were given work permits. On 20 August 2019, the Thai Cabinet announced that workers who had such work permits would be able to renew them for a further two years without having to return to their country of origin. The subsequent ‘Guideline for Migration Management 2019–2020’ on 29 August 2019 approved by the Committee on the Migrant Worker Management Policy, however required that the range recruitment-related costs - between THB 7,280 and THB 10,480.10 (\$257–\$346 at the time) - covering visa and work permit fees, costs for medical check-ups, medical insurance fees, ID card issuance fees, and deposit fees - should be paid by the migrant workers themselves.⁹⁴

1.6 Do national laws allow all categories of migrant workers the ability to change jobs within the destination country?

Thailand

According to the 2016 MOU agreement, a migrant worker cannot change employers except where the original employer “could not protect the worker according to the existing laws” or where they closed down the business due to financial failure or natural disaster or other reason (Article 6(2)). However, before amendment in 2018, the Foreign Workers Ordinance (FWO) required the work permits of foreign workers to be tied to a specific employer. Currently, change of employment is permitted in limited circumstances - a migrant worker who quits their employment contract within two years is not permitted to work with another employer unless they can prove fault of the employer or unless they paid damages to the original employer to cover costs undertaken to bring them to work, in proportion to the time or period that the worker has already worked (Section 51).⁹⁵ Where such permission is given by the Registrar, the worker is required to start with the new employer within 30 days (Section 52).

A Ministry of Labour directive lays down the conditions under which workers can change employers in cases (also known as the “5+1”). One of the following five conditions is required: “(1) physical abuse of the worker, (2) employer dishonors the work contract or violates the Labor Protection Act (1998), (3) work environment that is potentially harmful to the life, physical, mental health and sanitation of the employee, (4) worker’s contract is terminated without a proper reason, or (5) in the case of employer’s death or bankruptcy. In addition (the +1), the MOU fee must be repaid to the former employer by either the new employer or the worker.”⁹⁶ The circumstances are so limited, that according to an ILO technical expert, “In practice they [workers] cannot change jobs without their employer’s permission.”⁹⁷ A 2020 Cabinet announcement relating to temporary work permits for fishers also has similar provisions, and further lists the specific documentation required for each condition.⁹⁸ However, with respect to condition 2, a research report noted that in a setting where only some workers “received a contract in a language they understood, proving an employer is at fault remains a largely impossible clause which in practice continues to tie workers to their employer.”⁹⁹

The limitations with respect to job mobility are a serious disincentive for workers to migrate through the MOU process. As a 45-year-old factory worker from Mon state explained: “One thing I don’t like in this MOU system is not being able to mobilize - move to another job - because we used to be able to move freely and earn more... The MOU system is like you are tied up and beaten up. For me, I did not have a good working relationship with the employer and still could not change to another job.”¹⁰⁰

The UN team in Thailand has noted that the longer-term impacts of the limited change of employer in the 2018 FWO are yet unclear: while a significant development “exercising this right relies upon obtaining permission from the Registrar, which may be a difficult process for migrant workers to complete. In cases where migrant workers want to change their employment due to experiences of abuse or exploitation in the workplace,

94. ILO, “Recruitment fees and related costs: What migrant workers from Cambodia, the Lao People’s Democratic Republic, and Myanmar pay to work in Thailand,” (2020): 8.

95. The original 2017 FWO provided for work permits to be directly linked to the employer, but this was changed in the 2018 revised version.

96. Seafood Working Group, “Comments Concerning the Ranking of Thailand by the United States Department of State in the 2020 Trafficking in Persons Report,” (10 March 2020): 19.

97. Laura Villadiego, “Thailand’s trying to protect migrants. So why are they all so worried?,” *South China Morning Post*, (18 March 2018).

98. Office of the Prime Minister, “Issuing of Seaman book under the Fisheries Law,” (10 April 2020).

99. Praxis Labs, “Tracking Progress: Assessing Business Responses to Forced Labour and Human Trafficking in the Thai Seafood Industry,” (2019): 58.

100. Remote interview R11, 30 August 2020.

they may be reluctant to approach authorities for official approval. Additional obstacles remain, including lack of information and language barriers, and it is unclear at this stage whether implementation of the new policy will tangibly result in greater independence for migrant workers to choose their employment.”¹⁰¹

The importance of the ability to change employers for migrant workers cannot be overstated. The lack of flexibility to change jobs contributes to increased vulnerability to abuse and reduced likelihood of seeking redress from mechanisms. It also leads to workers changing employment without permission: as the UN has noted, “without greater flexibility to change employment, it will remain difficult for migrants to retain regular legal status after entering the country.”¹⁰² The common practice of Thai recruitment agencies hiring MOU workers under one demand letter but employing them at a different site means that such workers are in violation of the rules at the start itself.

Workers who come to Thailand for daily/seasonal work under the border pass scheme may change employers, but need to inform the Thai authorities without 15 days (Section 64/2 FWO). However this practice is out of sync with the realities of employment practices in the agricultural sector in Thailand. As the ILO/FAO have noted, “It is a common practice among seasonal agricultural workers to move between different plantations depending on what crop is in season. Migrant workers are often registered with one employer who then outsources the workers to other employers in the area. The development of a formal system allowing migrant workers to change employers under these circumstances would create clearer statutory responsibility for their working conditions, incentivize migrant workers to register with the Department of Employment and support increased labour market efficiency.”¹⁰³

As mentioned, a change of employer under a temporary fisher work permit (Section 83, Fisheries Ordinance) is also only permissible under the five conditions, with proof provided - but there is no requirement of permission from the current employer.¹⁰⁴ Previously

since late 2015, for most migrant fishers (regularised and holding ‘pink cards’) change was possible but “workers are required by the DOE to obtain written permission from their current employer, which must be submitted along with paperwork to process the change in DOE records.”¹⁰⁵ According to Human Rights Watch, in practice this effectively undermined the likelihood of change of employment with permission withheld and intimidation. It also increases the prevalence of corruption with workers paying under-the-table fees to obtain such permissions. Additionally, HRW observed that “many fisher workers seem wholly unaware of, or badly misinformed about, their ability to transfer to other employers.” Such misinformation has also been noted by another study, which also referred to workers being concerned about increasing debt due to not being able to switch employers, while the original employer’s boat is not allowed to go to sea.¹⁰⁶ The misinformation about change of jobs continues - a recent study found that 38 percent of fishery workers surveyed said that they faced obstacles to changing employers - most common obstacles included employers not allowing them to change their job because of worker shortage and cost of the process.¹⁰⁷

1.7 Do national laws offer migrant workers a pathway to long term residency and/or citizenship?

Thailand

Thailand does not provide a clear or obvious pathway to citizenship for migrant workers. According to one study, “Thai Immigration Bureau rules for obtaining permanent residence are highly complex and few migrant workers are in a position to attempt the process on their own. Similarly, the Nationality Act is notoriously restrictive on conditions for granting citizenship and naturalization.” This is part of broader restrictions on citizenship in Thailand, which was host to the third largest population of stateless people globally in 2018.¹⁰⁹

101. United Nations Thematic Working Group on Migration in Thailand, “*Thailand Migration Report 2019*,” (2019): 33.

102. Ibid, 88.

103. Ibid, 73.

104. Office of the Prime Minister, “*Issuing of Seaman book under the Fisheries Law*,” (10 April 2020).

105. Human Rights Watch, “*Hidden Chains: Rights Abuses and Forced Labor in Thailand’s Fishing Industry*,” (2018): 103.

106. Praxis Labs, “*Tracking Progress: Assessing Business Responses to Forced Labour and Human Trafficking in the Thai Seafood Industry*,” (2019): 58.

107. CSO coalition, “*Falling through the Net*” (2020): 48-49.

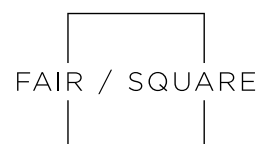
108. Benjamin Harkins and Aanas Ali, “*Evidence or Attitudes? Assessing the Foundations of Thailand’s Labour Migration Policies Authors*,” (2017): 8

109. IOM, *World Migration Report 2020*, (2020): 47.

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