

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:

## 7. Access to grievance mechanisms, provision of remedy and accountability

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Construction workers from Myanmar, 2020. © Yes058 Montree Nanta / Shutterstock

## 7. Access to grievance mechanisms, provision of remedy and accountability

*“There are cases in which workers directly file a complaint but mostly organizations like us have to file for them because they do not know the process or they do not dare go to government offices.” MYANMAR CIVIL SOCIETY ORGANISATION.*

### Summary

The best likely result for migrant workers seeking remedy in this corridor is getting their dues or a refund of official fees. Compensation is uncommon while accountability for abusers is rare. The grievance redressal system in Myanmar primarily operates as a mediation or negotiation to ‘solve’ a problem. MOLIP rules place overall responsibility on the recruitment agencies to resolve problems faced by workers, including in Thailand. Worker complaints within Myanmar, estimated at 100 a year, are usually filed through civil society groups or worker associations. This is a small number given the widespread abuses in the recruitment process. There are many fora for filing complaints but most relating to recruitment agents tend to

be settled by MOEAF/MOLIP and few workers go to court. Where complaints are against brokers, they are usually handled by the police. If and when these reach court, neither prosecutors nor judges prioritise them. Punishments, in the rare instances of conviction, are inadequate. On the whole, the grievance redressal machinery is slow and centralised with all decisions being made in Naypyitaw. When complaints are brought against Thai employers, the involvement of recruitment agencies and MOEAF in the negotiations also creates a conflict of interest as Myanmar recruiters cannot afford to antagonise employers in the highly competitive market. Myanmar also has labour attaches in Thailand who assist in such resolution processes, but they have limited resources and also rely on support from recruitment agencies.

Thailand's grievance redressal machinery is also largely oriented towards settlement. The complaint system is fragmented and attempts to provide integrated centres have not entirely convinced, including with fisher workers. Although domestic and agricultural migrant workers have the same rights, in practice it is far more difficult for them to access complaint mechanisms, partly due to their relative isolation or irregular status (common in both sectors), while migrant sex-workers rarely seek legal remedy due to concern of arrest and deportation. Most workers tend to rely on family and friends or NGOs for assistance, instead of officially complaining. Access to civil claims and criminal complaints is also available to migrant workers. It is not clear whether the state provides legal aid, but some NGOs do so along with other practical support necessary for workers to be able to seek judicial remedy. This is essential as migrant workers have far more difficulty accessing

mechanisms due to discrimination, language and other barriers. Court proceedings are lengthy and workers who go to court often have to return home regardless of the case being pending, further discouraging others to do so. DLPW and other authorities also encourage out-of-court settlement, often to the detriment of the workers. Compensation features largely in human-trafficking and forced labour cases. Retaliation against workers and those supporting them is common. Workers face threats of being fired and informally 'blacklisted' amongst local employers, while large companies also file counter-cases for defamation. This has a chilling effect on reporting and future complaints. Prosecutions of recruitment agents and brokers are negligible. Despite an increase in inspections, there have been few prosecutions for labour violations in the fishing sector too. Data on trafficking prosecutions is unclear. Convictions, across the board on labour rights issues, are rare.

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## Recommendations to the National Unity Government of Myanmar:

- Ensure that complaints against recruitment agents in Myanmar are independently investigated, without involvement of MOEAF or other recruitment agents, and that appropriate compensation is paid to workers where breaches are found.
- Ensure that labour attaches in Thailand and elsewhere are sufficiently resourced and able to act independently to protect the interests of the workers.

mechanism currently available to ensure that they are simplified and fit for purpose including being accessible for all migrant workers without requiring the need of NGOs, including domestic and agricultural workers.

- Ensure that government funding of shelters and legal aid services is made accessible to migrant workers.
- Ensure that all callers to official hotlines are clearly informed of their right to submit formal complaints and seek compensation, and conduct a complementary information campaign to inform workers of the circumstances in which they have the right to change employers and the process for doing so.
- Remove defamation as a criminal offence and ensure that workers and their supporters are not prosecuted for complaints made and/or labour activism.

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## Recommendations to the Royal Thai Government:

- In cooperation with civil society and workers' groups, review the complaint and redressal

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## 7.1 Do workers irrespective of their presence in the country or legal status have access to free or affordable grievance / dispute resolution mechanisms in cases of abusive/ fraudulent recruitment?

### Myanmar

The LROE does not provide for any specific grievance mechanism but recognises the right of workers “to take civil or criminal action for loss of his rights and privileges to overseas employment” (Section 24). The 2014 Rules and Regulations for License holders of Overseas Employment Agencies places overall responsibility on the licensed recruitment agencies till the workers return home, including to communicate with the Labour Attache in the receiving country and MOEAF to solve problems of workers (Rule 15-16). The Overseas Employment Supervisory Committee (OESC), created by the LROE, also has a duty to communicate and coordinate with government departments, organizations and persons to “ensure there is no loss of rights and privileges of workers arising out of their employment.” (Section 8) In practice, the formal migration regime puts the onus on recruitment agents to “resolve” the matter through negotiations, including with Thai employers. Although both the Law and Rules relate to regular migrant workers sent abroad by licensed recruitment agents, the right to take civil and criminal action per se applies to all workers. The extent to which irregular migrants would be able to exercise such rights is unclear but according to MWRN, MOLIP does assist them in such cases.<sup>529</sup> The Labour attachés in Myanmar are also reported to assist irregular migrants (see 7.6).

### Thailand

The 2016 MOU highlights that migrant workers will receive all the same protections as local workers (Article

5), but does not provide for any specific grievance mechanism. Thailand has a fragmented setup for complaints, making it difficult for migrant workers. Complaints with respect to recruitment under the Foreign Workers Ordinance can be taken up by regular migrants with the Department of Employment (DOE).<sup>530</sup> The Labour Protection Act 1998, provides all workers in Thailand the right to register complaints with the Department of Labour Protection and Welfare (DLPW) on a range of issues including related to working hours, payment of wages and harassment.<sup>531</sup> Additional access to civil claims and criminal complaints is also available to documented migrant workers.<sup>532</sup> Fisher workers also have access to the PIPO mechanisms (see 5.2), including for forced labour and trafficking complaints. The Anti-Trafficking Act specifically includes a provision to allow a trafficked person to remain in Thailand temporarily for the purpose of accessing remedies (Section 37). As per a 2016 Ministry of Interior notification, such persons may reside in the country initially for one year, extendable to a second, but there are significant limitations on work and movement.<sup>533</sup>

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## 7.2 Are grievance mechanism processes accessible in practice, rapid and free of complex administrative procedures?

### Myanmar

Neither law or rules lay down a procedure for complaints. Since June-July 2013, MOLIP has set up two complaint centres in Naypyitaw and Yangon - 24/7 hotlines are operated by the Department of Labour's Migration Division to receive complaints.<sup>534</sup> Complaints can be filed by migrant workers or their family or friends at Labour Exchange Offices (LEO, numbering between 91-97) in Myanmar, some of which host specialised Migrant Worker Resource Centres.<sup>535</sup> These complaints are transmitted and dealt with by the Naypyitaw Complaint Centre. Complaints can also be made by the workers or their representatives to their agent,

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

530. Winrock International, “Labor Abuse Complaint Mechanisms in Thailand,” (March 2020), 10.

531. The Labour Protection Act, 1998

532. Winrock International, “Labor Abuse Complaint Mechanisms in Thailand,” (March 2020), 10.

533. Liberty Global Asia 2018 “Turning Possibilities into Realities,” (2018), 32.

534. Mauro Testaverde, Harry Moroz, Puja Dutta, “Labor Mobility As a Jobs Strategy for Myanmar,” (World Bank: 2020), 103.

535. In practice however, only the ten LEOs that house migrant workers resource centres are equipped with information and knowledge to provide effective services. See 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): 11.

to MOEAF, or the Labour Attaché in Thailand - if not resolved, these are referred to MOLIP.<sup>536</sup> The MOEAF Code of Conduct, signed by the vast majority of the recruitment agencies, also requires them to inform the relevant authority of any abuse of workers' rights, including Anti-Trafficking Police in the event of forced labour or trafficking.<sup>537</sup>

Complaints can be filed free of charge.<sup>538</sup> Complaints by migrants alleging violations of LROE are initially investigated by 3-4 officials from MOEAF and the Labour Exchange Offices.<sup>539</sup> MOEAF members are usually representatives made of recruitment agencies, assigned on a rotating basis.<sup>540</sup> Where complaints are made directly to MOEAF, then after informing MOLIP of the receipt of the complaint, MOEAF carries out an investigation jointly with the union or advocacy group that reports the case.<sup>541</sup> In all instances, once the facts are known MOEAF will attempt to "settle" the dispute, whether between worker and employer or worker and agency.<sup>542</sup> Where negotiations do not lead to a resolution, a "formal investigation team" is established including a senior official of the state or provincial Department of Labor office along with LEO/MOEAF officials.<sup>543</sup> According to a World Bank study, such teams are rarely formed - only in cases where the allegations are against a licensed recruitment agency or their local representative and the issue cannot be resolved via negotiation or settlement. Where required, refunds or compensation can also be directed to be paid by the agency or deducted from the agency's deposit with MOLIP. The OESC also has the power to cancel or revoke recruitment agency licenses (Section 8). If the worker is not satisfied by the compensation or other action taken, then they can take the matter to the civil court or criminal court, e.g. for cheating under the Myanmar penal code (Section 420).<sup>544</sup> Cases of trafficking or bonded labour are taken up by the Police's Anti-Trafficking in Persons Division.

Between July 2013 and May 2018, MOLIP's complaint mechanism received 1801 complaints, of which 213 were related to recruitment fees and 210 to contract issues.<sup>545</sup> This is not a high number, given the widespread overcharging and contract substitution. According to an ILO representative, workers often do not file complaints or want to go through the complaint process because it is lengthy.<sup>546</sup> Even where the workers do want to file a complaint, they are reliant on labour unions or advocacy groups to do so. This is particularly true for migrants who go to Thailand who tend to have less education than others.<sup>547</sup> "Some workers do not know about the complaint mechanism ... those who receive pre-departure training would have knowledge on this but those who do not get, would not know this", said one civil society representative, "for those migrants who are in the area where there are migrant support organizations, it is easier for them to make a complaint. On the other hand, for those who are far from any of the organizations, it is extremely difficult for them to make a complaint."<sup>548</sup> As a MWRN representative explained, "There are cases in which workers directly file a complaint but mostly organizations like us have to file for them because they do not know the process or they do not dare go to government offices."<sup>549</sup> Workers have also complained to MWRN that it is not easy to make a complaint on the official hotlines. Even their calls keep getting transferred to different offices and people. MWRN staff said they do not have the same problem because they know the right people to talk to.<sup>550</sup>

Complaints against registered sub-agents are taken up with the concerned recruitment agency, however there is little accountability with respect to unlicensed brokers. As per the procedure, if a complaint is made regarding unlicensed brokers, MOLIP will send the details to the Police Anti-Trafficking in Persons Division. MOEAF told us that they try and take up complaints against brokers even though they are not covered by their mandate:

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

537. ILO Myanmar, "Country of origin complaints mechanisms for overseas migrants from Myanmar," (2016), 12.

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

539. ILO Myanmar, "Country of origin complaints mechanisms for overseas migrants from Myanmar," (2016), 7; An MWRN official, Migrant Workers Rights Network, interview, 18 February 2020.

540. ILO Myanmar, "Country of origin complaints mechanisms for overseas migrants from Myanmar," (2016), 12.

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

542. Peter Nyunt Maung, MOEAF, remote interview, 1 June 2020. ILO Myanmar, "Country of origin complaints mechanisms for overseas migrants from Myanmar," (2016), 8-9.

543. Mauro Testaverde, Harry Moroz, Puja Dutta, "Labor Mobility As a Jobs Strategy for Myanmar," (World Bank: 2020), 129.

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

545. ILO Myanmar, "Migration data for policy development", (2018): 34, 62. The vast majority - 758 complaints - were listed as "other" - and no details are known.

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

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

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

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

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



“We summon them ... We tell them that if they do not come, we will call the police.”<sup>551</sup> It is unclear however to what extent MOEAF is successful in holding unlicensed brokers to account. In theory, irregular workers or their representatives can also directly approach the police but it is difficult in practice, as the MWRN representative explained, “For cases of agencies, it is easy [to make a complaint] but for brokers they have to go to the police. I always raise this issue to the police, because for some cases they don’t open a case for us. Or they [the police] would intentionally avoid me because they do not want to accept cases.”<sup>552</sup> A trade union group said that agencies and brokers were able to act with impunity because of government inaction. They would not dare continue these practices if the government took serious action and made an example of it.<sup>553</sup>

The complaint process itself is also highly centralised, as local and regional labour officers appear unable to act on their own. One advocacy group suggests that the current system of Naypyitaw handling everything isn’t working well, “the process would be more effective if regional and other labour officers check and handle those agencies operating in their region - inspect them anytime.”<sup>554</sup> The lack of decentralisation affects complaints going to court also. As one trade union representative told us, “the plaintiff is always supposed to be the Ministry of Labour. It makes the process longer, because when they have a case, they have to request permission from Naypyitaw and they can only follow up the case after they receive this permission. This takes about a month. In the meantime, the culprit would be committing many other crimes or they would just go into hiding.”<sup>555</sup> The National Plan of Action recognises the shortcomings of the current complaint mechanism and seeks to review in order to “establish an efficient system of filing and adjudicating claims made by migrants, and having such a system enshrined in law.”<sup>556</sup> The NPA notes that the complaints system “relies heavily on the MOEAF

which faces the challenges of balancing the interests of migrants and its member recruitment agencies.”<sup>557</sup>

## Thailand

The complaint system in Thailand is fragmented. Complaints can be made via hotlines run by the DLPW, the DOE and the MOL (1546, 1694, 1506 respectively). According to the ILO, in practice, migrant workers have much more difficulty accessing grievance mechanisms than Thai workers, due to lack of awareness of their rights; language barriers and discrimination; wariness of accessing government services; or fear of employer retaliation.<sup>558</sup> An ILO study in 2017 shows that while migrant workers from Myanmar were the most likely of all migrants to seek assistance with respect to migration issues (58%) or labour concerns (39%), they sought the assistance of family and friends and did not rely on the formal Thai mechanisms.<sup>559</sup> However, according to a DLPW official, between 2017 and 15 September 2020, they received approximately 10,000 complaints from migrant workers filed online or in person with labour inspectors, while a further 300,000 calls were received on their hotline. The majority of the workers complaining were from Myanmar.<sup>560</sup>

In 2016, the DOE also set up ten migrant worker assistance centres (MWACs). These are based at provincial employment offices and are aimed at providing information to migrant workers, as well as to receive complaints and provide redressal.<sup>561</sup> As per the Thai authorities, a total of 113,644 migrant workers were provided with assistance in the MWACs in 2018, as compared to 57,498 in 2017.<sup>562</sup> The MWACs are set up by the DOE and meant to work in collaboration with officials of labour protection, welfare office and social security office etc. According to a Chiang Mai based migrant worker advocate however, many times

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

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

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

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

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

556. 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): 11.

557. 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): 11.

558. ILO, “Access to justice for migrant workers in South-East Asia,” (2017): 17.

559. ILO and IOM, “Risks and rewards: Outcomes of labour migration in South-East Asia,” (2017): 38, 58.

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

561. The ten MWACs are at Tak, Chiang Mai, Songkhla, Surat Thani, Ranong, Samut Sakhon, Samut Prakarn, Chonburi, Khon Kaen, and Nakhon Ratchasima. See ILO, “Ensuring migrant workers access to justice: An assessment of Thailand’s Migrant Workers Assistance Centers,” (2020): 3.

562. Royal Thai Government, “Thailand’s Country Report on Anti-Human Trafficking Response 2019,” (undated): 47.



MWAC staff “resolve” cases by telling workers that they do not have enough information regarding the cases and that the case cannot move forward and must be dropped.<sup>563</sup> Another migrant rights advocate seconded this, saying that officials actively discouraged workers from proceeding with their complaint. They often presented the situation as being one where the worker had few options. One common tactic, they told us, was to not accept complaints without the full name of the owner-employer. In most instances the migrant workers would only know the nicknames which are commonly used by most Thai people and not their full names.<sup>564</sup> Furthermore, he said that those officials who did try to help often gave information which was not always accurate and relevant. Most of the staff did not speak Burmese and translation was inadequate, suggesting that nuance was often lost.<sup>565</sup> As a result, workers rely more on NGOs. One migrant rights group told us that they are overstretched, with staff often needing to spend a lot of their time encouraging Thai officials to do their job, follow up on infractions and investigate matters which they have the authority and mandate to look into.<sup>566</sup> Three years after they were set up, the UN Migration Working Group in Thailand stated that MWACs were, “a relatively new initiative, and outreach activities are needed in order to increase access for migrants to utilize the services”.<sup>567</sup> ILO assessments in 2017 also indicated that “additional guidance and training is needed to build the model’s effectiveness”.<sup>568</sup> The UN report recommended expansion of reach and effectiveness of such centres.<sup>569</sup>

Thai labour law makes a distinction between rights of workers in the formal and informal sectors. Those working as domestic workers, seasonal agricultural workers, and fisher workers are not covered by the Labour Protection Act per se, but by industry-specific ministerial regulations on labour protection. These workers tend to be migrants; largely men in the case of fisher workers, and women as domestic

workers. Although all have formal access to grievance mechanisms, implementation differs across groups.

With global attention on the fishery sector, the Thai authorities have introduced significant measures to improve access to grievance redressal for fisher workers. As the ILO Committee has noted, these have included the MWACs which can receive grievances; a fisher worker centre for victims of forced labour and abuse established by DLPW with the Labour Rights Promotion Network Foundation (LPN); online chat-groups, website, mobile app and phone hotline to provide support and receive complaints.<sup>570</sup> Thai authorities have also set up, in collaboration with the ILO and an NGO (Stella Maris), three Seafarers Centres.<sup>571</sup> In addition, the Thai authorities also reported increasing the number of interpreters in the DLPW (from 72 in 2016 to 153 in 2018).

The impact of these changes is not clear. In 2019 the ILO committee also sought statistics from the government on the number of migrant fisher workers who have used the grievance process.<sup>572</sup> According to studies cited by the Seafood Working Group, there has been no significant increase in fisher workers seeking grievance redressal between 2013 and 2018.<sup>573</sup> According to civil society organizations, one reason was discouraging interactions with, or perceptions of, official proceedings. “Even when workers attempt to visit labour offices to file a complaint, they are sometimes turned away, told to collect evidence sufficient for an enforcement action, or told to come back at a different time”.<sup>574</sup>

Domestic workers are formally covered by labour and contract enforcement mechanisms,<sup>575</sup> but in practice it is difficult for migrant domestic workers to access such mechanisms due to a lack of access to information about legal or administrative processes due to the isolated nature of their work and a lack of labour inspections.<sup>576</sup> Furthermore, domestic workers are highly dependent on their employers and unable to complain,

563. Sugarnta Sookpaita, HRDF, interview, 9 March 2020.

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

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

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

567. United Nations Thematic Working Group on Migration in Thailand, “[Thailand Migration Report 2019](#),” (2019): 36.

568. United Nations Thematic Working Group on Migration in Thailand, “[Thailand Migration Report 2019](#),” (2019): 188.

569. United Nations Thematic Working Group on Migration in Thailand, “[Thailand Migration Report 2019](#),” (2019): 193.

570. ILO Committee, “[Comments adopted in 2020 - Thailand](#),” (2021).

571. Department of Fisheries, “[Thailand’s path to sustainable fisheries](#),” (undated): 8.

572. ILO Committee, “[Comments adopted in 2020 - Thailand](#),” (2021).

573. International Labor Rights Forum, “[Time for a Sea Change](#),” (March 2020): 27.

574. International Labor Rights Forum, “[Time for a Sea Change](#),” (March 2020): 28.

575. [Ministerial Regulation No. 14 on Domestic Workers \(unofficial translation\)](#), (2012).

576. United Nations Thematic Working Group, “[Thailand Migration Report 2014](#)” (2014): 125.

either because they are irregular migrants and risk arrest and deportation or because the law requires them to leave the country within seven days after termination of contract unless new employment is secured.<sup>577</sup> This is exacerbated by serious concerns about their situation, e.g. national minimum wage legislation does not apply to domestic workers. An ILO 2016 study showed that over 90% of domestic workers were paid less than minimum wage, while working an average of 13.5 hours per day.<sup>578</sup>

Similarly, a 2014 Ministerial Regulation recognised limited labour protection rights for seasonal agricultural workers.<sup>579</sup> Most agricultural workers are irregular migrants from Myanmar.<sup>580</sup> The sector also has routinely informal work arrangements, including contracts not being common, leading to poor implementation of their rights.<sup>581</sup> The Mekong Migration Network has also observed that agricultural workers also tend to be more isolated geographically, resulting in a lack of information and additional difficulty accessing NGOs and complaint mechanisms.<sup>582</sup> Furthermore, immigration issues also limit their ability to complain, e.g. if termination occurs, a migrant may not be able to remain in the country to pursue the case unless a new employer is found.<sup>583</sup>

The situation with sex workers is perhaps most complicated in Thailand. While common, sex work is illegal.<sup>584</sup> In 2017 however, the Inspector-General of the Ministry of Labour informed the CEDAW committee that Thailand regarded “women working in entertainment” to be protected by the Labour Protection Act and other similar legislation, and clarified that “employers in the entertainment sector can legally employ unskilled migrant workers, both male and female for legal activities in the establishment”.<sup>585</sup> Many migrants decide to become sex workers in Thailand, particularly as it

is reported to provide a much higher wage than other low-skilled options.<sup>586</sup> Even if they may not be formally excluded from legal remedy mechanisms, in practice they face the threat of arrest and deportation.<sup>587</sup> There also remains an official tendency in Thailand to conflate sex work and trafficking for the purpose of sexual exploitation. As a result, complaints filed by sex workers are unlikely in practice.

Complaints filed to the Ministry of Labour could be taken to a court by the authorities, if they are not “resolved”.<sup>588</sup> Alternatively, formal migrants can also directly take the case to a specialised labour court, which is a court of first instance and whose mandate also includes mediation between the parties. Yet, official processes also appear to make redress for migrant workers more difficult. According to a migrant worker advocate, migrants who seek redress in court need permission letters from Thai officials (‘section leaders’ and village officials) even though a Thai worker would not need one. “Every extra permission step is an excuse [for officials] to extort money or slow down someone’s case, or entry point for sexual harassment. All of these things make it hard for migrants to move their cases forward and this is something that is common across the board.” Whether the worker is on a MoU or other system would not affect this.<sup>589</sup>

Complaints against unlicensed brokers or firms must be made to the police. These are not accepted by the MWAC, as also experienced by a frustrated worker interviewed by us in Chiang Mai.<sup>590</sup> Another lesser used body is the National Human Rights Commission, which made policy recommendations after being approached by the Migrant Workers Rights Network on behalf of 14 Myanmar workers in the landmark Thammakaset chicken-farm case in 2016.<sup>591</sup> However its powers have been curtailed by the National legislative Assembly in 2017.<sup>592</sup>

577. United Nations Thematic Working Group, “[Thailand Migration Report 2014](#)” (2014): 125.

578. ILO and UN Women, “[Worker, Helper, Auntie, Maid?](#)” (2016): xviii.

579. [Ministerial Regulation concerning Labour Protection in Agricultural Work](#), 2014

580. United Nations Thematic Working Group on Migration in Thailand, “[Thailand Migration Report 2019](#),” (2019): 61.

581. United Nations Thematic Working Group on Migration in Thailand, “[Thailand Migration Report 2019](#),” (2019): 65.

582. Mekong Migration Network, “[Migrant Agricultural Workers in Thailand](#),” (January 2020): 68.

583. Mekong Migration Network, “[Migrant Agricultural Workers in Thailand](#),” (January 2020): 68.

584. [Prevention and Suppression of Prostitution Act](#), 1996

585. Committee on Elimination of Discrimination Against Women, “[Consideration of Thailand - 1504th Meeting, 67th Session](#) (UNweb TV),” (5 July 2017): 2:37 mins.

586. United Nations Thematic Working Group on Migration in Thailand, “[Thailand Migration Report 2019](#),” (2019): 43.

587. Empower Foundation, “[Sex Workers and the Thai Entertainment Industry Submitted by to the Committee on the Elimination of Discrimination against Women](#),” (July 2017).

588. Winrock International, “[Labor Abuse Complaint Mechanisms in Thailand](#),” (March 2020), 10.

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

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

591. NHRC, “[Report No. 114/2559 on labour rights in a case that Company T. in Lopburi Province was accused of violating labour rights and restricting workers’ right to travel](#),” (undated).

592. [Organic Law on the NHRC](#), 2017

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### 7.3 Are workers provided with remedy including compensation as a result of such grievance procedures?

#### Myanmar

There is little incentive for workers to persist with the formal grievance process beyond the negotiations. Even where they may eventually succeed, it is rare to be awarded more than refunds. A key issue with the grievance process, according to one trade union representative, was the lack of political will. “There are rules and laws from higher level but in reality, they are not actually enforced and they know that.” According to him, MOLIP needs to do more on implementation and of its own initiative, currently it only acts where there is a complaint.<sup>593</sup> According to a 2016 ILO study, 302 complaints were received by Labour Exchange Offices throughout Myanmar between December 2013 and March 2016, of which 16% related to employment contracts. In total there were allegations against 256 employment agencies - 11 agencies had their licenses temporarily suspended and nine agencies had licenses revoked.<sup>594</sup>

There was no information available on compensation given to migrant workers, but there was general consensus amongst trade union and civil society representatives that compensation was rare. One civil society representative told us, “the only thing they get is the refund of recruitment fees they paid. They do not get any other form of compensation for their time or the wages they lost. For instance, when the workers are in the process of negotiating or complaining, they have to spend a lot on transportation and all the other expenses. And when they receive the compensation, those are not included, instead those expenses should be calculated as interest.”<sup>595</sup> According to one union representative, there are very few workers who

receive compensation. They are satisfied as long as they get back the recruitment related costs.”<sup>596</sup> MOEAF chairman also indicated that refund of excess fees was usually the desired outcome.<sup>597</sup> According to an MWRN representative, compensation was awarded only in cases where workers were involved in accidents during transportation by recruitment agencies.<sup>598</sup> An ILO representative also highlighted a technical issue - the problem of low deposit amounts by recruitment agencies, “when some cases happen, the guarantee deposit or asset does not cover all the workers because the amount is very low, compared to other countries.”<sup>599</sup>

Statistics on migrant worker recruitment-related cases taken to Myanmar courts are not available, but according to a trade union representative, in 2019 the union helped to take 51 cases to court in regard to brokers alone.<sup>600</sup> Another civil society representative did not think there were many cases filed in courts, even though trade unions and organisations had started using it more in the recent years.<sup>601</sup> Cases in court are complicated, in part because of jurisdiction issues, according to one trade Union representative. With payments often made in Yangon cases must be filed there, “a worker from Chin state must come to north dagon [a Yangon neighbourhood] to file a complaint. Who would be able to come? It is impossible to attend hearings from Kalay to Yangon [nearly 1000 kilometres].”<sup>602</sup> A civil society representative also pointed out that workers found it tough to go to court themselves. They had neither time nor money to do so, they therefore relied more on organisations.<sup>603</sup> One civil society representative also highlighted the failures of sentencing, “under the law, Article 26 [LROE], the broker can be sent to seven years in prison as the highest punishment, but there are cases where the brokers only get 3 month sentences.”<sup>604</sup>

One of the reasons that courts do not play such a vital role in the grievance redressal process is that the

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

594. ILO Myanmar, “Country of origin complaints mechanisms for overseas migrants from Myanmar,” (2016), 7.

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

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

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

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

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

600. Name and organisation withheld, interview, 25 March 2020. As they pointed out, this does not include cases where outside-court negotiations were successful or the cases filed by other organisations

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

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

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

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

system is primarily seen as one of mediation and negotiation to “resolve” the problem, rather than of accountability. Such an approach is also inbuilt in the MOEAF and MOLIP complaint processes. However, such a system has obvious limitations as Myanmar recruitment agencies have conflicting interests when attempting to “resolve” a situation with employers in Thailand. On one hand they are responsible to protect the rights of the worker they sent, but on the other hand, they also do not want to antagonise the employer. As one union representative explained, “the problem is that they are worried that if they try and take some action, they will not get the demand in future. If they file a case and it gets big, the employers would be angry towards them and would not give them any more demand.”<sup>605</sup>

## Thailand

There is little information available about remedies with respect to investigations by DOE into recruitment-related issues. With respect to the DLPW, few of the calls received on their hotlines even make it to official complaints. From 2017 to 15 September 2020, only 80 official written complaints were taken forward from over 300,000 calls received.<sup>606</sup> However, even the small number of workers who complain to DLPW about labour abuse prefer to avoid court, mostly due to costly and lengthy legal proceedings.<sup>607</sup> This is often because the workers’ permission to stay in Thailand is tied to their employment and the long process effectively denies them remedy, as migrants must return home regardless of whether a resolution was reached.<sup>608</sup> According to a recent USAID-Winrock study, the DLPW too prioritises mediation of such disputes “over the provision of adequate remedy to aggrieved workers. Victims of labor rights violations often pursue mediation or accept out-of-court settlements that are well short of the amount they expect or could have reasonably obtained if they had won their case.”<sup>609</sup> A Chiang Mai based migrant worker advocate agreed, even if the workers wanted to take the matter to court, mediation was encouraged

by the authorities and out-of-court settlements were common, often to the detriment of workers.<sup>610</sup> A DLPW official however told us that labour inspectors cannot be involved in the mediation process between workers and employers, although she accepted that workers often accepted low compensation amounts to withdraw the complaint because of the difficulties they face without income.<sup>611</sup>

Few of the workers we spoke to had gone to court, and none had received compensation. In one instance, a 48-year-old woman from Shan state, who was part of a group of 48 workers involved in a case against their employers over contract substitution, told us about the difficulties involved in the process. Initially the workers tried to complain to the labour office but the factory owner managed to bribe the officers who then rejected their complaint. With the help of the Thai Lawyers Council, the workers managed to file a complaint. Although their claim succeeded, instead of compensation for their effort and to deter the factory-owner, the court only ordered return of half of the amount that was owed to them and here to, the owner was allowed to do so in monthly instalments over six months.<sup>612</sup>

There has however been remedy and compensation in some cases, albeit relating to labour violations such as non-payment of wages etc. In September 2018, the Thai Supreme Court upheld a 2016 order issued by the DLPW in Lopburi Province requiring the Thai poultry company Thammakaset to pay 1.7 million Thai Baht (US\$54,000) as compensation to 14 workers for violations of Thailand’s Labor Protection Act.<sup>613</sup> Compensation also appears to be awarded from the Anti-Human Trafficking Fund in relevant cases. The Thai government reported that during January to March 2020, over 7.2 million Thai Baht (US\$240,000) was disbursed, over 50% for remedies and services provided to victims of trafficking and forced labour.<sup>614</sup>

Civil society campaigns focusing on companies in Thailand have also led to reimbursement and compensation to migrant workers who were charged

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

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

607. Winrock International, “Labor Abuse Complaint Mechanisms in Thailand,” (March 2020), 14.

608. ILO, “Access to justice for migrant workers in South-East Asia,” (2017): xii.

609. Winrock International, “Labor Abuse Complaint Mechanisms in Thailand,” (March 2020), 15.

610. Sugarnta Sookpaitha, HRDF, interview, 9 March 2020.

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

612. Remote interview R13, 4 September 2020.

613. 89 civil Society organisations, “Open Letter re: RE: New Lawsuits Brought by Thammakaset Company Limited Against Human Rights Defenders,” (14 February 2019).

614. Royal Thai Government, “Progress Report on Anti-Human Trafficking Efforts (1 January – 31 March 2020),” (undated), 16.



excessive recruitment fees or charges in Myanmar. E.g. Following research by MWRN and Electronics Watch, Cal-Comp Electronics reimbursed 10,570 Myanmar migrant workers.<sup>615</sup> The Myanmar Labour Attache said he was unaware of the specifics of the case, while the Thai DOE refused to comment.<sup>616</sup>

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## 7.4 Are workers raising grievances and whistleblowers effectively protected from retaliation?

### Myanmar

There is no information available of any measures to protect whistleblowers or workers reporting grievances, but retaliation by recruitment agencies against workers or civil society groups did not appear to be a significant concern in Myanmar. Organizations and individuals working on these issues were stoic about the risks faced: “For us, we have to do what is needed to make the migration process safe and establish ethical recruitment. There are people who dislike us but we do not have any protection. We must endure what comes.”<sup>617</sup>

### Thailand

Retaliation against workers reporting on complaints filed and labour rights and human rights defenders supporting them is common in Thailand, particularly by way of complaints of criminal defamation. Since 2016, the Thai poultry company Thammakaset has filed 39 criminal and civil cases against 23 defendants: 14 Myanmar migrant workers; five human rights defenders/labour rights activists, one academic, two journalists and a media company.<sup>618</sup> In another instance, the Natural Fruit Company has filed four criminal and civil cases against a foreign researcher for defamation and computer-crimes for investigations and reporting on labour abuses of migrant workers.<sup>619</sup> Although none of

the above cases have so far led to a final conviction, many are ongoing including appeals against initial convictions and acquittals, and may have a chilling effect on reporting on such abuses. After his final acquittal in one of the cases, one researcher, who has since left Thailand, highlighted the impact of the “irrational cycle of litigation ... after years of ongoing judicial harassment that has taken a heavy toll on me, my family and my colleagues, the verdict does not feel like a victory.”<sup>620</sup>

While the Thai authorities have defended defamation as a criminal offence, on 20 March 2019, a new provision of the Criminal Procedure Code was introduced to allow Courts to dismiss any criminal complaint at the filing stage if it appears that it is meant to harass, gain unlawful benefit or achieve corrupt objectives (Section 161/1).<sup>621</sup> However the organisation Article 19 stated that it was not aware of any cases so far in which the provision had been used to dismiss a case.<sup>622</sup>

Migrant rights advocacy groups also commonly face threats from employers for aiding workers, while workers face threats of being fired if they complain. According to a MAP representative, in addition to being fired, employers also share pictures and identity documents of workers who complain on social media, or with factory owners in the area - de facto blacklisting them from finding other work.<sup>623</sup> He told us that the implications of such blacklistings have now become more serious with the use of biometrics. Previously it was easy for workers to get new documents and return. Such actions are a significant deterrent for workers to file complaints. A 31-year-old woman who was forced out of her factory job told us of her fear, “in the contract, it says we can make a complaint when we have an issue with the employer or the supervisor. But I did not dare to make a complaint or inform anyone about that because I am not fluent in Thai and am living in a foreign country. I was scared. I did not want to make this a big deal only for myself. I also had to look out for other people as well ... I was worried they might kill me. I thought about various scenarios and got scared.”<sup>624</sup>

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615. Electronics Watch, “Cal-Comp: A Lesson in the Importance of Worker-Driven Monitoring to End Forced Labour in Global Supply Chains,” (February 2020).

616. Nanchanok Wongsamuth, “Thai electronics firm compensates exploited workers in rare award,” *Reuters*, (11 December 2019).

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

618. FIDH, “Thailand: Thammakaset Watch,” (13 February 2020).

619. “Supreme Court acquits activist in defamation case,” *Bangkok Post*, 30 June 2020.

620. “Supreme Court acquits activist in defamation case,” *Bangkok Post*, 30 June 2020.

621. Royal Thai Government, “Response to the Joint Communication from HRC Special Procedures No. AL THA 3/2018 dated 10 May 2018 and AL THA 1/2019 dated 30 January 2019,” (23 May 2019).

622. Article 19, “Thailand: Act to prevent spurious lawsuits against human rights defenders,” (12 June 2020).

623. Sutthisak Rungreangphasuk, MAP Foundation, interview, 2 February 2020.

624. Remote interview R9, 29 September 2020.

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## 7.5 Are workers provided with free independent legal advice on judicial and non-judicial options to raise grievances and seek remedy?

### Myanmar

The NPA seeks to increase access to legal assistance “through establishing a network of legal assistance service providers (including non-governmental service providers) and formalizing the role of Labour Attaches in facilitating legal assistance to migrants while they are still abroad.”<sup>625</sup> Although the NPA also suggests that migrants already have limited access to legal assistance and counselling during the dispute resolution process,<sup>626</sup> we were unable to confirm this as complaints we came across were made through unions and civil society groups. Trade union representatives were unaware of such assistance. One civil society attributed this to shortage of staff within the government.<sup>627</sup>

### Thailand

There is no information on whether the state provides legal aid support to migrant workers. One DLPW official told us that they do provide ad-hoc assistance of a legal officer for complaints to be filed but it is largely in Thai and NGOs are required to assist the worker with translation.<sup>628</sup> NGOs are filling in the gap in providing legal support.<sup>629</sup> According to the Labour Protection Network, it provides legal aid to around 3,000 migrants each year and advice to many more: fielding an average of 200 calls per day: “when legal assistance is required, we accompany victims throughout the judicial process: negotiating with employers for compensation, witness protection, shelter, testimony preparation, fact-finding for their case, and transportation to court hearings.”<sup>630</sup> Given the difficulties faced by migrant workers (see 7.2),

such support would be vital for workers, and make the difference between them going to court or not.

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## 7.6 Does the origin state provide effective and timely consular support through its missions to workers who have been subjected to fraudulent or abusive recruitment?

### Myanmar

Myanmar has deployed Labour Attachés to key migrant destination states since 2012. Five Myanmar labour attaches are deployed in Thailand (Bangkok, Chiang Mai, Mai Sot and Ranong), while two are in Malaysia and one in Korea. The Attachés in Thailand work with migrant worker associations and civil society organisations to provide legal support for claims in Thailand, as well as to assist with complaints in Myanmar. Labour attaches have recently been receiving basic training by the government with support from ILO. Questions have also been raised about the selection criteria for these attaches - as one expert noted, they are rarely persons who have knowledge of migration or labour issues. Instead of hiring and sending from MOLIP’s Migration Division, the attachés mainly come from other departments or from military backgrounds.<sup>631</sup> Attachés also serve only a one-year term, a trade union representative said, “It seems as once they are familiar with the work then they have to leave.”<sup>632</sup>

The labour attachés play an important role in protecting rights of Myanmar migrants by assessing employers,<sup>633</sup> and supporting migrants (including undocumented and irregular) who need assistance.<sup>634</sup> Workers we interviewed were divided on how helpful the Labour Attachés were, but a 35-year-old factory worker told us that Labour attachés were better now, as compared to 4-5 years ago.<sup>635</sup> Regardless, significant concerns

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625. 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): 11.

626. 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): 11.

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

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

629. Max Tunon, “Migrant Worker Resource Centres: Supporting justice and fair treatment,” *ILO Blog*, (23 June 2015).

630. LPN Foundation, “Services,” (undated)

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

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

633. Shine Lin Aung, “Labour Attaché Office blacklists Thai factory for violating labour rights,” *Eleven Myanmar*, (9 October 2018).

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

635. Remote interview R3, 23 August 2020.

remain about the functioning of these attachés. One core problem is the close relationship between the Labour Attachés and the recruitment industry. This is most visibly reflected in a large number of recruiter-linked ‘volunteers’ at the main Labour Attaché office in Bangkok who assist the officials with translation and other tasks.<sup>636</sup> According to one NGO, these volunteers are paid by Myanmar-based recruitment agencies and brokers to protect their interest in the Attaché’s office which also processes demand letters sent by Thai employers seeking workers.<sup>637</sup> One trade union representative called for stringent checks to ensure that no person at the Labour Attaché’s office should have any connection with recruitment agencies or brokers.<sup>638</sup>

According to one advocacy group, this situation is partly a result of the labour attaché’s office lack of resources, including insufficient staff who speak Thai.<sup>639</sup> As one civil society representative noted, they are overwhelmed: only five attachés for 3-4 million Myanmar migrant

workers in Thailand.<sup>640</sup> With such few staff, it is not easy for workers to file complaints with the labour attaché. One CSO told us, “we provide the mobile numbers of labour attachés but when migrants call, they don’t pick up. It creates delays for migrants to make a complaint.”<sup>641</sup> In addition to the Government labour attachés, MOEAF also operates a hotline for workers in Thailand but according to a 2016 ILO study it received only 12-15 cases per month.<sup>642</sup> Another CSO notes the complete absence of women attachés, despite the fact that half of all Burmese workers in Thailand are female.<sup>643</sup> In addition, there appears to be a need for the office to be professionalised, including increasing e-filing and communication, improving coordination with Naypyitaw and using resources - including their time - more efficiently.<sup>644</sup> Such concerns appear to be noted in Myanmar, with the NPA aiming to strengthen the role of the Labour Attachés by developing support staff and a framework for “uniform procedures, practices and guidelines” for such officials.<sup>645</sup>

636. They were also present when Fair/Square researchers visited.

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

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

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

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

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

642. ILO Myanmar, “Country of origin complaints mechanisms for overseas migrants from Myanmar,” (2016), 10.

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

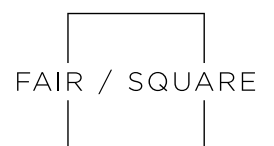
644. Name and organisation withheld, interview, 9 January 2020.

645. 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): 29.

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