

THE FIVE CORRIDORS PROJECT - CORRIDOR 1

Myanmar to Thailand: Fair recruitment in review

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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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3. Bilateral labour arrangements

“The process of coordinating and negotiating bilateral MOU provisions tends to be heavily influenced by national security concerns, and thus the government actors most associated with national security as well.” ILO STUDY, 2017.

Summary

Thailand is a strong proponent of bilateral MOUs with respect to migration, and has signed MOUs on labour cooperation with Vietnam and neighbouring states, including Myanmar. Myanmar has additionally signed a MOU with South Korea on a Government-to-Government recruitment and memoranda/ agreements with Japan and Malaysia. None of these documents have been made available by the Myanmar authorities, much like other official documents, as they are treated as confidential. The 2016 MOU and agreement on labour cooperation between Myanmar and Thailand, replaced a previous MOU signed in 2003. These documents - like all others signed by Thailand - have been made publicly available. In 2018, an agreement was reached on recruitment of fishing workers between the two countries, as part of the MOU follow-up process, but this has not been made available by Thailand (and Myanmar). The exact text of this is not publicly known, including to unions or CSOs.

MOU negotiations between Myanmar and Thailand were not transparent - consultations were limited and there was little engagement with workers groups or unions in either country. Private recruitment agencies - central to the MOU recruitment process - appear to have had more input in the process, along with employers in Thailand. National security concerns and associated actors led the negotiations; human rights concerns are therefore unlikely to have featured prominently in the negotiations leading up to the 2016 MOU.

However, the Myanmar Government reportedly pushed back consistently on human rights concerns with respect to the fishing agreement in 2018 and was successful in securing stronger labour protections. It is not known to what extent this was influenced by either the global attention on the industry’s human rights issues or the crippling shortage of fishing workers in Thailand.

The text of the 2018 fishing agreement is not available, but the 2016 MOU and agreement between Myanmar and Thailand are light on human rights references, other than some to non-discrimination. There is no special provision/ mechanism on enforcement, and none to consular protection (although it does exist in practice). Given the Thai focus on irregular migration, the focus remains on admissions procedures, prevention of irregular migration and employment, and repatriation of migrant workers, with less focus on meeting labour market needs and the protection of migrants. Coordination between both state parties is well-covered and regularly takes place (with a varied group of government agencies represented). There is little to no parliamentary or other oversight of such agreements (and the migration process in general) in either country. The secrecy of the negotiation and the lack of consultation with relevant stakeholders resulted in a sidelining of workers’ rights. This raises concern that the MOUs are little more than bureaucratic frameworks to enable better state regulation of migration, supported by private commercial interests.

Recommendations to the National Unity Government of Myanmar

- In all future negotiations, press destination states to sign binding MOUs and agreements that are public, and commit both countries to protect workers' human rights and labour rights throughout the duration of their recruitment, employment and return. These agreements should explicitly bind both states to enforce the 'employer pays' principle in relation to recruitment fees, and should include oversight and dispute resolution mechanisms that include participation of key stakeholders including worker organisations.

Recommendations to the Royal Thai Government

- Ensure that Thai bilateral arrangements with countries supplying workers includes binding agreements that commit both countries to protect workers' human rights and labour rights throughout the duration of their recruitment, employment and return. Civil society and other key stakeholders from both countries should be involved in the drafting of these agreements, which should explicitly bind both states to enforce the 'employer pays' principle in relation to recruitment fees, and should include oversight and dispute resolution mechanisms that include participation of key stakeholders including worker organisations.

3.1 Are the agreements publicly accessible in relevant languages? Are migrant worker organizations aware of them?

Myanmar

MOUs and related agreements tend not to be made publicly available by the Myanmar authorities. On 24 June 2016, Myanmar and Thailand signed a new MOU and an Agreement on the Employment of Workers. Although the MOU has been made available online by the Thai Ministry of Labour, the more detailed agreement is not available online.¹⁶⁷ A Myanmar trade union representative said that when they asked officials for a copy of the 2016 agreement, they were refused.¹⁶⁸ According to an ILO representative, it is treated as a confidential document.¹⁶⁹ In 2018, at the Ministry level meetings built-in to the MOU process, both sides agreed on hiring of fisher workers from Myanmar, however such Bilateral Technical Meeting agreements are also treated as confidential and no details have been made public.¹⁷⁰ Most civil society and migrant worker organizations appear to be unaware as to the precise contents of these documents.

Myanmar has also signed an MOU with Korea in 2007 to participate in its Employment Permit System with recruitment undertaken by the Government Overseas Employment Agency; and Memoranda of Collaboration with Japan on Technical Intern Training Programme (2018) and Specified Skill Workers (2019).¹⁷¹ Discussions with Laos are reported to be ongoing, while the NPA also envisages agreements with Singapore, China and the Gulf countries.¹⁷² There is also a 2013 collaboration agreement for Registration, Legalisation and Deportation of Undocumented Myanmar Workers with Malaysia - but there was no MOU signed until 2019.¹⁷³ None of these have been made available by the Myanmar authorities.

Thailand

The 2016 MOU and agreement with Myanmar have been made available online by the Ministry of Labour in English and Thai.¹⁷⁴ MOUs signed with Laos (Thai only), Cambodia and Vietnam (both English and Thai) are also

167. The MOU is valid for five years, while the agreement is only valid for two years.

168. Name and organisation withheld, interview, 26 February 2020.

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

170. An IOM official, IOM Myanmar, remote interview, 1 October 2020.

171. Daw Aye Aye Moe MOLIP - Migration Department, "Presentation - Impact of Existing Migration Mechanisms on Migrants' Access to Social Protection," (16 September 2019), on file.

172. 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): 19.

173. *Ibid.*, 7.

174. [Memorandum of Understanding between the Government of the Kingdom of Thailand and the Government of the Republic of the Union of Myanmar on Labour Cooperation](#), 24 June 2016

accessible online on the same website. The 2018 Fishing Workers Agreement with Myanmar however is not similarly available - migrant worker organisations and workers themselves also do not appear to be aware of the precise text of the agreement.

3.2 Does the government prioritise fair recruitment in the negotiating and drafting of bilateral agreements, including involving social partners and basing its position on evaluations of existing recruitment practices?

Myanmar

Human rights concerns do not appear to have featured prominently in the negotiations leading up to the 2016 MOU and agreement with Thailand, but as one union leader pointed out, little detail is known about the substance of the negotiations.¹⁷⁵ An ILO representative noted that although there was a technical working group which was part of the negotiations, it was not clear to what extent human rights featured in them.¹⁷⁶ An ILO study however indicated that despite representation by a wide range of government bodies, “the process of coordinating and negotiating bilateral MOU provisions tends to be heavily influenced by national security concerns, and thus the government actors most associated with national security as well.”¹⁷⁷

In contrast, human rights issues were more prominent in the discussion of recruitment of fishers in 2018, partly because of the EU and US pressure on Thailand. IOM was consulted and one official was seconded to the Government to assist the process in which human rights concerns were raised within the context of “migrant protection” - this is also a regular agenda item for the quarterly follow-up/ implementation meetings.¹⁷⁸ Another expert - who advised the Thai Government

on human rights in the fishing/ seafood sector - also said that human rights concerns were pushed quite strongly by the Myanmar side during negotiations for the fishing agreement in 2018, and repeated rounds of negotiations fell through because of the tough line they took.¹⁷⁹ Eventually, according to him, Thailand agreed to stronger provisions on labour protection - some going beyond Thai law - before an agreement was concluded. Myanmar’s focus on labour protection was also noted in local media.¹⁸⁰

The NPA (2018-2022) notes that the Government will prioritise working towards improved and safe working environments for workers abroad - “recognition of minimum terms of employment and wages, and procedures for contract verification” through “dialogue and action on key protection concerns with bilateral partners from key destination countries”, particularly Thailand and Malaysia.¹⁸¹ A MWRN representative said that the Government was consulting them and seeking their inputs with respect to the MOU - this included discussions on sectors of work previously blocked for migrants in Thailand, i.e. working in shops, and issues around social security/ returning allowance.¹⁸² According to MWRN, the Government was also collecting on the ground information from groups including problems being faced by workers and questions.

Thailand

Although there are references to labour protection and fair recruitment,¹⁸³ the background to the MOUs is national security concerns within Thailand around restricting irregular migration and a key aim, according to the UN, remains “to build greater commitment among countries of origin to implementing the [migration] process effectively, encouraging more migrants to make use of legal channels.”¹⁸⁴ The focus of the MOUs therefore remains on admissions procedures, prevention of irregular migration and employment, and repatriation of migrant workers, with less focus on meeting labour

175. Name and organisation withheld, interview, 26 February 2020.

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

177. ILO Myanmar, “Building Labour Migration Policy Coherence in Myanmar,” (2017): 22.

178. An IOM official, IOM Myanmar, remote interview, 1 October 2020.

179. Daniel Murphy, Individual Expert on Fishing sector, remote interview, 9 April 2020.

180. “Migrate Work Legally, Receive Full Protection,” *Global New Light of Myanmar*, (28 September 2018).

181. 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): 19.

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

183. “Thailand to sign labour agreements,” *Thai News Agency Myanmar* (22 June 2016).

184. United Nations Thematic Working Group on Migration in Thailand, “Migration Report 2019,” (2019): 2.

market needs and the protection of migrants.¹⁸⁵ There is limited evidence that human rights concerns were a significant concern from Thailand's perspective during negotiation of MOUs. The fishing agreement/ MOU finalised in 2018 - amidst ongoing attention on the fishing/ seafood industry and a shortage of workers - appears to have had more recognition of human rights concerns.

The World Bank noted that Thailand's MOU negotiation process "has not been transparent, and it has incorporated limited input from stakeholders".¹⁸⁶ A migrant advocacy group told us there was little input from civil society or unions with regards to the drafting of MOU agreements which "do not reflect the interests of workers and leave much to be desired."¹⁸⁷ According to one expert on fishers' human rights, while there was some consultation with vessel owners, operators were not consulted and the MOU fails to respond to their needs.¹⁸⁸ According to Issara, the industry is not happy with the MOU process.¹⁸⁹ A key concern was that the complicated MOU process would not be able to address the labour shortage in the fishing industry.¹⁹⁰ Industry representatives have also claimed that the MOU process took too long and that the burden of "expenses are on the employer only, causing foreign workers to have no responsibility which often results in workers fleeing to new employers."¹⁹¹

3.3 Do bilateral agreements incorporate relevant internationally recognised human rights and labour standards?

Myanmar-Thailand MOU/agreement

The 2016 MOU and agreement between Myanmar and Thailand are light on human/ labour rights. There is no reference to specific human rights instruments. The MOU does however refer to labour law as one area to improve technical cooperation including "collective

bargaining, compliance and enforcement, resolution of labour disputes, social security and labour protection, rehabilitation, freedom of association, occupational safety and health, maritime work, unemployment insurance and management of foreign workers" (Article 2). The MOU also includes a broad reference to non-discrimination (Article 5, "right to fair treatment" subject to national laws). This is clearer in the associated agreement (Article 5, workers from Myanmar would receive the same fair treatment as local workers - no discrimination on gender, ethnic and religious differences). Article 5 also notes that workers would receive their "protection rights and benefits" in line with contracts, labour laws and regulations in force. According to media reports, the 2018 Fishing agreement has more in terms of human rights standards, but no copies are available to assess this more thoroughly.¹⁹²

3.4 Do bilateral agreements contain specific mechanisms on fair recruitment for example on consular protection, collaboration on enforcement, and coordination on closing regulatory gaps?

Myanmar-Thailand MOU/agreement

The Myanmar-Thailand 2016 MOU and agreement do not include any provisions on enforcement. With respect to coordination, the MOU requires the parties to work out and agree on an implementation plan (Article 7a). Senior officials are also to meet once every two years. The Agreement sets up a joint working group to hold regular meetings (at least quarterly) on implementation issues as well as a stipulation to work together to "protect the rights and benefits of workers in accordance with employment contracts including laws and regulations of the receiving country" (Article 13). According to the ILO, these meetings take place every two-three months.¹⁹³ The agreement also notes that any dispute between

185. ILO Asia-Pacific, "Review of the effectiveness of the MOUs in managing labour migration between Thailand and neighbouring countries," (2015): 8.

186. Mauro Testaverde et al, "Migrating to Opportunity: Overcoming Barriers to Labor Mobility in Southeast Asia" (World Bank: 2017): 278.

187. Sutthisak Rungruangphasuk, MAP Foundation, interview, 2 February 2020.

188. Daniel Murphy, Individual Expert on Fishing sector, remote interview, 9 April 2020.

189. Lisa Rende Taylor et al, "Labour Risks in the Thai and Indonesian Fishing Industries," Issara Institute, (April 2019): 5.

190. "Fishermen issue fresh ultimatum to government," *The Nation*, (1 August 2018).

191. Ministry of Labour - Thailand "Permanent Secretary" Reports 14 Guidelines Concluded from Discussions with Fishing Associations," 8 January 2019.

192. "Migrate Work Legally, Receive Full Protection," *Global New Light of Myanmar*, (28 September 2018).

193. ILO Myanmar, "Building Labour Migration Policy Coherence in Myanmar," (2017): 21-22.

employer and employee will be dealt with under ordinary Thai law (Article 12). However, according to an ILO representative, Myanmar and Thailand do collaborate when it comes to labour disputes in specific cases: “Myanmar labour officers [even] go to Thailand’s labour protection office and solve problems.”¹⁹⁴ Such interventions however appear to be rare. Although there is no reference in the Myanmar-Thailand MOU/ agreement to consular protection, it does exist in practice, with Myanmar labour attachés put in place in Thailand, as well as in other major destination countries including Malaysia and Korea (see 7.6).

3.5 Are there effective measures - that meaningfully involve social partners - to implement and review bilateral agreements, including oversight mechanisms?

Myanmar

MOLIP is the competent authority to implement the MOUs/ agreements on migration. As the focal point for management of international migration, the Migration Division within the Department of Labour/ MOLIP is “an active participant in coordination and communication relating to Myanmar’s bilateral agreements”.¹⁹⁵ According to the ILO, the MOU with South Korea has a very limited process - only one bilateral meeting every two years.¹⁹⁶ However, the MOU and agreement with Thailand involves regular meetings and participants include at least the Ministries of Home Affairs, Foreign Affairs and Border Affairs, Labour Attachés and Police including Special Branch and Anti-Trafficking Police (ATIPD).¹⁹⁷

An IOM official told us that the Myanmar authorities

often had preparatory meetings with international organisations, migrant worker organisations and CSOs before the quarterly bilateral MOU meetings - at times even in Thailand, as alternate bilateral meetings took place there.¹⁹⁸ However, according to the ILO, engagement between MOLIP and civil society groups on migration governance remains limited and ad hoc: “High-level governmental coordination platforms such as the OESC, bilateral meetings for overseas migration, and the Parliamentary Committee on Local and Overseas Workers do not include formal, institutionalized channels for the participation of CSOs, unions, and other actors.” A Union representative also said they had never been involved in any process relating to the MOU - although they however raise such migrant worker issues in the domestic tripartite meetings where they met the Government officials.¹⁹⁹ Government authorities do however appear to consult with MOEAF regularly. According to a MOEAF representative, they even have access to the Minister although such meetings have reduced recently.²⁰⁰ The oversight role of the Parliamentary Committee on Local and Overseas Workers too is unclear. The committee was formed in 2016 but despite potential, does not yet appear to play a significant role with respect to oversight or review of migration related issues.²⁰¹

Thailand

The Ministry of Labour is the competent authority specified in the MOU and agreement with Thailand, but the ILO has noted previously that delegations at regular review meetings include participants from the ministries of foreign affairs and home affairs, the police, the Attorney General’s office and provincial governments.²⁰²

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

195. ILO Myanmar, “[Building Labour Migration Policy Coherence in Myanmar](#)” (2017), 15.

196. *Ibid.*, 21.

197. *Ibid.*, 21.

198. An IOM official, IOM Myanmar, remote interview, 1 October 2020.

199. Name and organisation withheld, interview, 26 February 2020.

200. Peter Nyunt Maung, MOEAF, remote interview, 1 June 2020.

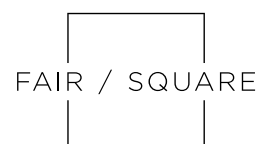
201. Han Ni, “[Amyotha Hluttaw: Performing Legislative Duty Without Regard To Race, Region, Or Ideology](#)”, *Global New Light of Myanmar*, (8 April 2019).

202. ILO Asia-Pacific, “[Review of the effectiveness of the MOUs in managing labour migration between Thailand and neighbouring countries](#),” (2015): 23.

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