

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.

**fairsq.org**

Design by [www.NickPurserDesign.com](http://www.NickPurserDesign.com)

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

# Assessment against the Five Corridors indicators:

## 6. Measures to prevent fraudulent and abusive recruitment

- 6.1** Does the government prohibit the charging of recruitment fees and related costs to workers and jobseekers? \_\_\_\_\_ 69
- 6.2** Are there laws and/or policies to ensure that the full extent and nature of costs, for instance costs paid by employers to labour recruiters, are transparent to those who pay them? \_\_\_\_\_ 73
- 6.3** Does the government take measures to ensure that employment contracts are clear and transparent, including an authoritative version in the worker's language, that they receive it in good time and that it contains all relevant terms and conditions, respecting existing collective agreements? Do they use IT to assist in this? \_\_\_\_\_ 75
- 6.4** Are there effective measures to prevent contract substitution? \_\_\_\_\_ 79
- 6.5** Does the government have policies or practices to ensure respect for the rights of workers who do not have written contracts? \_\_\_\_\_ 80



Workers from Myanmar on a salt farm near Samut Sakhon, Thailand, 2015. © ZUMA Press / Alamy

## 6. Measures to prevent fraudulent and abusive recruitment

*“Recruitment agencies say they do not have any relationship with the brokers, but actually most of them are bringing in those workers sent by brokers anyways. Agencies pay brokers around MMK 60000 or 70000 (US\$38-45) for each worker. One reason is that agencies can reduce the costs to hire staff. Another is that when things go sideways [wrong], they can blame it on the brokers.”* CIVIL SOCIETY REPRESENTATIVE, MYANMAR.

### Summary

Instead of zero-cost migration for workers, the MOU recruitment system has made it zero-cost recruitment for many Thai employers. In fact, Thai employers may even be profiting by selling demand letters to Myanmar recruitment agents via Thai agencies and brokers. Invariably such payments also are shifted to the workers, who bear the burden of much higher recruitment fees and costs. Currently, Thai law forbids recruitment agents from charging workers migrating to Thailand: service fee and costs are to be paid by the employer. On the ground however, these charges have been shifted to prospective migrant workers in the origin state. In such a situation, a zero-cost model

for workers would only be feasible if there was agreement between both Myanmar and Thailand to synchronize fee and costs rules and ensure that the ‘employer pays’ principle is enforced.

In Myanmar, recruitment agencies are now permitted by MOLIP to charge approximately US\$230. In practice, Myanmar workers pay much more to migrate to Thailand under the MOU - ILO estimates are US\$441. We interviewed 25 workers who all paid much higher amounts to agents or brokers, ranging from US\$465 to US\$1045, with an average of US\$730. That workers pay more than the fee-cap is well known. All the six Myanmar recruiters we spoke to admitted to charging more than the official cap-fee. There is also lack of clarity

over what is included or additional to the fee-cap imposed by the Myanmar Government. There is no public breakdown of the fee-cap, making it easier for brokers and recruitment agents to charge more from the usually rural and semi-literate workers. There are tough legal provisions for overcharging (3 years imprisonment and fine), but there is no enforcement.

Service contracts with lower protections (including “no refund of fees” clauses) are commonly used by recruitment agencies in Myanmar. Employment contracts are by and large a formality. While the requirements for contracts in the MOU are adequate and some recruiters use a standardised trilingual contract, this is not mandatory. Workers are often told different terms by brokers and sub-agents at the start and are informed of different terms and conditions just before the signing of the contract. By then they have already invested time and money in the process and want to get to Thailand, reducing any ‘informed consent’ to a mere formality. Many have not completed basic education and the

signing ceremony is conducted en-masse, with little opportunity to ask questions. Contract substitution is also common in Thailand, with many employers giving new contracts when workers reach the workplace. This is aided by many workers not being given copies of the contract. Contract substitution is also a byproduct of subcontracting and the practice of moving workers to entirely different jobs from those agreed initially. In addition to routine exploitation, workers not having an accessible contract also affects their ability of migrants to move jobs under the MOU system - an employer’s failure to comply with the contract is one of the limited grounds on which the worker can change employers. The situation with contracts is not better for fisher workers (who are largely hired in Thailand and regularised), despite the extensive inspection regime. Although the DLPW proforma contract is in three languages, in practice most of those workers who had contracts had them in Thai. Most fisher workers are unaware of detailed terms of the contract.

---

## Recommendations to the National Unity Government of Myanmar

- Adopt the ILO definition of recruitment fees and costs and, in coordination with Thailand, mandate that no recruitment fees or costs should be paid by workers, in line with the ‘employer pays’ principle. Ensure that prospective workers are made aware of this, in addition to their rights in the event of being overcharged.
- Refuse to allow addendums or modifications to the standard employment contract that result in workers being forced into agreeing to different contractual terms than initially agreed. Require that workers are given the contract at first instance, at time of initial interview, and not on the day of the signing.

---

## Recommendations to the Royal Thai Government

- Enforce the provisions of the Foreign Workers Ordinance under which Thai employers are liable to pay for fees related to recruitment, and hold accountable employers and recruiters where fees are charged from workers, including in Myanmar.
- In cooperation with Myanmar authorities, amend the MOU agreement to include the ‘employer pays’ principle; and amend the “internal MOU” system to ensure that workers already in Thailand do not have to pay fees and costs to be regularised and brought within the MOU recruitment system.
- Enforce provisions against contract substitution, including by ensuring that inspections routinely check for such practices; ensure that such substitution is meaningfully sanctioned and that substituted contracts with contractual terms less favourable to migrant workers are disregarded by all authorities.

---

## 6.1 Does the government prohibit the charging of recruitment fees and related costs to workers and jobseekers, and take measures to enforce its policy on fees?

### Myanmar

Myanmar law does not prohibit workers from being charged service fees and other recruitment costs. The NPA (2018-2022) however includes a policy objective to reduce recruitment fees (2.4), “and develop a common position on a zero-fee policy in Myanmar” (2.4.2). Currently, the Law Related to Overseas Employment 1999 (LROE, Section 23) specifically names the worker as being liable for fees. MOLIP does however set a maximum ‘cap’ amount for fees. As per the 2014 Rules and Regulations for License Holder of Overseas Employment Agencies, fees should not be more than four times the worker’s basic monthly salary or the prescribed amount (Rule 14). Since 2015, MOLIP has set specific prescribed service fees for migration to various countries. For Thailand it is set at a maximum of MMK 150,000 (approx US\$105).<sup>396</sup> In addition, recruitment agents in Myanmar are also allowed to collect THB 3600 (US\$115) from workers for official payments to be made on the Thai side for visa and work permit fees, medical checkup, and one-year’s health insurance.<sup>397</sup>

According to an ILO representative, the service fee cap is quite high compared to the market price.<sup>398</sup> However, recruitment agents and MOEAF representatives disagree. One recruitment agent told us that even if the amount was feasible in 2015, it is not so now because Myanmar’s currency has been devalued since: the MMK 150,000 figure was THB 5000 at the time it was set, but now is much lesser. According to him, the recruitment agent is supposed to make MMK 60,000 (US\$45) profit, while MMK 90,000 is for expenses. Even if the expenses amount does cover the payments for contracts, OWIC card, transportation from Yangon to the border and

accommodation and meals there, it doesn’t factor in the bribes that have to be paid, which then come out of the profit of the agent.<sup>399</sup> He claimed that they needed to make at least MMK 50,000 per worker. In 2019, a MOEAF official also publicly confirmed these views, calling for the fees to be increased to MMK 238,000 to make it equal to THB 5000 again.<sup>400</sup>

We were also informed of other factors that led to recruiters being dissatisfied with the fee situation. One recruitment agency representative told us that the cap amount was not practical and needed to be around THB 6500 (US\$210), particularly as there had been significant increases in the annual fee for recruitment agencies to renew their license renewal and agencies would have to pass some of this onto the workers.<sup>401</sup> A MOEAF representative also told us that the capped fee amount is insufficient and recruitment agencies do not make much profit. This was particularly the case after what they received for costs in Thailand was reduced. Previously, they used to receive THB 10,000 (US\$320) but now it has reduced to 3600 (US\$115).<sup>402</sup> A recruitment agent told us that even if this reduced amount covered the official costs, they still needed to pay additional service fees to Thai agents to do this work.<sup>403</sup> MOEAF therefore suggested to MOLIP that the costs for payments on the Thai side should be collected by Thai agencies and Myanmar agencies should not be involved in that process.<sup>404</sup>

The law prescribes stringent penalties for overcharging - suspension or revocation of license (Section 15, LROE) and even punishment of up to 3 years imprisonment and fines (Section 27, LROE). Additionally, the 2014 rules also state that refunds of excess fees charges can be taken from the agency insurance deposit fund (Rule 26). Implementation is questionable however. In practice, according to one civil society group, most of the workers still have to pay more than the cap fees: there are not that many workers who migrate having only paid recruitment fees at the capped level.<sup>405</sup> Payment of fees beyond the legal cap was also evident

---

396. MOLIP, “Safe Migration facebook post.” (9 January 2020).

397. MOLIP, “Safe Migration facebook post.” (15 March 2019).

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

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

400. Zaw Zaw Htwe, “Unscrupulous employment agencies prey on workers despite agreements,” *Myanmar Times*, (28 May 2019).

401. Name and organisation withheld, interview, 2 February 2020.

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

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

404. Zaw Zaw Htwe, “Unscrupulous employment agencies prey on workers despite agreements,” *Myanmar Times*, (28 May 2019).

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

in the worker-interviews we conducted,<sup>406</sup> and has been documented by other research.<sup>407</sup> MOEAF has also been quoted as saying that high processing costs and low profit margins could be reasons why agencies charged beyond the prescribed rate.<sup>408</sup> A labour union representative says that the cap is not being followed in 90% of the cases and this is well known to everyone.<sup>409</sup> The MOEAF chairman acknowledged to us that the fees collected was more than the legal cap: “The fees we collect is not beyond reasonable limits, we only collect a little bit more because we do not make enough profit.”<sup>410</sup> According to him, “when agencies collected much more than cap fees, the ministry took action right away.”<sup>411</sup> One recruitment agent said the Government ignored charges upto 5000 THB (instead of the 3600 THB).<sup>412</sup>

Some workers told us that recruitment agents told them to lie about the fees they paid, if asked by labour inspectors at the time of signing of the contract.<sup>413</sup> According to a MWRN representative, “there are agencies who have been charging excessive fees in plain sight” but there is no action by the Government officials.<sup>414</sup> A labour union representative agreed that the Ministry needs to do more to control the agencies: “the law is already there”.<sup>415</sup> Another civil society representative agreed: “The ministry says, the workers willingly pay [fees in excess of legal limits]. But our question is how are they going to stop that? For the workers, they cannot survive here so they want to migrate as fast as they can. They have taken loans and every month the interest is adding up.”<sup>416</sup> MWRN also highlighted that more workers need to make complaints about being overcharged as when the workers do not make complaints for having to pay excessive fees, there is not much that can be done.<sup>417</sup> According to an ILO representative, the workers

also need to make complaints when they find any fraud in the process. Workers do not want to go through the complaint process because it is lengthy.<sup>418</sup> However, a civil society representative questioned the need for a complaint, “these cap fees are imposed by the Government - rather than needing a worker to make a complaint, they can just take action.”<sup>419</sup>

A linked issue with recruitment fees in Myanmar is the unintended effect of the Thai ‘zero recruitment fees’ charged from workers. Although Thai law does not allow recruitment agencies to collect any recruitment fees or costs from workers anymore, some of this has been formally passed to Myanmar agencies who now collect THB 3600 charges from workers for costs on the Thai side. According to a Myanmar workers association in Thailand, this is a direct result of the cap being placed in Thailand.<sup>420</sup> Furthermore, with Thai recruiting agencies losing income due to the restrictions in Thai law, according to the ILO, Thai agents are reportedly requiring Myanmar recruitment agencies to pay an additional “informal fee of 5,000 to 12,000 THB (US\$156-\$375) per worker” in order to win the business of the Thai employer.<sup>421</sup> This was also confirmed to us by one recruitment agent in Myanmar, who said they paid THB 8000-10000 per worker for factory jobs and 4000-6000 for construction jobs.<sup>422</sup> Additionally, Myanmar agencies report having to pay other expenses (service fees, accommodation, transport, hospitality, dinners, entertainment, etc.) to Thai businesses and/or agents to win their business.<sup>423</sup> These costs are passed on to the migrant workers themselves. According to one union representative, “demand brokers” have come up in Thailand between the Thai and Myanmar recruitment agencies, they procure the demand letter in

406. Based on responses of 25 workers all of whom paid fees in excess of the legal cap to agents/brokers - the amounts paid ranged from US\$ 465 to 1045, with an average of 730 US\$.

407. E.g. 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); Verite, “Thailand Bound,” (May 2019); Issara Institute, “Developing a Financially Viable Ethical Labour Recruitment Model: Prospects for the Myanmar-Thailand Channel,” (2018).

408. Mekong Migration Network, “Social Protection Across Borders,” (September 2019), 67-68

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

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

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

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

413. Interviews P8-10, Chiang Mai, 30 September 2020.

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

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

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

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

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

419. Name and organisation withheld, interview, 25 February 2020.

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

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

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

423. Issara Institute, “Developing a Financially Viable Ethical Labour Recruitment Model: Prospects for the Myanmar-Thailand Channel,” (2018): 21.

Thailand and sell it to one Myanmar agency or another.<sup>424</sup> Electronics Watch has reported that such practices became visible after 2016 when Thai recruitment agencies were not allowed to charge worker recruitment fees.<sup>425</sup>

Another core problem with respect to fees is that of unregulated brokers, who are, in most instances, the entry point into migration for most workers and add a further layer of fees. According to one union representative, “more than ninety percent of the people who came to Pinlon Hall [to sign their contract], came through brokers.”<sup>426</sup> Brokers may be more informal, a friend or family member who may be paid for their assistance, or a more regular and organised operation. They may provide a range of lawful services including assistance with procuring a passport or completing other paperwork at the Labour Offices. However, often they also act unlawfully on behalf of recruitment agencies in Yangon. According to one civil society representative, “Some brokers are unaware of themselves committing trafficking. In their local community, they are being regarded as benefactors and local people even plead them to send their children abroad. Sometimes the brokers are not aware that what they are doing is illegal.”<sup>427</sup>

A part of the broker problem are the licensed recruitment agencies: according to a civil society representative: “Recruitment agencies say they do not have any relationship with the brokers, but actually most of them are bringing in those workers sent by brokers anyways. Agencies pay brokers around MMK 60000 or 70000 (US\$38-45) for each worker. One reason is that agencies can reduce the costs to hire staff. Another is that when things go sideways [wrong], they can blame it on the brokers. Recruitment agencies should not accept workers unless their own representatives bring them. Of course, there can still be cases where workers’ relatives introduce them to the agency or some people help them without charging them any fees.”<sup>428</sup> Recruitment agents we spoke to agreed that brokers were a significant problem but they claimed that they did not pay such brokers to bring

them workers, instead it was the brokers who charged the workers high fees. One USAID report provides an interesting, if unconfirmed, report of the endemic nature of payment of fees beyond legal limits: “some jobseekers approached an official recruitment agency and were surprised that their rates were much lower than what some brokers had quoted. Convinced that the official recruitment agencies were running a scam, they decided to go with the brokers instead, whom they felt were charging a more appropriate rate.”<sup>429</sup>

According to a union representative, the Government needs to do more on combating brokers, “both the agencies and brokers will not dare to do anymore [break the law] if the government takes serious action. They need to set some examples.”<sup>430</sup> According to a migrants rights’ advocate, workers also need to stop engaging and protecting brokers. They often use them to make the process easier, but then protect them out of fear, “workers get threatened...the broker tells them at the village that if they say something about having to pay [additional money] to him, he would not send them to Thailand. The workers don’t dare to say anything to anyone, at least until they get to Thailand.”<sup>431</sup>

Specific sectors also have their own peculiarities. In the fishing sector, according to one expert, employers willingly pay all costs initially. This is because the people who are joining the fishing industry come from very low-income families in rural Myanmar and would not be able to even get loans to get basic documents and pay brokers or agents.<sup>432</sup> “Employers know they have to bear the initial costs, as anyone who can manage to raise money or get a loan would go for other jobs, factory or agricultural. The ones who come to fishing are those who have no money and little knowledge of what it involves.” Of course, this money is later recovered from workers’ wages and in the worst cases, it leads to debt bondage. In practice though, most vessel operators rely on those already in Thailand who can be hired and regularised, instead of going through the unrealistic MOU process.<sup>433</sup>

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

425. Electronics Watch, “Compliance Report Update - Cal-Comp Electronics, Thailand,” (October 2018), 6.

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

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

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

429. Tandem Research, “Gig work on digital platforms, Case Study 4: Information-Sharing Platforms - Golden Dreams,” (USAID: March 2020): 8.

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

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

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

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



Issara has also documented failings of private sector initiatives by Thai seafood companies,<sup>434</sup> while Electronics Watch has similarly documented practical and technical problems with some industry-specific initiatives.<sup>435</sup> Meanwhile, other initiatives moving towards actual zero-fees recruitments have had more success. MWRN has prepared a model MOU with zero recruitment fees for the workers which has been accepted by some employers since 2014 and has reduced fees in practice.<sup>436</sup> Workers must however pay for their own passports and medical examination costs on the Myanmar side. On the Thai side, workers need to pay for the work permit (THB 1900) and visa (THB 500). Issara also reports that some employers in the apparel and footwear sector have been working with them on reducing recruitment fees and transparency of terms and conditions, but most fall short of fully meeting the ‘employer pays’ principle.<sup>437</sup>

## Thailand

Thai law forbids migrant workers from being charged recruitment fees. The Foreign Workers Ordinance 2017 prohibits recruitment agents from demanding any money or other property from the migrant worker. Recruitment agents may however charge fees and costs from the Employer as per a schedule prescribed by the Director-General (Section 42). Where employers directly hire workers, they are permitted to recover from the worker’s salary the costs the employer has paid in advance, “passports, health check, work permit or other relevant costs as prescribed by the Director-General.” (Section 49). Maximum monthly deduction may not exceed 10% of wages. Where there is no agreement specifying that the employer would pay the employee’s travel costs, and advance payment for travel from the origin state to the place of work was made by the employer, this too can be deducted. The Maritime Labour Act 2015, which covers seafarers,

prohibits recruitment agencies from charging fees to seafarers, but allows recruiters to charge for passport or travel documentation, seafarer documentation, medical certificates and “other expenses as prescribed in ministerial regulations” (Section 35). No regulations or directives giving further details appear to have been published under either legislation,<sup>438</sup> and clarification has been sought on these charges by the ILO Committee in 2019.<sup>439</sup>

With respect to recruitment of fisher workers, the recently enacted Labour Protection in Sea Fishery Work Act 2019 has stipulated that employers are responsible for all service fees and costs to the recruiter (Section 11). However the previous ending of workers being charged recruitment fees in Thailand only appears to have transferred these costs to Myanmar. Thai agents now appear to make their money by selling the demand letter to Myanmar agents, who then charge workers higher fees than that allowed by the cap.<sup>440</sup> A Thai recruitment agent we spoke to denied this practice and claimed that they made their money from the Employer, but could not give further details of the official and actual fees.<sup>441</sup> Furthermore, even other costs on the Thai side for documentation and medical checkup (currently THB 3600) are now formally paid by the workers to the recruitment agency in Myanmar.<sup>442</sup> The Myanmar agency then gives this amount to Thai agents to carry out the necessary paperwork in Thailand, reportedly along with additional fees, which are also built into extra-fees that Myanmar recruiters charge the workers. Thus, although workers are paying a lesser amount in Thailand, they are paying increased amounts for recruitment upfront in Myanmar.<sup>443</sup>

There is more clarity with respect to costs to be paid by migrant workers already in Thailand to be brought within the MOU recruitment system (also known as the “internal MOU”). In August 2019, the Thai Cabinet approved the ‘Guideline for Migration Management

434. Lisa Rende Taylor and Ohnmar Ei Ei Chaw, “Driving Behaviour Change of Recruiters, Suppliers, and Job Seekers Toward Ethical Recruitment,” (Issara Institute: 2018): 10-11.

435. Electronics Watch, “Compliance Report Update - Cal-Comp Electronics, Thailand,” (October 2018), 6.

436. An MWRN official, Migrant Workers Rights Network, interview, 18 February 2020. See Impact- Thai Union Study

437. Lisa Rende Taylor and Ohnmar Ei Ei Chaw, “Driving Behaviour Change of Recruiters, Suppliers, and Job Seekers Toward Ethical Recruitment,” (Issara Institute: 2018): 10-11.

438. 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): 81.

439. ILO Committee, “Comments adopted in 2020 - Thailand,” (2021).

440. Electronics Watch, “Compliance Report Update - Cal-Comp Electronics, Thailand,” (October 2018), 20-21; Issara Institute, “Developing a Financially Viable Ethical Labour Recruitment Model: Prospects for the Myanmar-Thailand Channel,” (2018): 30.

441. Name and organisation withheld, interview, 31 August 2020.

442. MOLIP, ‘Safe Migration facebook post’ (9 January 2020); MOLIP, ‘Safe Migration facebook post’ (15 March 2019). This was also confirmed by recruiters we spoke to.

443. 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): 37.

2019 - 2020'. Migrant workers in Thailand were allowed to have their work permits renewed for 2 years as long as they had an unexpired work permit and a nationality document (passport, travel document or certificate of identity etc).<sup>444</sup> According to the authorities, “the goal was to prevent these migrant workers from unfair recruitment fee and debt bondage”.<sup>445</sup> The in-country renewal would mean that workers would not be forced to return to their home country and would save the travel costs and prevent loss of income in that period.

While the Thai authorities claimed that one of the benefits of this process was that the “recruitment fee [would be] paid for by the employers and not to be reclaimed on the migrant workers”,<sup>446</sup> the guidelines also increased the visa fee nearly four-fold (from THB 500 to THB 1,900 per year, US\$16-60). Other costs, detailed below, amounting to between THB 7,280 and 10,480 (US\$ 257–346) are also to be paid by the migrant workers.<sup>447</sup>

- Visa fee: THB 3,800 for two years
- Work permit fee: THB1,900 for two years, including administrative process fee
- Medical check-ups: THB 500
- Medical insurance fee: varies between zero, THB 500, and THB 3,200 per year (depending on their previous social security status)
- Identity card issuance fee: THB 80
- Deposit fees: THB 1,000

According to the ILO, not only is Thailand moving away from the employer-pays principle, but the increase of the visa fee is also contrary to SDG Indicator 10.7.1.<sup>448</sup> On the other hand, for migrant fisher workers hired in Thailand (under Section 83, Fishing Ordinance), the employer must pay for the health check-up and health insurance and the worker must only pay for the seamen book (equivalent to a temporary residence permit and work permit).<sup>449</sup>

## 6.2 Are there laws and/or policies to ensure that the full extent and nature of costs, for instance costs paid by employers to labour recruiters, are transparent to those who pay them?

### Myanmar

The NPA includes an objective to detail fees and costs and publicise them (2.4.1). The Rules for License holders of Overseas Employment Agencies requires explanation of fees and related expenses to workers (Rule 7). The MOEAF Code of Conduct also requires that detailed breakdown of all fees and receipts for all costs incurred and fees collected be provided to migrant workers (Article 11). The Code also stipulates that the agreement between migrant workers and recruitment agencies must include “a clear identification of financial responsibilities of all parties, especially as they relate to the period of transition between countries including transportation terms” (Part 2, 2A). Where the agency or employer is paying in advance and charging the migrant, details of debt and arrangements of repayment must be included in the written contract and must be in accordance with the laws of Thailand and Myanmar (2B). Specific mention is made that the employment contract should be attached to this agreement and there must be no contract substitution, supplement or change/transfer to another agency (2C).

The cap imposed by the MOLIP/DOL is by way of directive and can only be found on their ‘Safe Migration’ facebook page. While a breakdown of the THB amount has been provided, there is no breakdown of the MMK fee. As a result, even those workers who access it do not know whether it is only for recruitment fees or other costs are included.<sup>450</sup> According to one migrant rights advocate, passport fees and medical checkup fees are included in the cap-fees but in reality, workers have to pay for them separately.<sup>451</sup> According to Verité, it is not clear which of the following mandatory costs

444. Public Relations Department, “Guidelines for the Labor Management of Foreign Workers in 2019-2020,” 23 August 2019.

445. Royal Thai Government, “Thailand’s Country Report on Anti-Human Trafficking Response 2019,” (undated), 59.

446. Royal Thai Government, “Thailand’s Country Report on Anti-Human Trafficking Response 2019,” (undated), 60.

447. ILO, “Recruitment fees and related costs: What migrant workers from Cambodia, the Lao People’s Democratic Republic, and Myanmar pay to work in Thailand,” (2020): 8-10.

448. 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): 10.

449. Office of the Prime Minister, “Issuance of Seaman Book under the Fisheries Law”, 21 April 2020

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

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

(totaling US\$37-52) on the Myanmar side for migration to Thailand are included or not in the cap: passport: MMK 25,000 to 30,000 (US\$16–20); medical check-up: MMK 15,000–23,000 (US\$10–15), overseas worker smart-card MMK 1,900 (US\$1.20); health insurance: MMK 15,000–30,000 for six and 12 months respectively (US\$10–20).<sup>452</sup> Another 2018 report by Electronics Watch also has differing costs and information with respect to what is covered by some agencies as opposed to others, indicating the complete confusion that prevails with respect to recruitment fees and costs.<sup>453</sup>

According to one civil society representative, transparency is weak in the whole process. Many workers do not get any information, do not know the fee-cap or the breakdown of fees. Some cannot even differentiate between a broker and an agency representative.<sup>454</sup> A labour union representative agreed that workers had no knowledge who they were actually paying and much more awareness raising was required, given that migrants going to Thailand were usually rural and the least educated.<sup>455</sup>

A key problem identified by both labour and civil society representatives with respect to lack of transparency and confusion amongst workers was that of unregulated brokers.<sup>456</sup> Myanmar recruitment agencies are not allowed to recruit unless they have an approved demand letter (Rule 3). Until 2019, agencies were generally unable to open offices outside Yangon.<sup>457</sup> This required them to operate in rural areas via registered local representatives/ sub-agents - who must act exclusively for that agency. MOLIP directives also prohibit recruitment agency marketing staff from going into the provinces and conducting general marketing and outreach about their company's services.<sup>458</sup> Recruitment agencies may only visit communities along with a CSO representative to provide information on legal channels and other safe migration related information for.

In practice however, the situation is very different. Most MOU recruitment is done by unregistered 'freelance' brokers, who act on behalf of multiple recruitment agencies, instead of by the registered sub-agents or local representatives.<sup>459</sup> A civil society representation blamed unethical agencies, who used such brokers to recruit workers for them.<sup>460</sup> There is also a more practical reason, according to one sub-agent, there are fewer sub-agents than brokers in any given area, e.g. in one area [in 2018], there were three registered sub-agents, but over 100 brokers.<sup>461</sup> According to MOEAF, the brokers are raising the cost of recruitment and the ones who really benefit from the system, "we have been wanting to abolish brokers but yet, we still cannot... It doesn't matter how much we advertise. The workers only know the broker and that broker would contact the agent here."<sup>462</sup>

Brokers, who are often acting with registered agencies, quote lump sum amounts higher than the fee-cap, which often includes the agency fees but may also include additional sums built-in for the recruitment agencies. Such lump-sums can be quite large as they often include costs for transportation, preparing documents, food and lodging while on necessary trips to Yangon for a passport etc, and for final travel to Thailand or the border. Workers do not get clear information from brokers, let alone a breakdown of fees and costs. However, according to one migrant rights advocacy group, the situation is more complex as even if some workers are aware they are paying more for the service through the broker, they agree anyway because their priority is to migrate as fast as possible.<sup>463</sup>

## Thailand

Although transparency is required by the law and the 2016 MOU agreement with Myanmar (Article 4(6)), the

452. Verite, "Thailand Bound," (May 2019), 41.

453. Electronics Watch, "Compliance Report Update - Cal-Comp Electronics, Thailand," (October 2018), 22-24.

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

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

456. Name and organisation withheld, interview, 20 February 2020; Name and organisation withheld, interview, 25 March 2020.

457. Communication with ILO representatives, 2021. The legal basis for this restriction, which ILO representations said was lifted in 2019, is not fully clear.

458. Lisa Rende Taylor and Ohnmar Ei Ei Chaw, "Driving Behaviour Change of Recruiters, Suppliers, and Job Seekers Toward Ethical Recruitment," (Issara Institute: 2018): 12-13.

459. Lisa Rende Taylor and Ohnmar Ei Ei Chaw, "Driving Behaviour Change of Recruiters, Suppliers, and Job Seekers Toward Ethical Recruitment," (Issara Institute: 2018): 12-13.

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

461. Lisa Rende Taylor and Ohnmar Ei Ei Chaw, "Driving Behaviour Change of Recruiters, Suppliers, and Job Seekers Toward Ethical Recruitment," (Issara Institute: 2018): 12-13.

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

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

situation in practice is unclear. The Foreign Workers Ordinance makes the employer liable to pay service fees and other related costs as laid down in the notification of the Director-General of the DOE (Section 42, the costs can be claimed back from workers). According to the ILO, no such notification has been made yet.<sup>464</sup> However, as per the Notification of the DOE dated 17 November 2016,<sup>465</sup> under the previous Ordinance the maximum service fee that can be charged by the recruiting agency to an employer is 25% of the worker's monthly wage (up to 12 workers). This reduces to 20% for 13-45 workers, to 15% for 46-90 workers and to 10% if more than 91 workers are provided by the agency. Recruitment agencies can also demand charges for document preparation costs such as notary or translation fee; transportation, food and accommodation costs undertaken with respect to the workers; and any payments which the employer is legally responsible for or has undertaken to pay in the contract. The status of this notification is unclear, as there does not appear to be any newer one superseding it.

Section 49 of the Foreign Worker Ordinance also allows employers (when hiring directly) to make deductions from workers' salaries for employee travel costs, unless there was agreement to the contrary. There is no further detail of appropriate or maximum costs, making this an easy place for employers to inflate costs and therefore charge the worker additional amounts. Furthermore, there is no reference either way to repatriation costs, workers may therefore be charged a deposit by the agent or the employer for such costs.<sup>466</sup>

Currently, the practice in MOU recruitment is that prospective workers pay THB 3600 to recruitment agents in Myanmar for Thai documentation/processes as part of the upfront payment. This is stipulated by a MOLIP directive.<sup>467</sup> The following appear to be included in these charges: visa fees (THB 500); Work permit (2 years' validity - THB 1,900); Medical exam (THB 500) and health insurance.<sup>468</sup>

According to a recent ILO report, regular Myanmar migrants were less likely to pay agents or brokers in

Thailand (14% of workers paid as opposed to 53% from Laos or 85% from Cambodia), although the number of irregular migrants making payments to Thai agents or brokers (for regularization via "internal MOUs) was much higher at 35%.<sup>469</sup> Myanmar migrants paid an average of US\$310 to agents or brokers in Thailand.<sup>470</sup>

---

### **6.3 Does the government take measures to ensure that employment contracts are clear and transparent, including an authoritative version in the worker's language, that they receive it in good time and that it contains all relevant terms and conditions, respecting existing collective agreements? Do they use IT to assist in this?**

#### *Myanmar*

The LROE makes no reference to contracts between workers and employers. The 2014 Rules and Regulations for MOEAF require the body to prepare standard employment contracts between workers and employers for each destination country in three languages: Myanmar, English and the destination language (Rule 11), however the corresponding Rules and Regulations for License holders of Overseas Employment Agencies, issued on the same day, do not require them to use the standard employment contract. The sole obligation is that licensed recruitment agencies ensure that workers are fully informed of, and understand, the terms and conditions in the employment contract before signing it (Rule 8). The 2016 Labour Agreement between Myanmar and Thailand (pursuant of Article 5, MOU) is more detailed with respect to contracts. Article 6 stipulates that a 2-year contract (extendable by a further two years), approved by the Ministry of Labour in Thailand, shall be concluded between the worker and the employer. The contract and related-documents in Thai,

---

464. 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.

465. Department of Employment, "List of transaction, service fees and expenses in bringing foreigners to work with employers in the country," (17 November 2016).

466. Verite, "Thailand Bound," (May 2019), 16.

467. MOLIP, "Safe Migration facebook post," (15 March 2019).

468. Name and organisation withheld, interview, 14 July 2020. The amounts are specified in a report but no source has been cited: Verite, "Thailand Bound," (May 2019), 15-17.

469. 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): 38.

470. 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): 40.

Myanmar and English are to be authenticated by the Myanmar Embassy in Thailand (Article 8). Responsibility is placed on the concerned Myanmar recruitment agency to ensure that the workers are sent with a copy of the employment contract (Article 6(4) and 9).

According to MWRN, there is no standard contract required by MOLIP but they require the agencies to add certain things. For example, they must put the name and ID number of the employer, the location of the workplace, type of work, working hours, and amount of wages and overtime, allowances or deductions depending on providing meals and dorms, etc. Depending on the type of sector, the contracts can be different as well.<sup>471</sup> The MOEAF Chairman also told us that in addition to the model contract by MOEAF/MOLIP, agencies have also developed their own contracts to benefit themselves, “They would include such terms as, no refund of recruitment fees when things go wrong. And the workers would sign them”. He conceded that these contracts are not aligned with the Ministry’s rules and regulations and violated the law.<sup>472</sup>

As per the MOEAF Code of Conduct, recruitment agencies are responsible for ensuring that contracts are comprehensive, and compliant with national laws and the standard employment contract (Part 2, 5A). Employment contracts must include “rights and responsibilities with regard to wages, working hours and other working and employment conditions” (page 8). Recruitment agencies are also responsible for ensuring that the translation in Thai and Burmese is accurate (5B); that the workers are explained the terms, understand them and have time to review and consider contract before signing (5C); that the signing of the contract is voluntary (5F); and that workers are given a copy of the signed contract to keep (5D).

MWRN has developed its own model MOU agreement and told us they make sure that the workers read the agreements many times and also explain it to them, in addition to what the agencies do.<sup>473</sup> According to MWRN, some agencies do not ensure that the worker has a contract copy, “they promised the workers that they

would give it to them when they arrive at Myawaddy [the border town] after they get their smart cards [Overseas Worker Identification Cards], but they don’t give it to them.”<sup>474</sup> An ILO representative agreed, noting that while contracts are standardised and by-and-large fine, the problem is that workers do not get the contract itself. “The agencies do not give the copy of the contract to workers. The workers are not aware that the employment contract is important for them. Only when they have a problem, we find out they do not have a contract.”<sup>475</sup>

In practice, contracts for migrant workers in Myanmar are signed at the Labour Department’s Panglong Hall in Yangon, or (in recent years) in Hpa-an, the Kayin State capital. In addition to a recruitment agency representative, the signing takes place in the presence of officials from the Ministry of Labour (Director/ Assistant Director, Staff Officer, and Deputy Staff Officer) and representative of the Thai agency or employer.<sup>476</sup> According to a migrant rights advocacy group, this is not much of a safeguard because of the large number of people at such signing events. Government officers don’t have the time to read thoroughly and ask the workers whether they understand what is written.<sup>477</sup> Another civil society representative said that although the contract situation had improved in the past few years, there were still gaps. “We need to give enough time to the workers for them to be able to read the employment contract thoroughly. At these events, they just shout from the front that this and this are included in the contract. The workers do not really pay attention when they do that, because their mind is occupied with having to migrate.”<sup>478</sup> As the ILO has pointed out, the timing of the signing is largely symbolic, contracts are presented to workers after it is practically too late for them to withdraw from the recruitment process.<sup>479</sup>

A 30-year-old factory worker from Bago division told us that he had been given no time even to consider what the contract said, but just to sign it.<sup>480</sup> According to the MOEAF chairman, a key issue is that the workers who go to Thailand have low levels of education, “some are even unable to read ... when they are asked to sign the

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

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

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

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

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

476. Verite, “Thailand Bound,” (May 2019), 38.

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

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

479. ILO Myanmar, “Recruitment Of Migrants In Countries Of Origin,” (July 2016); 28.

480. Remote interview R8, 29 September 2020.

contract, they just sign. They do not read and know anything.”<sup>481</sup> Further, the signing in Yangon also requires migrants to travel for that purpose, adding additional cost. According to a recent ILO study, only 41% of migrant workers from Myanmar that they interviewed had a written contract when they began work in Thailand.<sup>482</sup>

## Thailand

A formal contract between employer and the worker is mandatory in Thailand (Sections 14/1 and 17 of the Labour Protection Act, 1998). The Foreign Workers Ordinance requires that the recruitment agency submit a copy of the contract of the potential migrant workers’ employer to the Department of Employment, who confirms the employer and the work undertaken by them (Section 41). Where employers hire migrant workers directly, they are required to ensure that a contract is available at the workplace (Section 46) - failure to do so could lead to a fine up to THB 5000 (US\$160, Section 113). The same provision also requires an employee to ensure that the worker is given a copy of the contract. There do not appear to be any requirements or use of information technology processes for contract purposes. Contracts appear more designed to monitor migrant workers and their movement between jobs, as opposed to enforcement of laws to ensure their rights and benefits.<sup>483</sup>

In November 2016 the DOE announced that contracts for migrant workers must not “exempt or restrict liability” and must conform with legal requirements at a minimum,<sup>484</sup> suggesting that contracts have routinely included terms that did not meet Thai labour standards. Where workers are hired through the 2016 MOU and agreement between Myanmar and Thailand, contracts need to be for 2-years and approved by the Thai Ministry of Labour (Article 6(1)); in three languages - Thai, Myanmar and English - and authenticated by the Myanmar Embassy in Thailand (Article 8). The MOU & agreement make it the responsibility of the concerned Myanmar recruitment agency to ensure that a copy is provided to the workers prior to departure (Art 6(4) and 9). Where workers already in Thailand are brought within the

“internal MOU” process following the 2019 guidelines, they are also assured an employment contract in three languages: English, Thai and the official language of their country.<sup>485</sup> A DOE proforma employment contract is available online.<sup>486</sup> Most of the workers we interviewed however did not have such contracts.

For fisher workers, the 2014 Ministerial Regulation on Labour Protection in Sea Fishery Work requires that the contract in duplicate be prepared on a form to be prescribed by the DLPW and a copy provided to the employee, to be inspected by a labour inspector (Clause 6). It also required that the employee must be presented before a labour inspector once a year. Migrant fisher workers hired in Thailand (under Section 83, Fisheries Ordinance) must also be given an employment contract as per the DLPW format.<sup>487</sup> The DLPW proforma requires a number of relevant details of both employer and employee; the position accepted and the particular boat (name and registration number); start and end date; wage details along with any conditions, details but noting specifically that final amount can not be less than minimum wage. The proforma also notes some basic labour protection: employer to provide at least 10 hours or rest in a 24 hour period and not less than 77 hours in any 7-day period; adequate hygienic food and drinks, toilets, medical supplies for first aid appropriate for working and living on fishing boats; and communication device and access to communicate with family/DLPW inspectors etc. At the end, the contract requires both parties to sign that they “thoroughly read and understood the contents of this contract”, in the presence of two witnesses.<sup>488</sup> These forms remained in place until 2018 when revised forms were provided. Although the Thai authorities said that guidelines were issued “to enable officers to assist the drawing up of contracts in both Thai and workers’ native languages”,<sup>489</sup> the ILO noted that in practice the new form was only in Thai.<sup>490</sup> According to one CSO, it is not mandatory for migrant workers to receive their contract in their native language - a significant loophole.<sup>491</sup>

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

482. 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): 25. This was significantly higher than those from Cambodia and Laos

483. Royal Thai Government, “Thailand’s Country Report on Anti-Human Trafficking Response 2019,” (undated): 4, 61. See also Penchan Charoensuthipan “Paperwork cut for migrant workers as registration deadline looms”, *Bangkok Post* (12 January 2020).

484. Department of Employment, “Details in the contract to bring foreigners to work with employers in the country,” (17 November 2016).

485. Royal Thai Government, “Thailand’s Country Report on Anti-Human Trafficking Response 2019,” (undated): 60.

486. Department of Employment, “import form for Myanmar nationality foreign workers (MOU),” (undated).

487. Office of the Prime Minister, “Issuance of Seaman Book under the Fisheries Law”, 21 April 2020

488. Form LP11 (Thai/English); and LP12 (Thai/Burmese), on file. However, many migrants in Thailand from Myanmar’s ethnic minorities - including Shan, Akha, Karen and others - may not read Burmese well enough to understand a contract,

489. Royal Thai Government, “Country Report on Anti-Human Trafficking Efforts 2018,” (undated), 69.

490. ILO, “Endline research findings on fishers and seafood workers in Thailand,” (10 March 2020), 12.

491. Environmental Justice Foundation, “Thailand’s progress in combating IUU, forced labour & human trafficking,” (spring 2020), 14.

Although inspection of employment contracts remains part of the PIPO control system, none of the fisher workers interviewed by HRW in 2016-8 reported having possession of a copy of their written employment contract. Instead they were kept with the skipper who presented them for inspection - this was also acknowledged by industry and DLPW officials in conversation with HRW.<sup>492</sup> HRW research also suggests that counter-signatures of witnesses could not be relied upon, as the witness was often a representative of the employer.<sup>493</sup> A key obstruction appears to the approach taken by many DOE and DLPW officials who did not take the issue seriously and considered that there could be no problem if the documents had been signed by the worker. One senior provincial DLPW official admitted to HRW that contracts were “a waste of paper” designed to meet regulatory requirements.<sup>494</sup>

HRW noted that half of the fisher workers it interviewed were either uninformed or misinformed about key terms of employment.<sup>495</sup> Many fisher workers had signed numerous documents as part of the application process, without opportunity to read. They may have signed contracts without even knowing as they did not receive oral explanations from employers or government officials about key terms of employment. The 2014 fisheries-contract requirements were welcomed by the SWG as potentially protective, but it noted in 2018 that there was little implementation. The vast majority of fisher workers were unaware that they ever signed a written contract, much less read the provisions in the contract or been given a copy of the contract.<sup>496</sup> Another CSO-coalition research study from 2019 found that more than half of 475 fisher workers interviewed did not receive information about their job and the content of the contract before starting employment, more than 75% were not able to read the contract before signing it and 85% were not able to access the original or copy of their contract.<sup>497</sup> An earlier study in 2017-18 had found similar issues.<sup>498</sup> The ILO’s 2020 endline research report found that only 51% of 112 fisher workers surveyed reported their contract being in

their native language – a decline from 66% of respondents when a similar survey was conducted in 2017. The ILO Committee also noted from the observations made by the ITF that 78% of the fisher workers interviewed by the FRN indicated that they do not have a copy of their employment contract in their possession while some others have never seen it. Some of them have it in Thai language, which is not their language and therefore are unable to understand their pay scale and other mandatory protections available to them.<sup>499</sup>

Similar issues with contracts exist in other sectors too. According to a representative of a migrants advocacy organisation, most Myanmar workers are not aware of the contents of their contracts, even if it has been translated into Burmese for them. This is partially a result of low education levels amongst the migrants and lack of understanding about how contracts work and their significance. As a result of this migrant workers are not often able to use the contracts to advance their interests. “The lack of enforcement on the Thai side also means that often the contracts have less significance than in other countries.”<sup>500</sup>

Some of the workers interviewed by us were not even given copies of their contracts. One explained that the recruitment agency “took it away after we signed the contract.”<sup>501</sup> I do not have it. They did not give me the contract, they only gave it to the employer. After we signed the contract they took away all of our documents.”<sup>502</sup> Another said that neither she or any of the other over-400 workers in the factory - most working on Section 64 border passes - had a contract.<sup>503</sup> Workers elsewhere did not receive their contracts in Burmese.<sup>504</sup> Not having copies of contracts has knock-on impacts for workers. According to current Thai policy, an employer’s failure to comply with the contract is one of the limited grounds on which the worker can change employers.<sup>505</sup> If a copy of the contract, in an accessible language, is not available to them, there is no way for the worker to know if the contractual terms are being violated or not, leaving them with little chance of changing employers.

492. Human Rights Watch, “Hidden Chains: Rights Abuses and Forced Labor in Thailand’s Fishing Industry” (2018): 52.

493. Human Rights Watch, “Hidden Chains: Rights Abuses and Forced Labor in Thailand’s Fishing Industry” (2018): 52.

494. Human Rights Watch, “Hidden Chains: Rights Abuses and Forced Labor in Thailand’s Fishing Industry” (2018): 53.

495. Human Rights Watch, “Hidden Chains: Rights Abuses and Forced Labor in Thailand’s Fishing Industry” (2018): 51.

496. International Labor Right Forum, “Comments Concerning the Ranking of Thailand by the United States Department of State in the 2018 Trafficking in Persons Report,” (12 March 2018).

497. 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): 28.

498. 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), 42-46.

499. ILO Committee, “Observation: Forced Labour Convention, 1930 (No. 29) - Thailand,” (2018).

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

501. E.g. Interview P6, Mae Sot, 2 February 2020; remote interview R4, 25 August 2020; Remote interview R14, 7 September 2020.

502. Remote interview R12, 31 August 2020.

503. Interview P6, Mae Sot, 2 February 2020.

504. E.g. Remote interview R7, 28 September 2020; Remote interview R9, 29 September 2020.

505. See 1.7

---

## 6.4 Are there effective measures to prevent contract substitution?

### Myanmar

Contract substitution is common. An ILO-IOM report from 2017 found that 43% of Myanmar migrant workers had suffered contract substitution.<sup>506</sup> The MOEAF Code of Conduct makes it the responsibility of the recruitment agency to ensure that there are no substitutions or supplementary contracts or agreements (Part 2, 5E). However, a civil society representative told us that one problem on the Myanmar side even before signing was that because many workers are not able to read Burmese, brokers promised them more things initially but then cheated them by producing a contract with different terms at the time of signing.<sup>507</sup>

The MOEAF code specifically noted that the agency “will be responsible” for ensuring that none of the agreements are changed or transferred after they have been signed (page 22). However, it is unclear what enforcement takes place in such instances. One civil society representative said that there was little followup by Myanmar recruiting firms after they have sent the workers to Thailand. Often the recruiting firms have little idea about the project where the workers have been sent and if there were changes.<sup>508</sup> This was denied by recruitment agents who told us that they were responsible for the workers even when in Thailand and often intervened on their behalf with employers or the Embassy.<sup>509</sup> A Thailand-based advocate stressed the importance of workers complaining to the Myanmar agencies and MOEAF too.<sup>510</sup> Another migrant rights advocate was more forgiving, arguing that because there are a lot of workers the agencies cannot do much.<sup>511</sup>

According to an ILO representative, although instances of contract substitution are reducing, there are no specific measures being taken by the Myanmar government to prevent contract substitution. According to them, one way to avoid contract substitution is to have more education and training of migrant workers. “If they have a good understanding of their rights, they can catch out agents adding extra terms and conditions.”<sup>512</sup>

### Thailand

Contract substitution is common in Thailand, as also noted by the ILO, “It is not uncommon for a first contract to be drafted and signed for submission to authorities, while a second different contract contains the actual employment terms for the worker. The terms of this second contract will frequently change the conditions to be less favourable in a number of areas, including salary, job duties, and benefits. Workers are unlikely to learn of the deception until they arrive abroad, at which time they have likely already spent a large amount of time and money to secure employment and are not in a position to decline.”<sup>513</sup> A Myanmar recruitment agent agreed and told us that Thai employers do not care about the MOU contract signed in Myanmar, they ask workers to sign a new contract with their own terms.<sup>514</sup> Workers also confirmed to us that the contracts given to them often did not match the work or terms that they had been previously informed of.<sup>515</sup>

One mode of contract substitution, a byproduct of the current system, is where workers are hired for one job or factory but then sent to a different one entirely, often with different terms. According to a migrant rights advocacy group, “Sometimes the Thai agency sends the workers to a different workplace, or their promised job which is mentioned in the agreement, is different from what they actually have to do on site.”<sup>516</sup> The workers

---

506. ILO and IOM, “Risks and rewards: Outcomes of labour migration in South-East Asia,” (2017), 32. The same report also noted that signing a written employment contract before migrating did not significantly reduce the likelihood of contract substitution more than having a verbal agreement.

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

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

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

510. Name and organisation withheld, Interview, 21 January 2020.

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

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

513. ILO and IOM, “Risks and rewards: Outcomes of labour migration in South-East Asia,” (2017), 32.

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

515. E.g. Remote interview R2, 21 August 2020; remote interview R11, 30 August 2020; remote interview R12, 31 August 2020.

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

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

518. Name and organisation withheld, interview, 31 August 2020.

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

520. Name and organisation withheld, interview, 7 December 2019.

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



have the expectations that they would work at the jobs that they can actually do or are really interested in. Often it turned out to be different from their expectations or their capacity.”<sup>517</sup>

This happens in various ways. A Chiang-Mai based Thai recruitment agent told us that while there were only five licensed agents in the town, there were many more unlicensed agents who registered as a business, brought foreign workers in directly as an employer, but then subcontracted them out to other employers.<sup>518</sup> Licensed agencies also do this, by requesting a much larger number of workers than the actual number needed for a project.<sup>519</sup> According to another migrant rights advocate, companies are also part of the problem. They issue demand letters with inflated numbers or for jobs that don't exist. This allows agents to get visas issued for many more workers who can be sent to another company quickly without any processing time. But this creates huge problems for the workers.<sup>520</sup> Another civil society representative also confirmed this, “migrants are brought to Thailand without employment secured for them. For instance a company will only have 100 vacancies but the agency will have brought in 200 migrant workers, so 100 of them will have to look for other jobs elsewhere, this is a big problem right now.”<sup>521</sup>

While lengthy delays in the MOU process may have contributed to such a practice, it appears to have also developed into a side-business for corrupt employers and recruiters. Another problem, according to one civil society representative, is that contracts are at times light on detail. “In the contract it would only describe their job as ‘manufacturing sector’. It is vague and should add more details. For example, in a case that I helped resolve, the migrant was promised to take a job as sticking car-stickers but he was sent to work in the packing department. Then when we looked at the contract, it just mentioned manufacturing sector.”

Even if there are no different terms or new contracts in such situations, the workers are placed in a very vulnerable situation as their original contracts are effectively rendered meaningless given that they do not end up doing the same job or even working for the same entity. The Foreign Workers Ordinance imposes penalties for such subcontracting: a fine of up to THB

200,000 or approx US\$6500, (Section 113) or even imprisonment of up to 1 year when the offender is a licensed agent (Section 110/1). However, as the SWG points out, there are virtually no implementation or inspection mechanisms to detect such subcontracting.<sup>522</sup> One migrant rights advocate said that Thai authorities needed to do more to check that the business seeking the workers has the capacity to accept the numbers they are asking for.<sup>523</sup>

According to one migrant advocacy group, courts and tribunals also do not take contract substitution seriously. “For example, the court will often accept a falsified contract into evidence which the workers are unable to challenge because they do not have copies of their original and because the court operates in such a way as to heavily favour the employer. Written evidence submitted to the court by the employers is presumed to be genuine and therefore very difficult for the workers to challenge.”<sup>524</sup>

Since 2016, the Thai authorities have also set up five Post-Arrival and Reintegration Centres for Migrant Workers, in addition to orientation activities, there is also random screening of workers to verify that they were not tricked or charged excessive fees and expenses etc.<sup>525</sup> While this has generally been welcomed as a positive step, one expert on the fishing sector voiced doubts about the number of such interviews and how they were handled, raising questions about resourcing and sheer volumes that would arise if this were to be a meaningful exercise to prevent contract substitution and other abuses.<sup>526</sup>

---

## 6.5 Does the government have policies or practices to ensure respect for the rights of workers who do not have written contracts?

### Myanmar

Migration via the MOU or licensed recruitment agents requires a written contract. For other regular migrants to Thailand (e.g. Border permit) there is unlikely to

522. 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): 25.

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

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

525. Royal Thai Government, “Thailand’s Country Report on Anti-Human Trafficking Response 2019,” (undated), 62-3.

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

be any grounds for a claim in Myanmar. Theoretically, they could seek redress against a violation of a verbal agreement with a broker as Myanmar’s colonial-era contract law recognises verbal contracts per se as valid and binding.<sup>527</sup> However, according to the ILO, enforcement of verbal contracts is unlikely in Myanmar courts.<sup>528</sup>

## Thailand

Section 5 of the Labour Protection Act defines ‘contract of employment’ to include oral contracts. Since 2014, the Ministerial Regulation for Labour Protection in Sea Fishing Work made it mandatory for all employment

contracts relating to fishing boats to be in writing (Clause 6). Since 2017, the Foreign Workers Ordinance requires written contracts for all migrant workers brought by recruitment agents (Section 41 and 46). Employment contracts for seafarers, who are instead covered under the Maritime Labour Act 2015, must also be in writing (Section 43). Migrant workers who are regularised through the ‘internal MOU’ scheme must also have a written contract. Verbal and oral contracts are therefore likely to be common only in the case of informal workers, particularly domestic workers and seasonal agricultural workers, and irregular migrants working in a range of industries. These are also the least likely workers to be able to access any redress mechanisms.

---

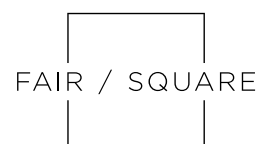
527. ILO Myanmar, “[Internal labour migration in Myanmar](#),” (2015), 43.

528. ILO Myanmar, “[Internal labour migration in Myanmar](#),” (2015), 43.

Supported by Open Society Foundations, Humanity United and Porticus

Produced by FairSquare

**OPEN SOCIETY  
FOUNDATIONS**



**fairsq.org**