

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

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# Acronyms

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<b>ASEAN</b>	Association of Southeast Asian Nations
<b>ATIPD</b>	Anti-Trafficking in Persons Division, Myanmar Police
<b>CTUM</b>	Confederation of Trade Unions of Myanmar
<b>DOL</b>	Department of Labour, MOLIP
<b>DOE</b>	Department of Employment, MOL
<b>DLPW</b>	Department of Labour Protection and Welfare, MOL
<b>EJF</b>	Environmental Justice Foundation
<b>FWO</b>	Royal Ordinance Concerning the Management of Employment of Foreign Workers
<b>HRW</b>	Human Rights Watch
<b>ILO</b>	International Labour Organisation
<b>IOM</b>	International Organization for Migration
<b>ITUC</b>	International Trade Union Confederation
<b>IUU</b>	Illegal, unreported and unregulated fishing
<b>LEO</b>	Labour Exchange Office
<b>LOL</b>	Labour Organisation Law
<b>LPA</b>	Labour Protection Act
<b>LPN</b>	Labour Protection Network
<b>LRA</b>	Labour Relations Act
<b>LROE</b>	Law Relating to Overseas Employment
<b>MMK</b>	Myanmar Kyat
<b>MMN</b>	Mekong Migration Network
<b>MOEAF</b>	Overseas Employment Agencies Federation
<b>MOL</b>	Ministry of Labour, Thailand
<b>MOLIP</b>	Ministry of Labour, Immigration and Population, Myanmar
<b>MOU</b>	Memorandum of Understanding
<b>MRC</b>	Migrant Worker Resource Centre
<b>MWAC</b>	Migrant Worker Assistance Centre
<b>MWRN</b>	Migrant Worker Rights Network
<b>NFAT</b>	National Fisheries Association of Thailand
<b>NPA</b>	National Plan of Action on the Management of International Labour Migration
<b>NRC</b>	National Registration Card
<b>OECC</b>	Overseas Employment Central Committee
<b>OESC</b>	Overseas Employment Supervisory Committee
<b>OWIC</b>	Overseas Worker Identification Card
<b>PEO</b>	Provincial Employment Office
<b>PIPO</b>	Port In Port Out control centres
<b>SELRA</b>	State Enterprise Labour Relations Act
<b>SWG</b>	Seafood Working Group
<b>THB</b>	Thai Baht

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# Overview

## 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.<sup>1</sup> 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.

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## 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.<sup>2</sup> 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.<sup>3</sup> 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:<sup>4</sup> while another million who entered irregularly or became irregular subsequently have been regularised following various Government schemes in recent years.<sup>5</sup> 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.<sup>6</sup>

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.<sup>7</sup> 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.<sup>8</sup> Approximately 117,000 workers from Myanmar migrated to Thailand (via Tak and Ranong province) this manner in 2019.<sup>9</sup> 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.

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## 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.<sup>10</sup> 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

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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.<sup>11</sup>

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,

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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.

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## 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,<sup>12</sup> 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

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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

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## 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?

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## 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.

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### ‘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.

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## 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.

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## 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



# Assessment against the Five Corridors indicators:

## 1. National migration policy

- 1.1** Does the government work to ensure coherence between labour recruitment, migration, employment and other national policies? \_\_\_\_\_ 21
- 1.2** *Origin state:* Does the government restrict countries that some or all workers can migrate to?  
*Destination state:* Does the government place restrictions or bans on immigration from certain countries? \_\_\_\_\_ 23
- 1.3** Does the government have a stated or observed preference/tendency towards government-to-government recruitment agreements? \_\_\_\_\_ 24
- 1.4** Does the government take gender and gender identity into account when formulating and implementing migration policy? \_\_\_\_\_ 24
- 1.5** *Origin state:* Does the government significantly regulate the process for a worker to obtain a visa to migrate? (i.e. does the worker need multiple permissions at different levels of the state to migrate?)  
*Destination:* Does the government significantly regulate the process for an employer to obtain a visa to hire a worker? (i.e. does the employer need multiple permissions at different levels of the state to recruit?) \_\_\_\_\_ 25
- 1.6** Do national laws allow all categories of migrant workers the ability to change jobs within the destination country? \_\_\_\_\_ 28
- 1.7** Do destination country laws offer migrant workers a pathway to long term residency and/or citizenship? \_\_\_\_\_ 29

# 1. National migration policy

*“One thing I don’t like in this MOU system is not being able to mobilize - move to another job - because we used to be able to move freely and earn more... The MOU system is like you are tied up and beaten up. For me, I did not have a good working relationship with the employer and still could not change to another job.”* 45-YEAR-OLD FACTORY WORKER FROM MON STATE, MYANMAR

## Summary

The economies of Thailand and Myanmar are heavily reliant on migrant workers: for labour and remittances respectively. Despite that, a long-term national migration policy and migrant workers and their rights are not a particularly high priority in either country. At least three million workers from Myanmar work in Thailand - an upper estimate is five million - although official figures on both sides are lower. Overseas migration for work is now 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. In Thailand’s booming economy - where most the migrants are unskilled workers from neighbouring countries and many are irregular/ undocumented - they are pragmatically tolerated but often face discrimination. The focus of the Thai government remains controlling irregular migration through a carrot and stick policy of regularisation and deportation. Controlling the flow from Myanmar however is particularly difficult given the long and porous borders between the two countries which facilitates easy informal migration - within an entire system of brokers and payoffs.

Given the reality that migration is a long-term scenario for both countries, they have been independently attempting to develop migration

policies and strengthen the largely inadequate legal and regulatory framework, working closely with ILO and IOM. Progress however has been patchy: a lack of coherence and clarity remains endemic, amidst a general lack of consistent enforcement. In recent years there has been a renewed focus - led by Thailand - on formal recruitment of workers based on a 2016 MOU and agreement. Although at times represented as a Government-to- Government process, this is largely an umbrella bureaucratic framework for private sector recruitment agencies to match workers to jobs. With the military playing a prominent role in governance in both countries, security concerns/ agencies invariably dominate the discussion on migration. This is also reflected in the burdensome emigration/ visa processes in both countries. In Thailand, job mobility for migrant workers is very restricted and there is virtually no pathway to citizenship. Both countries also place restrictions on migration. In a bid to restrict numbers of unskilled workers, Thailand only allows them from the bordering states (Myanmar, Cambodia and Lao PDR) and Vietnam. Myanmar officially allows workers to migrate to only some countries, largely in Southeast, East Asia and the Middle East, although irregular migration to China is significant and appears to be largely ignored as that to Thailand. Previous restrictions on Myanmar women domestic workers going to Singapore and Hong Kong - largely due to protection concerns - have now been removed.

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## Recommendations to the National Unity Government of Myanmar

- Conduct and publish an independent and detailed review of the national migration policy that will provide a fact-based analysis of the extent to which migrant worker welfare and rights are prioritised over the country’s economic development.

- Ensure that the national migration policy includes greater gender focus, including emphasis on the particular situation of domestic workers.

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## Recommendations to the Royal Thai Government

- Remove all legal restrictions and complex bureaucratic processes on workers changing employers before the ends of their contracts,



including any requirement of refunding fees to the former employer under the current five permissible circumstances laid down by the Ministry of Labour.

- Conduct a formal, independent review of Thailand's national migration policy in relation to its foreign workforce. The review should solicit views from a wide range of stakeholders and should address issues including gender sensitivity, the impact of foreign workers' job mobility, the complexity of the MOU hiring process, and the potential and feasibility of a government to government recruitment model based on an 'employer pays' principle.

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## 1.1 Does the government work to ensure coherence between labour recruitment, migration, employment and other national policies?

### Myanmar

According to the Myanmar 2014 census, 4.25 million Burmese worked abroad, of whom approximately three million were in Thailand.<sup>13</sup> This figure increased subsequently given the significant economic and cultural changes in the country in the past few years.<sup>14</sup> In 2018, there were an estimated five million Myanmar workers (four million regular and one million irregular) in Thailand.<sup>15</sup> While there have historically been various push factors including lack of opportunities in the countryside, and displacement due to conflict and natural disasters, the key pull factor for individuals is significantly higher wages: the minimum wage in Thailand is approximately three times higher.<sup>16</sup> Migrant remittances are a significant economic benefit for Myanmar, with 2015 estimates of 3.5 to eight billion.<sup>17</sup>

Myanmar's main migration instrument - the Law Relating to Overseas Employment (LROE) - was enacted in 1999.<sup>18</sup> A number of Ministerial regulations have been introduced since, to regulate migration. Since 2013, there have been two five year National Plans of Action (NPA) on the management of international labour migration - the current NPA runs from 2018 to 2022. The primary agency responsible for managing international labour migration is the Ministry of Labour, Immigration, and Population (MOLIP). It implements the LROE and chairs two inter-ministerial committees, including the Overseas Employment Supervisory Committee (OESC) which supports coordination and supervision of migration policy implementation. The other committee - the Overseas Employment Central Committee (OECC) - designed for policymaking - appears to be defunct. The NPA implementation is coordinated by the Ministry's Department of Labour, which also created the Migration Division in 2012 to lead on the administration of international migration.

The NPA highlights the Government's recognition of "the important role of international labour migration in addressing the lack of employment opportunities, promoting economic and social development and alleviating poverty."<sup>19</sup> It seeks therefore to harmonise labour migration policy with the country's development plan, and aims to set in place a whole-of-government coordinated approach. The Government foresees increasing out-migration from Myanmar over the next three decades due to the continuing rise in rural/agricultural population, an increase in the proportion of the population in prime working age (15-64) and a high unemployment rate.<sup>20</sup> The likelihood of increased female participation in the labour force is also likely to increase migration.<sup>21</sup>

Although the NLD government took initial steps since 2016 to reach out to migrant workers in Thailand and has undertaken some practical improvements,<sup>22</sup> overall progress with respect to a more comprehensive migrant

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13. ILO Myanmar, "Migration Data for Policy Development," (2018): 3.

14. 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.

15. Issara Institute, "Developing a Financially Viable Ethical Labour Recruitment Model: Prospects for the Myanmar-Thailand Channel," (2018): 13.

16. Asean Trade Union Council, "Minimum wages in Asean: How are they calculated?," (14 January 2020).

17. International Growth Centre, "Myanmar Remittances," (October 2017): 3.

18. ILO Myanmar, "Building Labour Migration Policy Coherence in Myanmar," (2017): 11.

19. 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.

20. Ibid, 2.

21. Ibid, 3.

22. Pen Dali, "The road to helping Myanmar migrant workers," *The Global New Light of Myanmar*, (27 July 2019).

policy and improvements in administration has been patchy.<sup>23</sup> The LROE has been undergoing review and revision for many years and does not appear to be a priority.<sup>24</sup> According to a leading civil society migration expert in Myanmar, this is reflective of the overall situation where issues surrounding migrant labour in general seem to not be a priority for the government at this point, even after four years in power.<sup>25</sup> Such a situation is arguably consistent with the reality that while improving the lot of migrant workers is the long-term objective stated in the NPA, in the short and medium term, migrant workers are seen largely as tools to help “Myanmar achieve its national economic development goals, reduce poverty and relieve pressure on the domestic labour market.”<sup>26</sup>

## Thailand

In 2015 the ILO noted: “despite becoming increasingly reliant on migrant workers in certain low-skilled and labour intensive sectors, and despite expectations that this trend is expected to continue given the now shrinking working age population and rising education levels, Thailand is yet to formulate a coherent long-term policy on labour migration, including a vision on the utility of labour migration to Thailand’s economic and social outlook.”<sup>27</sup> In 2016, the Thai cabinet adopted a National Strategy for Migrant Worker Management for 2017-2021 which consisted of five key strategies: “devise a standard for migrant worker employment by 2017; reduce the dependency of unskilled migrant labor by 2017; develop an organization by 2017 to effectively manage the migrant worker situation; promote all migrant workers to be employed through MOUs by 2020; and monitor, assess, and evaluate the labor management situation twice yearly to make sure global standards are met.”<sup>28</sup>

Given its porous land borders with Myanmar, Cambodia and Laos, the Thai approach to migration has been

historically dominated by security concerns and is often built around attempting to limit irregular migration. Following the national strategy, the Foreign Workers Ordinance was issued in 2017-2018. As the UN has noted with respect to this Ordinance: “what the law made most clear was that strict enforcement against irregular migration was to be used as the key policy approach to convince migrants to use regular channels.”<sup>29</sup> MOUs with most origin states were also revised in 2015-2016; however as the World Bank has noted, Thailand’s MOUs “have also been criticized for focusing more on the procedural aspects of migration and on preventing irregular migration and less on filling labor market shortages.”<sup>30</sup> The UN noted similarly in 2019: “the development of the MOU agreements was managed by the Ministry of Labour, in consultation with the Ministry of Foreign Affairs. However, the initial impetus for the MOUs largely came from the National Security Council of Thailand, resulting in a heavily security-driven approach to labour migration. Priority was given to admissions procedures, prevention of irregular migration and repatriation of migrant workers rather than labour market efficiency or upholding the protection of migrant workers’ labour rights.”<sup>31</sup>

While the use of the MOU process is a key strategic objective of the Thai authorities, two features have dominated migrant lives in practice: large-scale crackdowns on irregular workers and occasional amnesty schemes to regularize such workers.<sup>32</sup> The crackdown against irregular migrants in 2014 and 2017 led to thousands of migrants fleeing Thailand and significant problems for Thai industry and employers.<sup>33</sup> On the other hand, the demands of the labour market have also led to reliance on amnesty/ regularisation schemes, in the agricultural sector.<sup>34</sup> In addition to such regularisation schemes, border pass schemes (which allow limited rights to work in Thailand for Myanmar/ Cambodian/Lao nationals living in border provinces)

23. Nyan Lynn Aung and Htoo Thant, “NLD takes first steps on migrant policy,” *Myanmar Times*, (7 April 2016).

24. Shin Min, “We reevaluate labour laws that are no longer relevant and work to amend them according to International Labour Organization standards,” *The Global New Light of Myanmar*, (10 January 2020).

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

26. 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): 7-8.

27. ILO Asia-Pacific, “Review of the effectiveness of the MOUs in managing labour migration between Thailand and neighbouring countries,” (2015): 17.

28. Royal Thai Government “Thailand’s Country Report on Anti-Human Trafficking Response” (1 January – 31 December 2016), (Undated): 9.

29. United Nations Thematic Working Group on Migration in Thailand, “Thailand Migration Report 2019,” (2019): 3.

30. World Bank Group, “Migration Policy in Sending Countries,” (2017): 213.

31. United Nations Thematic Working Group on Migration in Thailand, “Thailand Migration Report 2019,” (2019): 31.

32. Article 17 of the Immigration Act, 1979 gives Thailand’s Minister of the Interior the authority to grant persons or groups of people who have entered Thailand irregularly permission to stay in the country under certain conditions, subject to the approval of the Thai cabinet.

33. Amy Sawitta Lefevre, “Thailand’s new labour rules send thousands of migrant workers fleeing,” *Reuters*, (3 July 2017).

34. Mekong Migration Network, “Migrant Agricultural Workers in Thailand,” (2020): 16.

are also being relied on by the fishing sector, given that the bilateral MOU processes are not popular with either workers or employers due to the bureaucratic, costly and lengthy processes.<sup>35</sup>

## 1.2 Does the government restrict countries that some or all workers can migrate to/ from?

### Myanmar

According to a World Bank study, Myanmar only officially permits workers to migrate to Thailand, Malaysia, Korea, Japan, Singapore, the United Arab Emirates, Qatar, and Jordan.<sup>36</sup> However this appears to have little bearing as recruitment agents in practice send workers to 16-18 countries. From December 2016 to January 2018, Myanmar also temporarily suspended sending migrant workers to Malaysia after a diplomatic dispute over the Rohingya,<sup>37</sup> although 'security' of migrant workers in Malaysia was also cited as a reason.<sup>38</sup> According to a World Bank study, the effectiveness of restricting destination countries is limited: despite China being excluded, it has become a prominent destination for Myanmar migrants.<sup>39</sup> There were also reported restrictions on migrants working in the fisheries sector, but this is now permitted for Thailand and Korea.<sup>40</sup>

Until 2009 Myanmar officially banned women from registering to work abroad.<sup>41</sup> In 2011 the Government permitted women to work overseas in factories where five or more other Myanmar women were working.<sup>42</sup> This has been increased to ten women in the Malaysian state of Johor. The 2011 order apparently prohibited

Myanmar migrant women working in cleaning/ domestic settings and entertainment.<sup>44</sup> However the general ban on domestic work/ cleaning appears to have been removed sometime after that. In 2014 there were bans on Myanmar women going for domestic work to Hong Kong,<sup>45</sup> and Singapore due to concerns of their ill-treatment.<sup>46</sup> This expanded later in the year to a generalised ban on migration for domestic work to any country for first-time migrant domestic workers.<sup>47</sup>

According to a MOLIP representative, the ban was to remain until the destination country came up with a comprehensive MOU - following international standards and domestic law - to protect Myanmar women.<sup>48</sup>

According to a UN Women-ILO study, in addition to the political leverage towards MOUs, there were external factors (a high profile case of abuse of an Indonesian domestic worker in Hong Kong) and internal factors (calls from a prominent conservative Buddhist group in Myanmar) for the ban, but the elections and domestic political expediency may have also ended up being a factor.<sup>49</sup>

According to an ILO representative, since March 2019 domestic work by Myanmar women has officially been permitted in Singapore, Thailand, Hong Kong and Macau, but no agreement/ mechanism has yet been put in place for such workers to migrate formally.<sup>50</sup> The impact of such bans in limiting migration of women domestic workers is unclear.<sup>51</sup> However, UN agencies and civil society groups agree that the official bans on women working as domestic workers only worsened the situation for such women who were then forced to become irregular migrants and placed in a more precarious situation.<sup>52</sup> Reports also indicate that the women had to pay higher fees for such irregular migration due to the ban.<sup>53</sup>

35. Seafood Working Group, "Comments Concerning the Ranking of Thailand by the United States Department of State in the 2020 Trafficking in Persons Report," (10 March 2020): 27.

36. World Bank Group, "Labor Mobility As a Jobs Strategy for Myanmar," (2020): 108. Recruiters have also mentioned sending workers to Macau.

37. Reuters Staff, "Myanmar stops migrant workers going to Malaysia after Rohingya row," *Reuters*, (7 December 2016)

38. Zaw Zaw Htwe, "Myanmar lifts worker ban to Malaysia," *Myanmar Times*, (11 January 2018)

39. World Bank Group, "Labor Mobility As a Jobs Strategy for Myanmar," (2020): 110.

40. *Ibid*, 108.

41. ILO and UN-Women, "Protected or put in harm's way? Bans and restrictions on women's labour migration in ASEAN countries," (2017): 11.

42. ADB et al, "Gender Equality and Women's Rights in Myanmar: A Situation Analysis," (2016): 72.

43. World Bank Group, "Labor Mobility As a Jobs Strategy for Myanmar," (2020): 108.

44. ADB et al, "Gender Equality and Women's Rights in Myanmar: A Situation Analysis," (2016): 72.

45. Mekong Migration Network, "Safe from the Start: The Roles of Countries of Origin in Protecting Migrants," (2017): 38.

46. Terry Xu, "Myanmar continues its ban on domestic workers leaving to work in Singapore," *The Online Citizen*, (5 July 2015).

47. ILO and UN-Women, "Protected or put in harm's way? Bans and restrictions on women's labour migration in ASEAN countries," (2017): 18.

48. *Ibid*, 25.

49. *Ibid*, 25.

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

51. ILO and UN-Women, "Protected or put in harm's way? Bans and restrictions on women's labour migration in ASEAN countries," (2017): 33-48.

52. Mekong Migration Network, "Safe from the Start: The Roles of Countries of Origin in Protecting Migrants," (2017): 38.

53. Katie Arnold, "From village to victim, Myanmar women fear ban on working as foreign maids puts them at risk," *Reuters*, (6 June 2016).

## Thailand

Thailand does not have any specific ban against origin countries, however according to the Thai authorities, low-income migrant workers will only be hired through MOUs agreed with Cambodia, Lao PDR, Myanmar and Vietnam (in addition to border employment schemes with Cambodia, Lao PDR and Myanmar) and no further amnesty schemes will be announced.<sup>54</sup> Such a move is however believed to be aimed at limiting irregular migrants instead of limiting the number of origin countries.<sup>55</sup> As the UN has noted, the MOU process however does not appear to be popular amongst migrant workers as it “largely fails to align with the interests of migrant workers themselves, many of whom see it as easier, quicker, cheaper and more flexible to enter and work in Thailand without documents and legal status.”<sup>56</sup>

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### 1.3 Does the government have a stated or observed preference/tendency towards government-to-government (G-to-G) recruitment agreements?

## Myanmar

Myanmar has had a government-to-government migration system with South Korea for low-skilled workers since 2007. The Korean ‘Employment Permit System’ is viewed as an example of global good practice.<sup>57</sup> Workers are hired in Myanmar by the Government Overseas Employment Agency of the Department of Labour and the entire process, including worker recruitment and intermediation services is managed through a government-to-government arrangement.<sup>58</sup> According to a representative from a Migrant workers association: “I think G-to-G with Korea is more or less successful, partly because the other

side has a good plan... We can say that Korea one is working well. I also heard during the last meeting with the ministry that they are planning to have G-to-G with Japan.”<sup>59</sup> Currently, this is the only fully G-to-G system in place and therefore only a very small percentage of workers are hired through it. According to an ILO representative, the Myanmar government would prefer G-to-G processes, but not all destination governments are keen, e.g. Singapore.<sup>60</sup> A trade union representative also supported more G-to-G systems.<sup>61</sup>

## Thailand

There is no ongoing government-to-government migration programme in Thailand, although the MOU schemes are sometimes represented as such.<sup>62</sup> However, the Thai Government informed the ILO committee in 2017 of a Government to Government pilot project to hire workers from Cambodia in the fishing sector (in collaboration with IOM).<sup>63</sup> This involved the Thai Government guaranteeing “a minimum salary of THB 12,000 per month, payment of wages by bank transfer, appropriate accommodation and food, as well as health insurance and accident coverage”. The progress of the scheme is not known, but Thai media reports suggest that parties could not agree on the conditions of employment.

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### 1.4 Does the government take gender and gender identity into account when formulating and implementing migration policy?

## Myanmar

The Myanmar government has previously instituted bans on women working as migrant domestic workers, ostensibly in order to protect them from ill-treatment/

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54. ILO Regional Office for the Asia and the Pacific, “[TRIANGLE in ASEAN Quarterly Briefing Note: Thailand July-September 2019](#),” (2019).

55. Penchan Charoensuthipan, “Govt reinstates unskilled workers ban,” *Bangkok Post*, (28 December 2018).

56. United Nations Thematic Working Group on Migration in Thailand, “[Thailand Migration Report 2019](#),” (2019): 19.

57. See e.g. World Bank Group, “Bilateral Arrangement of Temporary Labor Migration: Lessons from Korea’s Employment Permit System,” (2018).

58. 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): 6.

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

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

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

62. Royal Thai Government, “[Country Report on Anti-Human Trafficking Efforts](#) (1 January – 31 December 2018),” (undated): 46.

63. ILO Committee, “[Observation \(CEACR\) - adopted 2017](#),” (2018).



abuse (see 1.2). According to a senior MOLIP official, a 2018 MOU process directive for recruitment agencies also states that women not be placed in any work-setting where there would be less than five women working.<sup>64</sup> These appear however to be relatively sporadic decisions and gender does not appear to be a significant area of discussion in the migration context, as evidenced in the NPA 2018-2022 where gender dimensions are conspicuously absent. An ILO representative also noted that the MOU and its associated agreement also does not make any special provision for women workers.<sup>65</sup> Reportedly, the National Strategic Plan for the Advancement of Women (2013–2022) mentions female migrants in sections on research and policy making.<sup>66</sup>

On the ground, the absence of a woman labour attaché in Thailand has been identified as a key failure by civil society representatives. Given that half of the Myanmar migrant workers in Thailand are women, this may also be leading to many women workers not making complaints to the male labour attachés.<sup>67</sup> A trade union representative also highlighted that there are no specific guidelines for agencies on hiring/ sending women and much of the logistical arrangements in reception camps (transit venues near the border crossing) also do not consider the needs of women.<sup>68</sup>

## Thailand

There is no indication that the Thai policies factor in specific gendered impacts of migration policies. Women form approximately over half (52%) of the migrant population in Thailand but significantly lesser amongst formal MOU migrants (43%). According to a UN study, women are “overwhelmingly segregated in low-skilled sectors of work that are associated with lower wages and weaker labour protections.”<sup>69</sup> The UN recommends that “feminized sectors of work – such as domestic work,

care work and entertainment - should be brought within the MOU process to increase women’s access to regular migration pathways.”<sup>70</sup>

## 1.5 Does the government significantly regulate the process for a worker to obtain a visa to migrate/ employer to obtain a visa to hire a worker? (i.e. does the worker/ employer need multiple permissions at different levels of the state to migrate/ recruit?)

### Myanmar

The LROE requires prospective migrant workers to register (Chapter V). An overseas jobseeker registration card - valid for one year - is obtained after such registration at the local Labor Exchange Office.<sup>71</sup> Although this is supposed to be free of cost, according to a trade union representative, small bribes of 500 - 1000 MMK are commonly demanded.<sup>72</sup> To obtain this document, the individual needs to show their National Registration Card (NRC) - many in Myanmar do not have such a document, particularly members of ethnic minority groups.<sup>73</sup> This overseas jobseeker card - along with the NRC and household registration documents - is required to obtain the ‘PJ (job) passport’ from the nearest passport office.<sup>74</sup> Although the cost for the passport is fixed at MMK 25000, a MWRN representative pointed out that there are invariably additional payments for ‘checking’ and passport photos.<sup>75</sup> Most individuals obtain passports and other required documents either through local brokers or then through registered sub-agents of recruitment agencies who intend to hire them for specific jobs.<sup>76</sup>

64. Daw Aye Aye Moe, MOLIP - Migration Department, “Presentation - Impact of Existing Migration Mechanisms on Migrants’ Access to Social Protection,” (16 September 2019), on file.

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

66. World Bank Group, “Labor Mobility As a Jobs Strategy for Myanmar,” (2020): 97.

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

68. Name and organisation withheld, remote interview, 26 March 2020.

69. United Nations Thematic Working Group on Migration in Thailand, “Thailand Migration Report 2019,” (2019): 145.

70. Ibid, 153-4.

71. ILO Myanmar, “Migration Data for Policy Development,” (2018): 27.

72. Name and organisation withheld, remote interview, 26 March 2020.

73. This could be either because they are not considered an official ethnic/ national group or because they are areas not fully under central government control.

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

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

76. Issara Institute, “Developing a Financially Viable Ethical Labour Recruitment Model: Prospects for the Myanmar-Thailand Channel,” (2018): 42

Once a job has been identified, workers are required to undertake a health check/ medical examination as part of the selection process - this is usually arranged by the recruitment agency. Once a job is confirmed and contract signed, the worker must also obtain the Overseas Worker Identification Card (OWIC, also sometimes referred to as the overseas labour card) prior to departure. This card includes the migrant's passport number, the name and address of the Myanmar recruitment agency, type of work, the Thai employer/ agent and place of work. The OWIC can be obtained at the Migrant Worker office in Myawaddy - near the crossing point into Thailand - or the Migrant Worker Division office in North Dagon, Yangon. The MOLIP 'Safe migration page' on Facebook reiterates the importance of this card: "When you are to be sent legally but do not get this card before leaving to foreign country, you can be warned that you are being sent regard through an informal channel."<sup>77</sup>

Other documents required for departure include a copy of the approved demand letter and a pre-departure training certificate (not required for Thailand) - these are usually provided by the recruitment agent.<sup>78</sup> In practice, the recruitment agency shepherds the workers through the medical, interview-contract and OWIC phase. As MMN has noted: "For those who do choose to migrate formally, obtaining the necessary identification is a difficult and confusing process. Long passport application processing times, unclear costs and other complications make formal migration burdensome."<sup>79</sup> One part that appears wholly redundant is the initial overseas jobseeker registration card, particularly as potential migrant workers also obtain a passport and the OWIC.<sup>80</sup>

Another report highlights that workers often have to make at least 2-3 trips to Yangon to process the employment contract and MOU-related documents and that the overall procedure of sending workers to Thailand takes about 45-90 days.<sup>81</sup> One civil society representative pointed out that the direct link between time taken and increased debt for prospective workers:

"when they want to migrate they have to borrow money to pay for the expenses. Since this process is lengthy, the interest they have to pay is adding up every month. To cut those, they want to migrate as quickly as they can. That is one of the main reasons why the brokers can cheat the workers easily. The government should reduce some unnecessary processes and work more effectively..."<sup>82</sup>

Myanmar nationals who live in frontier/ border districts can also obtain border passes to cross into Thailand border provinces, including for daily or seasonal work. Although such passes are ordinarily valid only for 2 weeks per visit, once the worker has completed formalities on the Thai side for daily/ seasonal work, they can stay for up to 30 days per visit.<sup>83</sup> Border passes are valid for up to 2 years and can be extended for similar lengths.<sup>84</sup> To obtain such a pass, applicants need to show NRC/ Household registration at Myanmar immigration offices and pay between 500-2,000 MMK.<sup>85</sup>

## Thailand

According to the Royal Ordinance Concerning the Management of Employment of Foreign Workers 2017 (Foreign Workers Ordinance or FWO, significantly revised in 2018), in addition to having valid residence permits (visa etc), all foreigners need a work permit in order to work in Thailand (Section 8). Working without a permit - or in a work category beyond what the permit provides - can lead to a fine from THB 5,000 to 50,000 and/or repatriation (Section 101). Similarly, no employer can take on a worker without a work permit (Section 9). Penalties include a three-year ban and a fine of THB 10,000 to 100,000 per foreign worker. For a repeat offender, up to one-year imprisonment and/or a fine from THB 50,000 to 200,000 per foreign worker is possible (Section 102. See also 110/1).

Section 41 of the FWO provides some details of the process for workers hired through MOUs. Employers can either hire workers directly or through a licensed

77. MOLIP *Safe migration facebook page*, on file.

78. World Bank Group, "Labor Mobility As a Jobs Strategy for Myanmar," (2020): 110.

79. Mekong Migration Network, "Safe from the Start: The Roles of Countries of Origin in Protecting Migrants," (2017): 38.

80. World Bank Group, "Labor Mobility As a Jobs Strategy for Myanmar," (2020): 112.

81. Plan International and FairFish, "The Report on the Route of Migration from Myanmar," (2020): 8.

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

83. Agreement between the Government of the Kingdom of Thailand and The Government of the Republic of the Union of Myanmar on Border Crossing Between the Two Countries, Article 7, 24 June 2016.

84. Ibid, Article 6.

85. Verité, "Thailand Bound: An Exploration of Labor Migration Infrastructures in Cambodia, Myanmar, and Lao PDR," (2019): 43.

recruitment agency. A Thai employer seeking to hire migrant workers begins by submitting a demand letter - directly or through a Thai recruitment agency - to a Provincial Employment Office (PEO).<sup>86</sup> After this is checked, it is forwarded to the central Department of Employment (DOE). The DOE will then forward the request to the Myanmar Government via the Embassy in Bangkok. Once the Myanmar recruitment agency provides the list of workers to the Thai employer - verified by the Myanmar Labour Attaché - it is the employer's responsibility (in effect the Thai agency) to submit the list to the DOE, along with a copy of the original approved demand letter. The DOE then informs the Myanmar Embassy in Bangkok on the selection of the candidates and informs the Immigration Bureau for granting 'Non-LA' (Non Immigrant - Labour Approved) visa and permission to enter Thailand - this is issued at the immigration checkpoint in Mae Sot/ Ranong. Once in Thailand, a worker is required to undergo a medical examination and submit the application for the work permit at the PEO or special Post-Arrival and Reintegration Centres.

The visa/ work permit process is fairly lengthy and time-consuming. The work permits are issued for two years - the length of the employment contract as per the MOU - and may be extended once. Beyond that, workers are required to return home and can re-apply for jobs after a 30-day break (Article 6, MOU agreement). This means further costs and loss of income for workers. As a result, there is a disincentive for workers to use the MOU system who often prefer to migrate informally instead, relying on amnesty processes to subsequently receive a work permit once in Thailand.

Workers living in border regions of Myanmar can also legally do "daily or seasonal work" in border provinces of Thailand under the border-pass agreement between the two countries (Article 3).<sup>87</sup> Section 64, FWO provides for work permits to be given to such workers in Thailand. These permits are usually valid for 3 months (although workers are technically required to go back to

Myanmar after every 30 days) and the process is much less complicated than under the MOU scheme. Where employers seek to hire workers via the border pass scheme, they must provide the Provincial Employment Office (PEO) of the name list of the workers along with details of the employers. The certification provided by the PE is submitted by the employer to the Immigration Checkpoint which then issues the border pass/ visa accordingly. Employers are then required to take the workers to the public hospital for a check-up and for purchase of health insurance card, following which they are taken to the PEO which issues the work permits. It is also common for workers from Myanmar to subsequently move into other provinces or other employment or continue in Thailand without renewal of the border-pass work permit, thereby becoming irregular.

Local groups have reported that the seasonal border pass system is also being abused - in practice - to hire factory workers,<sup>88</sup> and fishing workers.<sup>89</sup> Regardless, another specific route for migrant workers to obtain a work permit in the fishing sector is via Section 83 of the Fisheries Ordinance 2015, where the Director-General of the Department of Fisheries has the power to issue temporary work permits and other necessary documents (seamen book) to foreign workers. This route has been highlighted by the Thai authorities as key to covering the labour shortage in the fishing sector in recent years. In 2018, they announced that all those whose work permits under this provision were expiring in September 2018 would be allowed to continue for a further two years, and migrant workers who had nationality documents could also register using the same provision.<sup>90</sup> As of 2020, the Thai authorities appear to continue to rely on Section 83 to cover the ongoing labour shortage in fishing.<sup>91</sup> Civil society groups have pointed out that migrant workers usually have to rely on their employer to register them, and therefore workers get charged illegal costs resulting in increased debts to employers.<sup>92</sup> The ILO has called on the Thai authorities to end use of this "loophole... that allows vessel owners to bypass regular migration procedures."<sup>93</sup>

86. Issara Institute, "Developing a Financially Viable Ethical Labour Recruitment Model: Prospects for the Myanmar-Thailand Channel," (2018): 11.

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

88. Human Rights and Development Foundation, "Statement: A call for the enforcement of Thailand's Social Security Act towards employers of migrant workers in the Special Economic Zone," (10 August 2020).

89. Seafood Working Group, "Comments Concerning the Ranking of Thailand by the United States Department of State in the 2020 Trafficking in Persons Report," (10 March 2020): 27.

90. Ministry of Labour Public Relations Department, "Extending Work Permits for Migrant Workers in the Fisheries Sector," (1 September 2018).

91. Migrant Working Group, "Update on the management of foreign workers policy (January-March 2020)," (undated).

92. The Freedom Fund, "Thailand Hotspot Annual Report," (2020): 2.

93. ILO, "Endline research findings on fishers and seafood workers in Thailand," (2020): 23.

Over the years, Thailand has also announced a number of regularisation schemes by which irregular workers who were able to confirm their nationality via documentation were given work permits. On 20 August 2019, the Thai Cabinet announced that workers who had such work permits would be able to renew them for a further two years without having to return to their country of origin. The subsequent ‘Guideline for Migration Management 2019–2020’ on 29 August 2019 approved by the Committee on the Migrant Worker Management Policy, however required that the range recruitment-related costs - between THB 7,280 and THB 10,480<sup>94</sup> (\$257–\$346 at the time) - covering visa and work permit fees, costs for medical check-ups, medical insurance fees, ID card issuance fees, and deposit fees - should be paid by the migrant workers themselves.<sup>94</sup>

## 1.6 Do national laws allow all categories of migrant workers the ability to change jobs within the destination country?

### Thailand

According to the 2016 MOU agreement, a migrant worker cannot change employers except where the original employer “could not protect the worker according to the existing laws” or where they closed down the business due to financial failure or natural disaster or other reason (Article 6(2)). However, before amendment in 2018, the Foreign Workers Ordinance (FWO) required the work permits of foreign workers to be tied to a specific employer. Currently, change of employment is permitted in limited circumstances - a migrant worker who quits their employment contract within two years is not permitted to work with another employer unless they can prove fault of the employer or unless they paid damages to the original employer to cover costs undertaken to bring them to work, in proportion to the time or period that the worker has already worked (Section 51).<sup>95</sup> Where such permission is given by the Registrar, the worker is required to start with the new employer within 30 days (Section 52).

A Ministry of Labour directive lays down the conditions under which workers can change employers in cases (also known as the “5+1”). One of the following five conditions is required: “(1) physical abuse of the worker, (2) employer dishonors the work contract or violates the Labor Protection Act (1998), (3) work environment that is potentially harmful to the life, physical, mental health and sanitation of the employee, (4) worker’s contract is terminated without a proper reason, or (5) in the case of employer’s death or bankruptcy. In addition (the +1), the MOU fee must be repaid to the former employer by either the new employer or the worker.”<sup>96</sup> The circumstances are so limited, that according to an ILO technical expert, “In practice they [workers] cannot change jobs without their employer’s permission.”<sup>97</sup> A 2020 Cabinet announcement relating to temporary work permits for fishers also has similar provisions, and further lists the specific documentation required for each condition.<sup>98</sup> However, with respect to condition 2, a research report noted that in a setting where only some workers “received a contract in a language they understood, proving an employer is at fault remains a largely impossible clause which in practice continues to tie workers to their employer.”<sup>99</sup>

The limitations with respect to job mobility are a serious disincentive for workers to migrate through the MOU process. As a 45-year-old factory worker from Mon state explained: “One thing I don’t like in this MOU system is not being able to mobilize - move to another job - because we used to be able to move freely and earn more... The MOU system is like you are tied up and beaten up. For me, I did not have a good working relationship with the employer and still could not change to another job.”<sup>100</sup>

The UN team in Thailand has noted that the longer-term impacts of the limited change of employer in the 2018 FWO are yet unclear: while a significant development “exercising this right relies upon obtaining permission from the Registrar, which may be a difficult process for migrant workers to complete. In cases where migrant workers want to change their employment due to experiences of abuse or exploitation in the workplace,

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

95. The original 2017 FWO provided for work permits to be directly linked to the employer, but this was changed in the 2018 revised version.

96. Seafood Working Group, “Comments Concerning the Ranking of Thailand by the United States Department of State in the 2020 Trafficking in Persons Report,” (10 March 2020): 19.

97. Laura Villadiego, “Thailand’s trying to protect migrants. So why are they all so worried?,” *South China Morning Post*, (18 March 2018).

98. Office of the Prime Minister, “Issuing of Seaman book under the Fisheries Law,” (10 April 2020).

99. Praxis Labs, “Tracking Progress: Assessing Business Responses to Forced Labour and Human Trafficking in the Thai Seafood Industry,” (2019): 58.

100. Remote interview R11, 30 August 2020.



they may be reluctant to approach authorities for official approval. Additional obstacles remain, including lack of information and language barriers, and it is unclear at this stage whether implementation of the new policy will tangibly result in greater independence for migrant workers to choose their employment.”<sup>101</sup>

The importance of the ability to change employers for migrant workers cannot be overstated. The lack of flexibility to change jobs contributes to increased vulnerability to abuse and reduced likelihood of seeking redress from mechanisms. It also leads to workers changing employment without permission: as the UN has noted, “without greater flexibility to change employment, it will remain difficult for migrants to retain regular legal status after entering the country.”<sup>102</sup> The common practice of Thai recruitment agencies hiring MOU workers under one demand letter but employing them at a different site means that such workers are in violation of the rules at the start itself.

Workers who come to Thailand for daily/seasonal work under the border pass scheme may change employers, but need to inform the Thai authorities without 15 days (Section 64/2 FWO). However this practice is out of sync with the realities of employment practices in the agricultural sector in Thailand. As the ILO/FAO have noted, “It is a common practice among seasonal agricultural workers to move between different plantations depending on what crop is in season. Migrant workers are often registered with one employer who then outsources the workers to other employers in the area. The development of a formal system allowing migrant workers to change employers under these circumstances would create clearer statutory responsibility for their working conditions, incentivize migrant workers to register with the Department of Employment and support increased labour market efficiency.”<sup>103</sup>

As mentioned, a change of employer under a temporary fisher work permit (Section 83, Fisheries Ordinance) is also only permissible under the five conditions, with proof provided - but there is no requirement of permission from the current employer.<sup>104</sup> Previously

since late 2015, for most migrant fishers (regularised and holding ‘pink cards’) change was possible but “workers are required by the DOE to obtain written permission from their current employer, which must be submitted along with paperwork to process the change in DOE records.”<sup>105</sup> According to Human Rights Watch, in practice this effectively undermined the likelihood of change of employment with permission withheld and intimidation. It also increases the prevalence of corruption with workers paying under-the-table fees to obtain such permissions. Additionally, HRW observed that “many fisher workers seem wholly unaware of, or badly misinformed about, their ability to transfer to other employers.” Such misinformation has also been noted by another study, which also referred to workers being concerned about increasing debt due to not being able to switch employers, while the original employer’s boat is not allowed to go to sea.<sup>106</sup> The misinformation about change of jobs continues - a recent study found that 38 percent of fishery workers surveyed said that they faced obstacles to changing employers - most common obstacles included employers not allowing them to change their job because of worker shortage and cost of the process.<sup>107</sup>

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## 1.7 Do national laws offer migrant workers a pathway to long term residency and/or citizenship?

### Thailand

Thailand does not provide a clear or obvious pathway to citizenship for migrant workers. According to one study, “Thai Immigration Bureau rules for obtaining permanent residence are highly complex and few migrant workers are in a position to attempt the process on their own. Similarly, the Nationality Act is notoriously restrictive on conditions for granting citizenship and naturalization.” This is part of broader restrictions on citizenship in Thailand, which was host to the third largest population of stateless people globally in 2018.<sup>109</sup>

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101. United Nations Thematic Working Group on Migration in Thailand, “[Thailand Migration Report 2019](#),” (2019): 33.

102. Ibid, 88.

103. Ibid, 73.

104. Office of the Prime Minister, “[Issuing of Seaman book under the Fisheries Law](#),” (10 April 2020).

105. Human Rights Watch, “[Hidden Chains: Rights Abuses and Forced Labor in Thailand’s Fishing Industry](#),” (2018): 103.

106. Praxis Labs, “[Tracking Progress: Assessing Business Responses to Forced Labour and Human Trafficking in the Thai Seafood Industry](#),” (2019): 58.

107. CSO coalition, “[Falling through the Net](#)” (2020): 48-49.

108. Benjamin Harkins and Aanas Ali, “[Evidence or Attitudes? Assessing the Foundations of Thailand’s Labour Migration Policies Authors](#),” (2017): 8

109. IOM, [World Migration Report 2020](#), (2020): 47.

# Assessment against the Five Corridors indicators:

## 2. Legal and regulatory framework relating to fair recruitment

- 2.1** Has the government ratified core international human rights and core/relevant labour conventions and enshrined them in domestic law? Does it meaningfully engage with UN and ILO oversight bodies? \_\_\_\_\_ 32
- 2.2** Are there national fair recruitment laws and policies? Does legislation address the entire spectrum of the recruitment process, including in relation to advertisements, information dissemination, selection, transport, placement into employment and return to the country of origin. Is legislation reviewed and evaluated? \_\_\_\_\_ 33
- 2.3** Are all workers (formal, informal, regardless of category) covered by relevant legislation? \_\_\_\_\_ 34
- 2.4** Are workers' organizations able to contribute to the setting and review of legislation, regulations and policy relevant to fair recruitment? \_\_\_\_\_ 35
- 2.5** *Origin state:* Are recruiters' organizations able to contribute to the setting and review of legislation, regulations and policy relevant to fair recruitment?  
*Destination state:* Are employers' and recruiters' organizations able to contribute to the setting and review of legislation, regulations and policy relevant to fair recruitment? \_\_\_\_\_ 36

## 2. Legal and regulatory framework relating to fair recruitment

*“Actors within government also consistently recognized the importance of non-governmental actors’ participation in policymaking and governance activities... Still, opportunities for participation largely remain ad hoc, varying greatly across consultations for particular policies, rapidly evolving policy agendas more broadly, and periodic meetings, workshops, and trainings.”* ILO STUDY ON MYANMAR, 2017, PRIOR TO THE FEBRUARY 2021 COUP.

### Summary

Both Myanmar and Thailand - with their history of wobbly and uneven democracies and military-led governments - have fragmented legal/regulatory frameworks governing migration in which the rights of migrant workers are peripheral. After decades of isolation, Myanmar made some moves to align itself with the international human rights system in the past decade, including ratification of the ICESCR. These moves however were overshadowed by global condemnation following Myanmar’s atrocity crimes against the Rohingya. Nonetheless, before the military coup took place on 1 February 2021, the first-ever civilian-led government of Myanmar had been working with the technical support of the ILO and IOM towards strengthening its legal/regulatory framework for migration, which remains inadequate and inconsistent and not easily available publicly. Progress has been slow, e.g. the 1999 Law Related to Overseas Employment (LROE) has been under review for many years, while consultation with workers’ groups is limited and ad-hoc. Civil society groups have largely been ignored, but recruiters are able to have some say through the Myanmar Overseas Employment Agencies Federation (MOEAF). Decision-making is centralised at high political levels and there is little Parliamentary or high-level oversight in a country in transition. On the ground, the formal migration process - built around recruitment agents - is limited by dated provisions, bureaucratic/ security-minded officials and endemic corruption. This ensures that recruitment processes are lengthy, non-transparent, confusing and expensive for workers, particularly with the involvement of brokers.

Thailand has ratified most of the core international human rights treaties and ILO conventions, with the notable exception of the migrant workers convention and ILO conventions relating to freedom of association and collective bargaining. While migrants workers largely have the same formal rights as nationals (one important exception is with respect to freedom of association), there is significant discrimination in practice. This invariably has negative outcomes for workers, including on access to justice. Recruitment was largely unregulated in Thailand until 2016 but Ordinances in 2017-18 provide the central framework regulating all migrant workers, albeit with significant gaps (relating to transportation, placement of workers and information dissemination). Recruitment of fishing workers and seafarers is additionally covered in specific legislation. Much of the relevant legal framework on recruitment was passed as decree/ ordinance by a military government, with little or no consultation, including from workers’ groups. There is no recruitment agency body, but many agencies themselves are believed to be owned by influential persons. Employers’ bodies, including the National Fisheries Association of Thailand (NFAT) are also influential. Regularisation of undocumented workers has been a common feature in Thailand over the past two decades and takes place via Cabinet announced procedures/ schemes. All workers - regardless of their legal status - are covered by labour protection legislation. Many amendments in the labour regime covering fishing were made in the context of global outrage against forced labour in the sector and the EU ‘yellow card’/ US ‘Trafficking in Persons Report’ rating downgrade.

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## Recommendations to the National Unity Government of Myanmar :

- Ratify the ILO Private Employment Agencies Convention, 1997 (No. 181) and in keeping with its requirements, ensure that Myanmar laws/regulations are amended to remove all recruitment fees paid by workers in line with the ‘employer pays’ principle and in such a way that it is consistent with the ILO’s definition of recruitment fees and related costs.
- Prioritise the reform/ amendment of the Law Related to Overseas Employment and supplemental rules to strengthen protection mechanisms for all workers, irrespective of their legal status. Any amendments should be introduced after ensuring that there is adequate consultation with civil society and trade unions, workers’ groups.

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## Recommendations to the Royal Thai Government

- Ratify the ILO Private Employment Agencies Convention, 1997 (No. 181)
- Following consultation with workers groups, conduct a review of all Thai laws/regulations relating to foreign workers to ensure that they are consistent with international human rights and labour standards and the gaps identified above are covered;
- Ensure that foreign workers, irrespective of their legal status, are not discriminated against in practice particularly with respect to freedom of association and access to grievance mechanisms.

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## 2.1 Has the government ratified core international human rights and core/ relevant labour conventions and enshrined them in domestic law? Does it meaningfully engage with UN and ILO oversight bodies?

### Myanmar

Myanmar has ratified only four of the core human rights treaties, including the International Covenant on Economic, Social and Cultural Rights in 2017.<sup>110</sup> Key Omissions include the International Covenant on Civil and Political Rights and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, although planning for the ratification of the latter is currently underway.<sup>111</sup> Myanmar has ratified three of the eight ILO fundamental conventions: Forced Labour Convention, 1930 (No. 29); Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and Worst Forms of Child Labour Convention, 1999.<sup>112</sup> Myanmar acceded to the Palermo Protocol in 2004,<sup>113</sup> voted in favour of adopting the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers in 2017,<sup>114</sup> and the UN Global Compact for Migration in 2018.<sup>115</sup> Treaty obligations must be included in national law before they are domestically enforceable: this does not appear to have been carried out. Although current jurisprudence is unclear, courts in the past have held that international obligations may automatically apply if they do not contradict Myanmar Law.<sup>116</sup>

Despite serious differences with UN and other international bodies on various issues, Myanmar works closely with the IOM and ILO. With technical support from IOM, Myanmar adopted a second five-year National Plan of Action for the management of international

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110. Office of the High Commissioner for Human Rights, “UN Treaty bodies database”, (undated).

111. Government of Myanmar - Ministry of Labour, Immigration and Population, “Second Five Year National Plan of Action on The Management of International Labour Migration (2018-2022),” (undated): 17.

112. The following are not signed: Right to Organise and Collective Bargaining Convention, 1949 (No. 98); Equal Remuneration Convention, 1951 (No. 100); Abolition of Forced Labour Convention, 1957 (No. 105); Discrimination (Employment and Occupation) Convention, 1958 (No. 111); Minimum Age Convention, 1973 (No. 138).

113. UN Treaty Collection, “Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention against Transnational Organized Crime,” (15 November 2000).

114. ASEAN Secretariat, “ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers,” (March 2018).

115. United Nations, “General Assembly Endorses First-Ever Global Compact on Migration, Urging Cooperation among Member States in Protecting Migrants”, (19 December 2018).

116. Melissa Crouch, “The Constitution of Myanmar: A contextual Analysis”, (Bloomsbury: 2019), Chapter 9.



labour migration (2018-2022, hereafter NPA). Myanmar also partnered with the ILO to prepare a Code of Conduct for Myanmar Overseas Employment Agencies in 2015.

## Thailand

Thailand has ratified most of the core international human rights treaties.<sup>117</sup> A key exception is the International Convention on the Protection of the Rights of All Migrant Workers and their Families. Thailand has also ratified six of the eight fundamental ILO conventions (all other than both relating to Freedom of Association).<sup>118</sup> Thailand ratified the Palermo Protocol in 2013,<sup>119</sup> voted in favour of adopting the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers in 2017,<sup>120</sup> and the UN Global Compact for Migration in 2018.<sup>121</sup> Treaties are not automatically binding in Thailand and require domestic law to be enacted.<sup>122</sup> Serious concerns however remain about the treatment of migrant workers, partly due to discriminatory attitudes.<sup>123</sup> Thailand works closely with the UN and many agencies including ILO and IOM, while Bangkok also hosts the regional offices of many international organisations.

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## 2.2 Are there national fair recruitment laws and policies? Does legislation address the entire spectrum of the recruitment process, including in relation to advertisements, information dissemination, selection, transport, placement into employment and return to the country of origin. Is legislation reviewed and evaluated?

## Myanmar

The key legislation with respect to migrant workers is the Law Relating to Overseas Employment, 1999 (LROE).<sup>124</sup> The LROE is a brief document (31 sections) and provides a basic architecture for managing migration. This includes provisions covering registration procedures for workers, licensing processes for recruitment agencies, and rights/ duties of workers and agencies. With respect to fees, the Overseas Employment Central Committee (OECC) can set the amount for service fees and any charges in excess claimed by a service/ recruitment agent could lead to cancellation/ temporary revocation of license.<sup>125</sup> An Overseas Employment Supervisory Committee (OESC) is also set up with a limited supervisory role. Both Committees are largely government bodies, but the appointment of individual labour experts or 'suitable citizens' is permitted.<sup>126</sup>

The LROE was supplemented by three sets of rules and regulations for implementation released by the Ministry of Labour, Immigration and Population (MOLIP) in 2014: Rules and Regulations for Overseas Employment Agency License; Rules and Regulations for License Holders of Overseas Employment Agency; and Rules and Regulations for Myanmar Overseas Employment Agencies Federation (MOEAF).<sup>127</sup> These cover a range of issues relating to fair recruitment including the licensing system (eligibility, application and cancellation process); advertising, contracts, pre-departure training; as well as specific responsibility of MOEAF. In addition, over the years, MOLIP has issued a number of directives providing relevant information, e.g. the fee cap. Such directives are however shared with recruitment agencies/ MOEAF and not publicly available - some might be confidential.<sup>128</sup> In August 2016, MOEAF also adopted a voluntary 'code of conduct' for its members, developed with assistance from ILO and endorsed by MOLIP.<sup>129</sup>

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117. Office of the High Commissioner for Human Rights, "UN Treaty bodies database", (undated).

118. The exceptions are Conventions 87, 98 (Freedom of Association and Protection of the Right to Organise Convention, 1948 and Right to Organise and Collective Bargaining Convention, 1949).

119. UN Treaty Collection, "Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention against Transnational Organized Crime," (15 November 2000).

120. ASEAN Secretariat, "ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers," (March 2018).

121. United Nations, "General Assembly Endorses First-Ever Global Compact on Migration, Urging Cooperation among Member States in Protecting Migrants", (19 December 2018).

122. Vitit Muntarbhorn, "The Core Human Rights Treaties and Thailand," (Brill, 2016): 5-6.

123. Benjamin Harkins and Aanas Ali, "Evidence or Attitudes? Assessing the Foundations of Thailand's Labour Migration Policies," International Seminar on Mixed Migration in Southeast and East Asia, 2017.

124. Law Relating to Overseas Employment, 1999, (unofficial translation).

125. Ibid., Section 6(g) and Section 15(d).

126. Ibid, Section 4(a) and 7(a).

127. In 2018 MOLIP sent further directives for recruitment agencies sending workers under MoU to Thailand. On file.

128. An IOM official, IOM Myanmar, remote interview, 1 October 2020.

129. On file.

The long-term vision of the NPA is “to provide Myanmar migrant workers with increased opportunities to migrate with dignity by accessing decent work opportunities abroad”.<sup>130</sup> Among the priorities is an update of the law “to strengthen protection mechanisms for the recruitment and placement” of Myanmar workers.<sup>131</sup> The NPA aims to take effective measures to prevent abuse and malpractice during recruitment by initiating “a more effective and transparent licensing system, improved resources of ongoing monitoring, and targeted measures to reduce the costs of migration”.<sup>132</sup> Other aims include developing guidelines and procedures to empower officials in overseeing and penalising recruitment recruiting agencies and supporting establishment of a special government agency assigned with powers to investigate and adjudicate against recruitment agencies.<sup>133</sup> The Department of Labour (DOL) within MOLIP - the main agency for management of migration issues - leads on implementation of NPA, although a Technical Working Group is envisaged for monitoring.<sup>134</sup> The mid-term review of the NPA was due in late 2020, but according to a civil society expert on migration, several of the benchmarks have been missed as the NPA seems to be way behind schedule.<sup>135</sup>

## Thailand

Since the increase in migrant workers in Thailand since the 1990s, Thailand’s approach to migration has been largely led by concerns of national security and dominated by attempts to limit irregular migration. As a result there have been many drives to penalise/ deport irregular migrants along with ad-hoc schemes to regularise irregular migrants. Despite the signing of MOUs in 2002-2003 with neighbouring countries (see Indicator 3), recruitment of migrant workers was largely unregulated prior to 2016. A first ordinance covering bringing workers to Thailand was passed in 2016, but it was replaced by another in 2017. The 2017 Emergency Decree/Royal Ordinance concerning the management

of employment of Migrant/Foreign Workers (Foreign Workers Ordinance, FWO) was significantly revised in 2018.<sup>136</sup>

The FWO covers recruitment of migrant workers - both by licensed recruitment agencies or directly by employers - and includes provisions on licensing, monitoring of private recruitment agencies. The FWO also outlines some migrant workers’ labour rights, including protection from abusive practices during recruitment (Chapter 3, Part IV). The FWO forbids advertising recruitment by anyone who does not have the requisite permission to do so (Section 25). Although often referred to as a comprehensive document - including by ILO -<sup>137</sup> there are no provisions included with respect to transportation,<sup>138</sup> placement of workers and information dissemination. The 2019 Labour Protection in Sea Fishery Work Act also reportedly includes aspects of recruitment (Section 11).<sup>139</sup> In addition, there are specific provisions (Section 64 FWO and Section 83 Fisheries Ordinance) which allow for recruitment of workers in specific limited circumstances, i.e. seasonal workers and temporary fishing workers respectively.

## 2.3 Are all workers (formal, informal, regardless of category) covered by relevant legislation?

### Myanmar

Although the definition of a worker (Article 2b) and the language of Chapter V - which deals with mandatory registration of migrant workers - appears to cover all workers, the LROE largely focuses on regular migrants. Article 8(g) gives power to a Supervisory Committee to lead on preventing workers from taking up overseas employment without having registered. Such registration also effectively links the worker to recruitment agents (‘service agent’ in the LROE).

130. 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.

131. Ibid, 17.

132. Ibid, 10.

133. Ibid, 17.

134. Ibid, 21.

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

136. Royal Ordinance Concerning the Management of Employment of Foreign Workers, 2017 (with 2018 amendments). The 2017 ordinance consolidated the previous Royal Ordinance concerning rules on Bringing Migrant Workers to Work with Employers in Thailand, 2016 and the Alien Working Act, 2008.

137. International Labour Organization, “Recruitment fees and related costs”, (2020): 5.

138. Verite, “Thailand Bound,” (May 2019): 16.

139. International Labor Rights Forum, “Time for a Sea Change,” (March 2020): 51.

Furthermore, even Chapter VIII covering ‘Rights and duties of workers’ largely assumes a regular migrant who has secured a job through a recruitment agent, who is seen as a key interlocutor between the worker and the state, including the embassy staff.

However, in some circumstances undocumented migrants in Thailand who had their passports lost/ stolen were able to get assistance from the Labour Attaché and from the Embassy with assistance from MWRN.<sup>140</sup> According to an ILO representative, technically speaking, MOLIP does not have the authority to look into complaints by undocumented workers, e.g. if they were cheated by a (unlicensed) broker in Myanmar, but MOLIP cooperates with anti-trafficking/ police to solve these cases.<sup>141</sup> A civil society representative also agreed, but noted that such cases are more difficult to resolve - they are not covered by LROE and only the penal code applies.<sup>142</sup>

The NPA aims to have “an increasingly coherent legal framework and institutional set-up for effective management of migration” by 2022. This will include “government regulations and guidelines in place to implement new and updated migration laws”.<sup>143</sup> A Parliamentary Committee on Local and Overseas Workers - consisting of 15 members - was formed in February 2016. One part of their role includes overseeing revision of the LROE, but although drafts of the revised law appear to have been drafted, they have not yet been reviewed by the Parliamentary Committee.<sup>144</sup> Given that the NPA recognises the scale of irregular migration to Thailand (at 5), the updated law is likely to include better coverage of such workers.

## Thailand

The Foreign Workers Ordinance covers all foreign migrant workers in Thailand.<sup>145</sup> However, consistent with Thailand’s broader approach to migration: the

FWO focuses largely on regular workers while provisions relating to irregular workers are limited to penalties, including for those who employ them.<sup>146</sup> Regularisation of undocumented/ irregular migrant workers commonly takes place via Cabinet procedures/ schemes (via Section 63/2), e.g. 1.7 million migrant workers already in Thailand were legally registered to work between July 2017 and October 2019.<sup>147</sup> All workers - regardless of their legal status - are officially covered by Thailand’s Labour Protection Act (LPA) and the 2019 Labour Protection in Sea Fishery Work Act.<sup>148</sup> In practice, irregular migrants can find it difficult to receive support and remedy, e.g. as the ILO noted, while the Government-run Migrant Worker Assistance Centres have a responsibility to support all migrant workers (including those with irregular status), they also work with the Department of Employment to oversee the implementation of the FWO - this makes the situation awkward as the FWO explicitly provides for imposition of penalties for irregular migrant workers.<sup>149</sup>

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## 2.4 Are workers’ organizations able to contribute to the setting and review of legislation, regulations and policy relevant to fair recruitment?

### Myanmar

The Government does attempt to engage with trade unions and workers organisations and collect suggestions from them.<sup>150</sup> However, the ILO has previously noted that “opportunities for participation largely remain ad hoc, varying greatly across consultations for particular policies, rapidly evolving policy agendas more broadly, and periodic meetings, workshops, and trainings.”<sup>151</sup> Despite being part of tripartite meetings with the Government and having

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

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

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

143. 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): 9.

144. “We reevaluate labour laws that are no longer relevant and work to amend them according to International Labour Organization standards,” *Myanmar Digital News*, (10 January 2020).

145. One group excepted are seafarers - other than on fishing boats - who are covered instead by the Maritime Labour Act, 2015, Section 23(2).

146. *Royal Ordinance Concerning the Management of Employment of Foreign Workers*, 2017, Section 13 and chapter 8.

147. Seafood Working Group, “Comments Concerning the Ranking of Thailand by the United States Department of State in the 2020 Trafficking in Persons Report,” (10 March 2020): 16.

148. Workers in agriculture and domestic work are not directly covered by the LPA, but by additional Ministerial Regulations.

149. ILO, “Ensuring migrant workers access to justice: An assessment of Thailand’s Migrant Workers Assistance Centers,” (2020): 13.

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

151. International Labour Organization, “Building Labour Migration Policy Coherence in Myanmar,” (2017): 19.

sent recommendations on revisions, a leading trade union had yet to see a draft of the revised LROE.<sup>152</sup> Similarly, the President of the Migrant Workers Rights Network (MWRN) is also a member of the NPA monitoring committee, but despite such improvements, coordination issues remain between workers groups and the Government.<sup>153</sup> Engagement with workers organisations is seen by some in civil society as a ‘tick the box’ exercise.<sup>154</sup> Civil society has not been consulted much on migration issues by the NLD Government, much like with other sectors.<sup>155</sup>

## Thailand

Much of the relevant regulation, passed since the military coup in 2014, has been in the form of Emergency Decrees/Ordinances which, as per the Constitution, are meant “for the purpose of maintaining national or public safety or national economic security, or averting public calamity”.<sup>156</sup> Given the heavy influence of national security considerations on Thai migration policies, civil society and workers organisations are rarely consulted in the setting or review of legislation or regulations.<sup>157</sup>

The Royal Ordinance in 2017 also created a high-level Foreigners’ Working Management Policy Commission for oversight and policy formulation.<sup>158</sup> Headed by the Minister of Labour, the Commission includes nearly twenty Government officials (including senior bureaucrats from nine ministries, chiefs of the Army, Navy, Police and Intelligence and Internal Security agencies) as well as representatives of the Thai Chamber of Commerce and Federation of Thai Industry. The Minister also has the power to appoint up to two representatives of employees’ organisations and one expert each from the fields of labour, industry, law and human rights. As such it does not include workers organizations. All the non-governmental members must be Thai nationals, independent of political parties.

## 2.5 Are recruiters’/ employers’ organizations able to contribute to the setting and review of legislation, regulations and policy relevant to fair recruitment?

### Myanmar

It is unclear to what extent recruiter organisations are directly able to contribute to, or influence, legislation. However, the federation of recruitment agencies - Myanmar Overseas Employment Agencies Federation (MOEAF) - is influential. While officially set up as an independent NGO, MOEAF operates more akin to a State agency, operating under specific MOLIP regulations and with delegated responsibility with respect to monitoring of recruitment agents. Given this, it is likely to have significant influence on legislation and policy in this sector. According to a MOEAF representative, they have regular meetings with the Government and even have access to the Minister.<sup>159</sup>

### Thailand

Thailand does not have a recruitment agency association,<sup>160</sup> but many recruitment agencies in Thailand are believed to have close links to politicians and government officials, including often being owned by them or their proxies.<sup>161</sup> They may therefore be able to often influence legislation or policy. There was little consultation with employers or recruitment agencies before the 2017 FWO was passed.<sup>162</sup> Following a mass exodus of migrant workers and resultant labour shortages, there was a pushback by Thai employers leading to the deferral of some controversial provisions.<sup>163</sup> Subsequently the Ministry of Labour led an interagency process to consult with UN agencies,

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

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

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

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

156. Constitution of the Kingdom of Thailand, Section 172, 2017.

157. Migrant Working Group, “An Open Letter Subject Observations and recommendations regarding the Draft Royal Decree on the Management of Foreign Workers,” (24 May 2017).

158. See Chapter 2, Sections 17-22. Some of the revised provisions dealt with penalties for undocumented workers and for employers who hire such workers, unreported employment or employment of unlicensed workers.

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

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

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

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

163. “New foreign labour law deferred 180 days”, *Bangkok Post*, (4 July 2017); “Employment Dept warns firms against illegal brokers”, *Bangkok Post*, (10 July 2017).



diplomats and civil society and employer organisations before key amendments in 2018.<sup>164</sup> In the fishing sector, the National Fisheries Association of Thailand (NFAT) is one influential forum of employers, which has also

been leading protests against reforms in the industry in recent years.<sup>165</sup> Mongkol Sukcharoenkana, President of NFAT also told Reuters, “If the Government won’t fix the problems for us, we’ll just oust them.”<sup>166</sup>

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164. Ministry of Foreign Affairs, Thailand, “[Thailand Lifted Restrictions on Foreign Workers to Change Employers, Workplaces and Types of Work](#)”, 18 March 2018.

165. “[Govt eases fishing regulations after protests](#)”, *Bangkok Post*, (19 December 2019).

166. Patpicha Tanakasempipat, “[Thousands of Thai fishermen protest against tough industry regulations](#)”, *Reuters*, (17 December 2019).

# Assessment against the Five Corridors indicators:

## 3. Bilateral labour arrangements

- |            |  |    |
|------------|--|----|
| <b>3.1</b> | Are the agreements publicly accessible in relevant languages? Are migrant worker organizations aware of them? _____  | 40 |
| <b>3.2</b> | Does the government prioritise fair recruitment in the negotiating and drafting of bilateral agreements, including involving social partners and basing its position on evaluations of existing recruitment practices? _____ | 41 |
| <b>3.3</b> | Do bilateral agreements incorporate relevant internationally recognised human rights and labour standards? _____   | 42 |
| <b>3.4</b> | Do bilateral agreements contain specific mechanisms on fair recruitment for example on consular protection, collaboration on enforcement, and coordination on closing regulatory gaps? _____                                 | 42 |
| <b>3.5</b> | Are there effective measures - that meaningfully involve social partners - to implement and review bilateral agreements, including oversight mechanisms? _____   | 43 |

### 3. Bilateral labour arrangements

*“The process of coordinating and negotiating bilateral MOU provisions tends to be heavily influenced by national security concerns, and thus the government actors most associated with national security as well.” ILO STUDY, 2017.*

#### Summary

Thailand is a strong proponent of bilateral MOUs with respect to migration, and has signed MOUs on labour cooperation with Vietnam and neighbouring states, including Myanmar. Myanmar has additionally signed a MOU with South Korea on a Government-to-Government recruitment and memoranda/ agreements with Japan and Malaysia. None of these documents have been made available by the Myanmar authorities, much like other official documents, as they are treated as confidential. The 2016 MOU and agreement on labour cooperation between Myanmar and Thailand, replaced a previous MOU signed in 2003. These documents - like all others signed by Thailand - have been made publicly available. In 2018, an agreement was reached on recruitment of fishing workers between the two countries, as part of the MOU follow-up process, but this has not been made available by Thailand (and Myanmar). The exact text of this is not publicly known, including to unions or CSOs.

MOU negotiations between Myanmar and Thailand were not transparent - consultations were limited and there was little engagement with workers groups or unions in either country. Private recruitment agencies - central to the MOU recruitment process - appear to have had more input in the process, along with employers in Thailand. National security concerns and associated actors led the negotiations; human rights concerns are therefore unlikely to have featured prominently in the negotiations leading up to the 2016 MOU.

However, the Myanmar Government reportedly pushed back consistently on human rights concerns with respect to the fishing agreement in 2018 and was successful in securing stronger labour protections. It is not known to what extent this was influenced by either the global attention on the industry’s human rights issues or the crippling shortage of fishing workers in Thailand.

The text of the 2018 fishing agreement is not available, but the 2016 MOU and agreement between Myanmar and Thailand are light on human rights references, other than some to non-discrimination. There is no special provision/ mechanism on enforcement, and none to consular protection (although it does exist in practice). Given the Thai focus on irregular migration, the focus remains on admissions procedures, prevention of irregular migration and employment, and repatriation of migrant workers, with less focus on meeting labour market needs and the protection of migrants. Coordination between both state parties is well-covered and regularly takes place (with a varied group of government agencies represented). There is little to no parliamentary or other oversight of such agreements (and the migration process in general) in either country. The secrecy of the negotiation and the lack of consultation with relevant stakeholders resulted in a sidelining of workers’ rights. This raises concern that the MOUs are little more than bureaucratic frameworks to enable better state regulation of migration, supported by private commercial interests.

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## Recommendations to the National Unity Government of Myanmar

- In all future negotiations, press destination states to sign binding MOUs and agreements that are public, and commit both countries to protect workers' human rights and labour rights throughout the duration of their recruitment, employment and return. These agreements should explicitly bind both states to enforce the 'employer pays' principle in relation to recruitment fees, and should include oversight and dispute resolution mechanisms that include participation of key stakeholders including worker organisations.

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## Recommendations to the Royal Thai Government

- Ensure that Thai bilateral arrangements with countries supplying workers includes binding agreements that commit both countries to protect workers' human rights and labour rights throughout the duration of their recruitment, employment and return. Civil society and other key stakeholders from both countries should be involved in the drafting of these agreements, which should explicitly bind both states to enforce the 'employer pays' principle in relation to recruitment fees, and should include oversight and dispute resolution mechanisms that include participation of key stakeholders including worker organisations.

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### 3.1 Are the agreements publicly accessible in relevant languages? Are migrant worker organizations aware of them?

## Myanmar

MOUs and related agreements tend not to be made publicly available by the Myanmar authorities. On 24 June 2016, Myanmar and Thailand signed a new MOU and an Agreement on the Employment of Workers. Although the MOU has been made available online by the Thai Ministry of Labour, the more detailed agreement is not available online.<sup>167</sup> A Myanmar trade union representative said that when they asked officials for a copy of the 2016 agreement, they were refused.<sup>168</sup> According to an ILO representative, it is treated as a confidential document.<sup>169</sup> In 2018, at the Ministry level meetings built-in to the MOU process, both sides agreed on hiring of fisher workers from Myanmar, however such Bilateral Technical Meeting agreements are also treated as confidential and no details have been made public.<sup>170</sup> Most civil society and migrant worker organizations appear to be unaware as to the precise contents of these documents.

Myanmar has also signed an MOU with Korea in 2007 to participate in its Employment Permit System with recruitment undertaken by the Government Overseas Employment Agency; and Memoranda of Collaboration with Japan on Technical Intern Training Programme (2018) and Specified Skill Workers (2019).<sup>171</sup> Discussions with Laos are reported to be ongoing, while the NPA also envisages agreements with Singapore, China and the Gulf countries.<sup>172</sup> There is also a 2013 collaboration agreement for Registration, Legalisation and Deportation of Undocumented Myanmar Workers with Malaysia - but there was no MOU signed until 2019.<sup>173</sup> None of these have been made available by the Myanmar authorities.

## Thailand

The 2016 MOU and agreement with Myanmar have been made available online by the Ministry of Labour in English and Thai.<sup>174</sup> MOUs signed with Laos (Thai only), Cambodia and Vietnam (both English and Thai) are also

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167. The MOU is valid for five years, while the agreement is only valid for two years.

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

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

170. An IOM official, IOM Myanmar, remote interview, 1 October 2020.

171. Daw Aye Aye Moe MOLIP - Migration Department, "Presentation - Impact of Existing Migration Mechanisms on Migrants' Access to Social Protection," (16 September 2019), on file.

172. 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): 19.

173. Ibid, 7.

174. Memorandum of Understanding between the Government of the Kingdom of Thailand and the Government of the Republic of the Union of Myanmar on Labour Cooperation, 24 June 2016



accessible online on the same website. The 2018 Fishing Workers Agreement with Myanmar however is not similarly available - migrant worker organisations and workers themselves also do not appear to be aware of the precise text of the agreement.

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### **3.2 Does the government prioritise fair recruitment in the negotiating and drafting of bilateral agreements, including involving social partners and basing its position on evaluations of existing recruitment practices?**

#### **Myanmar**

Human rights concerns do not appear to have featured prominently in the negotiations leading up to the 2016 MOU and agreement with Thailand, but as one union leader pointed out, little detail is known about the substance of the negotiations.<sup>175</sup> An ILO representative noted that although there was a technical working group which was part of the negotiations, it was not clear to what extent human rights featured in them.<sup>176</sup> An ILO study however indicated that despite representation by a wide range of government bodies, “the process of coordinating and negotiating bilateral MOU provisions tends to be heavily influenced by national security concerns, and thus the government actors most associated with national security as well.”<sup>177</sup>

In contrast, human rights issues were more prominent in the discussion of recruitment of fishers in 2018, partly because of the EU and US pressure on Thailand. IOM was consulted and one official was seconded to the Government to assist the process in which human rights concerns were raised within the context of “migrant protection” - this is also a regular agenda item for the quarterly follow-up/ implementation meetings.<sup>178</sup> Another expert - who advised the Thai Government

on human rights in the fishing/ seafood sector - also said that human rights concerns were pushed quite strongly by the Myanmar side during negotiations for the fishing agreement in 2018, and repeated rounds of negotiations fell through because of the tough line they took.<sup>179</sup> Eventually, according to him, Thailand agreed to stronger provisions on labour protection - some going beyond Thai law - before an agreement was concluded. Myanmar’s focus on labour protection was also noted in local media.<sup>180</sup>

The NPA (2018-2022) notes that the Government will prioritise working towards improved and safe working environments for workers abroad - “recognition of minimum terms of employment and wages, and procedures for contract verification” through “dialogue and action on key protection concerns with bilateral partners from key destination countries”, particularly Thailand and Malaysia.<sup>181</sup> A MWRN representative said that the Government was consulting them and seeking their inputs with respect to the MOU - this included discussions on sectors of work previously blocked for migrants in Thailand, i.e. working in shops, and issues around social security/ returning allowance.<sup>182</sup> According to MWRN, the Government was also collecting on the ground information from groups including problems being faced by workers and questions.

#### **Thailand**

Although there are references to labour protection and fair recruitment,<sup>183</sup> the background to the MOUs is national security concerns within Thailand around restricting irregular migration and a key aim, according to the UN, remains “to build greater commitment among countries of origin to implementing the [migration] process effectively, encouraging more migrants to make use of legal channels.”<sup>184</sup> The focus of the MOUs therefore remains on admissions procedures, prevention of irregular migration and employment, and repatriation of migrant workers, with less focus on meeting labour

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

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

177. ILO Myanmar, “Building Labour Migration Policy Coherence in Myanmar,” (2017): 22.

178. An IOM official, IOM Myanmar, remote interview, 1 October 2020.

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

180. “Migrate Work Legally, Receive Full Protection,” *Global New Light of Myanmar*, (28 September 2018).

181. 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): 19.

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

183. “Thailand to sign labour agreements,” *Thai News Agency Myanmar* (22 June 2016).

184. United Nations Thematic Working Group on Migration in Thailand, “Migration Report 2019,” (2019): 2.

market needs and the protection of migrants.<sup>185</sup> There is limited evidence that human rights concerns were a significant concern from Thailand's perspective during negotiation of MOUs. The fishing agreement/ MOU finalised in 2018 - amidst ongoing attention on the fishing/ seafood industry and a shortage of workers - appears to have had more recognition of human rights concerns.

The World Bank noted that Thailand's MOU negotiation process "has not been transparent, and it has incorporated limited input from stakeholders".<sup>186</sup> A migrant advocacy group told us there was little input from civil society or unions with regards to the drafting of MOU agreements which "do not reflect the interests of workers and leave much to be desired."<sup>187</sup> According to one expert on fishers' human rights, while there was some consultation with vessel owners, operators were not consulted and the MOU fails to respond to their needs.<sup>188</sup> According to Issara, the industry is not happy with the MOU process.<sup>189</sup> A key concern was that the complicated MOU process would not be able to address the labour shortage in the fishing industry.<sup>190</sup> Industry representatives have also claimed that the MOU process took too long and that the burden of "expenses are on the employer only, causing foreign workers to have no responsibility which often results in workers fleeing to new employers."<sup>191</sup>

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### 3.3 Do bilateral agreements incorporate relevant internationally recognised human rights and labour standards?

#### *Myanmar-Thailand MOU/agreement*

The 2016 MOU and agreement between Myanmar and Thailand are light on human/ labour rights. There is no reference to specific human rights instruments. The MOU does however refer to labour law as one area to improve technical cooperation including "collective

bargaining, compliance and enforcement, resolution of labour disputes, social security and labour protection, rehabilitation, freedom of association, occupational safety and health, maritime work, unemployment insurance and management of foreign workers" (Article 2). The MOU also includes a broad reference to non-discrimination (Article 5, "right to fair treatment" subject to national laws). This is clearer in the associated agreement (Article 5, workers from Myanmar would receive the same fair treatment as local workers - no discrimination on gender, ethnic and religious differences). Article 5 also notes that workers would receive their "protection rights and benefits" in line with contracts, labour laws and regulations in force. According to media reports, the 2018 Fishing agreement has more in terms of human rights standards, but no copies are available to assess this more thoroughly.<sup>192</sup>

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### 3.4 Do bilateral agreements contain specific mechanisms on fair recruitment for example on consular protection, collaboration on enforcement, and coordination on closing regulatory gaps?

#### *Myanmar-Thailand MOU/agreement*

The Myanmar-Thailand 2016 MOU and agreement do not include any provisions on enforcement. With respect to coordination, the MOU requires the parties to work out and agree on an implementation plan (Article 7a). Senior officials are also to meet once every two years. The Agreement sets up a joint working group to hold regular meetings (at least quarterly) on implementation issues as well as a stipulation to work together to "protect the rights and benefits of workers in accordance with employment contracts including laws and regulations of the receiving country" (Article 13). According to the ILO, these meetings take place every two-three months.<sup>193</sup> The agreement also notes that any dispute between

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185. ILO Asia-Pacific, "Review of the effectiveness of the MOUs in managing labour migration between Thailand and neighbouring countries," (2015): 8.

186. Mauro Testaverde et al, "Migrating to Opportunity: Overcoming Barriers to Labor Mobility in Southeast Asia" (World Bank: 2017): 278.

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

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

189. Lisa Rende Taylor et al, "Labour Risks in the Thai and Indonesian Fishing Industries," Issara Institute, (April 2019): 5.

190. "Fishermen issue fresh ultimatum to government," *The Nation*, (1 August 2018).

191. Ministry of Labour - Thailand "Permanent Secretary" Reports 14 Guidelines Concluded from Discussions with Fishing Associations," 8 January 2019.

192. "Migrate Work Legally, Receive Full Protection," *Global New Light of Myanmar*, (28 September 2018).

193. ILO Myanmar, "Building Labour Migration Policy Coherence in Myanmar," (2017): 21-22.

employer and employee will be dealt with under ordinary Thai law (Article 12). However, according to an ILO representative, Myanmar and Thailand do collaborate when it comes to labour disputes in specific cases: “Myanmar labour officers [even] go to Thailand’s labour protection office and solve problems.”<sup>194</sup> Such interventions however appear to be rare. Although there is no reference in the Myanmar-Thailand MOU/ agreement to consular protection, it does exist in practice, with Myanmar labour attachés put in place in Thailand, as well as in other major destination countries including Malaysia and Korea (see 7.6).

### 3.5 Are there effective measures - that meaningfully involve social partners - to implement and review bilateral agreements, including oversight mechanisms?

#### Myanmar

MOLIP is the competent authority to implement the MOUs/ agreements on migration. As the focal point for management of international migration, the Migration Division within the Department of Labour/ MOLIP is “an active participant in coordination and communication relating to Myanmar’s bilateral agreements”.<sup>195</sup> According to the ILO, the MOU with South Korea has a very limited process - only one bilateral meeting every two years.<sup>196</sup> However, the MOU and agreement with Thailand involves regular meetings and participants include at least the Ministries of Home Affairs, Foreign Affairs and Border Affairs, Labour Attachés and Police including Special Branch and Anti-Trafficking Police (ATIPD).<sup>197</sup>

An IOM official told us that the Myanmar authorities

often had preparatory meetings with international organisations, migrant worker organisations and CSOs before the quarterly bilateral MOU meetings - at times even in Thailand, as alternate bilateral meetings took place there.<sup>198</sup> However, according to the ILO, engagement between MOLIP and civil society groups on migration governance remains limited and ad hoc: “High-level governmental coordination platforms such as the OESC, bilateral meetings for overseas migration, and the Parliamentary Committee on Local and Overseas Workers do not include formal, institutionalized channels for the participation of CSOs, unions, and other actors.” A Union representative also said they had never been involved in any process relating to the MOU - although they however raise such migrant worker issues in the domestic tripartite meetings where they met the Government officials.<sup>199</sup> Government authorities do however appear to consult with MOEAF regularly. According to a MOEAF representative, they even have access to the Minister although such meetings have reduced recently.<sup>200</sup> The oversight role of the Parliamentary Committee on Local and Overseas Workers too is unclear. The committee was formed in 2016 but despite potential, does not yet appear to play a significant role with respect to oversight or review of migration related issues.<sup>201</sup>

#### Thailand

The Ministry of Labour is the competent authority specified in the MOU and agreement with Thailand, but the ILO has noted previously that delegations at regular review meetings include participants from the ministries of foreign affairs and home affairs, the police, the Attorney General’s office and provincial governments.<sup>202</sup>

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

195. ILO Myanmar, “Building Labour Migration Policy Coherence in Myanmar,” (2017), 15.

196. Ibid, 21.

197. Ibid, 21.

198. An IOM official, IOM Myanmar, remote interview, 1 October 2020.

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

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

201. Han Ni, “Amyotha Hluttaw: Performing Legislative Duty Without Regard To Race, Region, Or Ideology”, *Global New Light of Myanmar*, (8 April 2019).

202. ILO Asia-Pacific, “Review of the effectiveness of the MOUs in managing labour migration between Thailand and neighbouring countries,” (2015): 23.

# Assessment against the Five Corridors indicators:

## 4. Licensing, registration and certification schemes

- 4.1** Is the system comprehensive? Does it apply to recruitment for all kinds of work? \_\_\_\_\_ 46
- 4.2** Is the licensing / registration system transparent and accessible? Can workers and other interested parties use this system to verify the legitimacy of recruitment agencies and placement offers? \_\_\_\_\_ 49
- 4.3** *Origin state:* Are worker and recruiter organizations consulted on the design and implementation of these schemes?  
*Destination state:* Are worker, recruiter and employer organizations consulted on the design and implementation of these schemes? \_\_\_\_\_ 50
- 4.4** Does the government put in place measures that incentivise ethical recruitment practices? \_\_\_\_\_ 51
- 4.5** Are employers and recruiters jointly liable/accountable for respecting workers' rights in the legislative and regulatory regime governing recruitment? \_\_\_\_\_ 51



## 4. Licensing, registration and certification schemes

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

### Summary

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

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

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

### Recommendations to the National Unity Government of Myanmar:

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

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

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

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## Recommendations to the Royal Thai Government

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

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

#### Myanmar

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

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

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

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

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

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

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

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

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

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

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

210. Name and organisation withheld, 20 February 2020.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Thailand

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

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

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

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

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

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

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

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

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

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

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

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

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

231. Ibid.



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

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

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

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

### Myanmar

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

### Thailand

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

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

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

234. ILO, "Recruitment fees and related costs: What migrant workers from Cambodia, the Lao People's Democratic Republic, and Myanmar pay to work in Thailand," (2020): 5.

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

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

237. Government of Myanmar - Ministry of Labour, Immigration and Population, "Second Five Year National Plan of Action on The Management of International Labour Migration (2018-2022)," (undated): 24.

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

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

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

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

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

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

#### Myanmar

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

#### Thailand

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

##### Myanmar

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

##### Thailand

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

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

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

##### Myanmar

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

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

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

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

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

259. Government of Myanmar - Ministry of Labour, Immigration and Population, “Second Five Year National Plan of Action on The Management of International Labour Migration (2018-2022),” (undated): 24.

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

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

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

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

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

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

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

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

### *Thailand*

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

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

267. Remote interview R1, 16 August 2020.

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

# Assessment against the Five Corridors indicators:

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

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



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

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

### Summary

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

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

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

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

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## Recommendations to the National Unity Government of Myanmar

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

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## Recommendations to the Royal Thai Government

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

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

### Myanmar

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

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

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269. Government of Myanmar - Ministry of Labour, Immigration and Population, "Second Five Year National Plan of Action on The Management of International Labour Migration (2018-2022)," (undated): 17.

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

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

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

## Thailand

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

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

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

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

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

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

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

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

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

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

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

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

280. Seafood Working Group, “Comments Concerning the Ranking of Thailand by the United States Department of State in the 2020 Trafficking in Persons Report,” (10 March 2020): 17.

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

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

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

### Myanmar

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

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

### Thailand

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

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

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

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

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

286. Government of Myanmar - Ministry of Labour, Immigration and Population, “Second Five Year National Plan of Action on The Management of International Labour Migration (2018-2022),” (undated): 10.

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

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

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

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

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

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

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

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

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

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

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

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

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

295. Seafood Working Group, “Comments Concerning the Ranking of Thailand by the United States Department of State in the 2020 Trafficking in Persons Report,” (10 March 2020): 9.

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

308. Remote interview R14, 7 September 2020.

309. Seafood Working Group, "Comments Concerning the Ranking of Thailand by the United States Department of State in the 2020 Trafficking in Persons Report," (10 March 2020): 13.

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

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

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

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

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

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

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

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

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

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

320. Seafood Working Group, "Comments Concerning the Ranking of Thailand by the United States Department of State in the 2020 Trafficking in Persons Report," (10 March 2020): 12.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

335. Seafood Working Group, “Comments Concerning the Ranking of Thailand by the United States Department of State in the 2020 Trafficking in Persons Report,” (10 March 2020): 9.

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

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

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

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

## Myanmar

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

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

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

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

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

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

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

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

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

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

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

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

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

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

348. Government of Myanmar - Ministry of Labour, Immigration and Population, "Second Five Year National Plan of Action on The Management of International Labour Migration (2018-2022)," (undated): 25-26.

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

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

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

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

## Thailand

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

366. Royal Thai Government, "Country Reports".

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

368. Seafood Working Group, "Comments Concerning the Ranking of Thailand by the United States Department of State in the 2020 Trafficking in Persons Report," (10 March 2020): 5.

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



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

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

##### Myanmar

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Thailand

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

# Assessment against the Five Corridors indicators:

## 6. Measures to prevent fraudulent and abusive recruitment

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



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

## 6. Measures to prevent fraudulent and abusive recruitment

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

### Summary

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

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

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



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

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

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

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## Recommendations to the National Unity Government of Myanmar

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

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## Recommendations to the Royal Thai Government

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



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

### Myanmar

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

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

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

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

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

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396. MOLIP, ‘Safe Migration facebook post.’ (9 January 2020).

397. MOLIP, ‘Safe Migration facebook post.’ (15 March 2019).

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

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

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

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

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

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

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

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

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

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

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

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

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

407. E.g. ILO, “Recruitment fees and related costs: What migrant workers from Cambodia, the Lao People’s Democratic Republic, and Myanmar pay to work in Thailand,” (2020); Verite, “Thailand Bound,” (May 2019); Issara Institute, “Developing a Financially Viable Ethical Labour Recruitment Model: Prospects for the Myanmar-Thailand Channel,” (2018).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Thailand

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

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

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

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

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

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

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

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

438. ILO, “[Recruitment fees and related costs: What migrant workers from Cambodia, the Lao People’s Democratic Republic, and Myanmar pay to work in Thailand](#),” (2020): 81.

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

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

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

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

443. ILO, “[Recruitment fees and related costs: What migrant workers from Cambodia, the Lao People’s Democratic Republic, and Myanmar pay to work in Thailand](#),” (2020): 37.

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

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

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

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

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

### Myanmar

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

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

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

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

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

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

448. ILO, "Recruitment fees and related costs: What migrant workers from Cambodia, the Lao People's Democratic Republic, and Myanmar pay to work in Thailand," (2020): 10.

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

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

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



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

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

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

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

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

## Thailand

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Myanmar

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

464. ILO, "Recruitment fees and related costs: What migrant workers from Cambodia, the Lao People's Democratic Republic, and Myanmar pay to work in Thailand," (2020): 5.

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

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

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

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

469. ILO, "Recruitment fees and related costs: What migrant workers from Cambodia, the Lao People's Democratic Republic, and Myanmar pay to work in Thailand," (2020): 38.

470. ILO, "Recruitment fees and related costs: What migrant workers from Cambodia, the Lao People's Democratic Republic, and Myanmar pay to work in Thailand," (2020): 40.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

480. Remote interview R8, 29 September 2020.

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

## Thailand

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

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

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

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

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

482. ILO, “Recruitment fees and related costs: What migrant workers from Cambodia, the Lao People’s Democratic Republic, and Myanmar pay to work in Thailand,” (2020): 25. This was significantly higher than those from Cambodia and Laos

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

497. Seafood Working Group, “[Comments Concerning the Ranking of Thailand by the United States Department of State in the 2020 Trafficking in Persons Report](#),” (10 March 2020): 28.

498. CSO Coalition for ethical and sustainable seafood, “[Falling through the Net: A survey of basic labour rights among migrants working in Thailand’s fishing sector](#),” (undated), 42-46.

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

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

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

502. Remote interview R12, 31 August 2020.

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

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

505. See 1.7



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

### Myanmar

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

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

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

### Thailand

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### Myanmar

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

522. Seafood Working Group, “Comments Concerning the Ranking of Thailand by the United States Department of State in the 2020 Trafficking in Persons Report,” (10 March 2020): 25.

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

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

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

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

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

## Thailand

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

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

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

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

# Assessment against the Five Corridors indicators:

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

- 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? \_\_\_\_\_ 85
- 7.2** Are grievance mechanism processes accessible in practice, rapid and free of complex administrative procedures? \_\_\_\_\_ 85
- 7.3** Are workers provided with remedy including compensation as a result of such grievance procedures? \_\_\_\_\_ 90
- 7.4** Are workers raising grievances and whistleblowers effectively protected from retaliation, including deportation? \_\_\_\_\_ 92
- 7.5** Are workers provided with free independent legal advice on judicial and non-judicial options to raise grievances and seek remedy? \_\_\_\_\_ 93
- 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? \_\_\_\_\_ 93



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 redress.<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 Rungreangphasuk, MAP Foundation, interview, 2 February 2020.

565. Sutthisak Rungreangphasuk, 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. Sugarnata 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.

# Assessment against the Five Corridors indicators:

## 8. Information provided to workers

- 8.1** Do government websites contain relevant information regarding fair recruitment policies, legislation, regulation, and processes? Does the government conduct outreach, including publishing “how-to” guides online, public service announcements on radio and/or television; or webinars etc? \_\_\_\_\_ 97
- 8.2** Does the government carry out effective pre-departure orientations, including providing training regarding workers’ rights and fair recruitment for potential migrants? \_\_\_\_\_ 98
- 8.3** Does government encourage outreach to workers by employers, workers’ organizations, compliant labour recruiters and civil society groups? \_\_\_\_\_ 99
- 8.4** Does the government make labour market information publicly available so as to inform decision making by workers, employers and labour recruiters? \_\_\_\_\_ 101
- 8.5** Does the government collaborate with the ILO and the most representative employers’ and workers’ organizations to provide education and training and /or conduct awarenessraising campaigns? \_\_\_\_\_ 102

## 8. Information provided to workers

*“Maybe we should ask Daw Aung San Suu Kyi to make a video clip for us on safe migration as she has done for the [Covid-19] wash-hands campaign. There are still many people we are not able to reach. A person like Daw Aung San Suu Kyi making a video clip - it would reach the whole country.”* A TRADE UNION REPRESENTATIVE, SPEAKING BEFORE THE FEBRUARY 2021 COUP.

### Summary

There is a lack of reliable and accessible information about migration in Myanmar, particularly in the rural areas where most of the prospective migrants are. Workers are therefore effectively pushed towards the ubiquitous broker, eventually resulting in higher recruitment costs. This is aided by a 1959 law prohibiting recruitment agencies from operating offices outside Yangon and MOLIP directives which forbid advertising by recruitment agencies. Although the latter is not strictly followed and some job-information is available on social media, websites are largely basic and often incomplete or out of date. The MOLIP ‘safe migration’ facebook page is a more useful source of practical information in Burmese for workers. A three-day pre-departure orientation carried out by recruitment agents is mandatory for migrants going to all countries, other than Thailand, because of the sheer scale of workers migrating there. This is ironic as these workers tend to be the least educated and experienced and would benefit the most from pre-departure training. Instead, all they receive is a basic session explaining the contract and working conditions immediately before the signing ceremony in Yangon, and a brief presentation on Thailand immediately prior to entering. In addition, trade unions and CSOs carry out their own training programmes but these are often limited in number and oversubscribed. CSOs and unions face restrictions and bureaucratic hurdles from local authorities, even when conducting their own outreach work. Increased cooperation between Government, CSOs and unions is therefore an obvious solution to improve information for workers.

Information made available by Thai authorities invariably focuses on those already in the country. Official websites provide some basic information, laws and regulations, cabinet resolutions, updates and detailed statistics, but these are mostly in Thai and thereby inaccessible to workers. Documents are also often outdated. Thai authorities do however produce material in various languages covering rights and duties of workers as also documents for irregular and undocumented workers already in the country. These include announcements about the regularisation process and warnings about registration deadlines. Similar information is also circulated via newspapers, internet videos and social media. Thai authorities have also collaborated extensively with the ILO, particularly on labour protection in the fisheries and seafood processing industry. There is good cooperation with NGOs who assist the ten Government Migrant Worker Assistance Centres, and the three ILO-supported Migrant Worker Resource Centres. In recent years, there has been increased collaboration in the fishing-seafood sector with NGOs also supporting the five Post-arrival and Reintegration Centres which also screened new workers and verified employment contracts. A number of seafarers’ centres have also been set up by NGOs and Government collaborating to provide advice and support to fishers. NGOs also often conduct their own events with migrants able to directly raise concerns with government officials. Many such ‘engagement’ events however tend to be proforma and/or symbolic.

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## Recommendations to the National Unity Government of Myanmar

- Require that migrant workers to Thailand also receive the mandatory pre-departure orientation, which should be undertaken in consultation with workers groups and civil society groups and with recruitment agencies excluded.
- Increase cooperation with CSOs and unions ensuring that workers receive pre-departure and other necessary labour market information, including in rural areas so that they can make an informed decision to migrate.

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## Recommendations to the Royal Thai Government

- Ensure that all information relevant to migrant workers - including laws, guidelines, information on fees/costs, particularly related to the complex and lengthy MOU process - is available in Burmese and other languages used by workers.

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### 8.1 Do government websites contain relevant information regarding fair recruitment policies, legislation, regulation, and processes? Does the government conduct outreach, including publishing “how-to” guides online, public service announcements on radio and/or television; or webinars etc.

#### Myanmar

Some basic information regarding recruitment is available on the DOL/MOLIP website, including the 1999 LROE, but relevant Ministerial regulations and guidelines

including on fees are not available. The website also provides a 2019 list of licensed overseas agents, but the information on suspension and withdrawn licenses does not appear to be regularly updated. There are relevant news updates every few days according to one civil society activist.<sup>646</sup> MOLIP has prepared guides on how to legally migrate to Thailand and Malaysia and how to apply for a passport and shared them on their website.<sup>647</sup> A recent World Bank study however noted that information on the DOL website “is difficult to find, and some of it is out of date and incomplete. Most of the information is only available in the form of PDFs or pictures, which migrants tend to avoid because viewing them incurs data charges on their mobile phones.”<sup>648</sup> A more relevant forum is MOLIP’s ‘Safe Migration’ facebook page - this practical migration information in Burmese and particularly useful given the wide prevalence and usage of facebook in Myanmar and Thailand.

A BBC Media Action radio-project (Yay Kyi Yar or ‘Towards clearer waters’) regularly interviews government and MOEAF officials or CSO representatives and former migrants to provide more information on the migration process and the risks and opportunities of migration.<sup>649</sup> This however has limited reach.<sup>650</sup> According to one union representative, the Government has done some outreach in collaboration with IOM - distributing pamphlets and through radio and tv, but the most effective is probably their facebook page. A civil society representative pointed out that the government is not able to reach out to the public adequately, not specifically on this matter but on the whole, and therefore they rely on ILO and CSOs. They recommended Parliamentarians also sharing accurate information on migration in their constituencies, often they are asked questions in public meetings and give wrong or misleading information.<sup>651</sup> Another civil society representative illustrated the poor spread of information - according to him most migrants in the Kayin state did not even know they could apply for a passport in the state capital and didn’t need to go to Yangon to do so.<sup>652</sup> A trade union representative, alluding to a recent successful campaign, suggested “Maybe we should

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

647. MOLIP, “Curriculum books for migrant workers to prepare before leaving the country,” (undated) (Burmese).

648. Mauro Testaverde, Harry Moroz, Puja Dutta, “Labor Mobility As a Jobs Strategy for Myanmar,” (World Bank: 2020), 121.

649. “Yay Kyi Yar: Making the most of migration and money,” BBC Media Action, (undated).

650. Name and organisation withheld, 20 February 2020.

651. Name and organisation withheld, 25 February 2020.

652. Name and organisation withheld, presentation at FairSquare meeting in Yangon, 16 March 2020.

ask Daw Aung San Suu Kyi to make a video clip for us on safe migration as she has done for the wash-hands campaign. There are still many people we are not able to reach. A person like Daw Aung San Suu Kyi making a video clip - it would reach the whole country.”<sup>653</sup>

The inconsistency with respect to information is symptomatic of the broader lack of information sharing by ministries and government agencies in Myanmar, which had a first civilian government after decades of military rule, and has now returned to military rule. The National Plan of Action for the management of international Labour Migration (2018-2022), itself not a publicly available document, includes a specific aim to strengthen the Department of Labour’s website “for migrant workers and Recruitment Agencies including clear information on all aspects of recruitment.”<sup>654</sup>

## Thailand

Websites of the Ministry of Labour and the Department of Employment list a number of relevant laws and regulations relating to recruitment and employment of migrant workers, cabinet resolutions and regulatory updates. Although there are some quasi-official translations of documents in English, most information is only in Thai. Few of the workers from Myanmar are likely to read either language.<sup>655</sup> As a civil society group has noted, there are no official resources that clearly outline the complex and lengthy MOU process for migrant workers who wish to come to Thailand.<sup>656</sup> The Thai authorities do however produce material in languages spoken by the main migrant communities, but the focus tends to be more on the workers already in the country, and not on the recruitment process. The informational material includes announcements/warnings about registration deadlines and extensions with respect to regularising workers already in Thailand,<sup>657</sup> or explaining the rights and duties of

workers. E.g this manual for training foreign workers in Thailand (in Thai and Vietnamese) covers details on general knowledge about Thailand, contract and benefits, safety and hygiene, laws and prohibitions and getting help in Thailand.<sup>658</sup> In 2016, the MOL produced pamphlets, including on worker rights and forced labour in four languages and also “disseminated information through various channels as newspapers, social media, information pamphlets, and press releases.”<sup>659</sup> The Thai authorities have produced information aimed at Thai audiences, including a series of videos to promote migrant workers and explain the benefits for migrant workers.<sup>660</sup> Following a 2017 notification whereby fishing workers were to receive wages only via bank transfers, the Ministry of Labour collaborated with the ILO in producing public relations leaflets and videos for fishing crews in three languages: Thai, Myanmar and Cambodian, with the aim of raising awareness among fishing crews on the benefits of wage payment via a bank account.<sup>661</sup>

## 8.2 Does the government carry out effective pre-departure orientations, including providing training regarding workers’ rights and fair recruitment for potential migrants?

### Myanmar

Currently, a free of charge three-day overseas employment orientation programme conducted by MOLIP is compulsory for workers heading abroad, except Thailand. According to the Director of the Migration Division of MOLIP, it includes “full information about their proposed employment, a valid contract, and cultural awareness, occupational safety health employment law, rights and obligations of both the worker and employer, and contact information for embassy and Labour] Attaché].”<sup>662</sup> According to a World

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

654. Government of Myanmar - Ministry of Labour, Immigration and Population, “Second Five Year National Plan of Action on The Management of International Labour Migration (2018-2022),” (undated): 24.

655. Ministry of Labour, <https://www.mol.go.th/en/>; Department of Employment, <https://www.doe.go.th/prd/>

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

657. E.g. Ministry of Labour, “Guidelines for managing foreign workers according to the cabinet resolution on January 16, 2018,” (undated), (Thai).

658. Ministry of Labour, “Manual for training foreign workers who are allowed to work in Thailand,” (undated), (Thai/ Vietnamese).

659. Royal Thai Government, “Thailand’s Country Report on Anti-Human Trafficking Response 2016,” (undated), 23.

660. Public Relations Division, “Foreign workers benefits,” (27 June 2018) and “Various benefits of foreign workers,” (26 June 2020)

661. Royal Thai Government, “Summary Thailand’s Country Report on Anti-Human Trafficking Response 2017,” (undated), 23.

662. Daw Aye Aye Moe, MOLIP - Migration Department, “Presentation - Impact of Existing Migration Mechanisms on Migrants’ Access to Social Protection,” (16 September 2019), on file.



Bank study, the Migrant Worker Division and the Skills Development Division (part of the Department of Labor) operate pre-departure training centers in North Dagon Township in Yangon and Mandalay. The Migrant Worker Division provides guidelines on the curriculum and is informed when workers want to attend the pre-departure orientation. The Skills Development Division provides the tutors for the training courses and support for curriculum development.<sup>663</sup>

For workers who intend to work in Thailand, there is no mandatory 3 day training but a shorter orientation. Officials of the Department of Labour/MOLIP along with representatives of the Myanmar recruitment agency and the Thai employer are required to explain the employment contract and working conditions prior to the contract being signed. Furthermore, immediately prior to entering Thailand, officials from the DOL and Department of Immigration also make presentations and talks covering “Do and Don’ts” and brief information for workers to follow while working in Thailand. The pre-departure orientation for workers going to Thailand is rather rudimentary according to civil society activists and union representatives.<sup>664</sup> An ILO representative also agreed, stressing that the workers are often tired at this stage and cannot concentrate, having traveled long distances from different states and waiting for many hours.<sup>665</sup>

Although the MOEAF Vice-chairman acknowledges that the workers going to Thailand need the training the most, the reason it is not mandatory is the sheer scale. “There is no space big enough to provide this training for Thailand ... There are hundreds and thousands of workers. On the day, three or four agencies bring their workers to sign the contract on the same day, and they each bring one hundred or two hundred workers - there is not enough space.”<sup>666</sup> Some recruitment agencies do however provide some training, particularly for factory workers. This can be rather basic, as one 39-year-old man explained, “they teach you Thai words, how to say food, how to say water, and a little bit about Thai culture.”<sup>667</sup> In other instances, workers told us that the only training they received was by CSOs.<sup>668</sup>

The NPA acknowledges the importance of providing relevant pre-departure training for migrant workers.

It therefore seeks to review the effectiveness of the current scheme (timing, method of delivery, content and location (3.1.3) and develop a national standardized pre-departure curriculum (but with specific destination country information) covering cultural orientation, language training, working conditions, financial literacy, occupational safety and health, and HIV/AIDS, rights and responsibilities of migrant workers. Such curriculum to be adopted by MOLIP and MOEAF would be “delivered by a certified cadre of trainers at agencies independent from recruitment agencies.” (3.2.1). The NPA also envisages development of a “sector-specific training package, including on safe migration” in high outmigration areas along the border (3.2.2). Lastly, the introduction of “a system of trained counsellors based in MRCs, LEOs and other migrant advice centres and that support pre-departure programmes and provide advice at different stages of the migration cycle.” (3.2.3)

The importance of pre-departure information cannot be overstated. As one worker whose friends were arrested in Thailand for illegally working on ‘restricted jobs’ stressed, “I want to say before you come to Thailand make sure you study, you know the work, the recruitment company didn’t tell us clear information, the clear law, we didn’t know that you cant work certain jobs on the site. They just told us it’s a construction site, we thought we could work at everything on a construction site.”<sup>669</sup>

### 8.3 Does government encourage outreach to workers by employers, workers’ organizations, compliant labour recruiters and civil society groups

#### Myanmar

The NPA (2018-2022) acknowledges that there is a “lack of reliable and widely accessible information about migrating for employment, especially in more remote areas of Myanmar” and that such “absence of an environment that promotes informed decision-making on migration for employment creates personal

663. Mauro Testaverde, Harry Moroz, Puja Dutta, “Labor Mobility As a Jobs Strategy for Myanmar,” (World Bank: 2020), 105.

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

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

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

667. Interview P8, Chiang Mai, 30 September 2020.

668. Interview P11, Myawaddy, 2 February 2020; Interview P13, Myawaddy, 2 February 2020.

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

and social problems for workers”.<sup>670</sup> It recognises that efforts have been made by the DOL, in collaboration with international organizations, NGOs and civil society groups to introduce significant measures to prepare migrants for overseas employment but notes “challenges in extending their reach to more remote areas of Myanmar and to migrants who migrate to Thailand through informal channels.”<sup>671</sup> It therefore aims to establish, “in close collaboration with CSOs, a pre-migration supporting and capacity building programme for households in high outmigration areas to improve household planning for employment abroad” (3.1.1), along with implementing public information campaigns aimed at potential migrants (3.1.2). Such campaigns would cover information on procedures, costs, rights and responsibilities and risks of irregular migration.

Recruitment agencies were generally unable to open offices outside Yangon until 2019.<sup>672</sup> MOLIP directives further restrict advertising, ensuring that rural residents are solely reliant on the local sub-agents of recruitments or brokers. The frontline service providers for outreach activities are the 91 Labour Exchange Offices (LEOs) in Myanmar which are also meant to provide information to potential migrants about migration,<sup>673</sup> (along with services for migrants from pre-departure to return and reintegration).<sup>674</sup> In addition, there are currently 15 Migrant Worker Resource Centres (MRCs) throughout the country. At least seven of these are supported by the ILO, while four are supported by IOM.<sup>675</sup> The MRCs are operated either at the LEOs or operate in collaboration with those offices. According to MOLIP, the MRC are specialised centres “for local workers to know about the migration process and migrant workers to know the necessities in the whole process of formal migration, for job seekers who want to work abroad and prospective migrants to get the necessary information and job opportunities, for migrant workers to know their rights

and responsibilities to follow and apply, to protect and provide support to migrant workers through migrant resource centers.”<sup>676</sup>

The MRCs are not widely known by local people yet. According to a civil society organisation they are also not yet up to the task, “sometimes when workers go and ask at MRC, they cannot give concrete answers or no officer is in the office. The capacity of the government officers also needs to be built. The policy itself might be good, but the implementation is weak.”<sup>677</sup> The Government of Myanmar appears to be aware of such shortcomings, the NPA plans to conduct capacity building of staff in LEOs, MRCs and MACs “to ensure effective factual and migrants friendly service provision”.<sup>678</sup> An ILO representative told us that they provide technical support including training as well as materials such as computers, furniture.<sup>679</sup> The ILO has also appointed a full time national consultant to work closely with LEO staff who are running the co-located MRCs.

Civil society organisations and trade unions are however dissatisfied with the Government’s interactions with them with respect to outreach work. As one union representative pointed out, although they did undertake some training programmes with DOL and commonly involved anti-trafficking police and local administration in their ongoing activities, they could do a lot more outreach as they already had representatives all over the country.<sup>680</sup> Another union representative pointed out that not only did the government fail to encourage them in their outreach activity, but instead faced restrictions from the local administration in rural areas even when carrying out such activities on their own.<sup>681</sup> A civil society representative also told us that bureaucratic hurdles by local administration were common in granting permission for such activities in rural areas.<sup>682</sup> Another civil society representative suggested that one reason

670. Government of Myanmar - Ministry of Labour, Immigration and Population, “Second Five Year National Plan of Action on The Management of International Labour Migration (2018-2022),” (undated): 10.

671. Government of Myanmar - Ministry of Labour, Immigration and Population, “Second Five Year National Plan of Action on The Management of International Labour Migration (2018-2022),” (undated): 10.

672. Conversation with ILO representative (2021). The legal basis for this restriction, which ILO representations said was lifted in 2019, is not fully clear.

673. MOLIP, “Job and employment offices in regions and states,” (undated), (Burmese). According to a civil society network however the number is 96, Mekong Migration Network, “Safe from the Start,” (July 2017), 40.

674. ILO Myanmar, “Building Labour Migration Policy Coherence in Myanmar,” (2017): 19.

675. ILO, “TRIANGLE in ASEAN: Migrant Worker Resource Centres in Myanmar,” (undated).

676. MOLIP, “Services available at Migrant Support Centres,” (undated) (Burmese).

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

678. 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): 27-28.

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

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

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

682. Name and organisation withheld, 20 February 2020.

for this was that CSOs were seen as trouble-makers and were not popular with MOEAF and recruiting agencies.<sup>683</sup> Following Myanmar's February 2021 coup, a number of unions and CSOs actively helping migrant workers were banned and their senior leadership targeted for arrest. The full extent of the impact of the ensuing political and economic crisis on Myanmar's migrant workers remains to be seen.

## Thailand

In 2016, the Department of Employment (DOE) of the Ministry of Labour (MOL) established ten Migrant Workers Assistance Centers (MWACs). These were set up in provinces with a high migrant worker population, with an aim to protect and promote rights of migrant workers. Between 2016 and 2019, 124,515 migrant workers sought support from the MWACs - over half (73,034) of those who sought assistance were workers from Myanmar.<sup>684</sup> According to an ILO study, approximately 60% of the workers sought general counselling advice and legal assistance (e.g. questions concerning living and working conditions), while 38% had "recruitment or employment-related requests, such as approval of the change of employment or renewal of a work permit".<sup>685</sup>

The Ministry works in partnership with NGOs to provide assistance and interpretation for migrant workers at ten Migrant Worker Assistance Centres.<sup>686</sup> In fact, one ILO study found that most migrant workers became aware of MWACs only through local CSOs.<sup>687</sup> In Mae Sot, the local MWAC and the Human Rights and Development Foundation (HRDF) have established a working group to improve collaboration by identifying key challenges and creating an action plan for the MWAC.<sup>688</sup> Although one specific objective of the MWAC is to strengthen coordination with CSOs no budget is earmarked for this objective, which invariably limits the outreach work. The ILO has therefore recommended that the Government explore the possibility of providing financial support to

CSOs, including by a channel or mechanism by which they can apply for funding.<sup>689</sup>

## 8.4 Does the government make labour market information publicly available so as to inform decision making by workers, employers and labour recruiters?

### Myanmar

Although there is a fairly evolved system of sharing labour market information for jobs within Myanmar, according to a World Bank study LEOs generally do not have much information about employment opportunities abroad. Instead, they act to link jobseekers with licensed overseas employment agencies.<sup>690</sup> In a highly competitive market, the officials at MRCs/LEOs have to narrow down from a list of several hundred licensed agencies "by identifying those agencies that send the most migrants to the destination country of interest or those based on personal knowledge of reputable agencies", although an ILO-supported ranking system by MOEAF is also reported to be in use. State/region DOL offices also host job fairs to introduce jobseekers to overseas employment agencies. One recruitment agent told us that even though he did not send workers to Thailand, he would often get calls about it and would refer the person to other agencies who did so, "because I am worried that, if I say I don't know and they would get into brokers' hands."<sup>691</sup>

Non-state agencies disseminating labour market information include IOM, through its regional IOM X campaign videos and its "Miss Migration" facebook page which includes Burmese language information about migration and a chat bot to answer queries.<sup>692</sup> One CSO intervention which is particularly promising, given the significant increase in mobile phone penetration, is

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

684. ILO, "Ensuring migrant workers access to justice: An assessment of Thailand's Migrant Workers Assistance Centers," (2020): 10.

685. ILO, "Ensuring migrant workers access to justice: An assessment of Thailand's Migrant Workers Assistance Centers," (2020): 11

686. Royal Thai Government, "Thailand's Country Report on Anti-Human Trafficking Response 2019," (undated): 47.

687. ILO, "Ensuring migrant workers access to justice: An assessment of Thailand's Migrant Workers Assistance Centers," (2020): 15.

688. ILO, "Ensuring migrant workers access to justice: An assessment of Thailand's Migrant Workers Assistance Centers," (2020): 17.

689. ILO, "Ensuring migrant workers access to justice: An assessment of Thailand's Migrant Workers Assistance Centers," (2020): 22-23.

690. Mauro Testaverde, Harry Moroz, Puja Dutta, "Labor Mobility As a Jobs Strategy for Myanmar," (World Bank: 2020), 119.

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

692. IOM, "Miss migration facebook page" (undated). Mauro Testaverde, Harry Moroz, Puja Dutta, "Labor Mobility As a Jobs Strategy for Myanmar," (World Bank: 2020), 120.

Issara's 'Golden Dreams' smartphone application. In addition to providing information on workers' rights and resources, news and changes in regulation, the app also provides job-postings along with the ability to see user-ratings and reviews of approved recruitment agencies.<sup>693</sup> However technical issues (poor quality phones and slow internet) and local practice of commonly changing SIMs (requiring a fresh download every time) are reported to have limited the broader-use of the app.<sup>694</sup>

The significant gaps of information with respect to job availability pushes workers towards informal brokers or sub-agents of licensed recruitment agencies. According to the MOEAF vice-chairman, even they do not always get labour market data from the government although they are informed of changes in rules and regulations.<sup>695</sup>

The NPA seeks to identify and expand the labour market for Myanmar overseas workers. Amongst the plans is strengthening the "Research and Training Division of the DOL to conduct foreign labour market studies; collaborating with the private sector (MOEAF and others) to develop and implement a plan to increase employer demand for Myanmar workers abroad; and undertaking marketing study visits to help diversify the foreign labour market. At the same time, the Government will collaborate with its partners to identify skills that are in greatest demand in receiving countries and work to provide access to training in these skills set areas. This will be supported by increasing migrants' access to 'soft skills' training (such as language) and exploring mainstreaming skills development into national pre-departure training for migrants."<sup>696</sup>

Labour market information is also not shared with civil society groups and unions. A union representative said that they did not know where such information would be available.<sup>697</sup> Similarly a civil society member told us that the only information available would be through interviews, which were often inconsistent.<sup>698</sup> A migrant workers association representative suggested that

MOEAF was possibly better informed with respect to the labour market than the Government.<sup>699</sup>

## Thailand

Labour market information is not made available by the Thai authorities. This makes workers and Myanmar agents wholly reliant on Thai recruitment agents for information on available jobs, further tilting the balance of power in the favour of Thai recruiters and employers. The Thai authorities routinely publish statistics on the number of migrant workers in Thailand through regular channels, including breakdowns of the various schemes they are hired under, the provinces where they work and the countries of origin.<sup>700</sup> There is however no definitive number of irregular migrant workers in Thailand.<sup>701</sup> Such statistics are also politically sensitive and often contested by senior government officials.<sup>702</sup> The unwillingness of Thai officials to publicly acknowledge the scale of the migrant labour workforce in Thailand almost makes it challenging for migrant worker advocates to have a public dialogue with officials on issues relating to migrant workers.

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## 8.5 Does the government collaborate with the ILO and the most representative employers' and workers' organizations to provide education and training and/or conduct awareness-raising campaigns?

## Myanmar

Training and orientation programmes for migrant workers going to Thailand are often carried out by trade unions but as one representative explained these

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

694. Mauro Testaverde, Harry Moroz, Puja Dutta, "Labor Mobility As a Jobs Strategy for Myanmar," (World Bank: 2020), 120.

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

696. 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): 18.

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

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

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

700. Ministry of Labour, "Work statistics of aliens," (undated).

701. United Nations Thematic Working Group on Migration in Thailand, "Thailand Migration Report 2019," (2019): 161.

702. Max Tunon and Benjamin Harkins, "Addressing Irregular Migration and Violations of Migrant Workers' Rights" in *Safeguarding the rights of Asian migrant workers from home to the workplace* (ADB Institute: 2017), 39-62.

were limited in number and always oversubscribed - at times attended even by 200 in a training session designed for 35 workers.<sup>703</sup> According to one civil society representative, the Government could address the shortage by greater collaboration with CSOs who also provide such training.<sup>704</sup> He highlighted that local CSOs were working in all states and divisions and a Government scheme of 'Training of Trainers' certification along with collaboration by local administration or authorities could significantly help. This would also not place too much burden on the government.

## Thailand

The ILO has also set up three Migrant Worker Resource Centres in Thailand - in Mae Sot, Chiang Mai and Bangkok with Homenet, MAP foundation and HRDF respectively.<sup>705</sup> These MRCs offer legal aid when migrant workers' rights are abused at work or in the destination community, serve as an accessible link to the local authorities and deliver training. Thai authorities also collaborate extensively with the ILO, but with respect to migrant workers the focus has tended to be on labour protection, including in the fisheries and seafood processing industry (Ship to Shore project).<sup>706</sup> Other areas of focus funded by the EU and US also include on trafficking and violence against women. Government officials also commonly participate in events organised by NGOs where migrant worker representatives are encouraged to voice their concerns in a town-hall

format. We attended one such event organised by the Labour Protection Network (LPN) in Mahachai in December 2019 and another in Mae Sot in February 2020.

There has been significant collaboration in the seafood sector, following international criticism over workers right issues. The Thai Government established five Post-arrival Reception and Reintegration Centres along the border to ensure migrant workers received adequate information about their rights and were screened to identify cases of human trafficking and verification of employment contracts. In 2017, 250,000 migrant workers attended the training courses at the Centres and received guidelines on life in Thailand, employment contracts, rights, safety, relevant laws and the complaint mechanisms.<sup>707</sup> In 2018 Thailand also created a working group on labour promotion in fishing which included a number of leading NGOs.<sup>708</sup> The Stella Maris Seafarers Centre was set up in Songkhla Province - in collaboration with the DLPW and the Fish Marketing Organization - along with Fisher's Welfare Centres in Chonburi, Rayong and Pattani Provinces to provide health and counselling services as well as information on their risks and rights. The Authorities also work with the LPN Fishermen Centre set up in 2017 at Samut Sakhon Fish Market to monitor exploitation of labour in the fisheries sector and provide assistance for Thai and migrant fishers who have suffered abuse. A Workers' Protection Network on the Line Smartphone Application has also been set up to receive complaints and share information.<sup>709</sup>

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

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

705. ILO, "TRIANGLE in ASEAN: Migrant Worker Resource Centres in Myanmar," (undated).

706. Royal Thai Government, "Thailand's Country Report on Anti-Human Trafficking Response 2019," (undated), 85-86.

707. Ministry of Foreign Affairs, "Thailand's Comments on Report on Labour Situation in Fishing Industry of Human Rights Watch," (25 January 2018).

708. Ministry of Foreign Affairs, "Thailand Joins Hands with NGOs Establishing Labour Network in Sea Fisheries Sector," 8 March 2018.

709. Royal Thai Government, "Thailand's Country Report on Anti-Human Trafficking Response 2019," (undated), 51-52.



# Assessment against the Five Corridors indicators:

## 9. Freedom of association

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Members of the Network of Domestic Workers in Thailand shares information about their legal rights with other domestic workers and passers-by in downtown Bangkok, 2017. © Pi Noy from HomeNet / IDWF

## 9. Freedom of association

*“I have never heard of labour organizations inside the factory. Maybe there’s a worker union among Thai workers but I never heard of one with Burmese workers.”* 30-YEAR-OLD FACTORY WORKER, THAILAND.

### Summary

Thailand’s new 2017 constitution recognises the rights to freedom of association, expression, and assembly. However there are significant restrictions - both in law and in its implementation, including against Thai and migrant workers and advocacy groups. The only ILO fundamental conventions not ratified by Thailand relate to freedom of association and the right to organise and collectively bargain. Workers generally have a right to establish and join trade unions, but the majority are excluded, i.e. public sector workers, informal/ temporary workers, those sub-contracted or in seasonal agriculture. Laws governing unions are restrictive, there is significant resistance from employers and enforcement of workers’ rights is poor. Less than 2% of the overall workforce is currently unionised.

Conditions for unions deteriorated following the 2014 coup, and several union officials have since been detained/ prosecuted in high-profile trials for their normal union duties. In 2019 the US withdrew trade privileges to Thailand due to its “failure to adequately provide internationally-recognized worker rights... such as protections for freedom of association and collective bargaining”.

Freedom of association is even more restricted for migrant workers who have a right to join an existing union, but not the right to establish or lead one. This makes the right symbolic, given the already low unionisation in Thailand and the fact that most migrants work in sectors with few Thai workers. Language barriers and rampant discrimination also make it difficult to Thai and migrant workers to unionise together. Instead, migrant workers

rely on unregistered worker associations or civil society groups to highlight their interests. Collective bargaining is recognised by Thai labour law, even without a union, and worker organizations are involved in such efforts, but there are few protections in practice. Migrant workers, often in debt and at risk of being fired/ deported, are highly disadvantaged in such a context. Thai labour law also recognises the right to strike, albeit only when collective bargaining has failed, but authorities use overly broad powers to prohibit such action.

In Myanmar, despite a first civilian-led government, there had been insufficient corresponding increase in democratic space. Freedom of expression and assembly, while recognised, are not always easy to practice, particularly against interests of the military, which remains powerful - both politically and economically. Human rights defenders, protesters, journalists, and media workers are routinely threatened with arrest and prosecution and self-censorship is widespread. Public assemblies require five day notice and prior governmental approval. Although registration of CSOs is no longer

mandatory, the Government privileges registered organisations. After approximately 50 years of being unlawful, trade unions are now legal in Myanmar but restrictions remain, including on workers joining unions of their choice. Relationships between local authorities and unions are beset with bureaucratic hurdles. Collective bargaining and the right to strike have also been recognised in law, but significant restrictions remain in law and there are insufficient protections for workers taking such action. Employers actively discriminate against workers who join a union. Regardless, there has been increased unionisation, and some unions are playing an important role with respect to migrant worker assistance and outreach, particularly as they have existing reach in rural areas. Much more, however would be possible, with improved union-government relations. The military coup of 1 February 2021 has however dashed any such hopes in the near future, as a number of unions and CSOs have been banned, as part of the crackdown on pro-democracy voices which has severely limited freedoms of expression and assembly.

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## Recommendations to the National Unity Government of Myanmar

- Urgently reaffirm the right to freedom of expression and assembly in Myanmar and ensure that peaceful protest is not suppressed.
  - Recognise the important role played by trade unions, including with respect to migrant worker assistance and outreach in rural areas, and prioritise improved union-government relations.
- 

## Recommendations to the Royal Thai Government

- Ratify ILO conventions related to freedom of association and the right to organise and collectively bargain.

- Ensure that migrant workers have the same right to freedom of association as Thai nationals, including being able to establish or lead unions. Ensure that all workers, including migrant workers, are not discriminated against or penalised for membership of a union or for carrying out collective bargaining, exercising their right to strike.
- 

### 9.1 Do workers have the legal right to form and join unions, and can they strike and collectively bargain?

#### Myanmar

After approximately fifty years of being unlawful, trade unions are now legal in Myanmar. The 2008 Constitution required the enactment of “necessary laws to protect the rights of workers” (Section 24). The 2011 Labour Organisation Law (LOL) recognised the right of all

workers - other than police officers - to join a labour union (Section 3). However the same provision also notes that workers can only join organizations of the category of trade or activity related to them. The International Trade Union Confederation (ITUC) notes that the terms “trade or activity” have been interpreted narrowly, prohibiting workers in similar occupations from belonging to the same union.<sup>710</sup> Further, despite the government consulting with the ILO in drafting the law, the LOL provisions to establish and register unions are inconsistent with ILO conventions signed by Myanmar - as noted by the ILO Committee, not only are 30 members required to establish a union, but they further require support of at least 10% of workers.<sup>711</sup> Regional organizations and federations may be formed with 10% of trade unions and 20% of Federations are required to form a Labour Confederation.<sup>712</sup>

In practice, according to one civil society organisation, local officials create problems for registration of unions: requesting for unnecessary documents including recommendation letters from the employer. In one instance when they were involved in forming a union for public bus drivers, he said that the authorities gave them a hard time by giving different rules. The authorities did not want one union to be formed but wanted different ones for different townships: “We had to prepare so many documents for them and it took almost a year. To handle these cases, they must already have rules and regulations, it is as if they do not have any of those.”<sup>713</sup> Following the 2021 coup, 16 workers groups and civil society organisations were declared unlawful for being unregistered workers organisations.<sup>714</sup>

Despite the difficulties, there has been significant unionisation in Myanmar - the formerly-exiled Federation of Trade Unions of Burma, now the Confederation of Trade Unions of Myanmar (CTUM), was officially recognized as the only trade union confederation in Myanmar in 2015. By October 2016, CTUM had 8 federations with 783 factory unions as members, representing roughly 70,000 workers. The

CTUM regularly takes up complaints raised by migrant workers. Other large unions include the Agriculture and Farmers Federation of Myanmar-IUF and the Myanmar Industries Craft and Services Unions Federation.

In 2012 Myanmar enacted the Settlement of Labour Disputes Law which makes a reference to collective bargaining, but as noted by ITUC, does not provide for the requisites for collective bargaining.<sup>715</sup> Significant restrictions also remain in practice with respect to the right to strike.

## Thailand

Thailand has not ratified the ILO conventions on Freedom of Association (No. 87) and the Right to Organise and Collective Bargaining (No. 98). Thai workers have a right to establish and join trade unions - the Labour Relations Act (LRA) recognises Labour Unions (Chapter VII).<sup>716</sup> The State Enterprise Labour Relations Act (SELRA) also does the same (Chapter IV).<sup>717</sup> However, according to the ILO, less than 2% of the workforce is organised into trade unions - “a result of a combination of factors such as restrictive laws, resistance from employers and lack of enforcement of workers’ rights.”<sup>718</sup> ILRF has suggested a trade union density of 1.6%.<sup>719</sup> Approximately 80% of Thailand’s workforce is not guaranteed full rights to freedom of association “as public sector, informal, temporary, and seasonal agriculture and sub-contracted workers are not permitted to form or join unions whatsoever”.<sup>720</sup>

There are also restrictions on workers joining a union of their choice: each state enterprise can only have one union (Section 40, SELRA). The LRA also provides that members of a union “shall be employees working for the same employer” or “employees who work in the same type of business” (Section 88). As the US State Department has noted, “contract workers, even if working in the same factory and doing the same job as full-time workers, cannot join the union because they are classified as belonging to the service industry

710. ITUC, “[Foreign Direct Investment in Myanmar: what impact on human rights?](#),” (October 2015): 15.

711. ILO, “[Report of the Committee of Experts on the Application of Conventions and Recommendations](#),” (2017): 150.

712. ITUC, “[Global Rights Index - Myanmar](#),” (undated).

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

714. MOLIP, “[Announcement of Illegal Organisations](#),” *The Global New Light of Myanmar*, (2 March 2021).

715. ITUC, “[Foreign Direct Investment in Myanmar: what impact on human rights?](#),” (October 2015): 15.

716. *Labour Relations Act, 1975* (unofficial translation).

717. *State Enterprise Labour Relations Act, 2000*, (unofficial translation), Section 40.

718. ILO, “[International Labour Standards and Thai Trade Unions Agenda for Labour Law Reforms](#),” (10 March 2017).

719. International Labor Rights Forum, “[Time for a Sea Change](#),” (March 2020): 6.

720. Human Rights Watch, “[Statement on the U.S. Government Decision to Suspend Thailand’s Trade Preferences Due to Worker Rights Issues](#),” (10 December 2019).



while full-time workers come under the “manufacturing industry.”<sup>721</sup> Further, as ITUC points out, If a worker loses his/her job at that enterprise, he or she must be dismissed from membership of the union.<sup>722</sup>

Migrant workers have a right to join an existing union, but not the right to establish or lead one. LRA requires Thai nationality to establish a union (Section 88) or be part of any committee or subcommittee to carry out the tasks of the union (Section 100-101). However, as most migrants work in sectors with few Thai workers (fishing, seafood processing and construction), there are few such possibilities - according to ILRF, there are a very small number of unions in seafood-processing factories and no registered unions in the fishing sector.<sup>723</sup> Many Thai workers do work alongside migrants in aquaculture farms, but here unions are excluded altogether as it is designated by the government as seasonal agricultural work.<sup>724</sup> Even where Thai unions might exist in sectors where migrants work, there are significant language and cultural barriers.<sup>725</sup> ILRF also highlights that perceived differences in interests between Thai and migrant workers and discrimination are also relevant to explain why Thai and migrant workers do not typically unionise together.<sup>726</sup>

The cumulative effect of this is that migrant workers lack access to labour unions in Thailand - no data of their involvement is available. As one worker, a 30-year-old man working in a car oil filter factory told us: “I have never heard of labour organizations inside the factory. Maybe there’s a worker union among Thai workers but I never heard of one with Burmese workers.”<sup>727</sup> When there are problems in their workplace, migrant workers rely on unregistered organizations or civil society advocacy groups to highlight their interests. A 30-year-old woman from Bago in Myanmar who worked in a jelly factory previously told us that when there was a strike there over deductions from salary, the migrant workers relied on the assistance of a CSO - the Aid Alliance

Committee - for negotiations with the managers and owners.<sup>728</sup> Researchers from the Thailand Development Research Institute have also highlighted “Thai society’s negative views toward migrant workers” which makes them even more vulnerable in any negotiations, in the absence of a union.<sup>729</sup> The ILO Committee has called on the Thai Government “to eliminate, without delay, the restrictions placed on the freedom of association rights of migrant workers”.<sup>730</sup>

Collective bargaining is recognised by Thai labour law. Unions need to have at least 1/5 of the workforce as members (Section 15, LRA), but employees can bargain collectively - without a union - as long as the claim is made by a minimum of 15% of the workforce (Section 13, LRA). In theory, migrant workers could follow the same practice - and independent grassroots worker organizations are involved in such efforts - but the US State Department report indicated that this was not a successful route to effect change.<sup>731</sup> There are also concerns that employees do not have complete legal protections in such a situation, as opposed to when conducting such bargaining as part of a union.<sup>732</sup> As ILRF indicates, this is a significant concern for migrant workers who are often under debt and risk being deported if their employment is terminated.<sup>733</sup> The law also does not require employers and workers to negotiate in good faith - employers need only to attend an initial meeting within three days of the demand, following which they can ignore or refuse to negotiate.<sup>734</sup>

In practice, the US state department has pointed out how restrictions on contract workers joining the same union as full-time workers effectively cuts at collective bargaining.<sup>735</sup> Reports from labour advocates also indicate that many companies hired contract workers to undermine unionization efforts.<sup>736</sup> The report also highlights various techniques used by employers to weaken collective bargaining efforts: replacing striking workers with subcontracted workers; delaying

721. US Department of State, “2019 Country Reports on Human Rights Practices: Thailand,” (undated), Section 7A.

722. ITUC, “Global Rights Index - Thailand,” (undated).

723. International Labor Rights Forum, “Time for a Sea Change,” (March 2020): 21.

724. Ibid.

725. Migrant Working Group, “Joint Civil Society Report - on the Implementation of the ICCPR,” (2017).

726. International Labor Rights Forum, “Time for a Sea Change,” (March 2020): 21.

727. Remote interview R8, 29 September 2020.

728. Remote interview R6, 28 September 2020.

729. Yongyuth Chalamwong and Ratre Prasomsup, “Respect labour rights to avert sanction,” *Bangkok Post* (8 January 2020).

730. ILO Committee, “Case No 3164 (Thailand) - Complaint date: 07-OCT-15 - Follow-up,” (October 2016): para 1052.

731. US Department of State, “2019 Country Reports on Human Rights Practices: Thailand,” (undated), Section 7A.

732. International Labor Rights Forum, “Time for a Sea Change,” (March 2020), 22.

733. Ibid.

734. Ibid, 21.

735. US Department of State, “2019 Country Reports on Human Rights Practices: Thailand,” (undated), Section 7A.

736. Kevin Hewison and Woradul Tularak, “Thailand and Precarious Work: An Assessment,” *American Behavioral Scientist* 53, (2013).



negotiations; transferring key leaders and workers along with patently illegal tactics such as threatening or dismissing union leaders; inciting violence.<sup>737</sup> In November 2019, in an open letter to the Prime Minister, ITUC and other Unions stressed that “the widespread abuse of agency, subcontracted or temporary work arrangements also undermine the enjoyment of these rights in practice, including in industrial zones and the construction industry.”<sup>738</sup>

Restrictions on unionisation of migrant workers leaves them at a significant disadvantage when trying to engage in collective bargaining with their employers. In March 2020, our researchers observed protracted negotiations in a Mae Sot factory fail, in part due to a lack of negotiation experience and insufficient legal knowledge on the part of the migrant workers. Non-union worker support groups have however been successful in supporting workers in other instances: MWRN was vital in helping workers receive compensation from Cal-Comp for excessive recruitment fees paid.<sup>739</sup>

Thai labour law recognises the strike to strike, albeit only when collective bargaining has failed to reach a negotiated settlement (Section 34, LRA). In addition, ITUC has noted that the law allows undue interference by authorities to unilaterally prohibit, limit, suspend or cease a strike action that would “affect national security or cause severe negative repercussions for the population at large” under emergency laws/ martial law (Section 25 LRA). Such laws are overbroad and commonly resorted to in Thailand, including recently in the COVID-19 context.<sup>740</sup> There are also restrictions on strike for “public servants”: the State Enterprise Labour Relations Act prohibits strikes and lockouts within state enterprises (Section 33). Procedurally, workers also need to notify the authorities 24 hours in advance (Section 34), and not demonstrate on any public roads.<sup>741</sup> According to one civil society representative, staging a legal strike is very difficult, therefore there are more wildcat (unapproved) strikes, which the Thai authorities attempt to crush.<sup>742</sup>

According to ITUC, Thai law forbids strikes in essential services, (Section 23-24, LRA) which it defines in significantly broader terms than those laid down by the ILO.<sup>743</sup> According to ILRF, this may include certain undertakings relating to the seafood industry, including ports and sometimes in export-oriented seafood-processing factories.<sup>744</sup> Similarly there are concerns about the ability of workers to conduct a strike in a border areas like Mae Sot, where “the state, particularly the police, national security agencies, and border guards work together to regulate nearly every aspect of migrant workers’ lives to create and sustain the conditions for a regime of flexible and informalized labor that enables labor intensive industries to survive in the region.”<sup>745</sup>

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## 9.2 Can trade unions operate effectively in practice, are their activities free from disruption and harassment?

### Myanmar

Myanmar’s 2008 Constitution, which ostensibly remained in effect following the February 2021 coup, recognizes the right to freedom of expression, assembly and association.<sup>746</sup> This constitution came into effect in 2011, when a government led by former general Thein Sein took office. Following historic elections in 2015, the NLD government came to power in April 2016, and while Myanmar had its first civilian led government in half a century, a quarter of legislative seats in both houses of parliament remained reserved for the military.

PEN Myanmar has noted “a continued lack of progress to respect, protect, and fulfil the right to freedom of Expression” and in some instances, “alarming regression”.<sup>747</sup> According to the NGO Article 19: “The operating environment for the media and civil society remains fraught, with human rights defenders, protesters, journalists, and media workers routinely

737. US Department of State, “2019 Country Reports on Human Rights Practices: Thailand,” (undated), Section 7A.

738. IndustriALL Global Union, ETUC, ITUC and ITF, “Open Letter to the Prime Minister of Thailand,” (27 November 2019).

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

740. Human Rights Watch, “Thailand: State of Emergency Extension Unjustified,” (27 May 2020).

741. US Department of State, “2019 Country Reports on Human Rights Practices: Thailand,” (undated), Section 7A.

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

743. ITUC, “Global Rights Index - Thailand,” (undated).

744. International Labor Rights Forum, “Time for a Sea Change,” (March 2020): 57.

745. Dennis Arnold, “Spatial Practices and Border SEZs in Mekong Southeast Asia,” *Geography Compass* (2012): 6.

746. The Diplomat, “Melissa Crouch on Myanmar’s Coup and Rule of Law,” (23 March 2021).

747. PEN international, “Myanmar Freedom of Expression Scorecard,” (2 May 2019): 2.

threatened with arrest and prosecution simply for exercising their right to freedom of expression. Against this backdrop, self-censorship is widespread and government officials seek to control and manipulate the flow of information in the country.<sup>748</sup> Human Rights Watch also documented various provisions of the penal code - including criminal defamation, provocation and incitement, religious insult, and sedition and the colonial-era Official Secrets Act - being used to target free expression.<sup>749</sup> Similar targeting online, including against trade union supporters, was carried out using the provision for criminal defamation (Section 66d) in the 2013 Telecommunications Law.<sup>750</sup>

With respect to the right to peaceful assembly, prior governmental approval is required for assemblies - applications are required five days in advance.<sup>751</sup> The 2012 Peaceful Assembly and Peaceful Procession Act also introduced vague and broad restrictions. Along with the penal code restrictions on “unlawful assemblies”, these provisions have commonly been used by the Myanmar authorities to prevent exercise of the right to peaceful assembly.<sup>752</sup>

Trade Unions, effectively declared illegal in 1964, were reallocated in 2011-12 and significant efforts have been made to limit use of forced labour, commonly used by the military government in the past. A coalition of Myanmar labour and other groups noted in 2013 that the LOL “contains many controversial elements that are restricting union activity, entrenching limitations on freedom of association, and independence of labour unions”.<sup>753</sup> ITUC has observed restrictions on the right to elect representatives and operate independently: LOL sets minimum and maximum representatives on the executive committee at the local, township/regional/federation and confederation level (Section 7) and placed a 2 year limit on term of executive committee members - it is unclear whether they can run again (Section 5). LOL also sets a cap of 2% of wages/salary as monthly fees (Section 25) and allows for deregistration of the union if the membership falls below the minimum (Section 33b).

According to ITUC, the law does not provide sufficient protection for workers. While there is a prohibition against dismissal of a worker for membership in a union/ trade union activities/ strike, there is no overall prohibition on other forms of retaliation including blacklisting or forced transfers, which are common.<sup>754</sup> According to one activist, employers actively discriminate against workers who join a union, knowing that they will not be held to account. They dismiss union leaders to bust the unions and only have to pay a fine for doing so - the fine is minor, a maximum of MMK 100,000 (US\$ 72, Section 51). “The employers are only afraid of imprisonment, but the workers cannot be a plaintiff in the court - it needs to be the labour officer in their administration zone and they never file any cases. As far as we know, they are making deals with the factories. And all the former retired labour officers in Hlaing Thar Yar are now working as advisors in the factories.”<sup>755</sup>

One area where unions have been effective with respect to migrant workers is awareness and pre-departure training in rural areas where their members already operate and where CSOs are not able to go easily.<sup>756</sup> These are conducted in collaboration with the local authorities, including the anti-trafficking police.

Freedom of Association with respect to other organisations was also expanded by the removal of mandatory registration of organisations in 2014 with the enactment of the Association Registration Law. While the law also reduced barriers to formation and regulation of activities of organisations, many still remain and remain unclear as implementing rules have not been passed.<sup>757</sup> One civil society organisation, which also works on migrant rights, pointed out despite registration being voluntary, both the Government privileged registered organisations and did not work with unregistered ones like theirs; “we intentionally do not register because we are practicing our basic rights as per constitution.” He indicated that they had considered registering once, but that there were significant impediments placed by the Government - many documents and a long process. “The ministry just registers some organizations when they

748. Article 19, “Myanmar: UN HRC must maintain scrutiny on free expression situation,” (4 March 2019).

749. Human Rights Watch, “Dashed Hopes: The Criminalization of Peaceful Expression in Myanmar,” (2019).

750. Ibid., 24..

751. Article 19, “Myanmar: The Decree on the Right to Peaceful Assembly and Peaceful Procession,” (2012).

752. Article 19, “Myanmar: UN HRC must maintain scrutiny on free expression situation,” (4 March 2019).

753. Construction-based Labor Union et al., “Modern Slavery: A Study of Labour Conditions in Yangon’s Industrial Zones,” (15 November 2013): 7.

754. ITUC, “Foreign Direct Investment in Myanmar: what impact on human rights?,” (October 2015): 15.

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

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

757. International Center for Not-for-Profit Law, “Civic Freedom Monitor - Myanmar,” (13 April 2021).

want. I think they carefully look at the leaders of these organizations because once they become registered organizations, they will have to invite them. Probably they worry that those people will make noise.”<sup>758</sup>

## Thailand

A new constitution came into force in Thailand in April 2017. The provisions relating to rights to freedom of expression (Section 34), association (Section 42) and assembly (Section 44) are largely similar to those in the ICCPR.<sup>759</sup> In practice however, there are significant restrictions on freedom of expression, including the 2016 Computer-Related Crime Act, and provisions in the criminal code for sedition (Section 116); Lese Majeste (Section 112) and defamation (Section 326-8). In addition, Thailand’s contempt of court laws have also been used inconsistently with the right to freedom of expression.<sup>760</sup> Some of these provisions have also been used by Thai employers against both Thai and migrant workers and advocacy groups who highlighted violations of labour law (see also 7.4).

Restrictions also remain on the right to freedom of assembly. In 2015, Thailand enacted the Public Assembly Act which requires notification of assemblies at least 24 hours in advance, and forbids assemblies within proximity of royal palaces, courts, Government House or the National Assembly. This remains in force, even though other provisions restricting freedom of assembly were repealed in late 2018. Thai Lawyers for Human Rights has reported a number of instances where the 2015 Act or other technical reasons were used to restrict the substantive right.<sup>761</sup>

Freedom of association is limited in practice, with restrictions on civil society and trade unions increasing since 2014. According to the latest CSO sustainability study by USAID, Thailand “experienced the most significant deterioration” in 2018 and has amongst the lowest levels of CSO sustainability in Asia.<sup>762</sup> In October

2019, the United States suspended \$1.3 billion in trade preferences for Thailand under the Generalized System of Preferences (GSP) due to its “failure to adequately provide internationally recognized worker rights... such as protections for freedom of association and collective bargaining”.<sup>763</sup>

Thai law imposes limitations on unions organising their own administration: affiliation between state enterprise unions and private sector labour congresses or federations is restricted by law; advisors to Unions must be registered and effectively approved by the Ministry of Labour.<sup>764</sup> According to a joint statement of a number of Thai and international organisations, “Complaints submitted to the ILO over the past decade show Thai trade unionists are routinely discriminated against and are vulnerable to employer retaliation for union participation. Workers are regularly dismissed for attempting to register unions or for submitting demands to bargain collectively. Union leaders face legal and judicial harassment, with companies using courts to seek damages over alleged financial losses for union activity, bankrupting these individuals and discouraging other workers from signaling abuse or seeking remedy.”<sup>765</sup>

The US State Department notes that although Thai law protects workers/ union members from criminal or civil liability for negotiating with employers, initiating a strike, or organizing a rally etc, it does not protect them from criminal charges for reputational damage.<sup>766</sup> Such charges have often been brought against both workers and their advocates (see 7.4). ITUC and other unions have also highlighted that “anti-union discrimination by employers is commonplace”, including by the Thai state itself in the transportation sector.<sup>767</sup>

There has been a significant decline in conditions for unions since the 2014 coup, including several high-profile cases where officials from prominent Thai unions have been detained and or were charged for activities they carried out as part of their normal union duties. In

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

759. *Constitution of Thailand*, 2017

760. Human Rights Watch, “*To Speak Out is Dangerous: The Criminalization of Peaceful Expression in Thailand*,” (2019): 27-34.

761. Thai Lawyers for Human Rights, “*Restrictions and Harassments Remain: Public assemblies in January and before the elections*,” (6 February 2019).

762. USAID, “*2018 Civil Society Organization Sustainability Index*,” (November 2019): 4.

763. US Trade Representative, “*USTR Announces GSP Enforcement Actions and Successes for Seven Countries*,” (25 October 2019).

764. ITUC, “*Global Rights Index - Thailand*,” (undated).

765. Human Rights Watch, “*Statement on the U.S. Government Decision to Suspend Thailand’s Trade Preferences Due to Worker Rights Issues*,” (10 December 2019).

766. US Department of State, “*2019 Country Reports on Human Rights Practices: Thailand*,” (undated), Section 7A.

767. IndustriALL Global Union, ETUC, ITUC and ITF, “*Open Letter to the Prime Minister of Thailand*,” (27 November 2019).

October 2019, the National Anti Corruption Commission (NACC) announced it was launching an investigation into 22 State Railway Union of Thailand officials for “acting in any manner that causes work stoppage or damage.”<sup>768</sup> The allegations stem from a health and safety initiative

the union organised a decade earlier following a deadly 2009 train derailment. Union leaders have also been threatened with legal action due to their trade union activity.<sup>769</sup>

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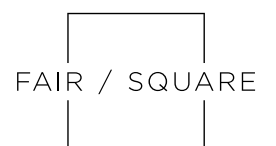
768. Seafood Working Group, “Comments Concerning the Ranking of Thailand by the United States Department of State in the 2020 Trafficking in Persons Report,” (10 March 2020): 14.

769. “Thai authorities detain, follow labour union leaders,” *Prachatai*, (8 Jan 2016).

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