

THE FIVE CORRIDORS PROJECT - CORRIDOR 1

# Myanmar to Thailand:

## Fair recruitment in review

OCTOBER 2021



five corridors  
project

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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:

## 5. Machinery to implement and enforce legislative and regulatory regimes

- 5.1** Does government ensure that ministries and departments, agencies and other public institutions that oversee recruitment and business practices cooperate closely and are aware of and observe human rights obligations when fulfilling their respective mandates? \_\_\_\_\_ 55
- 5.2** Is there an effective and sufficiently resourced labour inspectorate, empowered and trained to investigate and intervene at all stages of the recruitment process for all workers and all enterprises, and to monitor and evaluate the operations of all labour recruiters? \_\_\_\_\_ 57
- 5.3** Are the criminal investigative and prosecuting bodies trained and resourced to investigate and prosecute criminal activity related to fraudulent recruitment? \_\_\_\_\_ 61
- 5.4** Does the government have effective anti-corruption measures (including legislation and evidence of enforcement) that addresses and tackles the risk of corruption on the part of public sector officials, recruiters and employers involved in the regulation of the recruitment sector? \_\_\_\_\_ 64

## 5. Machinery to implement and enforce legislative and regulatory regimes

*“If the Thai Government was serious about serious labour inspections, they should have ramped up gradually and implemented the program for 10-20 years. Instead, everything was implemented all at once and removed quickly, responding to the EU yellow card process. Even if the Government wanted to keep the program going, the scaling-up was not sustainable.”* DANIEL MURPHY, EXPERT ON FISHING SECTOR.

### Summary

The machinery for enforcement of the legal-regulatory framework is weak in both countries, while corruption is endemic. In Myanmar, there is inadequate government inspection machinery with respect to recruitment agencies. Inspections are rarely carried out. Investigation into complaints by workers is largely carried out by MOEAF. MOEAF undertaking this role creates an obvious conflict of interest - not only was it created as a federation of recruitment agents to further their interests (and registered as an NGO), but senior office-bearers of MOEAF continue to own or run recruitment agencies while ostensibly regulating the industry. Complaints involving brokers are investigated by the Police, overseen by the Ministry of Home Affairs. Although the police force is generally poorly trained and resourced for investigations, in 2013 a well-funded and specifically trained Anti-Trafficking in Persons Division was created. However, structural issues remained - coordination between the civilian-led MOLIP and the military-led Ministry of Home Affairs can be complicated, while cooperation between police and prosecutors is poor. Meanwhile, corruption is common throughout the enforcement machinery often determining who gets punished. There is also a historic lack of public trust in the police, particularly amongst ethnic minority groups who also form the bulk of the migrant population.

Corruption is endemic throughout the recruitment process, playing an important role in raising the cost of migration for workers. A rare high-profile prosecution involved the Myanmar labor attaché in Bangkok, who was allegedly seeking money from Myanmar agencies to approve demand letters

in Thailand. Nonetheless, recruiters say they need to ‘grease’ the entire machinery - including labour and immigration officials - adding cost they then pass on to the workers. Such payments are however dwarfed by the much larger payments being made by Myanmar recruitment agencies to Thai brokers, recruitment agencies or employers to secure contracts to supply workers. Corruption is also extremely common amongst Thai authorities, including within police and immigration. Although nearly 120 public officials have been disciplined or prosecuted between 2013 and 2020, this is a relatively small number given the scale of the problem. There is no clear information of any recruitment agents having been similarly disciplined or prosecuted. Although there have been legal and institutional reforms in the anti-corruption sphere, this is largely for public consumption.

Thailand undertook a general strengthening of the labour inspection regime in recent years, largely as a result of the global attention on its fishing and seafood sector. In 2015, the Navy took over control of a newly created inter-agency machinery responsible for enforcement (including labour issues) over fishing boats, but this transferred to civilian control in 2019. This, along with other aspects of the high-profile inspection regime now tailing down, reiterates views that the improvements to the inspection regime were more for international audiences instead of a sustainable long-term investment for change in the fishing industry. The increased inspections have not so far led to significantly more prosecution, let alone convictions, either in Labour Courts (cases taken up by DLPW) or in Criminal Courts (Police Anti-Human Trafficking Division and office of the Prosecutor).



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## Recommendations to the National Unity Government of Myanmar

- Ensure that inspection of licensed recruitment agencies and investigation of complaints by workers against such agencies is carried out by an effective and sufficiently resourced labour inspectorate.
- Ensure that complaints relating to recruitment are taken up by the specialised ATIPD, and that there is more effective coordination between the ATIPD and the regular police. Consult with migrant workers' groups and trade unions on steps to ensure that workers feel safe in filing such complaints.

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## Recommendations to the Royal Thai Government

- Set up an inspectorate or task force dedicated to the protection of foreign workers that has a mandate to accept and investigate complaints and to conduct random inspections in the sectors in which foreign workers are employed as well as to inspect private employment institutions that recruit foreign workers. Civil society groups and other expert stakeholders should be consulted on the precise mandate of any such inspectorate, which should at a minimum address contractual issues and recruitment fee payment.
- Ensure that the DOE is appropriately resourced to be able to carry out increased inspections/ audits of licensed recruitment agents and until the above inspectorate is set up, also carry out recruitment-oriented checks of employers, particularly in the fishing and agricultural sectors.

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## 5.1 Does government ensure that ministries and departments, agencies and other public institutions that oversee recruitment and business practices cooperate closely and are aware of and observe human rights obligations when fulfilling their respective mandates?

### Myanmar

The NPA 2018-2022 provides an overarching framework for coordination. It made a priority to review and clarify the roles of all ministries in the management of labour migration, and subsequently created a technical working group (with IOM acting as secretariat) on labour migration management, which takes the lead on implementing and monitoring the NPA. Although MOLIP, working through the Migration Division of the Department of Labour, is the lead agency, the NPA recognises that various other Government bodies have responsibilities. These include the Ministry of Social Welfare, Relief and Resettlement; Ministry of Foreign Affairs; Ministry of Health and Sports; Ministry of Border Affairs; Ministry of Planning, Finance and Industry; Ministry of Education; Ministry of Commerce; Ministry of Information; Supreme Court; Union Attorney General's Office; Myanmar Police Force; Central Bank of Myanmar; Myanmar Investment Commission.<sup>269</sup>

The Overseas Employment Supervisory Committee (set up under the LROE) is a key interdepartmental forum that brings MOLIP together with other key ministerial actors. Coordination is distributed through the OESC's three working committees: the administrative working committee, the workers' benefits committee, and the workers' rights protection committee.<sup>270</sup> Coordination also takes place through bilateral meetings for overseas migration, through the activities of the Parliamentary Committee on Local and Overseas Workers, and at the lowest level, through the activities of local Labour Exchange Offices.<sup>271</sup> In practice, there are a number

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269. 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): 17.

270. ILO Myanmar, "Building Labour Migration Policy Coherence in Myanmar," (2017): 20.

271. ILO Myanmar, "Building Labour Migration Policy Coherence in Myanmar," (2017): 20.

of factors that hamper effective coordination: at the Migration Division - the main actor for coordination - a key limitation is its relatively small size and budget. With decision-making centralised at higher levels of MOLIP, the Migration Division “tends towards implementation of coordination activities rather than their planning and formulation”.<sup>272</sup> At the OESC, the main problem is decentralisation. While the three OESC committees work to bring together relevant government actors, there is little coordination between the three committees as the OESC rarely meets together.<sup>273</sup> The OESC is also little known outside Government, limiting interaction with non-governmental sources.<sup>274</sup> The Parliamentary Committee on Local and Overseas Workers which has the ability to link the executive and legislative bodies on migration issues has yet to actively engage with these issues.<sup>275</sup>

## Thailand

According to one expert experienced in migration issues, the Thai government is “very uncoordinated” in managing migrants and government departments do not work together to solve migrant workers issues.<sup>276</sup> They see this as a long-term failure, which cannot be attributed to any single government - none of them considered migrant workers to be a priority issue. The legal expert was not optimistic of improvement in the near future. One goal that has remained consistent however, despite the lack of coordination, oscillations between amnesty/regularisation schemes and crackdowns in Thailand’s migration policy, is limiting irregular migration. Migration has largely been viewed through a national security lens, with immigration and policing aims being primary functions to ensure the security of the nation from a foreign threat. A high level committee to advise the Cabinet on Anti-Illegal Immigration and Anti-Labour Trafficking on policy, measures and practice also appears to have been

set up. It is headed by the Deputy Prime Minister and also includes the Minister of Labour, Minister of Social Development and Human Security and senior bureaucrats.<sup>277</sup>

Following the attention on forced labour on Thai fishing boats and the EU ‘yellow card’, the military government in 2015 decided to make the Navy responsible for the enforcement of fisheries and labour protection regulations.<sup>278</sup> A Command Centre for Combatting Illegal Fishing was set up to oversee the PIPO inspection centres. This was to be an important inter-agency mechanism to enforce regulations, including on labour rights. Performance was patchy, including due to lack of inter-agency collaboration and communication.<sup>279</sup> For example, SWG noted the “lack of clarity on which government agency is responsible for investigating and monitoring the wage deductions permissible under law. The Department of Employment (DOE) is responsible for handling these issues; however, it is the Department of Labor Protection and Welfare (DLPW) that undertakes labor inspections and does not regularly transfer such cases to DOE.”<sup>280</sup> Since 2019, the Navy has handed over control of the PIPOs to the Department of Fisheries.<sup>281</sup>

The Thai government has recognised the concerns of the international community about gaps in inter-agency coordination. In 2019, the Thai authorities informed the ILO Committee of steps taken to integrate actions of government agencies such as the DOE, police, security agencies and administrative officials to combat forced labour. They also stated that the Ministry of Labour had integrated cooperation with the navy, the army, the Department of Immigration and other local security agencies to intercept smuggling of migrant workers and to conduct operations against recruitment companies and illegal brokers.<sup>282</sup>

272. ILO Myanmar, “[Building Labour Migration Policy Coherence in Myanmar](#),” (2017): 22.

273. ILO Myanmar, “[Building Labour Migration Policy Coherence in Myanmar](#),” (2017): 22.

274. ILO Myanmar, “[Building Labour Migration Policy Coherence in Myanmar](#),” (2017): 22.

275. ILO Myanmar, “[Building Labour Migration Policy Coherence in Myanmar](#),” (2017): 22.

276. Chonticha Tangworamongkon aka Chon, HRDF, interview, 26 March 2020.

277. Patranist Sritubtim - Department of Employment, “[The Collection and Use of International Migration Data in Thailand](#),” (2017)

278. Peter Vandergeest and Melissa Marschke, “[Modern Slavery and Freedom: Exploring Contradictions through Labour Scandals in the Thai Fisheries](#),” *Antipode* 52(1), (January 2020).

279. Environmental Justice Foundation, “[Thailand’s road to reform: securing a sustainable, legal and ethical fishery](#),” (2019), 22.

280. 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): 17.

281. ILO, “[Endline research findings on fishers and seafood workers in Thailand](#),” (10 March 2020), 37.

282. ILO Committee, “[Observation: Forced Labour Convention, 1930 \(No. 29\) - Thailand](#),” (2021).

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## 5.2 Is there an effective and sufficiently resourced labour inspectorate, empowered and trained to investigate and intervene at all stages of the recruitment process for all workers and all enterprises, and to monitor and evaluate the operations of all labour recruiters?

### Myanmar

The Factory and General Labour Laws Inspection Department is the primary labour inspection body within MOLIP,<sup>283</sup> however their mandate does not include recruitment agencies. The LROE grants the OESC the power to assign duties to a sub-committee for “inspecting the functions of Service Agencies or Workers who are about to undertake overseas employment” (Section 8(f)), however it does not appear that the workers’ rights protection committee inspects or oversees any such inspections.<sup>284</sup> Instead, the 2014 MOLIP rules delegate the power to supervise agencies to MOEAF - including ensuring that workers are not being charged excessive service fees (Rule 4). This creates an obvious conflict of interest given that MOEAF is set up as an NGO for recruitment agents to come together as a federation and further their interests. A more direct conflict is also created as MOEAF officials also continue to own and/or run recruitment agencies at the same time.<sup>285</sup> Their impartiality to conduct such inspections is questionable. In any event, inspections are rarely carried out. An ILO report of 2016 recommended that the capacity to conduct inspections of recruitment agents should be strengthened: including confidential interviews with migrant workers, financial audits and on-site visits without a warrant or prior notification. Similarly although the NPA includes a specific aim of creating a monitoring system of licenses and recruitment

processes for migrant workers,<sup>286</sup> there does not appear to be any pro-active practice of inspections with respect to recruitment agents - only when complaints are made.<sup>287</sup> This was challenged by one civil society representative who questioned why the authorities acted only when a complaint is received? “They can go undercover disguised as a worker to take action...”<sup>288</sup>

### Thailand

Recruitment of migrant workers and the implementation of the Foreign Workers Ordinance falls within the domain of the Department of Employment (DOE) of the Ministry of Labour. Section 98 gives DOE inspectors wide-ranging powers to enter premises and seize required evidence. During 2019, the DOE inspected 244 recruitment agencies who brought workers into Thailand.<sup>289</sup> Similarly 166 were inspected in 2018 and 101 in 2017.<sup>290</sup> Following the inspections, action was taken against nine agencies since 2017. In 2019, four agencies were found to be in violation: one agency had its operation permit suspended for 120 days and three agencies had their operation permits suspended for 30 days.<sup>291</sup> In 2018 four recruitment agencies were found to be violating rules including failure to register employees, unauthorised publication of migrant labour recruitment, operating without a licence, and negligent misrepresentation or fraudulent recruitment. No details of punishment were provided.<sup>292</sup> In 2017, one recruitment agency had its license suspended for 30 days for not providing a receipt to the employer.<sup>293</sup>

DOE officials also conduct labour screenings for migrant workers arriving in Thailand under the MOU channel. This is done to ensure that they are not under duress or coerced to work. One civil society group raised concerns after observing the screening process at the Ranong ‘Post-Arrival and Reintegration Center for Migrant Workers’ port in September 2018: “EJF has observed

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283. ILO, “Understanding the Myanmar Labour Law: FAQs for workers,” (July 2018).

284. ILO Myanmar, “Building Labour Migration Policy Coherence in Myanmar,” (2017): 17.

285. All three current/former MOEAF officials interviewed were running a recruitment agency at the same time.

286. 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): 10.

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

288. Name and organisation withheld, remote interview, 25 February 2020.

289. Royal Thai Government, “Thailand’s Country Report on Anti-Human Trafficking Response 2019,” (undated), 62.

290. Royal Thai Government, “Country Report on Anti-Human Trafficking Efforts 2018,” and “Thailand’s Country Report on Anti-Human Trafficking Response, 2017,” (undated). However the authorities informed the ILO Committee that the Department of Employment inspected 364 migrant workers recruitment agencies and brokers, see ILO Committee, “Observation: Forced Labour Convention, 1930 (No. 29) - Thailand,” (2021).

291. Royal Thai Government, “Thailand’s Country Report on Anti-Human Trafficking Response 2019,” (undated), 62.

292. Royal Thai Government, “Country Report on Anti-Human Trafficking Efforts 2018,” (undated), 47.

293. Royal Thai Government, “Thailand’s Country Report on Anti-Human Trafficking Response, 2017,” (undated) 8-9.

arriving workers being interviewed as a group and not individually. Multiple uniformed and armed police and other officials were also present during the interview process. These factors have the potential to intimidate workers and make it unlikely that they will speak out about their experience or indeed if they were a victim of forced labour or trafficking.”<sup>294</sup> The Seafood Working Group has also highlighted a lack of regular DOE inspections in the fishing and seafood sector.<sup>295</sup>

Another department of the Ministry of Labour, the Department of Labour Protection and Welfare (DLPW), is the primary inspection body for ensuring compliance of the Labour Protection Act. DLPW inspectors have the power to carry out inspections after or even without any complaint from workers. Even though there may not be formal collaboration with civil society organizations, many inspection visits are carried out after critical reports are received from workers and CSOs.<sup>296</sup> Inspectors have wide powers during their visits. In addition to general working conditions and occupational safety and health, they can also raise any improprieties or abuses not specifically covered by existing legal provisions.<sup>297</sup> They have powers to issue a written order requiring the employer to comply with legislation or even take immediate measures, including suspension of work, when they consider there to be an imminent danger to health and safety of workers. DLPW inspections are relatively decentralized: Provincial Labour Protection and Welfare Offices are found in all 76 provinces and there are ten District Labour Protection and Welfare Offices in Bangkok.<sup>298</sup> These provincial and district offices are under the supervision of the local administrations and not under DLPW headquarters, which is responsible for making policy, providing guidance, implementation and direction for the implementing units. Although inspections are carried out as per the policies and objectives set by the Ministry of Labour, the local offices have their own annual plans which are not monitored or controlled by DLPW

centrally.<sup>299</sup> One migrant worker advocate said that in practice local DLPW inspectors could even summon employers without approval from head office.<sup>300</sup>

According to one Government report, Thailand had 1889 labour inspectors (for 22 million workers) in 2019,<sup>301</sup> a significant increase from 1245 inspectors in 2016.<sup>302</sup> However a Department of Labour Protection and Welfare (DLPW) official informed us that only 700 of the labour inspectors were civil servants.<sup>303</sup> The remaining were assistants who, while also government employees, had lower professional status and benefits as compared to civil servants. Although previously labour inspectors learned mostly on the job,<sup>304</sup> trainings for new labour inspectors are now conducted by MOL with IOM. According to a DLPW official, these training sessions last for 5 days and include inspection techniques, investigation and fact-finding methods, collecting data and evidence, legal prosecution, labour protection laws, and the laws on management of migrant workers.<sup>305</sup> Inspectors must pass a test at the end before being put on a job placement. A manual has also been prepared for labour inspectors in consultation with ILO, but this could not be shared with us as it is not a public document.<sup>306</sup>

The expansion of DLPW was part of broader reforms in the fishing/seafood sector following global attention over the past decade. The Ministerial Regulation on Labour Protection in Sea Fishery Work, 2014 envisaged that labour inspectors inspect the contract of all fishing employees at least once a year (Clause 6). In 2018 a new DLPW Regulation on Labour Inspection and Criminal Proceedings was issued, following the Ministerial Regulation on Labour Protection in Sea Fishing Work, 2018. These regulations expanded the mandate of labour inspectors in 22 coastal provinces: they were to now conduct workers’ interviews as part of inspections of employment conditions and examine documents in relation to “employment contract, wage payment,

294. Environmental Justice Foundation, “Thailand’s progress in combating IUU, forced labour & human trafficking,” (spring 2020), 27.

295. 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): 9.

296. ILO, “Labour inspection country profile: Thailand,” (undated).

297. ILO, “Labour inspection country profile: Thailand,” (undated).

298. ILO, “Labour inspection country profile: Thailand,” (undated).

299. ILO, “Labour inspection country profile: Thailand,” (undated).

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

301. Royal Thai Government, “Thailand’s Country Report on Anti-Human Trafficking Response 2019,” (undated), 5.

302. Department of Fisheries, “Thailand’s path to sustainable fisheries,” (undated), 9.

303. Kanchana Poonkaew, Chief of Division of Labour Protection, DLPW - Ministry of Labour, interview, 19 October 2020.

304. ILO, “Labour inspection country profile: Thailand,” (undated).

305. Kanchana Poonkaew, Chief of Division of Labour Protection, DLPW - Ministry of Labour, interview, 19 October 2020.

306. Kanchana Poonkaew, Chief of Division of Labour Protection, DLPW - Ministry of Labour, interview, 19 October 2020.



workers' registry, and the record for the provision of leisure times".<sup>307</sup>

Questions still remain with respect to DLPW inspections covering fair recruitment issues. Workers are under pressure from their employers to lie to the inspectors. For example, one worker told us that they were made to lie about the wages they received: "They [employers] make us lie when the workers' organizations officers come and inspect ... They asked us to answer the Thai labour officers that we receive 320THB."<sup>308</sup> Despite that, inspections are rather cursory. There are also more structural issues - the Seafood Working Group noted that when DLPW labor inspectors identify issues relating to sub-contracting of workers (or other issues covered by the Foreign Workers Ordinance), they do not record it.<sup>309</sup> The MOL does however appear to be acting on such concerns. In May 2019, the DOE organised a training for 190 labour inspectors from across Thailand to promote better understanding of relevant provisions of the Foreign Workers Ordinance.<sup>310</sup> Training series have also been conducted with ILO for inspectors on fishing boats and seafood processing industry, with updates of curriculum and training tools for new labour inspectors,<sup>311</sup> as well as with an NGO 'Oceonmind'.<sup>312</sup> The Thai authorities informed the ILO Committee that from 2016-18, specialised training was provided to 185 officials involved in fishing inspections; over 350 labour inspectors to deal with issues including forced labour; and 140 officers in multidisciplinary teams to handle trafficking cases.<sup>313</sup> According to one expert, although the improvement in training of inspectors has been significant indeed - including through the ILO Ship to Shore project - the progress is very patchy. One way in which inspections are stymied is that these inspections, while carried out by junior officers and new hires with updated training, are supervised by DLPW officials who

are still 'old school', with persistent negative attitudes and biases about migrant workers.<sup>314</sup>

The nationwide system of PIPO (Port in Port Out) Control Centres was set up in 2015 for control checks at ports and fish markets, on fishing vessels and at seafood processing plants.<sup>315</sup> At the peak, there were 32 PIPO centres operating along with 19 forward inspection points,<sup>316</sup> staffed by multidisciplinary teams consisting of a labour inspector from DLPW and officers of the Marine Police, Royal Thai Navy, Department of Special Investigations, the Department of Fisheries.<sup>317</sup> With respect to fishing, inspections of both vessel and crew were conducted each time a vessel departed from or arrived back in port. Despite the increase in PIPO centres and checkpoints, some centres appear to be overstretched. According to one study, out of 30 PIPO centres visited, 10 had an inspection point over 50km away from the centre, resulting in inspection teams missing port visits or spending many hours of the day just by travelling to and from the ports.<sup>318</sup>

While some migrant worker groups concede that the establishment of the PIPO has brought about a significant improvement in working conditions in the fishing sector,<sup>319</sup> others have raised concerns about the PIPO inspections. SWG highlighted that labour checks were only a small part of the PIPO inspectors work which was more focused on IUU fishing and irregular migration.<sup>320</sup> Concerns have also been raised about the quality of inspections. According to HRW, inspectors "tended to focus on overt or objective indicators of exploitation, such as evidence of physical abuse or forcible confinement, at the expense of identifying subtler forms of deception and coercion, such as withholding identity documents or wages."<sup>321</sup> The US State Department cited civil society organizations'

307. Ministry of Foreign Affairs, "Thailand Enforces Strict Labour Inspection in the Fishery Sector," (5 July 2018).

308. Remote interview R14, 7 September 2020.

309. 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): 13.

310. Royal Thai Government, "Thailand's Country Report on Anti-Human Trafficking Response 2019," (undated), 77.

311. ILO Ship to Shore Project, "Draft report of the Sixth Project Steering Committee," (7 March 2018), 4.

312. Royal Thai Government, "Thailand's Country Report on Anti-Human Trafficking Response 2019," (undated), 6.

313. ILO Committee, "Observation: Forced Labour Convention, 1930 (No. 29) - Thailand," (2021).

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

315. For an overview of steps see, Department of Fisheries, "Thailand's Success in Combating IUU Fishing," (10 July 2020).

316. Department of Fisheries, "Thailand's path to sustainable fisheries," (undated), 5.

317. ILO, "GMS TRIANGLE Project - Protecting Migrant Workers through Labour Inspection," (undated).

318. Environmental Justice Foundation, "Thailand's progress in combating IUU, forced labour & human trafficking," (spring 2020), 27.

319. Samak Tubtane, Labour Protection Network (LPN), interview, 10 March 2020.

320. 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): 12.

321. Human Rights Watch, "Hidden Chains: Rights Abuses and Forced Labor in Thailand's Fishing Industry" (2018): 114.

references to “inconsistent interview practices, inspections conducted without interpreters, and inspection practices that enabled owners, captains, or brokers to determine which workers reported exploitation to inspectors, thereby deterring workers from revealing information due to fears of retaliation.”<sup>322</sup> There were also questions about the seriousness of the inspections, the ILRF noted that labour checks were quite cursory.<sup>323</sup> Similarly, a recent EJF report also observed in some inspections that no member of the inspection team boarded the vessels, which could easily allow hiding of unregistered migrant workers onboard.<sup>324</sup> One CSO coalition study found that 59% of fishermen it had met had not been directly questioned by an official.<sup>325</sup> This was a key problem also identified by HRW - officials spoke to ship captains, boat owners but rarely conducted interviews with migrant fishers - they focused on a document check only.<sup>326</sup> Although this is partly an issue of interpretation, initially many PIPO teams apparently relied on employees on the boat, it is also an issue of the approach to inspections. There is little dignity or respect for the workers, much less empathy, said the author of the report.<sup>327</sup> EJF also noted inconsistencies in the procedures at 28 of the PIPO centres it observed.<sup>328</sup> Such varying levels of enforcement appears to allow boat captains to choose ports with weaker inspections and enforcement.<sup>329</sup>

The DLPW has reported carrying out inspections at 52,469 establishments from January 2018 to March 2019. In addition, inspections were also carried out in 2,549 establishments in industries susceptible to human trafficking; 460 seafood processing facilities and 94,327 fishing vessels.<sup>330</sup> Inspection numbers appear to have increased from January to March 2020: inspections were carried out on 17, 234 fishing vessels in PIPOs and 141 at sea; 464 high-risk establishments and 9,154 other establishments.<sup>331</sup> However, the Environmental Justice Foundation reported that there were no cases of serious

abuse which had been identified by inspections in any of the 29 PIPO centres it visited from 2015 to 2019.<sup>332</sup>

According to one expert, there are also some significant structural flaws in the decentralised inspection system by province. There is plenty of contact between fishing sector owners and the inspectors and other officials. Many of the inspectors have grown up in the same towns and would know the fishing people as well. There are also family links, e.g. one Head of DLPW was dating someone who was part of the vessel owners family. In such settings, it is common for DLPW inspectors to just contact employers when there are problems rather than taking up the issue through the official system. Although there have been some steps taken to address such problems, rotation of PIPO staff to other provinces, or sending flying squads from Bangkok, they achieve little: “A team from Bangkok or from another province can come and do spot-checks and raids, but follow-up will still need to be done locally.” This can’t address the structural issue in the process - the power of the fishing lobby within the Government.<sup>333</sup>

One workers association representative from Mae Sot said that inspections of factories tended to be more serious when they were conducted by teams from Bangkok, more transparent and professional. In contrast, when they were conducted locally, the owners often had prior information of the inspection and were prepared for them.<sup>334</sup> According to the SWG, factories in Mae Sot are known to keep separate fake receipts and accounting books showing proper wages without deductions in preparation for site inspections. These were found when investigations were conducted by an independent organization.<sup>335</sup> Such ‘defeat devices’ are also common in the fishing sector, where according to the ILO, workers “undergo repeated and highly ritualistic inspections by Thai Government officials that appear to have produced rote responses to questions”.

322. US Department of State, “2019 Trafficking in persons report: Thailand,” (undated).

323. Judy Gearhart - International Labor Rights Forum, “The State of Fisheries - Testimony to House Natural Resources Subcommittee on Water, Oceans and Wildlife Hearing,” (1 May 2019).

324. Environmental Justice Foundation, “Thailand’s progress in combating IUU, forced labour & human trafficking,” (spring 2020), 8.

325. CSO Coalition for ethical and sustainable seafood, “Falling through the Net: A survey of basic labour rights among migrants working in Thailand’s fishing sector,” (undated), 83.

326. Human Rights Watch, “Hidden Chains: Rights Abuses and Forced Labor in Thailand’s Fishing Industry” (2018): 114.

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

328. Environmental Justice Foundation, “Thailand’s road to reform: securing a sustainable, legal and ethical fishery,” (2019), 22.

329. US Department of State, “2019 Trafficking in persons report: Thailand,” (undated).

330. Royal Thai Government, “Thailand’s Progress Report on Anti-Human Trafficking Efforts (1 January – 31 March 2019),” (undated), 21.

331. Royal Thai Government, “Progress Report on Anti-Human Trafficking Efforts (1 January – 31 March 2020),” (undated), 27.

332. Environmental Justice Foundation, “Thailand’s progress in combating IUU, forced labour & human trafficking,” (spring 2019), 7.

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

334. Name and organisation withheld, interview, 3 March 2020.

335. 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): 9.

Interviews with fishermen by the ILO indicated that some employers paid THB 1,000 premiums per month to preselected fishers who were then permitted to speak with Government officials.<sup>336</sup>

In 2018 HRW described Thailand's revamped labor inspection regime as being "largely a theatrical exercise for international consumption".<sup>337</sup> The author of the report, now an independent researcher, said that PIPOs were never really about labour rights, "if the Thai Government was serious about serious labour inspections, they should have ramped up gradually and implemented the program for 10-20 years. Instead, everything was implemented all at once and removed quickly, responding to the EU yellow card process. Even if the Government wanted to keep the program going, the scaling-up was not sustainable."<sup>338</sup> A similar view is also taken by HRW, "Thailand has taken its foot off the pedal when it comes to vigorous enforcement of laws on the fishing fleets".<sup>339</sup>

While there has been plenty of attention on the fishing sector, the ILO noted that labour inspections were much more sporadic in the agriculture sector, contributing to already poor working conditions.<sup>340</sup> Such criticism appears to have been heard in the MOL. In the first quarter of 2020, the DLPW stated that it prioritised the inspection of business establishments along the border areas to check the protection and benefits of seasonal-migrant agricultural workers (registered under Section 64 of the Foreign Workers Ordinance). 55 such inspections were carried out.<sup>341</sup>

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### 5.3 Are the criminal investigative and prosecuting bodies trained and resourced to investigate/ prosecute criminal activity related to fraudulent recruitment? Do they do so?

## Myanmar

Complaints requiring criminal investigation are forwarded by MOLIP to the Ministry of Home Affairs. Such matters are usually investigated by the Police's Anti-Trafficking in Persons Division (ATIPD). The ATIPD is a well-resourced and specifically trained part of the Myanmar Police Force.<sup>342</sup> It was set up in 2013 following the 2005 Anti-Trafficking in Persons Law and consists of 340 personnel divided into three divisions, 18 units, 11 task forces and three child protection units. ATIPD maintains a 24-hour hotline and potential cases of human trafficking can be reported via the hotline or at the Task force offices which work with the police to investigate reports.<sup>343</sup> Once the investigation is concluded, the Central Body for Suppression of Trafficking Persons under the Ministry of Home Affairs works in collaboration with the Union Attorney General's Office to determine cases for prosecution.<sup>344</sup> In many instances however, the investigation is instead forwarded to the regular police force or prosecutors. The regular police are hampered by insufficient training and resources for investigations.<sup>345</sup> The regular police have little understanding of the recruitment process and also suffer from low credibility amongst the public, in part due to corruption.<sup>346</sup> Few workers would therefore attempt to file any complaints directly with the police.

However, forced labour with respect to migrants heading abroad is only a small part of the work of APITF, with trafficking in Myanmar also including cases of forced marriage, sexual exploitation cases and forced labour within Myanmar, also perpetrated by the military.<sup>347</sup> The NPA also identifies the need to enhance collaboration among the relevant ministries and agencies to investigate serious cases of abuse, exploitation and trafficking and to promote joint investigation on smuggling of migrants and prosecution of irregular agents involved.<sup>348</sup> As Myanmar's 2008 constitution

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336. ILO, "Endline research findings on fishers and seafood workers in Thailand," (10 March 2020), XI.

337. Human Rights Watch, "Thailand: Forced Labor, Trafficking Persist in Fishing Fleets" (23 January 2018).

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

339. Emmy Sasipornkarn, "Thai fishing industry makes headway, but challenges remain," *DW*, (13 November 2019).

340. United Nations Thematic Working Group on Migration in Thailand, "Thailand Migration Report 2019," (2019): 72.

341. Royal Thai Government, "Progress Report on Anti-Human Trafficking Efforts (1 January – 31 March 2020)," (undated), 22.

342. ILO Myanmar, "Building Labour Migration Policy Coherence in Myanmar," (2017): 18-19.

343. ILO Myanmar, "Building Labour Migration Policy Coherence in Myanmar," (2017): 14.

344. ILO Myanmar, "Country of origin complaints mechanisms for overseas migrants from Myanmar," (2016), 15. In 2015, 93 prosecutions under the Anti-Trafficking Law were ongoing from previous years and 130 new cases received. In 2015, a verdict was given for 37 cases. 30 additional cases were received in 2016 but prosecutions have not resulted in any verdicts thus far.

345. IREX, "Informal migration and the law in Myanmar How Myanmar's Legal System is Failing Migrants," (undated).

346. Thura Aung & Win Win May, "Public Trust in the Myanmar Police Force: Exploring the Influencing Factors," (Friedrich-Ebert-Stiftung: 2019), 7.

347. US Department of State, "2019 Trafficking in persons report: Burma," (undated).

348. 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): 25-26.

stipulated that the Ministry of Home Affairs (which oversees the police) and the Ministry of Border Affairs, stayed under direct military control, many of these matters remained beyond the purview of the civilian government. According to the US State Department, while investigations into trafficking activity have improved in recent years, they are hampered by “a lack of clarity between the roles and responsibilities of ATTF officers [ATIPD] and general Myanmar Police Force (MPF) officers, coupled with poor police-prosecutor cooperation and rapid law enforcement turnover”.<sup>349</sup>

In practice, complaints against recruitment agencies tend to be dealt with by MOLIP or MOEAF administrative processes (see 7.2) and rarely enter the criminal domain. This is despite the fact that the widespread overcharging by licensed agents is an offence punishable by up to 3 years imprisonment and a fine. According to one trade union representative, 90% of all migrant workers signing their agreement contracts, under supervision of the authorities, were brought to the recruitment agencies by unregulated brokers who had charged significantly higher fees.<sup>350</sup> Although complaints against such brokers are more likely to be forwarded to the police, even in such instances, prosecutions appear to be quite rare. According to an ILO representative, this lack of action for other violations is only partly because of the inadequacies of the law. “Even if officials wanted to take criminal action for other violations, the effectiveness of such action is questionable. The police nor the judiciary do not appreciate the seriousness of the issue. The court process is lengthy and most cases only end up with an unsatisfactory punishment.”<sup>351</sup> Although unlicensed brokers can be sentenced to up to 7 years imprisonment (Section 26, LROE) and provisions of the Penal Code can also be used, e.g. cheating and dishonestly inducing delivery of property (Section 420, Myanmar Penal Code), this is rare e.g. in 2014, there were four such cases, with three resulting in imprisonment of 1 to 1.5 years.<sup>352</sup>

As one trade union representative told us: “The law is there but what is happening on the ground is quite the opposite. That is what we call no rule of law.”<sup>353</sup>

According to him, MOLIP could pressure the recruitment agencies to not use brokers. However another expert, who requested anonymity, said that the reason that there was no crackdown on brokers was that it was convenient for the recruitment agencies to have a buffer layer in between. A migrant worker association however was more positive and said that there had been a lot of effort in the past two years with many cases being taken up by the Department of Labour in the provinces, especially in Magway, Bago and Tanintharyi.<sup>354</sup> According to them, often workers did not make complaints for having to pay excessive fees, and then there was nothing that could be done. “Even if the broker is caught, the police cannot do much because there is not enough evidence. Some agencies work with the brokers and give fake receipts to the workers which only show the permissible fee and not the actual excessive fees charged. The workers agree to this because their priority is to migrate.” However, given the widespread nature of brokers, he concluded, “that is why we advocate catching the brokers in the act, while they are operating outside the Government offices.”<sup>355</sup>

## Thailand

Complaints against employers and recruiters over fees and other fraudulent recruitment tend to be taken through the labour disputes mechanisms (see 7.2) and not within the criminal justice system. There is little information on prosecution of recruitment agencies being prosecuted, other than from 2017 when two recruitment agencies were prosecuted, the first for not providing a receipt to an employer and the second for acting without a license.<sup>356</sup> The former case was settled with a fine, but there is no information available on whether a conviction took place in the latter. While there have been the odd cases of subcontractors being held administratively accountable (fines etc.) by labour inspectors for recruitment related abuse, according to one migrant rights advocacy group, it is not clear whether criminal prosecutions take place in such instances.<sup>357</sup> Information given by Thai authorities

349. US Department of State, “2019 Trafficking in persons report: Burma,” (undated).

350. Name and organisation withheld, Interview, 25 March 2020.

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

352. Name and organisation withheld, Interview, 26 February 2020.

353. Name and organisation withheld, Interview, 25 March 2020.

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

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

356. Royal Thai Government, “Thailand’s Country Report on Anti-Human Trafficking Response, 2017,” (undated), 9.

357. HRDF, “Large Electronics Manufacturer Ordered to Pay 822,250 THB to 21 Subcontracted Migrant Workers from Cambodia as Severance Pay,” (10 January 2020).



on prosecution of illegal brokers, including to the ILO committee, appears to be in relation to Thai citizens going abroad for work, as opposed to migrant workers coming to Thailand.<sup>358</sup> This is a broader issue of police and other authorities' lack of interest in migrant issues, according to one civil society representative who said that the police rarely took migrant complaints seriously, "The police don't care about migrants at all".<sup>359</sup> In one case, a migrant woman alleged that the village head man forced her to have sex in exchange for renewing her local-documentation. Despite the woman complaining to the police, they didn't investigate it until the civil society group got involved.

Prosecutions for labour violations in the fishing sector appear very low, despite the high number of inspections reported. In 2018, there were no prosecutions despite 5,800 labour violations found (45% were 'payment document issues' while 9% were 'employment contract issues').<sup>360</sup> The vast majority appear to have been settled through administrative systems. Similarly in 2019, although inspections found 9,463 workplaces/ vessels to be in violation of labour law, "9,351 cases were completed", presumably closed with administrative or no action.<sup>361</sup> 85 cases remained under investigation and there was no information of any prosecutions.

Serious complaints including forced labour, human trafficking etc. are taken up by the Police's Anti-Human Trafficking Division (AHTD) which also operates 'Hotline 1191' to receive complaints. In 2018, the Police established the Thailand Anti-Trafficking in Persons Task Force (TATIP) to strengthen the coordination. The task force includes law enforcement, social workers, and NGOs.<sup>362</sup> The Department of Special Investigation (DSI) also undertakes investigation in significant cases while witness protection is undertaken by the Rights and Liberties Protection Department of the Ministry of Justice. Once an investigation is complete, the report is submitted to the Office of the Prosecutor.<sup>363</sup> In 2015,

specialized anti-human trafficking divisions were established within the Bangkok Criminal Court and the Office of the Attorney General. The Prosecutor then determines whether to file a case or not at the District Criminal Court. A case can also be filed as a private prosecution, but requires the party to bear all costs and undertake their own investigation.<sup>364</sup> Following the 2018 Ministerial Regulation on Labour Protection in Sea Fishing Work and the 2019 amendment making forced labour a standalone offence, the possibility of criminal proceedings has been strengthened.<sup>365</sup>

The one area where information and statistics is easily available is with respect to human trafficking, as the Thai authorities regularly report for the US State Department Trafficking in Persons report.<sup>366</sup> These reports also include some details of investigations and prosecutions into trafficking related to forced labour or services. During January – March 2020, the Department of Trafficking in Persons Litigation, Office of the Attorney-General (OAG), received 18 cases of forced labour or services. Figures for previous years were 115 in 2019; 57 in 2018; 68 in 2017 and 135 in 2016.<sup>367</sup> According to the SWG, only 35 cases each "were litigated" in 2019 and 2018, of which only four were related to fishing (all in 2019).<sup>368</sup> They also point out that the vast majority of trafficking cases prosecuted are for sex trafficking, despite studies showing that labour trafficking, particularly in the seafood and fishing sectors, is much more prevalent. It is unclear how many forced labour cases resulted in convictions as those official statistics are presented mixed with other trafficking offences, and are not disaggregated.<sup>369</sup>

The Environmental Justice Foundation has highlighted that the low prosecution figures for labour-related offences prevent victims from receiving justice, including compensation. Furthermore, "low conviction rates are also likely to dissuade victims from raising labour disputes or seeking charges in the first place as their

358. ILO Committee, "Observation: Forced Labour Convention, 1930 (No. 29) - Thailand," (2021); Royal Thai Government, "Country Report on Anti-Human Trafficking Efforts 2018," (undated), 43.

359. Sugarnita Sookpaita, HRDF, interview, 9 March 2020.

360. Environmental Justice Foundation, "Thailand's progress in combating IUU, forced labour & human trafficking," (spring 2019), 7.

361. Royal Thai Government, "Thailand's Country Report on Anti-Human Trafficking Response 2019," (undated), 69.

362. US Department of State, "2018 Trafficking in persons report: Thailand," (undated).

363. Court of Justice Thailand, "The Court of Justice System," (undated).

364. Winrock International, "Labor Abuse Complaint Mechanisms in Thailand," (March 2020), 10.

365. Ministry of Foreign Affairs, "Thailand Enforces Strict Labour Inspection in the Fishery Sector," (5 July 2018).

366. Royal Thai Government, "Country Reports".

367. Royal Thai Government, "Progress Report on Anti-Human Trafficking Efforts (1 January – 31 March 2020)" (undated), 4.

368. 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): 5.

369. Royal Thai Government, "Progress Report on Anti-Human Trafficking Efforts (1 January – 31 March 2020)" (undated), 5.

case is unlikely to result in sentencing.”<sup>370</sup> Another fishing sector expert agreed, but further pointed out that in any event, increase in statistics on criminal investigations and prosecutions were not a reliable indicator as they were “optic driven”, aimed at presenting a picture of improvement to the international community. He said that even if prosecutions are high, convictions are rare, not just in the fishing sector, but across the board on labour rights issues in Thailand. For there to be any real change, “Going after higher ups in the chain [owners of businesses] is vital. There’s no point playing whack-a-mole at lower levels. It isn’t clear how much appetite there is to maintain such tough action to very powerful people.”<sup>371</sup>

#### 5.4 Does the government have effective anti-corruption measures (including legislation and evidence of enforcement) that addresses and tackles the risk of corruption on the part of public sector officials, recruiters and employers involved in the regulation of the recruitment sector?

##### Myanmar

Myanmar enacted the Anti-Corruption law in 2013 and the Anti-Corruption Commission (ACC), prescribed by the law, was established the same year. The law has been amended a number of times to strengthen it, including broadening the powers of the ACC and to launch investigations based on prima facie evidence of corrupt behaviour. One civil society representative said there appeared to be less corruption under the NLD, although corruption was far from being eradicated.<sup>372</sup>

Another migrant advocacy group representative was not so convinced by the anti-corruption measures. Although

there is shuffling or transfers within positions in the Ministry [MOLIP], it is not clear if it is due to corruption.<sup>373</sup>

There have been a series of high-profile prosecutions for corruption in the past couple of years.<sup>374</sup> Among those prosecuted was the Myanmar labor attaché in Bangkok from December 2017 until August 2019 - U San Maung Oo. He was charged by the ACC in November 2019 after reports by more than 20 Myanmar recruitment agencies alleging that he took bribes from at least 28 agencies in exchange for approving labour demand letters.<sup>375</sup> Two assistants, U Than Htike Soe and U Saw Pyae Nyein, were also charged but are reported to have fled.<sup>376</sup> Media reports claim that Thein Swe, the Minister of Labour, Immigration and Population, is also being investigated by the ACC in an unrelated matter.<sup>377</sup>

Yet, corruption appears to be built-in within the MOU migration to Thailand.<sup>378</sup> According to a recruitment agent (and former MOEAF official), due to the competition amongst Myanmar recruitment agencies, they offer discounts and waivers of fees to get the contract or demand letter to supply workers.<sup>379</sup> According to a trade union representative, recruitment agents are even willing to pay 5000THB to 10000THB per worker to the Thai employer or agency to get the opportunity to provide workers. According to the union representative, the labour attaches also receive a cut when they approve the demand letters even though U San Maung Oo was the first one charged, previous labour attaches were doing the same. Another commentator agreed, referring to the recruitment process as “a big money making machine” which inevitably has corruption.<sup>380</sup> A recruitment agent also told us that regular bribes have to be paid to department of labour officers and immigration officers as part of the MOU process. All such costs get added on to what the migrant has to pay over the fee-cap.<sup>381</sup>

Further down the chain, corrupt practices may also be determining who gets punished, and in what form. One

370. Environmental Justice Foundation, “Thailand’s road to reform: securing a sustainable, legal and ethical fishery,” (2019), 22.

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

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

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

374. Sithu Aung Myint, “A round of applause for the Anti-Corruption Commission,” *Frontier*, (3 May 2019).

375. Zaw Zaw Htwe, “Myanmar Labor Attaché in Thailand Charged with Corruption,” *The Irrawaddy*, (7 November 2019).

376. Zaw Zaw Htwe, “Former Labor Attaché on Trial for Corruption Attacks Irrawaddy Photographer,” *The Irrawaddy*, (6 February 2020).

377. Htet Khaung Linn, “The outsiders: who are the NLD’s military-linked leaders?” *Myanmar Now*, (10 December 2018).

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

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

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

381. Name and organisation withheld, Interview, 14 July 2020.

trade union representative gave an example of a case where their union submitted a case, but only a fine was imposed and the license was not suspended because the agency gave money to the officers concerned.<sup>382</sup> Another factor was the relationship between the recruitment agents and government officials, this could make the difference between being punished with a fine or a suspension of the license.<sup>383</sup> There also appears to be structural issues in relation to MOEAF. Although registered as an NGO, it is tasked by MOLIP to monitor and supervise recruitment agencies. In 2014, MOLIP also enacted specific rules for MOEAF operations. Given the state-like functions being undertaken by MOEAF, the IOM and ILO have suggested that MOEAF should be brought within the legislative framework.<sup>384</sup> Previously, similar concerns have also been raised about MOEAF officials profiteering from sales of life insurance and SIM cards to migrant workers,<sup>385</sup> as well as the appropriateness of MOEAF and recruitment agencies taking over the task of conducting pre-departure training for workers.<sup>386</sup>

## Thailand

Both active and passive bribery of officials are criminal offences (Sections 144, 167 Criminal Code and Sections 149, 201 respectively). In July 2018, a new Organic Act on Anti-Corruption came into force, replacing the former law from 1999.<sup>387</sup> One key provision to combat complicity between officials and businesses that use forced labour, was to stipulate that companies can be held criminally liable for bribes given to officials.<sup>388</sup>

Anti-corruption prosecutors work in a Special Division on Corruption Cases established at the Office of the Attorney-General. In addition, there are a number of bodies with power to investigate: the national police

and the Department of Special Investigations, and two commissions - the National Anti-Corruption Commission (NACC) with a mandate to combat corruption amongst politicians and high-ranking officials, and the Public Sector Anti-Corruption Commission (PACC) which undertakes a similar role for public officials. The NACC has previously been accused of inefficiency as well as political bias, targeting government opponents.<sup>389</sup> According to one senior academic, while the notion that the NACC is going all out to “fight corruption” is useful for public consumption, it simply lacks the interest to fight corruption effectively and in a nonpartisan way.

Given the competition amongst recruitment agencies in Myanmar, recruitment firms in Thailand are commonly reported to demand payments and kickbacks in order to give the demand letter to a particular agency.<sup>390</sup> These costs are then passed on to the migrant workers. There is however no information available of prosecution of Thai recruitment agents for receiving such kickbacks. Corruption in the police force, with respect to migrants, both regular and irregular, is common too.<sup>391</sup> Reports of police and other Thai officials being involved in the transportation of undocumented migrants from Thailand’s border areas with Myanmar are common.<sup>392</sup> Two policemen were expelled from service in early 2020 for receiving bribes and concealing migrant workers respectively. They were part of the 58 public officials subjected to disciplinary proceedings since 2013.<sup>393</sup> A further 60 public officials have also been prosecuted for involvement in trafficking from 2013 to March 2020, of whom 34 were convicted.<sup>394</sup> In 2019, the Thai authorities told the ILO Committee that the number of government officials involved or colluding with trafficking in persons have decreased due to the intensive action taken.<sup>395</sup>

382. Name and organisation withheld, Interview, 26 February 2020.

383. Name and organisation withheld, Interview, 26 February 2020.

384. ILO Myanmar, “Country of origin complaints mechanisms for overseas migrants from Myanmar,” (2016), 28-32.

385. Zaw Zaw Htwe, “Officials to sue migrant rights activist for defamation,” *Myanmar Times*, (28 October 2016).

386. Bill O’Toole, “Concerns as agencies take over training,” *Myanmar Times*, (29 September 2014).

387. *Organic Act on Anti-Corruption*, 2018 (unofficial translation).

388. United Nations Thematic Working Group on Migration in Thailand, “*Thailand Migration Report 2019*,” (2019), 166.

389. Asaree Thaitrakulpanich, “Many Complaints, Few Results from Thai Anti-Graft Agency,” *Khaosod*, (9 February 2017).

390. Electronics Watch, “*Compliance Report Update - Cal-Comp Electronics, Thailand*,” (October 2018), 20-21.

391. Paul Chambers, Naresuan University, email message, 29 May 2020.

392. Verite, “*An Exploratory Study on the Role of Corruption in International Labor Migration*,” (January 2016), 16.

393. Royal Thai Government, “*Progress Report on Anti-Human Trafficking Efforts (1 January – 31 March 2020)*,” (undated), 8.

394. Royal Thai Government, “*Progress Report on Anti-Human Trafficking Efforts (1 January – 31 March 2020)*,” (undated), 8.

395. ILO Committee, “*Observation: Forced Labour Convention, 1930 (No. 29) - Thailand*,” (2021).

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