

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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4. Licensing, registration and certification schemes

“I arrived in Thailand on 14 Dec 2019 but I just lost my job last week after my boss fired me. I don’t know why. My boss said if I stay at the company compound he would call the police and have me arrested. I’m very scared and I have nowhere to go, I tried to call my agency but they are not answering the phone and not helping me.” 25-YEAR-OLD WORKER FROM MYANMAR.

Summary

Myanmar has a fairly comprehensive licensing system. Only licensed agents can procure employment for prospective migrant workers, while a second license is required for agents to send workers to Thailand. As of 12 May 2020, there were 347 licensed recruitment agencies in Myanmar, of which 105 were licensed to send workers to Thailand. The licensing system includes a scheme of sizable deposits for reimbursing workers if subsequently required and processes for suspending/ cancelling licenses, although these are not sufficiently applied. Only 17 agencies had their licenses terminated from 2014 to 2020 - less than 1% annually - a remarkably low number given the widespread violations of the law in the recruitment industry. One major flaw in Myanmar’s recruitment system is its inability to deal with the reality of unlicensed middlemen - a significant feature of the recruitment system. There are hundreds of unlicensed agents or brokers who operate to link workers in the countryside with the recruitment agencies. Most MOU workers we interviewed had used a broker and paid three/ four times higher than the official recruitment fees. Unlicensed agents can be punished with up to 7 years imprisonment and fine, but enforcement is questionable. While the middlemen invariably increase the cost of MOU recruitment for workers, their role and impact may be more nuanced. In the absence of easily accessible

labour market information at the village level, along with a general distrust of ‘outsiders’ and authorities, the local agent/ broker is seen by many prospective workers as not only reliable, but also easier to hold to account given proximity should something go wrong in the process.

Regulation of recruitment agents in Thailand only began in 2016 and remains weak. Under current law, a ‘permit’ is mandatory - as of May 2020, there were 241 recruitment agencies with permits to bring foreign workers into Thailand. These are known as the “Five million baht companies”, so named for the security deposit they need to pay as potential compensation for workers or employers. Recruitment agencies are reported to have close links to politicians and government officials and appear to have more influence on legislation and policy. A key failure of the licensing process is its inability to rein in subcontracting, which is common despite being prohibited, partly due to an opening in Thai law that allows employers to hire workers directly with a significantly lower security deposit. Many unlicensed firms hire workers claiming to need them as employers and then illegally subcontract the workers out to other employers. This facilitates contract substitution and places migrant workers in a vulnerable position. Unlicensed brokers are also a feature, particularly “assisting” workers already in Thailand to navigate through complicated regularisation schemes and processes.

Recommendations to the National Unity Government of Myanmar:

- Institute an ethical recruitment framework into the MOLIP licensing and regulatory machinery such that prospective or existing recruitment agencies need to demonstrate compliance with ethical recruitment principles, and for this

compliance to be verified and audited by an independent third party.

- Commission research into the role of ‘first mile’ agents/brokers and any other middlemen, before attempting to ensure that the useful elements of the system are regulated within the existing recruitment system, while there is enforcement of the law against the exploitative elements.

Recommendations to the Royal Thai Government

- In collaboration with workers groups and trade unions, institute an ethical recruitment framework into licensing and regulatory machinery such that prospective or existing recruitment agencies need to demonstrate compliance with ethical recruitment principles, and for this compliance to be verified and audited by an independent third party.
- Consider the introduction of incentives for agencies who can genuinely demonstrate due diligence, commitment to zero-fee recruitment and a duty of care for migrant workers.
- Amend the Foreign Workers Ordinance to remove the loophole wherein unlicensed recruitment agencies hire workers by representing themselves as “employers” and subsequently subcontract them.

4.1 Is the system comprehensive? Does it apply to recruitment for all kinds of work?

Myanmar

Licensing is covered by the 1999 LROE and the 2014 Rules issued under it. The LROE defines a recruitment agent (‘service agent’) as any person/ organisation who - for a prescribed fee - acts as an agent in securing employment for those who seek overseas employment (Section 2). All kinds of jobs are covered, even white collar ones, although in practice such persons get directly hired by employers and do not go through agents.²⁰³ Although not specified in the LROE and any

rules, a second license is required for sending workers to Thailand, reportedly because of the high volume of workers involved.²⁰⁴ As of 12 May 2020, there were 347 licensed recruitment agencies, of which 105 were licensed for Thailand.²⁰⁵

All recruitment agents are required to be licensed (Section 13) and there are stringent penalties (up to 7 years imprisonment and fine) for acting as an agent without a license (Section 26). Despite this, there are hundreds of brokers who illegally operate at the village and town level and play a significant part in the current MOU recruitment system.²⁰⁶ Recruitment agents are forbidden to subcontract recruitment to unlicensed brokers, and may operate in rural areas only through local representatives (subagents) who can act on their behalf.²⁰⁷ According to the MOEAF Code of Conduct, such local representatives must be directly connected to licensed recruitment agencies, trained by them, have an agency identity card and be recognised by MOLIP.²⁰⁸ The recruitment agency is further required to monitor their activities and take responsibility for their promises/ actions related to recruitment/ employment. The MOEAF Code of Conduct explicitly forbids recruitment agencies from using/ employing government staff as local representatives. According to the NPA, the authorities plan to identify, review options of regulating local subagents/ brokers (2.1.4). Another loophole in the existing system appears to be ‘training centres/ schools’ teaching Japanese and Korean which are not registered for recruitment activity but at times cheat prospective migrants by claiming they can provide them jobs abroad.²⁰⁹ According to one civil society representative, such cases appear to be growing significantly.²¹⁰

Details about applying for a license in the Rules and Regulations for Overseas Employment Agency License issued by MOLIP in 2014 (vide Section 17 and 31 of the LROE).²¹¹ Only Myanmar citizens or Myanmar-owned agencies may apply for a license (Rule 1). There are no other essential qualifications: the ILO has recommended substantive exams before grant of license to ensure that the agencies have knowledge of the fair recruitment

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

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

205. MOLIP-Myanmar, “Agency Lists,” (12 May 2020).

206. Verite, “Thailand Bound: An Exploration of Labor Migration Infrastructures in Cambodia, Myanmar, and Lao PDR,” (2019): 47.

207. Department of Labour, “Rules and regulations to follow in the process of sending workers,” (25 January 2018), Rule 2a, c. On file.

208. MOEAF, “Code of Conduct for the Members of Myanmar Overseas Employment Agencies Federation,” (August 2016).

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

210. Name and organisation withheld, 20 February 2020.

211. Section 17 requires MOLIP to determine Licence tenure, fee and other details, while Section 31 gives the Ministry powers to issue rules and procedure, as well as the Central Committee and the Department of Labour to issue orders, notifications and directives as necessary to implement the law.

process.²¹² Section 14, LROE allows the Department of Labour to carry out an investigation prior to the grant of a license and make the license conditional, if required. Those previously blacklisted or punished for sending workers overseas without a license are forbidden from applying for a license (Rule 2). However, civil society organisations have pointed out that this is not an effective bar as even if cancelled in one name, the person applies for and operates the agency under a family member's name.²¹³

Licenses are issued for one year and then renewed for two years (Rule 4c). The LROE requires license holders to observe the conditions of the license, rules, procedures, orders etc; pay the stipulated fees; carry out duties for the worker; communicate with the overseas employer concerned; submit accounts and other relevant information (Section 25). The same provision also makes the license holder responsible to ensure that workers' rights and privileges are respected by the overseas employers. Vide Rule 5, the agency must ensure documentation of all workers it sends overseas, including service fees collected, original contracts etc.

To get a new license, companies must show assets worth 100 million kyat (US\$ 56,680) and a bank-balance of 100 million kyat. Once a license is approved, the agency must pay a deposit of up to 25 million kyat (US\$ 18,500) (for countries other than Thailand).²¹⁴ A license for Thailand costs 5 million kyat (US\$ 3,500).²¹⁵ The deposits may be seized if the license is cancelled due to the agency's fault (Rule 4e). No other additional requirement appears to be necessary for a license to send workers to Thailand. The deposits are to be used should reimbursement of workers be required at some stage, but as one trade union leader points out, these amounts are also insufficient given the scale of the problem.²¹⁶ He cited a case of the Moe Shwe Sin agency from 2019 where the agency signed contracts with 300-400 workers but could not arrange for them to leave Myanmar. Eventually the agency people ran away leaving the workers with high debts and ruining their lives as there was not enough deposit.

Section 15, LROE gives grounds for cancellation/ temporary revocation of the license: violation of any conditions placed on the Licensee, failure to perform tasks, charging excess fees, failure to submit accounts or other required information, and transfer of license to another person/ agency. The OESC has the power to direct an investigation if required. Under the Rules and Regulations for Overseas Employment Agency License, the license can be cancelled for a variety of reasons: if the agency cannot send workers abroad within nine months from receipt of the license; or if they conduct (undefined) "illegal recruitment" - no warnings are necessary in such a situation (Rule 7). Under the Rules and Regulations for License Holders of Overseas Employment Agency, also issued by MOLIP in 2014, the agencies have a responsibility to help where workers sent overseas die or get injured. Failure to do so may also lead to cancellation of the license, seizure of deposit and even legal action (Rule 23). Similarly, charging excessive fees or any deception/ fraud in documentation or recruitment more generally could also result in similar action (Rule 26).

The licensing requirements include minimum annual quotas that each agency has to achieve, depending on which countries they are sending workers to: for Thailand they must send at least 300 workers every year, but fewer for others, e.g. 75 and 15 respectively for Malaysia and Singapore. One recruiter told us that the threat of cancellation of the license for not meeting the quota in a lean year pushes recruitment agencies to be less discerning about employers and more amenable to using brokers to recruit workers.²¹⁷

Given ongoing criticism that the MOU process is too slow, a 2018 MOLIP directive added a further requirement that workers needed to be sent within 60 days of the employment contract being signed.²¹⁸ According to one recruitment agent, a failure to do so leads to a warning and three instances lead to a six-month suspension of license, as happened in their case.²¹⁹

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

213. An MWRN official, Migrant Workers Rights Network, interview, 18 February 2020; Name and organisation withheld, remote interview, 25 February 2020.

214. Although Rule 4b itself says 5 million, the amount was increased to 25 million in early 2020. Peter Nyunt Maung, MOEAF, remote interview, 1 June 2020; Maung Maung Zaw Min, Managing Director Rakhita Company Ltd, remote interview, 14 July 2020; Kyi Kyi Win, Managing Director Agile Manpower, remote interview, 7 September 2020. See also Khin Myat Myat Wai, "Myanmar Govt to increase license fees of employment agencies", *Myanmar Times*, 13 Jan 2020. A 2017 attempt to raise the amount to 50 million does not appear to have been implemented, Zaw Zaw Htwe, "Overseas employment agencies could face 10-fold hike in fees", *Myanmar Times*, 27 January 2017.

215. Peter Nyunt Maung, MOEAF, remote interview, 1 June 2020. An expert consulted after the initial draft of this report was concluded suggested this has since been increased to 10 million, Name withheld, ILO Myanmar, Communication, October 2021.

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

217. Name and organisation withheld, remote interview, 7 September 2020.

218. Directive 3/27/AhLaNya(Migration) 2018 (25 January 2018), Rule 2r. On file.

219. Name and organisation withheld, remote interview, 7 September 2020.

The LROE lays down a range of penalties for licensed agencies; up to 3 years imprisonment and fine for charging excessive service fees (Section 27); a similar penalty for transferring license without permission (Section 28) and up to one year imprisonment and/or a 5000 Kyat (US\$3.50) fine for violation of any of the other rules, procedures, orders or directives issued by this law. The last fine has been called a “joke” by one organisation and cited as evidence of the need for reform of the LROE.²²⁰ According to an ILO official, even though the government has been trying to take action there has been little success in practice - the police and courts do not understand the law fully, the court process is lengthy and only weak action is taken against violators.²²¹ For instance, most of the cases only ended up with low fines. The only exception to this appears to be with respect to illegal brokers, where severe punishment is applied.

Administrative sanctions appear to be more used, even though insufficiently. Vide Rule 7 of the 2014 rules, MOLIP may impose fines of 3 million kyat and issue temporary suspension of the license from 3-5 years for other breaches of rules or regulations. According to MOLIP, 45 agencies returned their license as not being able to operate while 17 agencies had their licenses terminated from 2014 to 2020 - the reasons are not provided.²²² Some of these are reported to have led to criminal charges, while at least 13 agencies had their licenses temporarily suspended.²²³ Civil society organisations want to see tougher implementation - at least more blacklisting and cancellation.²²⁴

The LROE also elaborates some rights of the license holder: the right to charge a service fee (as prescribed by the Central Committee); right to conduct private training courses for workers (with the approval of the Department); and the right to advise the relevant Government departments/ organizations regarding overseas employment opportunities (Section 25).

Thailand

Until 2016 recruitment agencies bringing workers into Thailand were not regulated, they operated in a grey area as labour consulting agencies.²²⁵ A 2016 ordinance was replaced by the Foreign Workers Ordinance (FWO) in 2017 - this was amended significantly in 2018. A 2016 ministerial regulation provides details in relation to request, issuance, renewal of permit; and securities to bring foreign workers.²²⁶ Two other ministerial regulations issued on the same day cover license fees;²²⁷ and other requirements for employers who wish to recruit foreign workers.²²⁸ Similar rules and regulations exist for licensing for recruitment of seafarers under Maritime Labour Act, 2015 (Section 20), as they are not covered under the Foreign Workers Ordinance.²²⁹

Currently, the FWO makes it mandatory to have a permit - issued by the Director General of the Department of Employment - for operation of any business involving bringing foreigners into Thailand for work (Section 26). Unlicensed organisations/ brokers may be punished with imprisonment of 1-3 years and/or a 200,000-600,000 THB fine (US\$ 6400 - 19200, Section 105). For a permit for a migrant worker recruitment agency, the applicant must be a limited or public company with a registered capital of not less than one million THB; three quarters of the firms’ ownership must be held by Thai nationals; all staff must show good behavior and not have exhibited bad moral character or have criminal convictions or previously had their license suspended.²³⁰ A range of supporting documents is also required to be submitted to ensure the identity and assets of the applicant. These include certified copies of registration, list of owners, ownership/ lease documents of the office along with photos of interior and exterior, house registration, identification cards and photos of the director who will hold the license, doctor’s certificate, and background check from the police.²³¹

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

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

222. MOLIP-Myanmar, “Agency Lists,” (12 May 2020).

223. Zaw Zaw Htwe, “Labour Ministry withdraws licenses of over 40 job agencies”, *Myanmar Times*, (24 April 2018).

224. Name and organisation withheld, remote interview, 25 February 2020; Name and organisation withheld, remote interview, 20 February 2020.

225. Mauro Testaverde et al, “Migrating to Opportunity: Overcoming Barriers to Labor Mobility in Southeast Asia”, *World Bank*, (2017): 197.

226. Ministerial Regulation Re: Request for Permit, Issuance of permit, renewal of permit and prescription of securities for bringing foreign labour to work for an employer in the country, 2016 (unofficial translation). This appears to continue to remain in force, despite the 2016 Ordinance being replaced by the Foreign Workers Ordinance, 2017.

227. Minister Regulation on prescribing the fees for bringing a foreign labour to work for an employer in the country.

228. Minister Regulation Re: bringing a foreign labour to work for an employer in the country, 2016 (unofficial translation).

229. Re: Application for Permission, Issuance of License to conduct employment services for seafarer jobseekers, 2017 (unofficial translation); Re: Prescription of fee for conducting employment services for jobseekers to work as seafarers, 2017 (unofficial translation).

230. Qualifications for applicants seeking permission to bring foreigners to work with employers in the country, undated (Thai).

231. *Ibid.*

As of May 2020, there are 241 licensed Thai recruitment agencies that are allowed to bring foreign workers into Thailand.²³² The FWO prescribes a minimum of five million THB (US\$ 160,000) to be paid by license holders as a security deposit against which workers or employers could request compensation (Section 28). The ministerial regulations set the same amount to be paid via cash, government bonds or bank guarantee (Clause 13). The ministerial regulations provide that decisions to not issue or renew a permit must be provided in writing to the applicant, with reasons given, and can be appealed (Clauses 7, 12).²³³ The FWO has also established the Foreigners Working Management Fund (Chapter 5) to be used for repatriation, compensation and funding support organisations.

The FWO forbids advertising recruitment by anyone who does not have the requisite permission to do so (Section 25). It also outlines some migrant workers' labour rights, including protection from abusive practices during recruitment by either an employer and a recruiter. However, although sometimes referred to as a comprehensive document - including by ILO -²³⁴ there are no provisions included with respect to transportation,²³⁵ placement of workers and information dissemination.

Although subcontracting is prohibited by the FWO (Section 41) with stiff penalties (imprisonment for upto 1 year and fine upto 200,000 THB, Section 110/1), it is relatively common. Further, many unlicensed firms operate illegally as subcontractors - hiring workers claiming to need them as employers, but once in the country the workers are then subcontracted to other employers who need them. This is in part aided by the fact that the FWO allows employers to hire workers directly (without going through licensed agents) while paying a much lower amount than the 5 million THB that licensed recruitments agents have to deposit: 100,000 THB (if 100 or more workers being hired or 1000 THB per worker, if fewer. (Clause 22, Ministerial Regulation).²³⁶

4.2 Is the licensing / registration system transparent and accessible? Can workers and other interested parties use this system to verify the legitimacy of recruitment agencies and placement offers?

Myanmar

The 2018-2022 NPA has a specific policy objective (2.1) to put in place a transparent licensing system to facilitate monitoring and enforcement of licensing requirements. This includes plans to maintain a publicly available and regularly updateable database of status of licensees to enhance transparency and accountability of the system (2.1.1).²³⁷ Some aspects have been achieved - lists of licensed agents are updated and publicly available online.²³⁸ One migrant workers group confirmed that MOLIP officials are willing to confirm the status of an agency even on the phone.²³⁹ Details of documents required to apply for licenses are also publicly available. However, information about cancellation/ suspension of licenses or other fines-penalties/ criminal charges are not available, nor is it possible for a prospective worker to verify a demand letter/ offer online.

Thailand

The form and qualifications for receiving a permit for a migrant labour recruitment agency are available on the website of the DOE.²⁴⁰ The website also provides a regularly updated list of Thai firms who are licensed to bring workers into the country - these lists are however provided in Thai only and may therefore be of limited use to Myanmar recruitment agencies or workers. Information with respect to agencies whose licenses were suspended/cancelled or who faced fines or other

232. [List of companies licensed to bring workers to work with employers in the country](#), 18 May 2020.

233. [Ministerial Regulation Re: Request for Permit, Issuance of permit, renewal of permit and prescription of securities for bringing foreign labour to work for an employer in the country](#), 2016 (unofficial translation).

234. 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): 5.

235. Verité, "Thailand Bound: An Exploration of Labor Migration Infrastructures in Cambodia, Myanmar, and Lao PDR," (2019): 16.

236. [Ministerial Regulation Re: Request for Permit, Issuance of permit, renewal of permit and prescription of securities for bringing foreign labour to work for an employer in the country](#), 2016 (unofficial translation). Note that the last amount is wrongly stated as 100 THB in the translation.

237. 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): 24.

238. MOLIP-Myanmar, "Agency Lists," (12 May 2020). The lists were also shared by MOLIP 'Safe Migration' facebook page.

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

240. [Qualifications for applicants seeking permission to bring foreigners to work with employers in the country](#), undated (Thai).

penalties are not provided online. One civil society group that works with migrant workers said that they did not refer to the DOE website to check whether a Thai recruiting firm is still registered but instead found it easier to get more updated and reliable information by checking with MOEAF in Myanmar - who were also able to give their views on the track record of a given Thai recruitment agency.²⁴¹ A Chiang Mai based migrant worker also said that he and other workers do not access the website since it is in Thai: he was unaware that the agency that he paid to regularise his status in Thailand was not licensed to do so.²⁴² Such unlicensed agencies/brokers sit outside the system, despite the significant role they play in “assisting” workers in Thailand through the complex and changing regularisation processes.

4.3 Are worker and recruiter (and employer) organizations consulted on the design and implementation of these schemes?

Myanmar

The Government did consult the ILO about the licensing scheme and some trade unions and representatives of workers and employers were invited to meetings.²⁴³ Nonetheless, there does not appear to be wider consultation with trade unions, migrant worker groups or civil society groups.²⁴⁴ Migrant workers groups may be able to influence policy or legislation by actively raising issues or making detailed complaints to the authorities, but they are not usually consulted specifically or consistently.²⁴⁵ E.g. workers groups actively advocated with the Government for an increase of the deposit to be paid by license holders - they were successful in 2020 when the amount was hiked five-fold.²⁴⁶

Recruitment agencies were not happy that the civil society groups were advocating for higher deposits.²⁴⁷ Recruitment Agencies advocated - through MOEAF - with the President and Minister’s office to reconsider the increase.²⁴⁸ While MOEAF and the agencies were successful in 2017, they were less successful when a hike was attempted in 2020 - eventually a five-fold hike took place - to the current 25 million kyat (US\$ 18,500).²⁴⁹ MOEAF has access to Government officials, but in a speech in February 2020, the MOLIP Minister highlighted the importance of also consulting with individual agencies.²⁵⁰ This does not appear to have translated into action - a recruitment agency representative told us: “there is no consultation from MOLIP. They just impose whatever directives they want. When some directives come out, the Ministry sends them to us. And MOEAF would also announce that as well.”²⁵¹

Thailand

Migrant workers are not permitted to form their own unions in Thailand, and there is little overlap with Thai unions which typically do not cover sectors where most migrants work. Advocacy on migrant issues is therefore led via informal associations and civil society organisations. Such groups were not consulted in the passing of the 2017 FWO Ordinance.²⁵² With the Thai authorities more willing to engage in the context of the migrant crisis that followed, civil society groups were able to influence the 2018 amendments generally, although the extent to which the licensing provisions were discussed is unclear.²⁵³ According to one civil society organisation representative: workers and their civil society allies are rarely consulted by either the Thai or Myanmar governments on important matters: “meetings with them are more about informing than consulting.”²⁵⁴

241. Name and organisation withheld, interview, 21 January 2020.

242. Interview P9, Chiang Mai, 30 September 2020.

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

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

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

246. Name and organisation withheld, remote interview, 25 February 2020; An MWRN official, Migrant Workers Rights Network, interview, 18 February 2020.

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

248. “Employment Agencies Ask For Relief From Ten-fold License Increase”, *Global New Light of Myanmar* (2 February 2017); Zaw Zaw Htwe, “Labour ministry reviewing agencies deposit fee order”, *Myanmar Times* (24 April 2018).

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

250. MOLIP, “Speech by Minister U Thein Swe”, 17 February 2020 (in Burmese).

251. Name and organisation withheld, remote interview, 7 September 2020.

252. ILO, “ILO urges more tripartite dialogue in addressing migrant labour issues”, 4 July 2017.

253. Migrant Working Group, “Observations and Recommendations Regarding the Draft Royal Decree”, 24 May 2017.

254. Sutthisak Rungrueangphasuk, MAP Foundation, interview, 2 February 2020.

Although Thailand does not have a recruitment agency association,²⁵⁵ recruitment agencies are often able to influence legislation or policy due to their close links to politicians and government officials.²⁵⁶ Regardless, there was little consultation per se with respect to the passing of the 2017 Ordinance.²⁵⁷ While employers, international organisations and civil society were consulted by the Ministry of Labour prior to the 2018 amendments, the involvement or inputs of recruitment agencies are not clear.

4.4 Does the government put in place measures to incentivise ethical recruitment practices?

Myanmar

There are currently no Government measures to incentivise ethical recruitment, although this issue appears to be on the radar of the Myanmar Government.²⁵⁸ The NPA includes an objective to introduce incentives for recruitment agencies to comply with existing legislation through an award or grading system as in the Code of Conduct.²⁵⁹ IOM, in cooperation with MOLIP, is carrying out awareness workshops about the IRIS project which includes a voluntary certification system for ethical recruiters.²⁶⁰ The Code of Conduct may also be considered a step in the same direction.²⁶¹ The Code includes a Compliance and Monitoring Committee which has the power to rank agencies on an annual basis, and give ‘three star’ and ‘two star’ ratings.²⁶²

Thailand

There do not appear to be any consistent measures by the Government to incentivise ethical recruitment. However, it has been reported that one Myanmar recruitment agency received an ethical recruitment

award from the Thai Government following its work with Thai Union’s ethical recruitment policy.²⁶³

4.5 Are employers and recruiters jointly liable/ accountable for respecting workers’ rights in the legislative and regulatory regime governing recruitment?

Myanmar

The LROE guarantees migrant workers the right to claim - “through the Service Agent” - compensation or damages for injury sustained at a foreign worksite and the right to take civil or criminal action “for loss of his rights and privileges relating to overseas employment” (Section 24). As a corollary, Section 25 requires that license holders communicate with the employers and “undertake responsibility for obtaining in full” the rights and privileges of workers. Similarly, as per the 2014 Rules and Regulations for License holders of Overseas Employment Agencies, the agency has “full responsibility for the workers” from the time of sending of workers overseas until they return home after fulfilling their employment contract (Rule 16). Agencies must “coordinate with employers in the receiving country to ensure all rights and benefits for workers sent by it (Rule 18). The Rules and Regulations for Myanmar Overseas Employment Agencies Federation also place an obligation on MOEAF to supervise that agencies undertake such ‘full responsibility’. According to an IOM report of 2014 however, such responsibilities of agencies were watered down in contracts signed subsequently between workers and agencies, either at the airport or the border.²⁶⁴ An ILO representative also said that it was difficult in reality for agencies in Myanmar to take full responsibility for the employer’s acts in Thailand.²⁶⁵

255. Issara Institute, “Developing a Financially Viable Ethical Labour Recruitment Model: Prospects for the Myanmar-Thailand Channel,” (2018): 18.

256. ILO, “Regulating recruitment of migrant workers: An assessment of complaint mechanisms in Thailand,” (2013): 2.

257. Human Rights Watch, “Hidden Chains: Rights Abuses and Forced Labor in Thailand’s Fishing Industry” (2018): 21.

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

259. 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): 24.

260. IOM Myanmar, “Myanmar Overseas Employment Agencies Explore Pathways to More Ethical Recruitment,” (13 November 2018); Global New Light of Myanmar, “International Recruitment Integrity System workshop held in Yangon,” 29 May 2019.

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

262. MOEAF, “Code of Conduct for the Members of Myanmar Overseas Employment Agencies Federation,” (August 2016), Part 5, Article 11(B).

263. Impacct, “Ethical recruitment: translating policy into practice,” (October 2019): 12.

264. IOM Myanmar, “An Assessment of Regular Channels for the Recruitment of Migrant Workers in Cambodia and Myanmar for Employment in Thailand,” (October 2014): 106-7.

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

One recruitment agent (and former MOEAF official) told us that workers held them responsible even for problems with the Employer: “...no matter what, everything circles back to the Myanmar agencies.”²⁶⁶ According to him, instead of filing complaints through the authorities in Thailand or the Labour Attachés, workers preferred to raise the issue with the recruitment agency in Myanmar. He claimed that even civil society groups encouraged workers to do so. Some workers however said that agency staff do not provide them the required assistance. A 20-year-old factory worker told us that when they had a problem with the employer, they called the agent: “Because we came through an agency and we thought whatever happens, the agency would take responsibility.” However, the agency merely referred them instead to the broker/ middleman they had used.²⁶⁷ Another 25-year-old worker, who lost his job after the

Covid-19 pandemic lockdown began three months after he started, also received no assistance from the agency: “I arrived in Thailand on 14 Dec 2019 but I just lost my job last week after my boss fired me. I don’t know why. My boss said if I stay at the company compound he would call the police and have me arrested. I’m very scared and I have nowhere to go, I tried to call my agency but they are not answering the phone and not helping me.”²⁶⁸

Thailand

The Foreign Workers Ordinance makes both the employer and the licensed recruitment agents in Thailand liable to reimburse the authorities for costs of repatriation of a migrant worker brought by them (Section 56).

266. Name and organisation withheld, interview, 14 July 2020.

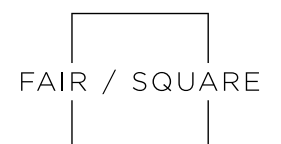
267. Remote interview R1, 16 August 2020.

268. Interview P7, Chiang Mai, 30 March 2020.

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