

THE FIVE CORRIDORS PROJECT - CORRIDOR 1

Myanmar to Thailand:

Fair recruitment in review

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ABOUT THIS DOCUMENT

The Five Corridors Project is an initiative led by FairSquare Projects, which aims to identify key measures that governments can take to ensure that migrant workers can migrate safely and with dignity. FairSquare Projects is a non-profit human rights organisation that tailors rigorous research with communication and advocacy work to promote systemic change. The Five Corridors Project is supported by Open Society Foundations, Humanity United and Porticus. The organisations that funded this project played no role in the design or execution of the research, and our conclusions and recommendations may not necessarily reflect the viewpoints of Humanity United, OSF or Porticus.

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An **overview** of fair recruitment in the Myanmar-Thailand labour migration corridor

At least three million migrant workers from Myanmar worked in Thailand pre-Covid19 - the bulk of a large migrant workforce from neighbouring countries which has been growing since the mid 1990s.¹ These workers suffer from a range of abuses. During recruitment in Myanmar, they are often exploited by brokers and recruitment agents resulting in workers effectively bearing the full cost of the recruitment process, while many Thai employers pay little or no costs and some even profit from the recruitment process. In Thailand, migrant workers from Myanmar struggle with contract substitution, deductions/wage theft and poor working and living conditions, particularly for fisheries and agricultural workers. In both Myanmar and Thailand, the enforcement machinery is limited and/or ineffective to protect their rights and ensure safe migration channels

whilst the grievance redressal machinery is fragmented and difficult to access. The status of migrant workers in Thailand is further adversely affected by the prevalence of discriminatory attitudes towards migrant workers and their inability to unionise and access social security benefits. Job-mobility for migrant workers is very restricted and there is virtually no pathway to citizenship.

The economies of both Thailand and Myanmar are heavily reliant on migrant workers, for labour and remittances respectively. The workers and their rights are not however a priority in either country. In terms of recruitment, a key limitation is that the current “MOU processes” - the formal migration mechanism in this corridor - focuses more on the interests of the state, in particular the Thai push for regular migration, along

1. 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): 1, 3. Although official estimates from 2016 are near 3 million, others estimate the number to be as high as 5 million (2018), see Issara Institute, “Developing a Financially Viable Ethical Labour Recruitment Model: Prospects for the Myanmar-Thailand Channel,” (2018), 13. Official Thai figures are lower - according to the Department of Employment, there were approximately 1.54 million workers from Myanmar with work permits as of 31 July 2020. The corresponding pre-covid19 figure was approximately 1.9 million (August 2019).

with commercial interests of recruitment agents, over the interests and rights of workers. This recruitment process further sits within inconsistent legal and regulatory frameworks that are inadequately enforced, and amidst broader concerns of corruption and the ‘rule of law’ in two countries where ‘national security’ and the democratic process partner awkwardly and where much recent reform - including on labour issues - has followed external lobbying and pressures.

Context and modes of migration

Although previously influenced by a variety of actors including conflict and displacement, the main motivation in the recent past for workers from Myanmar to migrate to Thailand is a three-times higher wage.² Overseas migration for work is largely viewed by the Myanmar authorities as a means to help the state achieve national development goals, reduce poverty and relieve pressure on the domestic labour market.³ This is also evident through the increased focus on formalising remittance flows into the Myanmar banking system in recent years as a means to combat the informal hundi money transfer systems. Migrant workers in Thailand are typically regarded as a necessity, due to Thailand’s workforce limitations and its ageing population, and they often endure discrimination. Although there has been some progress in recent years on protection/ work conditions for migrant workers in Thailand, it has followed external pressure, particularly global attention on Thailand’s fishing/ seafood sector along with private-sector led-initiatives focused on multinational corporations.

Irregular migration from Myanmar to Thailand is a common and longstanding phenomenon, aided by a long, porous land-border and endemic corruption and people-smuggling. An estimated one million workers

from Myanmar in Thailand are irregular migrants:⁴ while another million who entered irregularly or became irregular subsequently have been regularised following various Government schemes in recent years.⁵ Such regularisation processes - along with deportation drives - have been key elements of Thailand’s long-standing ‘carrot and stick’ approach to migration, invariably driven by security concerns and agencies.⁶

In the early 2000s Thailand signed Memoranda of Understanding with its neighbours on labour cooperation. The 2003 MOU with Myanmar practically came into effect in 2009 and was replaced by a new MOU and agreement in 2016. Approximately 234,000 workers from Myanmar went to Thailand through the MOU process in 2019.⁷ The MOU process existed alongside the landmark Nationality Verification processes that commenced in 2009 to regularise the status of irregular workers from Myanmar, Cambodia and Laos in Thailand. Although at time presented as a Govt-to-Govt process, the MOU process is largely an umbrella bureaucratic framework for private sector recruitment agencies to match workers to jobs, thereby leaving out informal sectors. In 2018, both countries are also reported to have agreed to allow recruitment of fishermen using the MOU process, but no details of the agreement have been made public and a pilot project seemed short lived and one-off. Negotiations around the MOU and follow up discussions between the two countries are conducted privately and kept confidential. Although labour protection issues are reported to have featured in the discussions, they were often dominated by national security concerns and associated actors. This is not entirely surprising, given that the military plays a prominent role in governance in both countries. The MOU documents are treated as confidential in Myanmar, but have been made public by Thai authorities - they are light on labour protection/ human rights issues, and the focus remains on admissions procedures, prevention of irregular migration and employment, and repatriation of workers.

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2. World Bank Group, “[Labor Mobility As a Jobs Strategy for Myanmar](#),” (2020): iii.
 3. 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): 7-9.
 4. Issara Institute, “[Developing a Financially Viable Ethical Labour Recruitment Model: Prospects for the Myanmar-Thailand Channel](#),” (2018), 13.
 5. According to official statistics, over a million workers from Myanmar have been regularised and have work permits through various schemes announced in recent years.
 6. Yongyuth Chalamwong, Jidapa Meepien and Khanittha Hongprayoon, “Management of Cross-border Migration: Thailand as a Case of Net Immigration”, *Asian Journal of Social Science* (2012): 453 – 454.
 7. Staff reporter, “[Over 234,000 MoU workers leave for Thailand last year](#)”, *Eleven Media* (12 January 2020). This figure is likely to be based on issuance of the Overseas Worker Identification card. For figures from previous years see, Ministry of Labour, Immigration and Population, “[Handbook on Human Resources Development Indicators 2017-18](#),” (2019): 41.

Residents of Myanmar provinces bordering Thailand can also undertake seasonal/ daily agricultural work in Thailand via border passes (and work permits) issued for three months at a time, but requiring return/ reentry every 30 days.⁸ Approximately 117,000 workers from Myanmar migrated to Thailand (via Tak and Ranong province) this manner in 2019.⁹ Most choose this process due to the speed and significantly less bureaucracy in comparison with the MOU process. Many 'seasonal workers' also work year-round in factories and construction - with monthly 'border runs' - as the border passes are used by employers to hire workers on lower wages and to avoid social security payments, in contrast to recruitment of MOU workers.

The recruitment framework

Both Thailand and Myanmar have also independently been attempting to develop their national migration policies and strengthen the largely inadequate legal and regulatory framework, working closely with ILO and IOM. Progress has, however, been patchy. Myanmar's main legislation - the Law related to Overseas Employment dates back to 1999 and attempted update/ reform has been ongoing for many years. In the meanwhile, shortcomings have been made up by three sets of rules enacted in 2014 and many directives by the Ministry of Labour, Immigration and Population (MOLIP) - none of these are easily accessible and some provisions are inconsistent with the regulatory framework of Thailand. Recruitment of workers into Thailand was largely unregulated until 2016. Currently, the 2017 Royal Ordinance Concerning the Management of Employment of Foreign Workers (significantly revised in 2018) provides a central framework, albeit with significant gaps and missing/unclear secondary legislation. Consistent consultation with workers groups/ civil society is not a feature in the corridor, although it does take place in an ad-hoc manner. The Myanmar Overseas Employment Agencies Federation (MOEAF) has more influence, as do employers bodies and recruiters in Thailand, many of whom are reported to have close links to politicians and government officials.

Both countries have also developed fairly comprehensive licensing systems, with significant deposits required by recruitment agencies for potential reimbursements of workers. There are also clear stipulations with respect to contracts. MOU workers are required to have trilingual contracts approved by authorities in both governments. Thailand's Department of Employment (DOE) also provides a proforma employment contract while the Department of Labour Protection and Welfare (DLPW) has a specific contract for fishermen. Following global attention on work conditions and forced labour, Thailand also increased numbers of inspections - including on labour issues - in the fishing/ seafood sector from 2015.

Many of these above steps are undermined by inadequate coverage and/or inconsistent enforcement. Accountability of recruitment agencies is limited in practice - only 17 agencies in Myanmar had their licenses terminated from 2014 to 2020 - less than 1% annually - a remarkably low number given the widespread violations of law/rules in the recruitment process.¹⁰ Recruitment agencies in Thailand appear to face even lesser accountability, with negligible prosecution/ administrative penalties even though illegal subcontracting of workers is common. Such subcontracting is aided by a significant loophole in the Ordinance by which recruitment agencies act as employers who can hire workers directly, with significantly less financial investment. With these workers then sent to a different workplace, this practice facilitates contract substitution and places migrant workers in a vulnerable position - employed in contravention of the terms of their work permit, nullifying their legal status and making them subject to deportation.

The licensing systems in both countries provide stiff penalties for unlicensed agents and brokers, but enforcement is notional with innumerable brokers operating at various levels of the recruitment process. In Myanmar, brokers play a significant role in the 'first mile': linking prospective migrants to recruitment agencies or providing assistance with securing a passport/ essential documentation required for the passport. The vast majority of workers, including those interviewed

8. Agreement between the Government of the Kingdom of Thailand and the The Government of the Republic of the Union of Myanmar on Border Crossing Between the Two Countries, 24 June 2016.

9. Department of Employment, Ministry of Labour, "Yearbook of Employment Statistics 2019," (April 2020), Table 5.3.

10. Ministry of Labour, Immigration and Population, "License Close List" (12 May 2020)

for this study, relied on a broker in the recruitment process. Although some may have been registered as licensed sub-agents/ local representatives of a particular recruitment agency, they usually operate as freelancers - linking workers to various agencies in Yangon. While brokers invariably increase the cost of MOU recruitment, their role and impact may be more nuanced. In the absence of easily accessible labour market information at the village level, along with a general distrust of 'outsiders' and authorities, the village/ local broker is seen by many prospective workers as not only reliable, but also easier to hold to account given proximity should something go wrong in the process.

Employment contracts are largely a formality. Workers sign these contracts in large ceremonies, with limited explanation or time to examine/ question. In any event, such signing takes place late in the recruitment process, when significant time and money has been invested by the worker, making it difficult to contest terms that may differ from those originally promised by the broker/ agency. Substitution is rife with new contracts issued by the Thai employer, aided by a frequent practice of workers not being given a copy of the contract. The increase in Thai labour inspections in recent years - also meant to check contracts - was largely restricted to the fishing/ seafood sector and even that appears to have tailed off as the US/EU spotlight on the industry decreased in intensity.

In addition to inadequate enforcement, there are significant shortcomings in the grievance redressal process, whether for recruitment or work-condition issues. Although both Myanmar and Thailand have many official modes for workers to make complaints and initiate legal action, these are practically inaccessible for most workers. For those who do complain and get redress, the common best-case scenario for migrant workers is getting their dues or a refund of the official fees. Compensation is uncommon (other than in high-profile human-trafficking/ forced labour cases) while accountability for abusers is rare.

The redress system in Myanmar primarily operates as a mediation/negotiation to 'solve' a problem, with responsibility placed on the recruitment agency to resolve complaints by migrant workers, including in relation to their employer in Thailand. MOEAF plays

a large role in inspections/ investigating complaints - along with state representatives - despite the obvious conflict of interest. Not only is it a federation to further the interests of recruitment agents, but senior office-bearers of MOEAF also continue to own/ run recruitment agencies while ostensibly regulating the industry. Similarly, where complaints are against Thai employers, the involvement of recruitment agencies/ MOEAF in any negotiations with the Employers/ Thai agencies also creates a conflict of interest as Myanmar recruiters cannot afford to antagonise employers in the highly competitive Thai-market. Labour attaches - appointed by the Myanmar authorities - also assist workers in the resolution process in Thailand, but they have very limited resources and invariably rely on support from Myanmar recruitment agencies. Complaints against brokers in Myanmar are handled by the police who have a reputation of corruption and inspire little faith in workers from ethnic minorities. Even when such cases reach the courts, they are not prioritised by either prosecutors or judges. On the whole, the grievance redressal machinery is slow and centralised with decisions largely being made in Naypyitaw.

Once in Thailand, migrant workers can theoretically file complaints for violations of labour law through various official hotlines/ local centres, but given limitations of language and a common fear of authority workers tend to seek assistance from family/ friends. Legally barred from forming and leading unions in Thailand - and largely unable to join unions at all - migrant workers rely more on worker associations and NGOs for support. Such support is particularly relevant as migrant workers often face discrimination, limiting their access to any remedy. Access is even more limited for domestic and agricultural workers, partly due to their relative isolation or irregular status (common in both sectors). While various centres have been set up, including to receive complaints from fisher workers, this does not appear to have led to corresponding increase of workers seeking redress.¹¹

Documented migrant workers have access to the courts via civil claims and criminal complaints, but few take this step given lengthy court proceedings and the risk of being returned home while the case is pending. Further, Thai authorities encourage out-of-court settlement,

11. International Labor Rights Forum, "Time for a sea change", (March 2020), 27.

often to the detriment of the workers interest. Retaliation against workers and those supporting them is frequent, with migrant workers facing threats of being fired and informally ‘blacklisted’ amongst local employers. Such reprisals are more serious in cases involving large companies that reach the courts, with counter-cases for defamation a real risk. This has a chilling effect on reporting on such cases and future complaints. Despite the huge increase in inspections, there have been few prosecutions for labour violations in the fishing sector too. Convictions, across the board on labour rights issues, are rare. Although both countries have well resourced and specifically trained anti-trafficking police forces (and prosecutors in Thailand), structural issues including coordination and internal cooperation limit their effectiveness.

The already weak enforcement and redress system on the whole is further riddled with corruption. Despite strengthening of the law in both countries, and some action taken against corrupt public officials in Thailand (120 disciplined/ prosecuted between 2013 and 2020), corruption is widespread throughout the recruitment process and there is no information on recruitment agents being similarly held accountable. Recruiters/ workers need to grease the entire recruitment machinery, including labour and immigration officials. An ongoing rare high-profile prosecution in Myanmar involved the former labor attaché in Bangkok, for allegedly seeking money from Myanmar agencies to approve demand letters in Thailand.

Shortcomings of the MOU process

Corruption also increases the cost of migration for workers. Workers in this corridor already bear significant migration fees/ costs. Thailand has officially stipulated that recruitment agencies should charge no fees or costs from workers, but there is no equivalent bar in Myanmar. Instead, the Myanmar authorities have set an upper-cap for fees/costs that workers may be charged by recruitment agencies. The fee-cap includes a service fee of 150,000 MMK (approx 115 US\$) and ‘costs’ of 3600 THB (approx 115 US\$) to cover work permit, health checks

and insurance in Thailand. Thus, instead of employers in Thailand being charged by recruitment agencies, virtually all costs/fees are now passed on to prospective workers in Myanmar. Instead of zero-cost migration for workers, the MOU recruitment system is effectively zero-cost recruitment for many Thai employers. In addition, anecdotal evidence suggests that some Thai employers and their staff even profit by taking bribes/ kickbacks from Myanmar recruitment agencies (via Thai agents) in return for selecting them to provide workers.

On the ground, accounting to an ILO study, workers from Myanmar pay an average of 441 US\$ to migrate to Thailand via the MOU process,¹² much higher than the officially set fee of approximately 230 US\$. Although 450 US\$ was cited by some agents/ experts as a relatively-standard amount charged by most agents (along with a 40 US\$ surcharge by most brokers), there seems to be little consistency. We interviewed 25 migrant workers who got their MOU visas in Myanmar: all paid much higher amounts to agents/brokers, ranging from 465 to 1045 US\$, with an average of 730 US\$. Workers we spoke to also paid significantly different amounts to agents/ brokers, even when they were heading to do the same work and earn the same wages at a particular factory. Passport costs were not included, while many paid additional costs for transportation. As a breakdown of the fee-cap is not public, the confusion is exploited by unscrupulous agents/ brokers.

That workers from Myanmar pay high amounts to migrate via the MOU process is an ‘open secret’. Although the Government has set a fee-cap and the law provides stringent penalties for overcharging (up to 3 years imprisonment and fine), the lack of consistent enforcement ensures little deterrence. All the six Myanmar recruiters we spoke to admitted charging more than the official fee-cap. Regardless, recruitment agents claimed that other than rare instances of an agent/broker “charging much more”, the money was not being made by them, but going to Thailand as Myanmar agencies have to pay high amounts to secure orders from Thailand. This is paid either as fixed fees per worker or bids to purchase demand letters via Thai agencies/ brokers. This reality was also acknowledged by an ILO representative and by civil society. Not only are some Thai employers not paying to hire workers, but they are

12. International Labour Organisation, “Recruitment fees and related costs: What migrant workers from Cambodia, the Lao People’s Democratic Republic, and Myanmar pay to work in Thailand” (2020), 36.

even making money in the process. Meanwhile, petty corruption and payoffs along the entire recruitment process further increase the burden on the workers. As one union representative told us, “the Thai [MOU] market is broken...”

While some Thai employers are certainly benefiting from the MOU system, the recruitment system does not appear to be working for others, including fishing vessel operators. Despite the rhetoric, few new workers are being employed through the MOU process for fishing. Most MOU workers in fishing are ‘u-turn’ visas - where existing workers (e.g. holding a certificate of identity or other documentation) are briefly returned to Myanmar to obtain a passport and re-enter with a MOU visa. In addition - to ensure an adequate supply of workers - fishing boat operators are also being allowed to continue

to keep existing fishers on by use of another temporary provision in the Fisheries Ordinance (Section 83).

Virtually all stakeholders in the MOU system agreed that the process took too long, but blamed the other side. For workers - keen to start work as soon as possible - delays in the process also lead to a willingness to pay higher amounts. Workers who moved to the MOU system while in Thailand (the internal/ special MOU, following nationality verification) also expressed unhappiness about the inability to change employers in the MOU process, as opposed to under other regularisation schemes previously in Thailand. The main reason for workers to choose the MOU route is the fear of deportation/ harassment by the police following irregular migration.

Priority Recommendations

The formal recruitment system in the Myanmar-Thailand corridor needs significant change to make it worker-friendly: authorities should:

- Both Myanmar and Thailand must jointly agree to a zero fees/charge model for workers, based on the ‘employer pays’ principle. This could include advance payments for recruitment at the stage of approval of demand letters. Such agreement needs to be accompanied by Thailand implementing an e-payment system and/or regular inspection of receipts to ensure no subsequent deductions from wages;
- Myanmar must ensure widespread awareness of the agreed fees framework, to discourage workers from paying brokers, particularly working with CSOs and Unions to ensure coverage in rural areas and building upon the growing mobile internet usage in the country;
- Myanmar must create a specialised body for inspection/ investigation into complaints against recruitment agencies and ensure that they are held strictly accountable for (over)charging workers.

- Myanmar must ensure a mandatory pre-departure training for all MOU workers heading to Thailand, similar to those being carried for fisher workers in Kawthaung. This should include detailed information on rights and grievance redressal mechanisms.
- Thailand must ensure that all migrant workers are effectively able to change jobs without requirement of permission/ clearance from the current employer.
- Thailand must ensure that grievance mechanisms are simplified and reformed in consultation with migrant worker associations and CSOs, and that migrant workers are able to effectively join unions. Myanmar must strengthen Labour Attache offices to ensure their independence from recruitment agencies. Both governments should encourage compensation awards for workers, including to deter further non-compliance by employers and recruiters.

Given the history of the Myanmar-Thailand migration corridor over the past two decades, a ‘stick’ approach (fear of deportation/ harassment) by the Thai authorities is unlikely to ensure migration only, or even largely, through the MOU process. Making the MOU process a ‘no cost’ worker-friendly recruitment system may however provide the ‘carrot’ needed to encourage workers to actively choose the MOU process over irregular/ temporary migration routes.

Methodology

Project Aims

The aim of this research was to test the performance of the governments of Myanmar and Thailand against a set of 44 indicators that cover nine areas of government policy. The indicators examine laws, policies and government practices in relation to recruitment and to evaluate their effect on outcomes for migrant workers:

1. National migration policy (7 indicators)
2. Legal and regulatory framework (5 indicators)
3. Bilateral arrangements (5 indicators)
4. Licensing, registration and certification schemes (5 indicators)
5. Machinery to implement and enforce regulation (4 indicators)
6. Measures to prevent fraudulent and abusive recruitment (5 indicators)
7. Enforcement, access to grievance mechanisms and remedies (6 indicators)
8. Measures to provide accurate information to workers (5 indicators)
9. Freedom of association (2 indicators)

The indicators are anchored in existing international standards, in particular the ILO General Principles and Operational Guidelines on Fair Recruitment. Full details of each indicator, and how they are derived from ILO and other standards, is provided in the Five Corridors methodology.

The corridor research team comprised of Bikramjeet Batra, Kevin Mcleod, Johny Adhikari, and Sutharee Wannasiri. Researchers were tasked to take account of the following considerations, in addition to relevant laws and formal policies.

- **The object and purpose of laws and policies:** What stated and unstated goal/s does the government have with regard to this intervention? Goals could include economic development, increasing remittances, migration management, protection of human rights, national security, immigration control etc.
- **The implementation of laws and policies:** What

does the government do in practical terms to implement this measure? For example: financial and personnel commitment made to the policy; levels of professionalism and responsiveness of state institutions; whether key institutions have the appropriate mandate and authority; whether independent institutions scrutinise and report on performance; and whether there is transparency in the way the government carries out this measure.

- **The effects and outcomes of laws and policies:** What is the effect of the government's intervention on migrant workers? In particular, to what degree does it ensure fair recruitment?

Sources of Information

In order to assess laws, policies and practices in Myanmar and Thailand against the indicators, we conducted a thorough review of secondary source material, and sought information and perspectives from a wide range of individuals directly involved in, affected by or knowledgeable about the regulation of migration and recruitment in these corridors. In total we carried out 63 in-depth individual interviews for the project, three group-interviews (covering 16 persons) and two workshop discussions - one each in Myanmar and Thailand.

Legal and policy frameworks, and secondary sources:

We conducted a full analysis of relevant laws and policies in Myanmar and Thailand, and a thorough review of secondary sources, including NGO/other institutional reports.

Key stakeholders and experts in migration processes:

We interviewed a wide range of stakeholders and experts either remotely or in person, including NGOs working on migrant workers' rights, trade union representatives, academics, think-tanks, journalists, lawyers, recruitment agencies, and representatives of intergovernmental organisations such as the ILO and the IOM. We explained to interviewees our preference of attributing all comments to named individuals, but offered them

the option of withholding their names. A majority of interviewees agreed to be quoted directly. However, following the coup in Myanmar in February 2021, as a precautionary measure we unilaterally decided to remove names of nine Myanmar-based organisations and individuals we interviewed. These included three civil society organisations, three unions and three migrant worker-advocacy groups/associations operating in Thailand. In Thailand we interviewed representatives of organisations including the Labour Protection Network (LPN), Human Rights and Development Foundation (HRDF), Migrant Worker Rights Network (MWRN), MAP foundation, State Enterprises Workers' Relations Confederation (SERC), Solidarity Centre and the Seafood Task Force. Amongst the individuals interviewed were Professor Paul Chambers and Daniel Murphy. We also interviewed seven representatives of recruitment agencies/ bodies (two in Thailand), including the Myanmar Overseas Employment Agencies Federation. Most of these interviews were conducted on condition of anonymity, enabling the recruiters to speak frankly about the problems faced by them and the limitations of the recruitment processes.

Government: In Thailand we met with the Chief of the Division of Labour Protection, in the Department of Labour Protection and Welfare (Ministry of Labour). The Department of Employment within the Ministry of Labour agreed to respond to our questions. These were sent in August 2020, but no response was received. The report's key findings and recommendations were sent to the Minister of Labour in April 2021, but we had not received a reply at the time of publication. In Myanmar, we interviewed one Myanmar government official - knowledgeable about the migrant worker situation - off the record, on condition of anonymity. We also wrote - in March and July 2020 - to the Director General of the Department of Labour (Ministry of Labour, Immigration and Population) as well as the Speaker of Amyotha Hluttaw seeking a meeting with members of the Local and Overseas Labour Affairs Committee. In September 2020, we sent a further letter to the Department of Labour with detailed questions arising from our research, but did not receive a reply. In order to best reflect the Myanmar and Thai authorities' perspectives on their efforts to ensure fair recruitment we have therefore had to rely on the insights of individuals with extensive knowledge of government policy.

Migrant workers: We interviewed a total of 47 migrant workers from Myanmar (25 men and 22 women) in the course of this research in 31 one-to-one interviews and three group interviews involving 16 workers. We spoke to migrant workers to help us understand better recruitment and migration processes from workers' perspectives, and to provide us with insights into how particular measures work in practice. Our interviews with migrant workers were not designed to provide representative samples of workers, and we did not attempt to carry out large-scale quantitative surveys of migrant workers. We intended to interview workers in person, in a mixture of group and individual interviews. The Covid-19 pandemic prevented us from carrying out all the interviews in this way, nonetheless 17 of the 31 one-on-one interviews were conducted in person, while the remaining 14 were remotely conducted (largely via Facebook messenger calls). Of the 47 interviewed workers, 13 were in Myanmar while the remaining 34 were already in Thailand. Most of the interviewees in Thailand were recent arrivals but some had been in the country for several years. We secured interviews via leads provided by four different organisations in Myanmar and Thailand, as well as leads provided by local experts. We explained the purpose of our research and asked if they would be willing to describe their experience of recruitment from Myanmar to Thailand. Most of the detailed interviews were with workers engaged in the construction and manufacturing sectors. Approximately half were hired through the MOU system, while the remaining half had either been regularised or hired as seasonal workers. Most of the 16 workers interviewed in group discussions were irregular migrants, working largely in the agricultural sector.

We used interview questionnaires structured around the recruitment process, including questions on the experiences of workers with regard to:

- Their decision to migrate;
- Introduction to and interaction with recruitment agents and officials;
- Payment of fees and exposure to debt, where applicable;
- Pre-departure experience, including contract processes and any orientation programmes;
- Arrival and working in the destination country;
- Getting support if something goes wrong; and
- Returning home after migration.

We explained the purpose of the interview and the wider project in advance and secured the express consent of all of the individuals we spoke to to use the information they provided to us for the purpose of the project. Where we have cited worker comments directly, we have opted to withhold workers' names or any other identifying details, referencing only their age, gender, and the sector of employment.

Research for this report was completed prior to the February 2021 military coup in Myanmar. As such the report's analysis does not attempt to assess the implications of the coup. The recommendations in this report are directed to the National Unity Government of the Republic of the Union of Myanmar, which formed in April 2021 in response to a military coup in February 2021. Myanmar Kyat-USD exchange rates reflect pre-coup values.



An agricultural worker from Myanmar near to the Thailand-Myanmar border, 2014. © ZUMA Press / Alamy

Recruitment pathways: How employers in Thailand hire workers from Myanmar

At least three million workers from Myanmar worked in Thailand pre-Covid19, with numbers dropping during the pandemic. This is an examination of the main ways in which Burmese workers are recruited into low-paid work in Thailand. It looks at how the bilateral MOU framework operates in principle, as well as in practice, and examines processes for irregular migrant workers from Myanmar to regularise their status in Thailand. Finally it touches on the seasonal worker border passes that migrant workers can obtain in the Thai/ Myanmar Border Area.

‘MOU’ recruitment

In June 2016 Thailand and Myanmar signed a Memorandum of Understanding (MOU) on labour

cooperation and a bilateral agreement on employment of workers, replacing a previous 2003 MOU and agreement. The MOU and agreement have set into place a system of recruitment of workers, which although sometimes presented as a Government to Government process, is largely an umbrella bureaucratic framework for private sector recruitment agencies to match workers to jobs. Approximately 234,000 Burmese workers went to Thailand through the MOU process in 2019.

Article 4 briefly lays down the “Sending and Receiving Process” noting that “expenses, processes and durations for the procedures of sending and receiving workers under this agreement shall be announced publicly by the parties.” Much of this has not always been made available and/or is patchy and unclear. In the absence of official information, the following is based on various secondary sources.

1. A Thai employer or Thai recruitment agent (TRA) acting on their behalf applies for “quota” and “demand” requests at the Department of Employment (DOE) office. These processes take about two weeks. The employer/TRA often engage a Myanmar recruitment agency (MRA) to fulfill the demand of workers sought: this may involve a competitive bidding process.
2. Approved demand letter is checked by Myanmar labor attaché (LA) in Bangkok and forwarded to the Ministry of Labour, Immigration, and Population (MOLIP) in Myanmar, usually carried by the MRA in person.
3. The demand letter is reviewed by the Migrant Worker Division (MWD, part of Department of Labour - DOL, MOLIP) and approved by the Education, Health, and Human Resources Development Committee.
4. While the demand letters are under review in Myanmar, the MRA usually advertises the vacancies and carries out selection of workers. Prospective workers are assisted by sub-agents/ brokers in obtaining the mandatory overseas jobseeker registration cards, from the local Labour Exchange Office (LEO), and “PJ” (job) passport.
5. The MRA coordinates with the MWD to arrange the Employment-contract signing ceremony (in Yangon or Hpa-An). In addition to the workers, senior MRA, TRA and Employer representatives, the ceremony is attended by senior labour/ state officials who verify the contracts and other documents. MRA also arranges for medical examinations for workers, following which they return to their hometown, awaiting further information.
6. Documentation is shared with employer/TRA - via the LA - who then proceed to apply for the work permit with the Thai DOE. Once approved, DOE forwards details to the Thai Department of Immigration (DOI), requesting visas for the potential workers at Mae Sot (the main border crossing).
7. MRA coordinates a leaving date with MWD. Workers are then brought to the border town of Myawaddy where they are issued the Overseas Worker Identification Card (OWIC) at the Migrant Worker Office. Potential migrants also receive a short training on the “Dos and Don’ts” of living and working in Thailand.
8. Once the workers are taken across into Thailand by Employer/ TRA (visas are stamped) they are

taken for a short orientation at the post-arrival and reintegration center. Medical examinations are carried out (where not done in Myanmar) and electronic work permits are issued by the DOE, following which the employer/TRA takes them onwards to their place of employment.

In practice: The main reason for workers to choose the MOU route is the fear of deportation/ harassment by the police following irregular migration. However, virtually all stakeholders in the MOU system agree that the process takes too long. For workers - keen to start work as soon as possible - delays in the process also lead to a willingness to pay higher amounts to the innumerable brokers which operate at various levels of the recruitment process.

In Myanmar, brokers play a significant role in the ‘first mile’: linking prospective migrants to recruitment agencies or providing assistance with securing a passport/ essential documentation required for the passport. The vast majority of workers rely on a broker in the recruitment process. Although some may have been registered as licensed sub-agents/ local representatives of a particular recruitment agency, they usually operate as freelancers - linking workers to various agencies in Yangon. In the absence of easily accessible labour market information at the village level, along with a general distrust of ‘outsiders’ and authorities, the village/ local broker is seen by many prospective workers as not only reliable, but also easier to hold to account given proximity should something go wrong in the process.

Fees and Costs: Thailand has officially stipulated that recruitment agencies should charge no fees or costs from workers, but there is no equivalent bar in Myanmar. Myanmar has laid down an upper limit of MMK 150,000 and THB 3600 that MRAs can impose on workers for recruitment to Thailand.

However, in practice workers pay much more - often up to two/three times the official rate - either to the MRA or upfront to the sub-agents/ brokers. Most workers also have to pay additional for their passports (officially MMK 25,000 but often more due to corruption and fees), while some also may pay extra for the transportation to Yangon and Myawaddy.

Regularisation

Irregular migration from Myanmar to Thailand is a longstanding phenomenon, aided by a long, porous land-border and endemic corruption, and an estimated one million of these workers migrated irregularly.

Following the first MOUs in 2002-2003, Thailand also introduced a process of regularisation of undocumented migrant workers already in-country through a process of 'Nationality Verification' (NV), to be carried out in coordination with neighbouring states. Disagreements between Thailand and the then Myanmar military government, and concerns raised by some members of the Myanmar community in Thailand - including ethnic minority groups who fled conflict - about the implications of NV, delayed the process for Burmese migrants until 2009. Subsequently approximately 1.2 million Burmese workers were issued with temporary (purple) passports, which made them eligible to get visas and work-permits for up to 4 years at a time. It was envisaged that these workers would return to Myanmar after this period, get regular passports and then return via the MOU process above.

Since 2014, Myanmar workers were also required to have a Thailand issued identity card ('pink card', Tor Ror 38/1) to work and live in Thailand. However, many migrants who registered for pink cards were unable to complete the nationality verification requirements to obtain a longer period of stay in Thailand; leading the Thai Government to continue regularly opening opportunities to re-register for temporary documentation. The frequent changes to policy have compounded uncertainty among migrant workers attempting to maintain regular legal status. The pink cards have also been criticized for restricting the mobility of workers to the province where their employer is located until the NV process is completed.

In 2017-8, Myanmar moved to issuing Certificates of Identity (CI) to its nationals in Thailand instead of temporary passports. The Myanmar Government established many CI centres in Thailand - approximately 1.1 million undocumented Burmese workers in Thailand had been issued CI, allowing for them to regularised in Thailand. Over 777,000 were awaiting nationality verification in September 2018. Such workers are

generally covered by Cabinet announcements which grant clemency and allow them to continue work until specified dates, which are often extended.

After an exodus of undocumented workers in 2017 following a Thai government crackdown, and the 2018 amendments in the Thai Foreign Workers Ordinance, another round of nationality verification was announced. Approximately 1.2 million migrant workers were estimated to have received Myanmar identity documents and work permits at One Stop Service centres in Thailand, without having to return to their countries of origin. These are also referred to as 'internal MOUs' or changing/ converting to MOU status.

Fees and costs: Although such regularisation schemes mean that workers do not need to incur costs to return to Myanmar and thus also do not have periods without work, they nonetheless have to pay the fees. Since 2019, workers have to pay between THB 7,280 and THB 10,480 (\$257-\$346 at the time) for such regularisation. This includes costs for visa (THB 3800 for two years) and work permit fees (THB 1900 for two years), medical check-ups (THB 500), medical insurance fees (varies between THB 0, 500 and 3200 per year), ID card issuance fees (THB80), and deposit fees (THB 1000). Many workers also pay Thai agents and Myanmar brokers to facilitate the process.

Section 83 of the Fisheries Ordinance

One distinct form of temporary regularisation is via Section 83 of the Fisheries Ordinance which permits the Director-General of Fisheries power to issue a seabook to work on fishing vessels (equivalent to temporary residence and work permit) for migrant workers already in Thailand. The granting or extension of Section 83 seabooks follows a decision by the Cabinet, the most recent of which was announced on 21 April 2020, following representations by fishing employers and the NFAT over continuing shortage of fishers in the industry. Previous announcements had also been made in 2018 and 2016.

Migrant workers from Myanmar (and Cambodia/ Laos) with valid passport/travel documents who entered the country legally are eligible to receive a seabook. An employer must hold a valid fishing permit and vessel registration. The seabook is valid for one year, and limited to specified vessels/ employers. However, with the permission of the employer, two further employers

can be added to the seabook. A migrant worker is allowed to change employers only where they can prove that the employer has died, gone bankrupt or terminated the employment; physically assaulted the worker; or violated the contract or that the work conditions are dangerous.

Fees and costs: Once the employer and migrant worker have signed the contract (in the DLPW proforma), the worker must pay for the cost for a health check (THB 550). Payment is also required for one-year health insurance (THB 1600) and a visa (THB 1900) but the regulations do not specify who bears these costs. The contract is to be verified by DLPW and wage payment is to be solely via bank transfer.

Seasonal workers / “Section 64” workers

In June 2016 Thailand and Myanmar signed an agreement on border crossings, replacing a similar agreement signed in 1997. This agreement allows for travel in the Thai/ Myanmar Border Area (Article 6) via border passes for various purposes including for daily/ seasonal work (Article 3). While only permanent residents of border areas are allowed 2-year border passes allowing up to two weeks per visit (Article 2, 6-7), all Thai/ Myanmar nationals are eligible for a temporary 1-year border pass allowing entry for up to one week per visit (Article 7). A similar agreement is also in place between Thailand and Cambodia. Where a person on the regular border pass finds a job in Thailand, Section 64 of the Thai Foreign Workers Ordinance 2017-8 provides work permits. These are valid for three months, but the migrant worker needs to exit and re-enter Thailand after every 30 days.

In October 2019, there were approximately 63,000 migrant workers under Section 64 - 27,000 from Myanmar, the overwhelming majority of whom were in Mae Sot and two neighbouring border districts. (This number decreased very significantly after the onset of the Covid-19 pandemic, as many workers returned home). Although largely aimed at seasonal agricultural workers, ‘Section 64’ employment is popular amongst factory owners/ employers in the border areas, including the Mae Sot SEZ, who use it to circumvent the rights and entitlements that workers in factories would

normally receive. Section 64 workers are not eligible for the Workmen’s Compensation Fund or the Social Security Fund and therefore cannot access benefits such as medical treatment for on-the-job injury or unemployment benefits. They are also not entitled to the rights that migrant workers on other visas enjoy under the 1998 Labor Relations Act. According to local civil society groups, nearly half of the 69,000 workers in the Mae Sot SEZ are Section 64 workers. One worker told us that her employer cancelled existing work permits (via various regularisation processes) of over 25 workers, including her, without informing them and instead shifted them on the Section 64 work-permits. Her place of residence was also changed from Bago to Myawaddy - a common practice as only those workers from specific border districts like Myawaddy and Kawthaung are officially eligible for Section 64 visas.

However, another worker highlighted the main advantage of such passes for workers - speediness: everything can be completed in one day. Furthermore, changing employers is not very difficult as workers can return and apply for a new work permit with support of a new employer. The border pass system also invariably provides a route for irregular migrants. Many workers enter on such passes, overstay and end up becoming irregular migrants, including due to the cost of securing regular work-permits.

Fees and costs: The official cost for the work permit is approximately THB 1325 (100 application fee; 225 DOE work-permit fees; 500 health check-up fee; and 500 three-month health insurance by Ministry of Public Health). If renewed four times through the course of the year, the official cost will be THB 3800 in fees. All the above costs are to be paid by the worker.

In practice, workers appear to be paying even higher amounts as brokers are invariably involved in the process. A 48-year old Burmese woman told us that she paid THB 2900 initially for the documents in addition to having to pay the official charges every three months for the work-permit. Another 26-year old Burmese man said that he had to pay the employer THB 4500 (USD 145) at the start for all the paperwork through a broker, in addition to paying THB 1600-1700 to the broker every three months for the work permit. All workers also need to pay for transport (THB 200-400) to the border and back, every 30 days to get the re-entry stamp on the border passes.

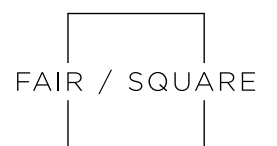
A simplified impression of a typical “MOU” recruitment process for a worker in Myanmar employed in Thailand



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