



International  
Labour  
Organization

# Closing the Migration-Trafficking Protection Gap: Policy Coherence in Myanmar

Funded by



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## Foreword

Migration, when integrated into a coherent set of sustainable development policies, can make a tremendous contribution to development. This is well recognized internationally, in the 2030 Agenda for Sustainable Development and within Myanmar in its National Plan of Action on Labour Migration (2018-2022).

Policy coherence is vital to ensuring that migrants don't fall between legal and policy gaps, and to empower all migrants to find decent work, and escape exploitative, dirty difficult and dangerous situations.

This paper was prepared before the Covid-19 pandemic, but remains just as timely. International border closures, uncertainty and rising joblessness have left many migrants in highly precarious situations. Trapped behind borders, searching for work to support themselves and their communities. If we are to build back better, now is the time to take stock of policy governing migration and trafficking, and to bridge gaps to empower migrants.

I would like to express my appreciation to Rebecca Napier-Moore for her outstanding work in writing this paper, conducting interviews and assembling legislative and policy reviews. I would also like to extend my thanks to the Government of the Republic of the Union of Myanmar, labour organizations, recruitment agencies, and CSOs who contributed their legal and practical knowledge and experience to this report. Importantly, we extend gratitude to the Myanmar migrants interviewed in Singapore and Yangon who shared their experience and analysis of trafficking and labour migration policies and mechanisms in Myanmar.

Many thanks also to all colleagues who gave their time and expertise to review the paper. Thanks are also due to those who assisted with comparative country information: Kimberly Rogovin, and ILO colleagues in Nepal and in the Regional Office for Asia and the Pacific. Special thanks go to Nilim Baruah, Senior Labour Migration Specialist, Bangkok, Piyamal Pichaiwongse, Deputy Liaison Officer, Myanmar, as well as Jacqueline Pollock, Wai Hnin Po, Phyo Maung Maung Kyaw, Ei Mon Win, Imogen Howells and especially Hkun Sa Mun Htoi. This paper was developed under the ILO Developing International and Internal Labour Migration Governance (DIILM) project, which has been supported by the Livelihoods and Food Security Fund (LIFT) since 2016.



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## Abbreviations

AAPTIP	Australia-Asia Programme to Combat Trafficking in Persons
ASEAN	Association of South East Asian Nations
ATIPD	Anti-Trafficking in Persons Division, Police Force and Customs Department, Ministry of Home Affairs
ATTF	Anti-Trafficking Task Force, Police Force and Customs Department, Ministry of Home Affairs
ATU	Anti-Trafficking Units, Police Force and Customs Department, Ministry of Home Affairs
BCATIP	Border Cooperation on Anti-Trafficking in Persons
CBTIP	Central Body for the Suppression of Trafficking in Persons
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
COC	Code of Conduct
COMMIT	Coordinated Mekong Ministerial Initiative against Trafficking
CSO	Civil society organization
CTUM	Confederation of Trade Unions Myanmar
DOFE	Department of Foreign Employment, Nepal
DOI	Department of Immigration and National Registration, Ministry of Labour, Immigration and Population, Myanmar
DOL	Department of Labour, Ministry of Labour, Immigration and Population
DSW	Department of Social Welfare, Ministry of Social Welfare, Relief and Rehabilitation
EIU	Economist Intelligence Unit
GAD	General Administration Department, Ministry of Home Affairs
GAATW	Global Alliance Against Traffic in Women
ILO	International Labour Organization
IOM	International Organization for Migration
LEO	Labour Exchange Office, Department of Labour, Ministry of Labour, Immigration and Population, Myanmar
LIFT	Livelihoods and Food Security Fund, Myanmar
LROE	Law Relating to Overseas Employment

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MD	Migration Division, Department of Labour, Ministry of Labour, Immigration and Population
MFA	Ministry of Foreign Affairs
MHA	Ministry of Home Affairs
MIMU	Myanmar Information Management Unit
MMK	Myanmar Kyats
MOEAF	Myanmar Overseas Employment Agencies Federation
MOLIP	Ministry of Labour, Immigration and Population
MOM	Ministry of Manpower, Singapore
MOU	Memorandum of Understanding
MRC	Migrant Workers Resource Centre
MSWRR	Ministry of Social Welfare, Relief and Rehabilitation
MWAF	Myanmar Women's Affairs Federation
NPA	National Plan of Action
NRC	National Registration Card
OEA	Overseas Employment Agency
OECC	Overseas Employment Central Committee
OECD	Organisation for Economic Co-operation and Development
OESC	Overseas Employment Supervisory Committee
POEA	Philippines Overseas Employment Administration
SOP	Standard Operating Procedure
UN	United Nations
USDOS	United States Department of State

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## Executive summary

“Coordination is shared responsibility and also shared risk...

Labour migration and anti-trafficking are still seen as separate in terms of policy formulation. Migration is seen as an economic issue, and anti-trafficking in terms of national security.” – ILO representative <sup>1</sup>

Addressing labour migration and human trafficking in Myanmar requires coordination between key government ministries and other stakeholders, as well as in law, in policy, and in associated mechanisms. This paper examines current mandate boundaries, coordination in working practices, inter-agency mechanisms, as well as collaborative working practices between labour migration and anti-trafficking actors.

Strengthening policy coherence involves minimizing policy conflicts, maximizing synergies, and eliminating gaps. Myanmar’s current political, social and economic transformation has only recently begun and is facing many challenges. Much of Myanmar’s legislation dates back to pre-independence and is outdated, while other legislation was promulgated by the military. Since the Thein Sein government numerous laws have been repealed, revised or developed, and changes have been made to some working practices. Among a myriad of changes, attention to migration has been uneven and sometimes reactive, often triggered by media exposés of exploitation in destination countries (ILO, 2017c).

The contribution of migration to sustainable development is recognized in the 2030 Agenda for Sustainable Development, with specific targets and indicators found in ten of the 17 Sustainable Development Goals (SDGs). Effective policy coherence will contribute to the realization of the full positive potential of migration: this involves minimizing policy conflicts, maximizing synergies, and eliminating gaps, and is vital for achieving the aims of *both* labour migration governance and anti-trafficking governance. Effective and regular data collection on migration, including standard definitions and concepts, improved capacity and systems, and the mainstreaming of gendered labour migration in national surveys are key parts of the process. <sup>2</sup>

Policy coherence can help ensure complementarity between labour migration and anti-trafficking policy, ensuring that no migrant is left unprotected. Greater policy coherence can, for example, have the result that working towards safe migration reduces the risk of trafficking and other forms of exploitation. Through coherent policies, access to remedy and justice could be ensured for all persons who experience exploitation in their migration journey – whether trafficked or not, in situations of forced labour or not, regular or irregular, whether they have migrated for marriage or for work.

Some 4.25 million Myanmar migrants live abroad: 70 per cent are in Thailand, 15 per cent in Malaysia, 5 per cent in China, 4 per cent in Singapore, and the rest in various other countries. Some Myanmar migrants, particularly irregular migrants, are not protected by either current labour migration or anti-trafficking policy or practice. Migrants may be irregular or undocumented for a variety of reasons. They may have departed from Myanmar without having any ID from Myanmar or without the correct documents to enter the country of destination. They may have used unauthorized migration channels. In the country of destination, they may never have had the correct documents or, if they did, may have overstayed their visa or work permit or fallen between the

<sup>1</sup> Interview, ILO, Yangon, 13 February 2018.

<sup>2</sup> ILO. 2018. Migration data for policy development: An appraisal of data and statistics on international labour migration in Myanmar. See also: Migration Data Portal, <https://migrationdataportal.org/sdgs> (accessed 23 Feb 2020).

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cracks in the registration processes. Irregular migration status in any of these forms impacts on Myanmar migrants' access to government services and to justice because they are not recognized in either of the two main protection frameworks for migrants: labour migration and anti-trafficking.

Multi-sectorial mechanisms on both these frameworks are already functioning in Myanmar. For trafficking, these include: the Central Body for the Suppression of Trafficking in Persons (CBTIP); the Human Trafficking Working Group; and the National Task Force on the National Plan of Action to Combat Trafficking in Persons. For migration, these include: the Overseas Employment Central Committee (OECC); the Overseas Employment Supervisory Committee (OESC); and the Technical Working Group on the National Plan of Action on Labour Migration (2018-2022).

Enhancing these good practices is key to creating a coherent system of rights-based labour migration and anti-trafficking measures that leave no migrant behind. However, the involvement of multiple ministries and other stakeholders can be hard to coordinate, and this paper has identified a number of challenges:

- Current responses and measures do not fully protect all migrants at all times, particularly migrants in an irregular situation.
- Gaps in institutional mandates combined with challenges in cooperating between government actors, make it difficult to reach even migrants who are covered by the law.
- Coordination bodies are siloed or not fully functional due to lack of financial and human resources; lack of institutionalized information sharing and cooperation means the bodies cannot perform as intended.
- Migrants and trafficked persons seeking access to services and justice face gaps between policies and practices.
- The rules and regulations governing recruitment agencies have significant loopholes.
- Practical barriers inhibit cooperative working practice.

Labour migration and anti-trafficking policies are currently being reviewed and reformed in Myanmar and this should provide a unique opportunity to clarify the mandates, and to jointly address the identified gaps. In consultations for this paper both labour migration and anti-trafficking officials highlighted the need for better coordination and collaboration. Stronger, better coordinated labour migration and anti-trafficking governance can positively affect wider development in the country, creating better migration experiences where exploitation is a less common occurrence and where migration outcomes are empowering, rewarding, and positive, and where access to remedy and justice are better guaranteed.

The paper is intended as a resource for policy makers and implementers. It aims to assist policy makers in developing a longer-term strategy on migration to prevent and address all forms of exploitation, including trafficking. The paper and its recommendations provide guidance for legal revision, national plans and other practical mechanisms so that they cover and protect all Myanmar migrants, whatever their circumstances. The ILO's commitment to tripartism and social dialogue makes it well-placed to promote policy coherence. The ILO's promoting fair migration agenda recognizes that labour migration policy must be integrated with other policy areas in origin and destination countries, and between them (ILO, 2016b).

**Summary of Recommendations:** The report concludes with the following nine recommendations.

**Recommendation 1: Clarity of mandates in the Law Relating to Overseas Employment (LROE) and Anti-Trafficking Law Revisions**

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Review and specify, in laws and directives, the mandate and roles of all ministries involved in labour migration and/or anti-trafficking processes. Rationalize agency roles and responsibilities to avoid duplications and gaps.<sup>3</sup> Develop these mandates in a consultative and coordinated manner with input from all relevant parties, including social partners and civil society groups.

The LROE could be revised to grant the Migration Division (MD) with the authority to adjudicate over complaints against agencies related to fraud, overcharging of recruitment fees, operating without a licence and failure to otherwise comply with the law or with other ministry directives, rules or orders. The law should provide fines, penalties and mechanisms to enforce or appeal a decision, as well as incentives for high performing agencies, such as reducing administrative requirements.

The capacity of Labour Exchange Offices (LEOs) should be developed to mediate certain types of complaints and deploy lawyers to the offices to offer investigation and/or mediation services.

Anti-trafficking task force (ATTF) officers should be granted investigative power and the authority to open cases.

MD and ATTF should further develop relations with labour organizations and Civil Society Organisations (CSOs) to provide counselling and receive complaints, which could then be referred to the LEO, ATTF or a central compliance mechanism.

**Recommendation 2: Better utilization of current mechanisms and development of new mechanisms.**

The current mandated OECC, OESC and CBTIP frameworks should be better utilized to provide greater overall policy guidance, ensuring regular meetings (at least quarterly) where the work of the three committees is shared, discussed, and effectively coordinated. Information and reports should be made publicly available.

Labour migration coordination needs to extend beyond the union level. Government stakeholders consulted for this paper offered two suggestions in this regard:

- The OESC should be replicated at state and region, district, and ward and administration levels; or
- The Department of Labour (DOL) could coordinate labour migration responses through the One Stop Shop housed at GAD.<sup>4</sup>

The OESC and CBTIP should formalize processes for transferring cases outside the mandate of the mechanisms to another ministry/department, or mechanism, or to the formal court system. This requires clear guidelines to define horizontal lines of discussion between OESC and CBTIP and between their working groups and committees.

**Recommendation 3: Improved cross border coordination**

Similar bilateral systems to transfer compensation and wages could be developed for trafficked persons and for migrants who have been exploited; and to allow both victims of trafficking and of labour exploitation the right to stay and where possible, work, in the country of destination for the duration of the legal proceedings.

The current Myanmar-Thailand bilateral system of cooperation on the transfer of trafficked victims' compensation, wages and/or assistance grants should be studied to assess its efficiency. It should

<sup>3</sup> See example in Table 9.2 “Korea’s first basic plan for immigration (2008–12): Division of oversight roles regarding low-skilled migration” in World Bank, 2017, pp. 274-275.

<sup>4</sup> Discussion: GAD, ATU and LEO, Mandalay ILO Training on Safe Migration for GAD and LEO, 24 April 2018.

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also be considered for non-trafficked migrants who are due compensation from Thai labour courts and who wish to return to Myanmar. Further, DOL should explore replicating the bilateral system which allows trafficked persons to stay in Thailand to participate in legal proceedings, for migrants with cases in Thai labour courts.

The information in the Receipt of Compensation and/or Assistance Grant Form (for trafficked persons returned from Thailand), as well as in the Matrix of Basic Victim Data, could provide useful information to DOL. The data may highlight particular areas (geographical, sector, or other) where trafficking is occurring, and named agencies or brokers in such cases should be cross-checked to ensure that they are no longer allowed to operate.

Negotiate bilateral agreements for the portability of social security benefits. Migrant workers should be given the choice of either maintaining their social security benefits (pension, health insurance, etc.) in their country of employment or transferring them to their country of origin.

#### **Recommendation 4: Coverage of irregular migrants**

The LROE and Anti-Trafficking Law revisions and accompanying rules and regulations should clearly indicate the responsible bodies and what action they should take in migration situations where there are current gaps in coverage including: 1) irregular migration that does not amount to trafficking; 2) forced labour that does not amount to trafficking; 3) migration and trafficking from conflict areas; 4) recruitment by semi-licensed subagents and unauthorized brokers; 5) direct hire; 6) migration for marriage that does not amount to trafficking; 7) stranded or missing migrants; 8) migrants in detention; and 9) migration for domestic work.

Ministry of Labour, Immigration and Population (MOLIP) (and Ministry of Foreign Affairs (MFA) at embassies) should urgently expand their mandates and working practices to cover irregular migration and respond to humanitarian needs in collaboration with the Department of Social Welfare (DSW). MOLIP, and MFA should work towards agreements with countries of destinations that provide migrants who have been exploited or who have become victims of crime, with the right to remain and when possible work during the course of their legal case and until they have received due compensation and/or other remedies.

The principle of non-discrimination should be clearly set out in the preamble to the new LROE, ensuring that access to services and rights is not dependent on migration status. Revised laws and subsequent Standard Operating Procedures (SOPs) and other guidelines should be framed as needs-based rather than according to migration/trafficked status.

Coordination is needed to ensure that all Myanmar citizens abroad are supplied with appropriate Myanmar identity documents.

#### **Recommendation 5: Increasing regular migration channels with rights protections**

Focus on developing labour markets that provide equitable and decent work opportunities for women and men.

Governance structures regarding labour migration to China should be established, possibly in the form of a Memorandum of Understanding (MOU). MOLIP should continue to advocate with its Chinese counterparts for the opening of more office locations where migrants can register for permission to work.

The Government may wish to consider regularizing direct hire labour migration mechanisms.

#### **Recommendation 6: Full regulation of subagents and brokers**

Following MOLIP's directive in 2019 allowing licenced overseas employment agencies to set up branches in States and Regions, inspection and oversight powers could be devolved to regional government.

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Identify and review different options for regulating subagents and local brokers so as to enhance transparency and accountability, for example, by extending the licensing system to local brokers, and requiring brokers and agents to complete training and to pay a deposit in order to operate. Systems can be set up locally – perhaps through the GAD One Stop Shops – for brokers to register their details and provide regular reports on their activities. MOLIP might consider an incentive for registration, and taking legal action against those which are not registered.

Rules and regulations made under the LROE should clearly state the relationship between the main office of Overseas Employment Agencies (OEAs) and contracted subagents, and clearly define the responsibility and liability of both parties.

### **Recommendation 7: Closing gaps in the Law Relating to Overseas Employment**

The LROE revision process should include tripartite consultations on the introduction of joint and several liability between OEAs and employers, meaning that OEAs could be held individually liable for contractual infringements, including unpaid wages, death and disability benefits, and repatriation costs. This gives OEAs a significant incentive to work with reputable employers and to monitor conditions of work and accommodation.

Steps should be taken towards ratifying and applying the ILO’s Private Employment Agencies Convention, 1997 (No. 181), which does not permit the charging of service fees.<sup>5</sup> All costs and fees including details of who is responsible for paying each fee, should be made publicly available by overseas employment agencies and MOLIP.

### **Recommendation 8: Increased capacity and resources of government service providers**

Local-level and front-line service providing offices – particularly DSW, LEO, and labour attachés – need increased human and financial resources and training so that they can provide quality services to migrants.

Labour attachés and MFA staff should be experienced in migrant protection and have strong references to account for their integrity and ability to represent Myanmar. Labour attachés should be selected with respect to the ethnicity and gender of migrants in the country of destination.

A mechanism should be established for embassies together with other service providers to access funding for the provision of legal aid to migrants in need.

DOL should give a mandate for LEOs to provide staff to the GAD One Stop Shops not only for trafficking cases, but also to provide safe migration information and counselling for potential and returned migrants and their families.

LEOs should survey and keep up-to-date records of job trends in their areas in order to provide meaningful employment information to returned migrants.

### **Recommendation 9: Corruption tackled**

Policies should be designed in full awareness of the fact that corruption has thrived not only as a result of gaps and weaknesses in policy, but also despite procedures being in place to protect migrants. Reports of cases of corruption should be independently investigated.

Systems must be put into place to allow migrants to report corruption without fear of retribution and to ensure that cases are investigated and appropriate action taken.

<sup>5</sup> C181 Article 7(1) states: “Private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers.”

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# 1. Introduction

“Coordination is needed before protection for migrants can move ahead” – International organization representative <sup>6</sup>

The normative framework governing international migration of Myanmar workers abroad is not robust enough to ensure the safety of those migrating or to increase the potential development benefits to the migrants, communities, and country that migration could bring. The governance of labour migration could be considered a national priority since international migrant workers from Myanmar are equivalent in number to at least 20 per cent of the labour force and being young when they migrate, some 75 per cent of recent migrants to Thailand were aged 15 to 35 years,<sup>7</sup> will also be part of the future labour force of Myanmar. Remittances sent by migrants boost local economies in Myanmar, contributing to higher consumption rates and job growth at home. Returning migrants bring skills, experiences, and in some cases capital, which can further boost socio-economic development. While Myanmar has been involved in anti-trafficking initiatives since the 1990s, it is only much more recently that the government has taken more active measures to manage labour migration, including commitments to strengthen the legal framework, reviews of bilateral agreements with countries of destination, regulation of recruitment actors, and improvements to migrant worker support services.

This paper explores policy coherence between labour migration and anti-trafficking in terms of policies and practices and how this impacts on the outcomes of labour migration and trafficking situations. It particularly looks at the gaps in the intersections between labour migration and anti-trafficking governance, where currently some migrants discover that their rights are not protected and that they have no access to justice. The paper addresses horizontal policy coherence in labour migration and anti-trafficking arenas, examining the main actors and their roles; laws and policies; and strategies and mechanisms.

The first half of the paper is primarily descriptive of the actors, laws and mechanisms. An analysis follows in section 5, “Gaps and incoherence in policy and practice”.

Strengthening policy coherence involves minimizing policy conflicts, maximizing synergies, and eliminating gaps. Myanmar’s current political, social and economic transformation has only recently begun and is facing many challenges. Much of Myanmar’s legislation dates back to pre-independence and is outdated, while other legislation was promulgated by the military. Since the Thein Sein government numerous laws have been repealed, revised or developed, and changes have been made to some working practices. Among a myriad of changes, attention to migration has been uneven and sometimes reactive, often triggered by media exposés of exploitation in destination countries (ILO, 2017c).

The contribution of migration to sustainable development is recognized in the 2030 Agenda for Sustainable Development, with specific targets and indicators found in ten of the 17 Sustainable Development Goals (SDGs). Effective policy coherence will contribute to the realization of the full positive potential of migration: this involves minimizing policy conflicts, maximizing synergies, and eliminating gaps, and is vital for achieving the aims of *both* labour migration governance and anti-trafficking governance. Effective and regular data collection on migration, including standard

<sup>6</sup> Interview, ILO, Yangon, 13 February 2018.

<sup>7</sup> 2014 Myanmar Population and Housing Census Thematic Report on Migration and Urbanization. 2017 Update.

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definitions and concepts, improved capacity and systems, and the mainstreaming of gendered labour migration in national surveys are key parts of the process.<sup>8</sup>

Policy coherence can help ensure complementarity between labour migration and anti-trafficking policy, ensuring that no migrant is left unprotected. Greater policy coherence can, for example, have the result that working towards safe migration reduces the risk of trafficking and other forms of exploitation. Through coherent policies, access to remedy and justice could be ensured for all persons who experience exploitation in their migration journey – whether trafficked or not, in situations of forced labour or not, regular or irregular, whether they have migrated for marriage or for work.

## Note on methodology

Primary data for this study was collected through semi-structured interviews in Yangon, Nay Pyi Taw, and Lashio, Northern Shan State, by the author and ILO staff. Desk reviews were conducted from February 2018 to February 2020.

## Research sample

Key informant interviews were held in February and March 2018 with a total of 50 people, including 25 from the Government of Myanmar, one from the US Embassy in Yangon, four from overseas recruitment agencies (OEAs) within the Myanmar Overseas Employment Agencies Federation (MOEAF), two from a labour organization, 18 from CSOs, CBOs, and religious organizations, and five from United Nations agencies. Of the respondents interviewed, 26 were women, and 24 were men. The scope did not allow for interviews with migrant workers or trafficked persons, though the ILO and consultant drew on in-depth interviews of Myanmar migrants in Myanmar, Thailand, and Singapore conducted in 2016 (ILO, 2017c).

## Research questions

A standard set of questions was developed for the semi-structured interviews of key informants for the current briefing paper. Questions were organized along certain themes or main lines of inquiry, with the flexibility to ask further questions as needed. Core questions guiding the study were as follows:

- What are the current approaches to addressing labour migration and human trafficking in Myanmar?
- Horizontal linkages: how or to what extent is migration governance in Myanmar effectively integrated with anti-trafficking policies? What are the strong points of such integration and where are the weak points? How might better integrated policies improve the governance of migration and anti-trafficking?
- To what extent do the Anti-Trafficking in Persons Division (ATIPD) and the Migration Division (MD) work together and share common aims? Is this reflected in the respective National Plans of Action? Do the current laws and policies support or hinder this? To what extent do they coordinate with other actors, including the General Administration Division,

<sup>8</sup> ILO. 2018. Migration data for policy development: An appraisal of data and statistics on international labour migration in Myanmar. See also: Migration Data Portal, <https://migrationdataportal.org/sdgs> (accessed 23 Feb 2020).

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the Department of Social Welfare, the Department of Immigration, and relevant parliamentary committees, as well as civil society organizations, labour organizations, and Myanmar Overseas Employment Agencies Federation (MOEAF)?

- What are the factors for and against greater coordination and developing common goals?

## Research scope and limitations

The paper analyses coordination at the union level, with the addition of case study-type examples on local-level coordination and realities in Northern Shan State, where most migration is to China. The case study on the Myanmar-China border was chosen because relatively little is known about migration governance on this border, as compared for instance to the Myanmar-Thailand border. Further, there are significant governance gaps related to migration to China, as this paper will show. Finally, the majority of trafficking cases handled by Anti Trafficking in Persons Department (ATIPD) are of people returning from China – 88 per cent of all trafficking cases in 2016.<sup>9</sup>

When giving examples of migration scenarios, the paper includes case study examples of migration to China, as the research scope focused on local governance of that border. Migration to Thailand, as well as other countries of destination, will be touched on briefly, but the scope does not allow a full examination of policy coherence relevant specifically to other migration corridors. Scope here also does not allow for full examination of migration and trafficking into the fishing sector, which is governed by different ministries and different national and international laws and standards.

## 2. What is policy coherence?<sup>10</sup>

### Defining policy coherence

At its core, policy coherence is the harmonization of policy agendas with minimal conflicts and minimal gaps and loopholes, as well as the maximization of policy synergies. It is the systematic promotion of mutually reinforcing policy across government departments and agencies, creating synergies towards achieving agreed objectives. The Organisation for Economic Co-operation and Development (OECD) defines policy coherence as follows: “Policy coherence means different policy communities working together in ways that result in more powerful tools and products for all concerned. It means looking for synergies and complementarities and filling gaps among different policy areas so as to meet common and shared objectives.” (OECD, 2012, p. 3).

### Horizontal and migration-related policy coherence

Horizontal policy coherence, as this paper examines, is across various policy domains, while vertical policy coherence is at various governance levels – local, regional, and national. The International Organization for Migration (IOM) has worked with the Economist Intelligence Unit (EIU) to develop a Migration Governance Index, which partly addresses policy coherence. Its assessment of countries’ migration-related policy coherence centres around three ways of achieving it:

<sup>9</sup> Interview, ATIPD, Nay Pyi Taw, 9 March 2018. Also, ATIPD, 2016.

<sup>10</sup> This section draws on “Defining policy coherence” in ILO, 2017b.

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- Specialized inter-departmental committees
  - National planning processes
  - The activities of a lead agency, or several agencies that share responsibility for the mandate (EIU, 2016).

This paper examines all three as they relate to labour migration and anti-trafficking policy coherence.

## **Linkages between labour migration and human trafficking**

There are different schools of thought relating to frameworks addressing labour migration and anti-trafficking management. The assumptions held by policy makers and practitioners can affect whether and how they cooperate with each other and extend measures to cover different groups.

### **Traditional approach**

The traditional approach was to view the two issues as totally separate: trafficking in the criminal domain; and migration in the labour rights and human rights domain. As one interviewee noted, “Trafficking is viewed as criminal activity, not as a social [problem].”<sup>11</sup> Even though this is true for some, many Myanmar actors interviewed said that they know theoretically that migration and trafficking are interlinked, yet mandate boundaries and finite resources mean this does not always translate into coherent policy or working practice. Many actors are siloed, working within the boundaries of their mandates only. This would not in itself necessarily be problematic if thorough oversight ensured that these siloed mandates did indeed cover all migrants, and that new grey areas were dealt with as they emerged.

### **Labour rights approach**

This approach focuses on improving rights and protections of migrant workers, as an anti-trafficking strategy, a strategy to prevent forced labour, as well as a labour migration governance strategy. This approach includes the safe migration awareness raising prevalent in Myanmar, but more systematically also aims to reduce structural vulnerabilities to abuse within global supply chains and ensure that migrants receive fair benefits from their migration. It does this by positively improving and realizing rights protections for migrant workers.

“We always include safe migration in the Anti-Trafficking National Plan of Action because safe migration is important.” – Anti-Trafficking in Persons Division (ATIPD) representative<sup>12</sup>

When seeking justice for migrants whose rights have been violated, actors can work through multiple legal frameworks to serve the same goal. Legal representatives may serve the needs of an exploited migrant under labour or anti-trafficking law. Many lawyers and government actors use this approach already. Some actors in Myanmar recognize that a full spectrum of policy tools is needed to take action when exploitation occurs:

<sup>11</sup> Interview: IOM, Nay Pyi Taw, 15 February 2018.

<sup>12</sup> Interview, ATIPD, Nay Pyi Taw, 9 March 2018.

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“It is not easy to cope with migration with only the Overseas Employment Law, so we need to have the Anti-Trafficking Law too.” – MOEAF representative <sup>13</sup>

### 3. Myanmar’s international labour migration and trafficking context

#### 3.1 Migration flows

Myanmar is a major country of migration origin in the South-East Asia region. Migration from Myanmar is mixed, with people moving for economic livelihood, safe refuge, education, and marriage. Each individual’s decision on migration is complex, driven by systemic political, economic, and social factors. About three million migrant workers and refugees from Myanmar are in Thailand, 500,000 are in Malaysia, and one million refugees are in Bangladesh. <sup>14</sup> According to the 2014 Myanmar Population and Housing Census, some 4.25 million former Myanmar household members live abroad, 70 per cent of whom are in Thailand, 15 per cent in Malaysia, 5 per cent in China, 4 per cent in Singapore, and the rest in various other countries. <sup>15</sup> The major countries of destination for registered migrants are Japan, Republic of Korea, Malaysia, and Thailand. <sup>16</sup> China is also a significant destination, people from Myanmar move using a border pass system managed by the Department of Immigration and National Registration (DOI).

Apart from those migrants who migrate regularly under the MOU system, the majority move to Thailand through a border pass system, while others cross at unofficial border crossings without documents. As at September 2019 there were a total of 1,903,014 registered Myanmar workers in Thailand. <sup>17</sup> Figures for migrants moving to China for work were not available. CSOs in the border region report that Myanmar migrants go to China for marriage and to work in sugar cane, fishing, and construction, meat processing, manufacturing, retail, and domestic work. <sup>18</sup>

Data on the numbers of trafficked persons is extremely limited. Most people do not seek assistance when they return from a trafficked situation for fear of repercussions from authorities or stigma from their community. Others are miscategorised when they do seek assistance, which can be the result of lack of capacity or knowledge among front-line officials or service providers. ATIPD in Myanmar collects data on returned migrants who are identified as trafficked. <sup>19</sup> Their data indicates that most identified trafficked persons return from China, and that the majority are women. The authorities categorize all migration for marriage to China as trafficking. In 2016 some 65 per cent

<sup>13</sup> Interview, MOEAF, Yangon, 13 March 2018. Correspondence, ILO, 26 April 2018.

<sup>14</sup> As at April 2018, some 898,300 refugees were in Cox’s Bazar, Bangladesh, with others in cities inland. See IOM, 2018b.

<sup>15</sup> The census did not include Rakhine State. See ILO, 2015b.

<sup>16</sup> DOL, MOLIP, 9 March 2018.

<sup>17</sup> Ministry of Labour, Department of Employment, Thailand, September 2019. Available at: [https://www.doe.go.th/prd/assets/upload/files/alien\\_th/0f97b190eca800b5bea79107adff6897.pdf](https://www.doe.go.th/prd/assets/upload/files/alien_th/0f97b190eca800b5bea79107adff6897.pdf) (accessed 28th Nov 2019)

<sup>18</sup> Interview, CSOs, Lashio, 6 March 2018.

<sup>19</sup> See Appendix 1, Table 1 for data on domestic and international trafficking cases disaggregated by sex; and Table 2 for slightly older data on international-only cases, disaggregated by country of destination.

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of trafficking cases were categorized as trafficking for forced marriage. The details and implications will be discussed later in this paper.

Internal labour migration also includes trafficking cases within Myanmar. In 2015 ILO partnered with ATIPD to conduct a survey of 7,295 internal migrants, assessing their experiences of exploitation amounting to forced labour or trafficking. The report found that 26 per cent were in a situation of forced labour and 14 per cent in a situation of trafficking for forced labour (ILO, 2015a). In 2018, the government reported investigating 205 trafficking cases, of which 21 were forced labour, 20 were classified as “forced prostitution”, and five “unique circumstances”. The Ministry of Defence reported taking disciplinary action against 27 Tatmadaw (Myanmar’s armed forces) personnel for child soldier recruitment.<sup>20</sup>

### **3.2 Laws and policies related to labour migration and anti-trafficking<sup>21</sup>**

In Myanmar the 1999 Law Relating to Overseas Employment (LROE) is the central policy guiding international labour migration. It is currently under review and revision at the departmental level. Though limited in its ability to establish a legal framework for regulating recruitment agencies and protecting migrant workers, the LROE and its 2014 Rules set out procedures for migrant worker registration and OEA licensing. The LROE lists the rights and responsibilities of both migrant workers and OEAs. It establishes the Overseas Employment Supervisory Committee (OESC) and the Overseas Employment Central Committee (OECC), the mechanisms for creating and implementing policy and for coordinating cooperation. Regulations to guide implementation need to be developed. Contrary to the ILO’s Private Employment Agencies Convention, 1997 (No. 181), the LROE’s Article 15d allows for the charging of service fees. Article 14 of the accompanying 2014 Rules and Regulations for Licence Holders of Overseas Employment Agencies states that fees should not exceed “four times the worker’s basic salary or the ministerial prescribed amount”. This means that four months of a workers’ pay in destination can be charged to the migrants on recruitment. The Rules and Regulations do not specify whether employers or workers should bear these costs, and they are currently borne by workers.

The LROE establishes offences and penalties which can be addressed in Myanmar courts. Crucially, LROE’s Article 2 defines “worker” as “a worker in any overseas employment”, meaning that the law applies not only to those who registered with the Government of Myanmar before they departed.

Article 26 of the LROE relates to unlicensed OEAs: “Whoever performs the service agency functions without the Licence, shall on conviction be punished with imprisonment for a term which may extend to seven years and shall also be liable to a fine”. In practice, in cases which conform to Article 26, the Ministry of Labour, Immigration and Population (MOLIP) refers to ATIPD, even though Article 3 of the Anti-Trafficking Law which defines trafficking does not include a mention of unlicensed recruitment as an element of trafficking.

LROE Article 27 relates to agencies that overcharge migrant workers, conviction of which can result in three years in prison and a fine for the offender. Article 29 states that any agent who

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<sup>20</sup> US Department of State (2019), Trafficking in Persons Report, June 2019. Available at: <https://www.state.gov/wp-content/uploads/2019/06/2019-Trafficking-in-Persons-Report.pdf> (accessed 28 Nov 2019)

<sup>21</sup> Appendix 2 covers key international and regional laws and agreements, as well as international and regional cooperation.

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violates any of the LROE shall on conviction be imprisoned for up to one year or fined 5,000 MMK (US\$ 3.70) or both. According to Article 24, migrant workers can claim full compensation or damages for injury at a foreign workplace and can take civil or criminal action related to employment abroad.

The 2005 Anti-Trafficking in Persons Law is also under review and revision. ATIPD reported in March 2018 that it was consulting the relevant Parliamentary Committee, with mutual reporting every week. Legal specialists are also reviewing proposed rules and regulations.<sup>22</sup> The new law is reported to include a definition of forced marriage. According to a report in *Global New Light of Myanmar*, a new chapter allows anti-trafficking police to follow up, investigate and take action in cases where they suspect trafficking (*GNLM*, 2017). In the current 2005 version of the law, the definition of trafficking in the law is broadly in line with the United Nations Convention against Transnational Organized Crime and its anti-trafficking Protocol. The law criminalizes trafficking for labour and sexual exploitation, with penalties ranging from three years in prison and fines to life imprisonment, differing according to the gender and age of the trafficked person and the nature of the offence. The law established the Central Body for the Suppression of Trafficking in Persons (CBTIP), as well as several working groups. Trafficked persons have a right to monetary compensation, and the CBTIP is meant to establish a fund for that purpose (Articles 22 and 23). Traffickers' property may be confiscated after a conviction (Article 33), and the court may order the fund to pay damages to the trafficked person. In the past little money has been seized from traffickers in practice or distributed to victims.<sup>23</sup>

The current law lacks rules and procedures, and compensation measures conflict with those in the Penal Code. There are discrepancies concerning the legal age of a child.<sup>24</sup> The Anti Trafficking in Persons Law of 2006, Chapter I, section 3(j) defines a child as a person who has not attained the age of 16 years and a youth as a person who has attained the age of 16 years but not yet 18 years. The Child Law (1995) defines a child as a person who has not attained the age of 16 years and guarantees protection of children from economic exploitation, hazardous work, and work interfering with education (s.24). However, the Factories Act and the Shops and Establishments Act allow employment of children over 14 years old in these sectors.

<sup>22</sup> Interview: ATIPD, Nay Pyi Taw, 9 March 2018.

<sup>23</sup> ILO, 2016a. No information on this issue was included in the most recent anti-trafficking NPA 2016 Annual Progress Report.

<sup>24</sup> Interview: CSO, Yangon, 14 February 2018.

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**Box 1: Policy incoherence between the LROE and the Anti Trafficking in Persons Law*****Horizontal policy coherence***

The LROE and Anti Trafficking in Persons Law, both of which are under review, set out guiding parameters for ministries' mandates and work, as well as that of the coordinating bodies that the laws establish.

The LROE provides for the establishment of the Overseas Employment Central Committee to communicate and coordinate to ensure that there is no loss of the rights and privileges of workers and that they enjoy the rights to which they are entitled (Article 6c).

The Anti Trafficking in Persons Law establishes a Central Body and working groups, which allows for the participation of MOLIP, particularly in its role of submitting suggestions to the government for policies and a work plan relating to the suppression of trafficking in persons. There is also opportunity for coordination at state, division, district, and township levels within the law and with regard to rehabilitation and establishing vocational education and employment opportunities for trafficked victims.

Both laws call for measures preventing exploitation and human rights abuses before they happen, offering further opportunity for collaboration.

***Policy incoherence***

Article 26 of the LROE does not mention trafficking or any connection to the Anti-Trafficking Law. Yet government officials regularly consider and classify recruitment without a licence as trafficking. Moreover, the Anti Trafficking in Persons Law does not mention unlicensed recruitment of migrant workers as part of the definition of trafficking in its Article 3.

There is hence no logical connection between the two laws. Particularly, there is no specific provision in either law which states that recruitment without a licence is considered trafficking.

More specifically, Article 26 of the LROE prohibits "whoever performs the Service Agency functions without Service Agency Licence", and such unlicensed recruitment is regularly interpreted as covered by Article 3(a) of the Anti Trafficking in Persons Law, which does not mention licensing. It reads as follows:

- (a) Trafficking in persons means recruitment, transportation, transfer, sale, purchase, lending, hiring, harbouring or receipt of persons after committing any of the following acts for the purpose of exploitation of a person with or without his consent:
- (1) Threat, use of force or other form of coercion;
  - (2) Abduction;
  - (3) Fraud;
  - (4) Deception;
  - (5) Abuse of power or of position taking advantage of the vulnerability of a person;
  - (6) Giving or receiving of money or benefit to obtain the consent of the person having control over another person.

Article 374 of the Penal Code, 1861 can be used in relation to OEAs and other employers who put workers in situations of forced labour. The maximum sentence is one year's imprisonment or a fine, or both. The Penal Code contains articles on deception, kidnapping, sexual exploitation, rape, and slavery (Articles 358-376). These can be relevant to prosecuting OEAs for specific violations against migrant workers.

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The Ministry of Home Affairs 2000 Supplementary Order to Order 1/99<sup>25</sup> reinforced the order that the requisition of forced labour was illegal in Myanmar. The revised Wards and Village Tracts Administration Law of 2012 also made forced labour a criminal act and is addressed in sections 358 and 359 of the 2008 Constitution.

According to the Employment Restriction Act of 1959, only Labour Exchange Offices (LEOs) across the country are responsible for job matching between all employers, and all jobseekers must apply through the LEOs. The reality of today's Myanmar is very different, with direct hiring common through online job advertisements, recruitment agencies, and brokers. Since the law did not correspond to overseas migrants, OEAs were allowed to be set up in Yangon, with a few given permission in Mandalay. In 2019 MOLIP issued a directive to MOEAF allowing recruitment agencies to set up branches in the States and Regions, although the impact of the directive is yet to be felt.

This means that in practice subagents are hired by registered centralized agencies to recruit migrants outside of Yangon and Mandalay. Furthermore, subagents often work with entirely unlicensed local brokers – a third level in the recruitment chain where there is a lack of clear statutory responsibility for recruitment practices (see Section 5.6).

The Burma Immigration (Emergency Provisions) Act 1947 and its 1990 Amendment regulate entry into and exit from Myanmar. While it deals mostly with the irregular entry of foreigners, Article 3(2) is of relevance to this paper, stating that no Myanmar citizen can enter Myanmar without a Myanmar passport or other certification. This affects many Myanmar citizens who migrate across the border without passports. Article 13B of the 1947 Act notes that it is the responsibility of the person to prove their citizenship.

Various policies in Myanmar specifically restrict women's labour migration. Of particular note is the 2014 Myanmar ban on first-time migrants to any country for domestic work<sup>26</sup> (see section 5.1). The ban was lifted in March 2019 for Hong Kong (China), Macau (China), Singapore, and Thailand. However, no regulations have been published to enable domestic workers to migrate through regular channels. A further restriction is that recruiters must place women workers in worksites where they will work together with at least five women.<sup>27</sup> Ideally five women should migrate together, but at a minimum, the recruiter must prove that there will be at least five women in the destination worksite. This is particularly enforced for migration to Malaysia.<sup>28</sup> Women's migration to Japan is exempt from this restriction because workers go as "trainees", not "migrant workers".<sup>29</sup>

<sup>25</sup> <https://www.ilo.org/dyn/natlex/docs/WEBTEXT/59641/65226/E00MMR01.htm> Ministry of Home Affairs (2000) Supplementary Order 1/99 (27 October)

<sup>26</sup> Interview: MOLIP, 19 Aug 2016, in ILO, 2017b. MOLIP stated that the ban was introduced in June 2014.

<sup>27</sup> Interview: MOLIP, 19 Aug 2016, in ILO, 2017b.

<sup>28</sup> Interview: MOLIP, 19 Aug 2016, in ILO, 2017b. The agency and labour attaché have to check employer-provided accommodation to verify that men and women have separate dormitory areas before sending women workers to a worksite. MOEAF Interview, 9 May 2016.

<sup>29</sup> Interview: MOEAF, 9 May 2016, in ILO, 2017b. Workers migrate under the Technical Intern Training Program (TITP). For more information see TITP site, available at: <https://www.jitco.or.jp/en/regulation/index.html>

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Myanmar has bilaterally agreed Memoranda of Understanding (MOU) with the Republic of Korea and with Thailand regarding migrant workers; regarding border regions with China and Thailand; and on combating trafficking with China and Thailand. The 2010 MOU with the Republic of Korea establishes a government-to-government migration management system through the Employment Permit System. An MOU with Malaysia has also been under discussion.

**Box 2: Not all bilateral MOUs benefit migrant workers** <sup>30</sup>

ILO research found that, when MOUs were agreed in the Greater Mekong Subregion, they had “limited success in reaching their objectives” (ILO, 2015c). They have not resulted in fundamental changes to working conditions for migrants, and at times have resulted in migrants incurring high levels of debt. The MOUs solidify an agency-facilitated recruitment and job placement system, requiring migrant workers to go through agencies if they would like to move legally. Research in Thailand suggests recruiters have captured the MOU process, benefiting financially from the MOU-established system, “with some even establishing themselves as the de facto employer for foreign workers and contracting out their labour to larger companies” (ILO, 2013a).

The MOU between Thailand and Myanmar on labour cooperation (2016)<sup>31</sup> outline principles and procedures for labour migration facilitated through recruitment agencies in Myanmar and Thailand. The MOU calls for the two countries to work towards technical cooperation in the field of labour and applies this in particular to the exchange of systems, programmes, studies, expertise, research, and information on a wide range of issues, including resolution of labour disputes, rehabilitation, unemployment insurance and the management of foreign workers (Article 2, a); and the exchange of information for prevention of illegal recruiting of labour and human trafficking for employment (Article 2, c). The accompanying Agreement<sup>32</sup> on the employment of workers calls for both countries to take all necessary measures, in their respective territory, to prevent and suppress illegal border crossings, human trafficking for employment, and illegal employment of foreign workers (Article 13, 1). To support the implementation of both texts, each country may appoint an officer to be the coordinator to research, assist, coordinate, monitor, and advise on the sending and receiving process (MOU, Article 6), and designate a joint working group comprising relevant officials to hold regular meetings at least quarterly on an alternating basis, on matters related to the implementation of the Agreement (Agreement, Article 13.3).

The MOU on cooperation in the administration of border areas between China and Myanmar covers eight checkpoints on the China-Myanmar border. It has provisions for two types of border pass. Costs and lengths of stay are not detailed in the MOU. According to DOI Officials in Nay Pyi Taw, the border pass allows people whose identity card is issued from the bordering districts of Myanmar to go to border districts of China for 13 nights and 14 days. This costs 500 MMK (0.37 USD) as an initial fee, followed by a 300 MMK (0.22 USD) fee for each border crossing during that period. The two-week validity period can be started at any time within a year of its issue. A second temporary border pass allows people with ID cards issued in the rest of Myanmar to go to China

<sup>30</sup> See also ILO, 2017c.

<sup>31</sup> 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, signed in Bangkok on 24 June, 2016 by HE Sirichai Distakul, Minister of Labour, Thailand and HE Thein Swe, Union Minister for Labour, Immigration and Population, Myanmar

<sup>32</sup> Agreement on the Employment of Workers Between the Government of the Kingdom of Thailand and The Government of the Republic of the Union of Myanmar, signed in Bangkok on 24 June, 2016 by HE Sirichai Distakul, Minister of Labour, Thailand and HE Thein Swe, Union Minister for Labour, Immigration and Population, Myanmar

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on one journey to Chinese border districts for a maximum of six nights and seven days. It costs an initial 500 MMK (0.37 USD), followed by a further 500 MMK (0.37 USD) at crossing. The passes are only to cross the border. If Myanmar migrants want to work, they must have the following documentation required by Chinese labour law: 1) a labour card, 2) medical clearance, and 3) a resident's permit. Chinese employers are to apply for these documents for migrant workers at one office location in China.<sup>33</sup> Some people in Northern Shan State suggested that people can stay in China for one year with the border pass.

A series of cross border agreements between Myanmar and Thailand govern cross border trade and the movement of people.<sup>34</sup> Article 64 of the Thai Royal Ordinance concerning the management of employment of foreign workers (2017) states that foreign workers of neighbouring countries who enter Thailand with a border pass may be permitted to work temporarily for a specified period or season within the area that is specified. Details are specified in the Notification of the Council of Ministers by publication in the Government Gazette.<sup>35</sup> CSOs in Thailand have claimed that these border and seasonal passes are misused regularly by employers, who send workers over the border every 30 days for a new pass while actually employing the workers year-round. Some also use the passes as an excuse not to give workers permanent contracts, saying they will issue another contract if and when the worker returns.<sup>36</sup>

In 2009 Myanmar signed an MOU with China on Strengthening Cooperation on Preventing and Combating Human Trafficking, and a further MOU in the same year with Thailand on Cooperation to Combat Trafficking in Persons, Especially Women and Children. They establish provisions for regular cooperation meetings across the borders. The MOU with China establishes Border Liaison Offices, and that with Thailand sets up a joint working group. They call for confidentiality, non-criminalization of trafficked persons under immigration laws, provision of care services, and cooperation in investigation, extradition, and repatriation.

#### **4. Actors and strategies on labour migration and anti-trafficking**

“We have the CBTIP... and the OESC. So, there are national mechanisms currently in practice for trafficking and non-trafficking situations.” – ATIPD official<sup>37</sup>

In Myanmar the MOLIP is the government focal point for labour migration. The Myanmar Ministry of Home Affairs (MHA) is the focal point on human trafficking issues. Other actors from government, labour organizations, overseas recruitment agencies (OEAs), international organizations, and civil society organizations (CSOs) are also essential to Myanmar's systems of migration and anti-trafficking governance, services and justice; some play major roles. Both labour

<sup>33</sup> Interview: DOI, Nay Pyi Taw, 9 March 2018.

<sup>34</sup> <http://www.mip.gov.mm/greater-mekong-subregion-cross-border-transport-agreement-gms-cbta-information-for-myanmar-thailand-border-crossing/>

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[https://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=107728&p\\_count=4&p\\_classification=17](https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=107728&p_count=4&p_classification=17)

<sup>36</sup> <https://www.bangkokpost.com/thailand/general/1748509/employees-abuse-seasonal-contracts-to-cut-costs>

<sup>37</sup> Interview: ATIPD, Nay Pyi Taw, 9 March 2018.

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migration and human trafficking issues also have multi-sectoral committees that bring together a wide range of government actors.<sup>38</sup>

Two parliamentary committees cover labour migration and trafficking: the Amoytha Hluttaw (Upper House) Parliamentary Committee on Local and Overseas Workers, and the Pyithu Hluttaw (Lower House) Parliamentary Committee on Women and Children's Rights. The Farmers and Worker Committee is also concerned. They were established in 2016 (GNLM, 2016).

In early 2018 they had been working on revisions of the LROE and the Anti Trafficking in Persons Law, as well as the development of a national domestic workers' law,<sup>39</sup> the development of which could set standards for the treatment of Myanmar domestic workers abroad.<sup>40</sup> Parliamentary committees submit information and proposals for discussion and debate by Parliament and eventual legislative action (ILO, 2017b). The committees welcome submissions of information as well as complaints. On receipt of a complaint, they consult the relevant ministry and in some cases hand it over. The Committee on Local and Overseas Workers has joined the MOLIP to travel and verify the authenticity of complaints of brokers deceiving potential migrants. The Committee notes that, by travelling, "their presence shows commitment to the issue and discourages brokers from violating laws".<sup>41</sup>

The United Nations agencies involved include UNICEF, which provides in-kind and other reintegration assistance for trafficked children. ILO has worked with MOEAF and MD on the Code of Conduct for OEAs and hosts the Forced Labour Complaint Mechanism. ILO is active in legal reform and advocacy for a domestic worker law. UN Women has a joint regional project with the ILO addressing violence against migrant women, and UNODC is also involved in this project. In 2012 the UNODC and IOM signed an MOU pledging closer cooperation to tackle human trafficking and migrant smuggling and to improve border management. IOM is conducting a nationwide migration survey and has a significant project on skills development for migrants as well as an anti-trafficking programme that includes safe migration awareness, government capacity building, and reintegration assistance with sustainable livelihoods. ILO and IOM both work with the government on the establishment and maintenance of MRCs throughout the country. The World Bank and UNCDF are assessing the migration systems with a view to improving financial services and access to affordable remittance channels.

Migration policy coherence not only involves coherent policy and focal agencies but, in line with the IOM Migration Governance Index, also involves: 1) specialized inter-departmental committees; and 2) national planning processes (EIU, 2016). Growing recognition of the importance of safe migration is underlining the need for effective coordination and awareness raising (see Box 3).

<sup>38</sup> See section 4.2.

<sup>39</sup> Interview, Parliamentary Committee on Local and Overseas Workers and the Parliamentary Committee on Women and Children's Rights, Nay Pyi Taw, 9 March 2018.

<sup>40</sup> Correspondence, ILO Geneva, 23 Jan 2016, in ILO, 2017b.

<sup>41</sup> Interview, Parliamentary Committee on Local and Overseas Workers and the Parliamentary Committee on Women and Children's Rights, Nay Pyi Taw, 9 March 2018.

### **Box 3: Key role of safe migration awareness raising**

“I have been involved in anti-trafficking in Myanmar since 2005. Before there was a “Don’t Migrate” attitude, but rich and poor alike all migrate. Now we understand that people migrate to increase their livelihood, so now we have moved to Safe Migration messaging.” – ATIPD official <sup>42</sup>

“When irregular migrants return, there are receiving centres in Myawaddy and Tachilek. In cooperation with GAD, DSW, and village level officials, we give awareness raising there.” – MD official

Many of those interviewed talked about safe migration awareness raising. The DOL conducts safe migration activities, coordinating with GAD to do so. ATIPD distributes information through Community-Based Watch Groups at the Village and Ward levels. ATIPD says they monitor migration trends, as well as changes in countries of destination and natural disasters, to be able to target their awareness raising. At the time of interview there were floods in Chin State, and anti-trafficking police were giving safe migration information there, but reporting that they were not sure whether it was going to be effective, since people were scrambling to leave rather than paying attention to the information. <sup>43</sup> DOI has put up signs about the terms of the border passes and possible consequences at the hands of the Chinese authorities if their terms are violated. DOI reports that state and regional officials also raise awareness on documentation terms, but that this is infrequent. <sup>44</sup> Finally, most CSOs and labour organizations interviewed also conduct safe migration training.

While many groups perform these activities individually, in some places they collaborate. Greater collaboration is recommended to ensure that messages are integrated and not contradictory: some agencies advise people not to move, others issue warnings, and still others offer empowering advice for safety on journeys. Greater collaboration would also make better use of the limited resources available for migration activities. As demonstrated in the 2014 Population Census, although the greatest movement of people is from districts bordering Thailand, people in fact migrate from all states and regions of Myanmar, and it is therefore important that information is available throughout the country.

#### ***Good practice: local joint efforts for safe migration awareness raising***

In Keng Tung the LEO and ATTF have worked with the Mawk Kon Local Development Organization, which has run the Migrant Workers Resource Centre (MRC) since 2015 to provide all migrants with information prior to their departure. The MRC was set up in a CSO and not the LEO because the majority of migrants from Keng Tung migrate irregularly, and it was expected that for this reason very few would contact a government office. By housing the MRC in the CSO with the approval and support of the LEO and ATTF, the MRC has become a centre for the building of trust and support. Potential migrants reported to ILO that they felt that both agencies were supporting them. The MRC also includes ATIPD and LEO in an annual festival at Shan New Year with migrants’ rights campaigns. In a similar type of effort, in Mandalay ATIPD presented anti-trafficking information at an awareness raising session during an ILO TRIANGLE safe migration training session. <sup>45</sup>

In a similar type of effort, in Mandalay ATIPD presented anti-trafficking information at an ILO TRIANGLE safe migration awareness raising training invites police to their safe migration training. <sup>46</sup>

## **4.1 Main actors in labour migration governance**

The Ministry of Labour, Immigration and Population (MOLIP) participates in, and in some cases also convenes platforms, and policy coordination and bilateral meetings. High-level responsibilities

<sup>42</sup> Interview: ATIPD, Nay Pyi Taw, 9 March 2018.

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are assumed by the Minister of MOLIP, the Permanent Secretary, or the Director-General of the DOL (ILO, 2017b).

The DOL within MOLIP ensures that workers enjoy the rights and protection granted under the various labour laws, providing social services for workers, promoting higher productivity of labour, and participating in international labour affairs (DOL, 2016).

The Migration Division (MD), formed in 2012, is among seven divisions under the DOL. It is a specialized unit able to provide technical input and contribute to planning, policy making, and implementation. It leads the current LROE revision process, participates in discussions on bilateral agreements, issues licences to OEAs, and verifies and approves labour migration upon receipt of requests from OEAs. It also handles the migrant worker complaints mechanism (see section 4.2), and mediates disputes between agencies and migrants. In cases where the agencies are found to be cheating the migrants, it suspends the agencies and blacklists agencies that regularly violate regulations (ILO, 2017b).

The Department of Immigration and National Registration (DOI) within MOLIP has responsibility for managing migration at airports, controlling borders with Bangladesh, China, India, Laos PDR, and Thailand, and administrating documentation for exits and entries. Coordinating with MHA, DOI focuses on issuing passports, temporary border passes, border passes, and certificates of identity, which are currently issued at eight centres in Thailand and at others in Myanmar. DOI coordinates with MHA on the issue of passports to verify citizenship and age. It coordinates with DOL on labour migration by checking passports, destinations, and employment contracts at exit checkpoints.<sup>47</sup>

A network of 101 labour exchange offices (LEOs) covers all Myanmar territory. Of these, 15 are state and regional offices, 81 are township offices, three cover special economic zones, and two district level offices. Currently 15 such offices are also serving as Migrant Resource Centres (MRCs) with a further five migrant centres operating outside the LEOs run by CSOs.<sup>48</sup> As regards recruitment and job matching, LEOs register jobseekers, post employers' advertisements, and conduct domestic, but not international job matching.<sup>49</sup> They are able to publicly post available jobs overseas, however, and they register potential migrants for an Overseas Worker Card, which is needed to apply for the PJ or "job" passport, the only one of nine passports that allows the holder to work overseas.<sup>50</sup> LEOs that have Migrant Worker Resource Centres (MRCs) receive specific training from ILO or IOM to provide migration services, such as referrals to the complaints mechanism and coordination of outreach with labour organizations and CSOs. Their mandate is to provide awareness raising and education for potential migrants, including information on

<sup>43</sup> Ibid.

<sup>44</sup> Interview: DOI, Lashio, 7 March 2018.

<sup>45</sup> Interview: Northern Shan State Baptist Convention Women's Department, Lashio, 6 March 2018.

<sup>46</sup> Ibid.

<sup>47</sup> Interviews: DOI, Lashio and Nay Pyi Taw, 7 and 9 March 2018.

<sup>48</sup> The ILO supported seven MRCs based in LEOs as follows: Dawei, Kengtong, Kyaukse, Maiktila, Mandalay, Myingyan, and Taunggyi. In addition, the ILO also supports five MRCs in Shwe Pyi Thai (run by BKM North Dagon, CTUM, Kaw Thaug and Fed); in Bago (run by FLC); in Myawaddy (run by Samaritans Purse); and in Tachilek and Keng Tung (run by Mawk kon). The IOM supported eight, in Hakha, Hpa-An, Magway, Mawlarmyine, Myawaddy, Pathein, Sittwe, and Yangon.

<sup>49</sup> Interview, LEO, Lashio, 7 March 2018.

<sup>50</sup> Discussion: GAD, Anti-Trafficking Unit (ATU) and LEO, Mandalay ILO Training on Safe Migration for GAD and LEO, 24 April 2018.

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destination countries, contact details of labour attachés, explanations of the migration process and complaints mechanism, and information pamphlets. LEOs without MRCs can also provide information under their remit of providing services to workers and employment matching, but the staff may not be confident to provide detailed information at this time.<sup>51</sup>

The GAD, under MHA, has the widest presence of any government organization in Myanmar. It manages public administrative structures, and is a major actor in the coordination and provision of all public services. GAD communicates with all 21 government ministries, connecting vertically from Nay Pyi Taw to 16,700 wards and village tracts. It has multiple roles, including tax collection, land management and various registration processes (Saw and Arnold, 2014). GAD notes that it has no dedicated funding for the work on migration or trafficking, and work is carried out through its general fund or “with donations of money provided by local persons and NGOs”.<sup>52</sup>

In ideal situations, before a migrant’s departure, ward and administration-level GAD officials verify household registration, the Citizenship Scrutiny Card, and the age (over 18) of the potential migrant. If those criteria are met, GAD makes a recommendation to process the migrant’s documents, refers the potential migrant to MRCs, lets them know about pre-departure training, and recommends they make copies of all their documents and leave them with family and authorities. Families are to inform GAD if family members are overseas. GAD reports having a basic tracking system for that information: it has 316 One-Stop Shops across the country (GAD, 2017) which can receive migrants’ complaints and can provide support, counselling and referrals (see Section 4.2).

Also of note is the role of the Ministry of Border Affairs, which maintains martial law in border conflict areas. The majority of internationally bound migrants come from these areas, and thus the ministry’s governance is relevant for outward migration and for the management of returns.

Myanmar embassies, staffed primarily by the Ministry of Foreign Affairs (MFA), also host DOL’s labour attachés in select countries. Since early 2018 labour attachés were present in the Republic of Korea (1), Malaysia (2) and Thailand (5). In the past only men were allowed to apply to be labour attachés, but since January 2019 the men-only criterion was removed from advertisements, but there are still no female labour attachés. The attachés have terms of reference which detail 33 roles and responsibilities. They are able to organize meetings with workers, employers, OEAs, and MOEAF if needed to settle disputes. If disputes involve employers or country of destination agencies, the ministry of labour of the destination country will be contacted (ILO, 2016a). Some OEAs give migrant workers a stamped envelope with the Myanmar embassy’s address on it, advising workers to use it to send their details to the embassy by post in the event of problems.<sup>53</sup> While the Myanmar embassy in Singapore does not have a labour attaché, MFA Myanmar set up a 24-hour hotline there in mid-2016. Embassy staff in Singapore work with some NGOs and negotiate with agencies in some problem situations (ILO, 2017c). The Myanmar embassy in Malaysia set up a Migrant Protection Task Force in 2016, and the Myanmar embassy in Thailand set up a similar committee that included NGOs, though this is reportedly no longer operative (*Myanmar Times*, 2016).

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<sup>51</sup> ILO, 2016a. Interview, LEO, Lashio, 7 March 2018.

<sup>52</sup> GAD, 2018, provided in Interview, GAD, Nay Pyi Taw, 9 March 2018. On file with author and ILO.

<sup>53</sup> Interview, Migrant domestic worker returned from Singapore, Yangon, 19 August 2016.

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**Box 4: Interagency cooperation on labour migration at a glance**

As stated above, some interagency cooperation is already occurring on labour migration, both before and after migration, on the issue of employment contracts. DOL, DOI and the Myanmar Police Force jointly ensure that migrant workers have appropriate documentation. DOI and MHA coordinate on the issue of passports; GAD checks household registration, national ID cards and the age of the migrant. DOL and MHA work together to conduct background checks on Overseas Employment Agency (OEA) staff and on subagents. MOLIP and MOEAF work together on authorizing OEAs, as well as migrant travel.

Labour organizations are key stakeholders in the realization of migrant workers' rights, including by assisting migrants to file and prosecute cases pre- or post-migration. They receive complaints and work on awareness raising when they have the resources. The Confederation of Trade Unions Myanmar (CTUM) has a dedicated Migration Department. Its members include the Agriculture and Farmers Federation of Myanmar, the Building and Wood Workers Federation of Myanmar, the Industrial Workers' Federation of Myanmar, the Mining Workers' Federation of Myanmar, the Myanmar Transport and Logistics Federation, as well as public sector and education sector Unions. In some cases, trade unions in countries of destination have reached out to migrant workers. The Malaysia Trade Union Congress (MTUC), for example, runs Migrant Resource Centres while the State Enterprise Workers Relations Confederation (SERC) of Thailand and the Thai Labour Solidarity Committee (TLSC) have worked closely with migrant workers' groups to promote the rights of migrant workers and the inclusion of migrants in Thai unions.

MOEAF is a registered non-governmental organization that represents private OEAs in Myanmar (ILO, 2016a). It was created with the support of MOLIP, and is tasked with monitoring and supervising agencies regarding their compliance with Myanmar laws, assisting and protecting workers, and trying to resolve complaints (MMN, 2017). It must supervise agencies "in taking full responsibility for workers from the day of sending to the receiving country to the end of their employment contract and return to their home."<sup>54</sup> All agencies licensed to send migrant workers abroad must be members of MOEAF. In 2016, together with MOLIP and with technical assistance from the ILO, it instituted a Code of Conduct for OEAs. The Federation has since 2013 had offices in Yangon and Bangkok, Thailand (ILO, 2016a), as well as a 24-hour call centre in Thailand.

MOEAF is responsible for coordinating with MOLIP regarding members' requests to send workers abroad. The Federation also plays a large role in the migrant workers complaints mechanism in Myanmar, as the government gave it responsibility to mediate complaints against its members where this is possible.<sup>55</sup> MOEAF also maintains a blacklist of companies abroad to which MOEAF member agencies are not permitted to send workers. MOEAF reports having placed companies on its own blacklist for allowing workers to be arrested in workplace raids; non- or delayed payment of wages; or otherwise violating workers' rights under national law (ILO, 2016a). MOEAF also plays a role in coordinating with ATIPD on trafficking cases, reporting cases to ATIPD when they arise. MOEAF notes that ATIPD calls them and sends a letter to check if an OEA is registered when they make a trafficking-related arrest. MOEAF responds by phone and post.<sup>56</sup>

Civil society organizations (CSOs) and labour organizations (LOs) working on migration in Myanmar are organized in a CSO and LO Network for Migrants (Myanmar). Some of the members also address issues of trafficking. The CSO and LO Network regularly provides training on safe migration and trafficking awareness raising and community meetings. Nearly all member

<sup>54</sup> Article 18, 2014 Rules and Regulations for Myanmar Overseas Employment Agencies Federation.

<sup>55</sup> This relates only to licensed OEAs. See section 4.2 below for more details of the complaint mechanism.

<sup>56</sup> Interview: MOEAF, Yangon, 13 March 2018.

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organizations receive cases from migrants, including people who have experienced cheating, coercion, overcharging, and trafficking. They discuss the cases together and where possible with counterparts in destination countries, as well as with MOLIP, ATIPD, and MOEAF. A few examples of work by Network members include the YMCA, which has provided paralegal training to community watch groups; the Northern Shan State Baptist Convention Women Department, which has invited police and pastors to the safe migration training it conducts at churches; Fifth Pillar and YMCA's Impulse Case Information Centre provide legal aid to returned migrant workers, and Future Light Centre and the Migrant Worker Rights Network advocate for legal changes to benefit migrant workers. The Keng Tung Mawk Kon Local Development Organization runs a Migrant Resource Centre in Shan State. Save the Children and World Vision work on legal aid and service provision for trafficked persons, including children. This is only a sample of active national and local CSOs. Other groups, such as the Foundation for Education and Development (FED) and Yaung Chi Oo Workers Association, are present in both Myanmar and Thailand.

The Myanmar Women's Affairs Federation (MWAF) and Myanmar Maternal and Child Welfare Association are non-governmental organizations enjoying governmental support. They assist migrant women who return with no identity or household registration documents, as well as those with nowhere to stay. Before migration, they try to ensure the families of potential migrants have details of where migrants are going and copies of migrants' documents. They also make referrals to MRCs, give out information where available about OEAs, and in some cases work to verify the jobs and contact embassies. In cases where migrant women have been in exploitative situations, they provide counselling and work with DSW.<sup>57</sup>

## **4.2 Strategies and mechanisms on labour migration**

### ***Overseas Employment Central Committee (OECC) and Overseas Employment Supervisory Committee (OESC)***

The LROE has established two inter-departmental committees related to labour migration: OECC and OESC. LROE Article 6(c) notes the OECC's duty of "communicating and coordinating with Government departments, organizations and persons concerned to ensure that there is no loss of the rights and privileges of workers and that they receive the rights they are entitled to". The OECC is chaired by the Minister of MOLIP, and its duties are primarily related to creating and communicating law and policy. The OECC includes relevant Deputy Ministers and heads of government departments.

The OESC operates at national level, is chaired by the Director-General of the DOL, and includes relevant multi-sectoral ministries and government departments. Its role is to implement policy laid down by the OECC. Article 8(b) of the LROE states that OESC's role is "communicating with local and foreign government departments, organizations and persons [...] ensuring rights and privileges of the workers and damages arising out of employment". The OESC is to recruit and select workers for overseas employment; provide skills and training; issue, cancel or revoke OEA licences; coordinate with other government agencies to facilitate passports and entry visas for migrants; and oversee the collection of recruitment service fees.<sup>58</sup> The OESC has three Working Committees, which each include around ten different ministries and related departments. Appendix 3 gives details of their membership:

<sup>57</sup> Discussion: GAD, ATU and LEO, Mandalay ILO Training on Safe Migration for GAD and LEO, 24 April 2018.

<sup>58</sup> LROE, Article 8.

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- Administrative Working Committee
  - Workers' Benefits Committee
  - Workers' Rights Protection Committee (MOL, 2011).

### ***National Plan of Action on Labour Migration***

The Second Five-Year National Plan of Action on the Management of International Labour Migration (2018-2022) was completed and MOLIP launched it publicly in May 2019 in English and Myanmar languages. The NPA includes reference to international standards in relation to exploring zero fee policies, particularly for domestic workers and seafarers; proposes the ratification of key conventions, including the 1990 UN International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; and the ILO's Work in Fishing Convention, 2007 (No. 188) and Domestic Workers Convention, 2011 (No. 189); as well as implementation of the UN Global Compact. The NPA specifies that bilateral agreements should be made with reference to key conventions. The NPA also establishes a centrally managed Labour Migration Information System (LMIS). Implementing ministries and organizations include MOLIP (primarily), the Central Bank, Ministry of Education, MHA, MFA, MOEAF, MOI, MSWRR, and the Office of the Attorney General. As with OESC, NPA coordination is primarily at national level.

### ***Complaints mechanism for overseas migrants***

The MD under DOL set up two complaints mechanism centres in 2013, in Nay Pyi Taw and Yangon, including a hotline which is staffed on a daily, rotating basis by DOL staff, and two Myanmar Migrant Workers' Counters at Terminal One Departure and Arrival Hall of Yangon International airport. Complaints can be received there, or at any LEO, GAD One Stop Shop, Myanmar Embassy abroad, MOEAF's offices in Yangon or Bangkok, through MOEAF's hotline, or to a parliamentary committee.

LEOs can receive complaints by phone, email, letter or in person, and then send those to the MD for processing. An inquiry team made up of LEO and MOEAF officials will follow up to verify the complaint (ILO, 2016a). Complaints can only be processed for migrant workers with an overseas employment identification card; in other words, they must be registered migrant workers. Irregular migrants can also make complaints, but the majority are referred to the local police, who then refer it to Anti-Trafficking Task Forces (ATTF), or ATIPD. Between January and August 2019, MOLIP reported receiving 691 complaints through the mechanism. In most cases (427) migrants issued complaints to their embassy or labour attaché while in the country of destination. There were many causes for complaint. However, the most frequent included death of the worker (106); unpaid wages (82); employers retaining workers' documents (50); and deportation (50).<sup>59</sup>

If DOL, an embassy, or the MOEAF receive complaints against a licensed OEA, they first negotiate between the OEA and the worker and investigate the case, sometimes in coordination with other government actors or each other. Embassies and the MOEAF report cases to MOLIP and/or the ministry of labour of the destination country. The DOL can suspend or revoke an OEA licence or compel offenders to pay the worker compensation, if necessary, taken from the OEA's licensing deposit. MOLIP may also blacklist an agency (ILO, 2016a).

DOL reports filing a small number of cases against unregistered persons acting as migration agents under article 26 of the LROE (see Box 5).<sup>60</sup> For cases where MOLIP takes action against OEAs,

<sup>59</sup> Data provided by MoLIP on the Complaints Mechanism, January-August 2019.

<sup>60</sup> Interview: MOLIP, Nay Pyi Taw, 9 March 2018.

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subagents or brokers, LEO officers file complaints at the relevant local police station. MOLIP then seeks comment from public prosecutors and charges the OEA, subagent, or broker.

If the complaint is against an unlicensed OEA, subagent or individual broker, as in the majority of cases, they are referred to the local police, ATTF, or ATIPD (see Box 17 for details of case transfers).

**Box 5: In 2018 DOL filed cases under LROE Article 26 <sup>61</sup>**

**Case 1: Two cases filed against recruiters, using the LROE and Anti-Trafficking Law**

As reported in the *Myanmar Times*, the SOD Oversea Employment Agency had no licence when it recruited over 500, and possibly up to 1,000 workers for welding jobs in Taiwan's construction sector. The company worked through three subagents, who in turn worked through local-level brokers to recruit workers. The brokers collected an estimated 500,000 MMK (US\$ 370) from each worker and sent it to the subagents and OEA.

When the local brokers realized the recruitment was fraudulent, and that their fellow community members had been cheated, they filed a case with the National Human Rights Commission. They wanted to recover the money for the migrant workers and sought help. According to DOL, they did not realize they were acting as brokers, or that their action of collecting money and promising work was illegal. Instead, they felt they had been "used" by the subagents to collect money from potential migrants.

The Managing Director and Director of the OEA, the subagents, and now the brokers are being charged under LROE Article 26 by MOLIP. MOEAF also reports that a charge has been filed against the agents and brokers under the Anti-Trafficking Law.

**Case 2: Government official charged for recruiting**

In Magway Region a ward-level official is being charged for collecting 700,000 MMK (US\$ 518) from potential migrants. The official contacted an OEA to send the migrant workers to Malaysia. However, at the time a ban on sending migrants to Malaysia was in place, creating a delay. The workers asked for their money back. The OEA had not received money from the official, who continued to hold the money. DOL reports that it intervened, upon which the official returned the funds to the migrants. DOL is prosecuting the official under LROE Article 26 for recruiting without a licence.

## **GAD's One Stop Shops**

GAD's One Stop Shops involve officials from different ministries (GAD, 2017). A DOL official can be based in the One Stop Shops, but in some areas the LEO offices do not have sufficient staff to assign staff to them. GAD and other ministries receive migrants' complaints and can provide support, counselling and referrals. Potential migrants can also visit the shops to ask questions (see section 4.3). Returned migrants can seek assistance from the One Stop Shops to set up small businesses. GAD reports that One Stop Shops can provide police clearance and recommendations for those seeking employment. They also have a role in maintaining the electoral role and ensuring migrants do not lose their right to vote.

In addition to the above primary mechanisms on labour migration, GAD states that it also participates in committees relevant to coordinating on labour migration and anti-trafficking issues: the Myanmar Workers' Rights Protection Committee, Workers' Affairs Cooperation Working

<sup>61</sup> Both cases in the box are from Interview: MOLIP, Nay Pyi Taw, 9 March 2018. Information on Case 1 is also in *Myanmar Times*, 2018b.

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Committee, and Supervisory Committee on Preparatory Work for Issuing a Household List and Registration Card to Migrants and Workers.<sup>62</sup>

### **Code of Conduct for OEAs**

A Code of Conduct (COC) was jointly developed in 2016 by MOLIP with technical input from ILO. It fosters ethical recruitment practices through a monitoring mechanism involving working practice standards and ranking of OEA compliance. Agencies that sign are to coordinate and cooperate with government and civil society in such areas as multi-stakeholder pre-departure training and dispute settlement. As at March 2018, 183 agencies had signed the Code of Conduct. Japan is now requiring that only OEAs that have signed the COC may send workers to Japan.<sup>63</sup>

### **4.3 Main actors in anti-trafficking governance**

The MHA is the government focal point on human trafficking issues. At the national level within the MHA's Police Force and Customs Department, the Anti-Trafficking in Persons Police Division (ATIPD) is the focal agency for anti-trafficking. Anti-Trafficking Units (ATUs) and ATTFs are focal points at state, regional and local levels.

ATUs and ATTFs have existed since 2004 following the 2003 MOU with Australia on Asian Regional Cooperation to Prevent People Trafficking.<sup>64</sup> The MHA formed the ATIPD in 2013 as a specialized body. Part of its mandate is to oversee the pre-existing ATTFs throughout the country. ATIPD has dedicated funding and operates three subdivisional offices supervising the 18 ATUs and 11 ATTFs, which are located in cities and at borders. In 2016 there were 471 ATTF officers.<sup>65</sup> ATIPD also oversees three Child Protection Task Forces.<sup>66</sup> ATIPD has a dedicated 24-hour hotline, which in 2016 received 2,923 calls.<sup>67</sup>

The ATIPD works with police to investigate reported cases of trafficking. However, ATTF officers have no investigative power or authority to open cases, though they can give technical advice to local police. ATIPD receives returnees and conducts awareness raising for those who return as well as for potential migrants. The ATTF is also involved in reintegration efforts and is able to provide livelihood support, spending up to 40,000 MMK (US\$ 29.59) per person for returned trafficked persons.<sup>68</sup> ATIPD has also set up Community-Based Watch Groups at local levels.<sup>69</sup>

Local station police are the first contact for many persons reporting a trafficking violation. They can open an investigation. Station police come under the Myanmar Police Force and Customs Department, MHA. Their remit is very wide, but many officers lack knowledge of laws relevant to trafficking or labour migration. ATIPD and others conduct training throughout Myanmar and serve

<sup>62</sup> Interview: GAD, Nay Pyi Taw, 9 March 2018.

<sup>63</sup> *Myanmar Times*, 2018a.

<sup>64</sup> MHA, 2017.

<sup>65</sup> USDOS, 2017.

<sup>66</sup> ILO, 2016a, 2017a.

<sup>67</sup> ATIPD, 2016.

<sup>68</sup> This can involve, for instance, buying three pigs as livelihood support for the returned person. Interview: DSW, Lashio, 6 March 2018.

<sup>69</sup> ATIPD, 2016.

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as technical backup for the police force.<sup>70</sup> The Myanmar Police Force serves as the main body executing the national anti-trafficking mechanisms, and the Chief of Police is the Chair of the National Task Force on the National Plan of Action to Combat Trafficking in Persons.

Labour attachés in Myanmar embassies abroad have responsibility for assisting trafficked persons.<sup>71</sup> The 2016 Progress Report on the ATIPD NPA notes that the Myanmar Embassy in China verifies nationalities of Myanmar migrant workers who are arrested for illegal entry and identifies trafficked persons among them, though the report explains that this not a straightforward process given the ethnic languages spoken by the workers and geographical distances from the embassy.<sup>72</sup>

The DSW in the Ministry of Social Welfare, Relief and Rehabilitation (MSWRR) is responsible for the return, rehabilitation and reintegration of people who have been trafficked. It reports doing so since 1992, and states that it assisted a total of 333 trafficked persons in 2017 who had experienced trafficking in China, Indonesia, Thailand and other countries. In total, 254 of these were women, and 79 were men.<sup>73</sup> DSW provides shelter, psychosocial counselling, family tracing and awareness raising “with trafficked persons so they may not want to migrate again if they know the risks”.<sup>74</sup> For trafficking cases in China, ATTF contacts DOI to check the DOI border pass record, checking whether the person crossed to China with a border pass and when they did so. ATTF then uses that evidence to take legal action. The DOI also checks the residence of the trafficked person using a paper-based administrative system (see Box 6).<sup>75</sup>

<sup>70</sup> ATIPD, 2016.

<sup>71</sup> USDOS, 2017.

<sup>72</sup> ATIPD, 2016.

<sup>73</sup> DSWRR, 2018, provided in Interview, Department of Rehabilitation, Nay Pyi Taw, 8 March 2018. On file with author and ILO.

<sup>74</sup> Interview: DSW, Lashio, 6 March 2018.

<sup>75</sup> Interview: DOI, Lashio, 7 March 2018.

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**Box 6: E-governance: e-cooperation risks and ethics**

DOI officials note that “Cooperation is ‘manual’ now, but soon we will switch to e-governance.”<sup>76</sup> The advantages and disadvantages of the switch for migrants, including trafficked persons, are not yet clear. E-governance could mean that cases are properly tracked and do not get lost when passed between agencies.

Risks related to increased e-cooperation, however, need to be managed with attention to confidentiality, digital security, and a rights-based approach ensuring that data in the e-system is not used to penalize migrants or trafficked persons.

The *2017 US Trafficking Report* already notes that in Myanmar “authorities continued to arrest trafficking victims for acts they were forced to commit as a result of being subjected to human trafficking” (USDOS, 2017). The UN Convention on Transnational Organized Crime and other international law and guidance mandate that migrants in trafficking and smuggling situations should not be penalized for acts committed as a result of trafficking or smuggling processes.<sup>77</sup>

Reintegration efforts are conducted in collaboration with the ATTF, the Myanmar Women’s Affairs Federation (MWAFF), and local CSOs, as well as actors from the international community (IOM, UNICEF) and NGOs (Save the Children, World Vision). The ATTF follows up with trafficked persons for a minimum of one year, with check-ups every three months through GAD contacts at the local level. The DSW does not have sufficient travel funds to do this itself. A DSW case manager follows cases and engages a public prosecutor to work on the cases. Minors who are trafficked and not reintegrated with families are placed in DSW institutions and receive training or education. The DSW established an information centre for trafficked persons in 2014 at the Social Welfare Training School in Yangon.<sup>78</sup> It has taken learning and coordination trips to visit Thai counterparts and shelters for trafficked persons in Thailand. In terms of people returning from overseas, the DSW is specifically mandated to care for trafficked persons, but returned migrants can access their general programmes, such as vocational training or referrals of women to the Myanmar Women Affairs Federation.<sup>79</sup> In this limited capacity, they give information to returned migrants who need employment and refer migrants to MRCs. However, MSWRR Deputy Director-General Mr. Myo Set Aung noted a wish to be able to protect “migrants in distress” more thoroughly and systematically.<sup>80</sup>

GAD reports that they play a specific role in pre-departure and upon return for trafficked persons and migrants,<sup>81</sup> with a mandate to cooperate on anti-trafficking with ATIPD and DSW as follows:

<sup>76</sup> Ibid.

<sup>77</sup> UN Recommended Principles and Guidelines on Human Rights and Human Trafficking, Principle 7 and Guideline 4(5); UN Convention against Transnational Organized Crime, Article 18(12) and 18(27) and its Protocol against the Smuggling of Migrants by Land, Sea and Air, Article 5; Model Provisions for State Anti-Trafficking Laws, Center for Women Policy Studies, Protections for Trafficking Victims Proposed Language, 6, 2005; State Model Law on Protection for Victims of Human Trafficking, Division D, Section 3, 2005; Council of Europe Convention Against Trafficking in Human Beings, Art. 26, 2005; UNODC Model Law Against Trafficking in Persons, Art. 10, 2009.

<sup>78</sup> DSWRR, 2018, provided in Interview, Department of Rehabilitation, Nay Pyi Taw, 8 March 2018. On file with author and ILO.

<sup>79</sup> Interviews: DSW, Lashio, 6 March 2018, and Department of Rehabilitation, Nay Pyi Taw, 8 March 2018.

<sup>80</sup> Interview: Department of Rehabilitation, Nay Pyi Taw, 8 March 2018.

<sup>81</sup> Discussion: GAD, ATU and LEO, Mandalay ILO Training on Safe Migration for GAD and LEO, 24 April 2018.

- Receiving trafficked persons at border areas on return
- Providing food and establishing temporary shelter for migrants in schools, halls and monasteries at arrival sites
- Referring trafficked persons to DSW shelters
- Providing transportation for return home
- Coordinating with the Health Department for medical treatment
- Coordinating at ward and administration level on trafficking cases with Anti-Trafficking Police and DSW
- Coordinating with NGOs for assistance provision.

The Office of the Attorney General prosecutes cases under the 2005 Anti-Trafficking in Persons Law. Public prosecutors and the judiciary work toward remedies and access to justice for migrant workers and trafficked persons.

**Box 7: Interagency cooperation on anti-trafficking at a glance**

There is interagency cooperation to identify and assist trafficked persons, and to prosecute traffickers. To summarize actors' roles in anti-trafficking: <sup>82</sup>

- At borders, trafficked persons are received at reception centres on the Myanmar side of the border by DSW, DOI, ATTF, GAD, and any relevant Myanmar CSOs.
- ATIPD, ATTFs and DOI work together, and coordinate with GAD to trace trafficked persons' hometown origins. DOI checks its records to see whether the person crossed the border with documents and the date.
- Anti-trafficking bodies work with DOL and MOEAF to determine whether an offending OEA is licensed, and then coordinate with DSW for service provision. DSW also coordinates with GAD and the Public Health Department.
- At local level, GAD coordinates all ministries through its One Stop Shops on problems that arise before and after migration, including trafficking experiences.
- When trafficked persons do not want to open a case, CSOs report that they can still access service provision. CSOs coordinate to obtain referral documents from DSW and ATTF. <sup>83</sup>

#### 4.4 Strategies and mechanisms on anti-trafficking

##### ***The CBTIP and other bodies concerned with trafficking in persons***

The Anti-Trafficking in Persons Law established the CBTIP in 2005. This multi-sectoral national coordination body is chaired by the MHA Minister and supported by Deputy Chairs, who include the MHA Deputy Minister, the MSWRR Deputy Minister and the Deputy Attorney General. The Director-General of the Myanmar Police Forces is the Secretary, and it also includes the heads of relevant government departments, including MOLIP (DOL and DOI), GAD, the Ministry of Border

<sup>82</sup> These are detailed in section 4.3.

<sup>83</sup> Interview: World Vision, Yangon, 14 February 2018.

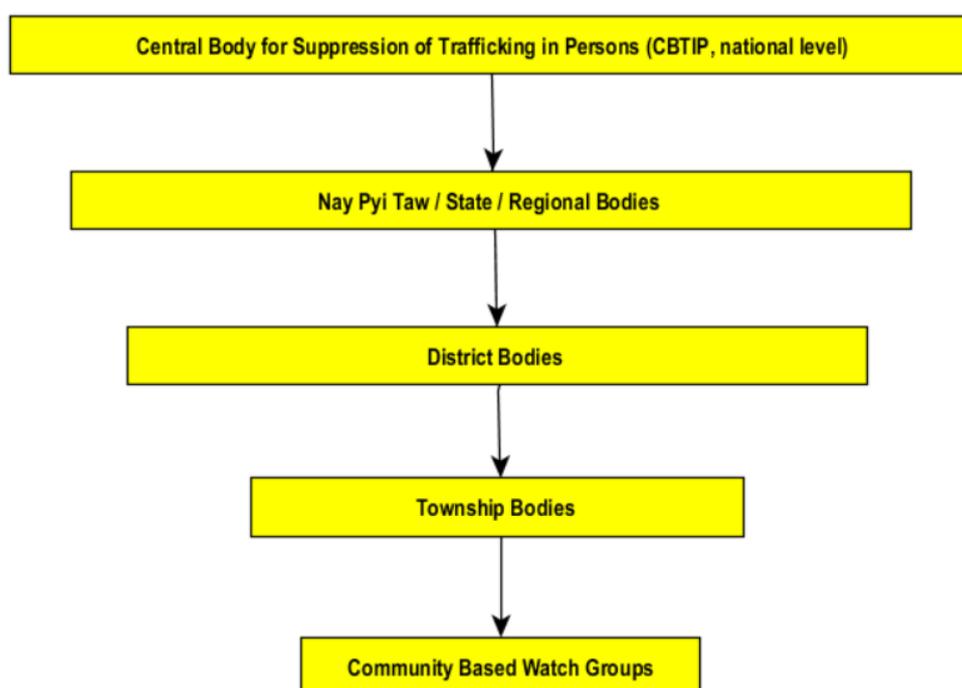
Affairs, and others. It may also include non-governmental organizations. CBTIP has working groups on the following three issues:

- Prevention of trafficking in persons and protection of trafficked persons, chaired by the MHA Deputy Minister
- Legal framework and prosecuting measures, chaired by the Deputy Attorney General
- Repatriation, reintegration and rehabilitation of trafficked persons, chaired by the MSWRR Deputy Minister.

CBTIP meets once a year, with limited time for discussion, particularly between the working groups.

Trafficking in persons bodies at all vertical levels were established by 2006, except for Community Based Watch Groups, which were established in 2012 (Figure 1). Annual activities of the state and regional bodies are detailed in ATIPD's annual reports, and primarily involve awareness raising and surveys (ATIPD, 2016). Community Based Watch Groups are comprised of the GAD Village/Ward Administrator (serving as Group Leader), heads of clusters of 100 households, persons in charge of Village/Ward Fire Brigades and Village/Ward Red Cross, Immigration, MWAF, the Myanmar Maternal and Child Welfare Association, and a surveillance police officer (serving as Secretary).<sup>84</sup>

**Figure 1: Trafficking in persons coordination bodies**



### ***National Plan of Action to combat trafficking in persons***

The Third Five-Year National Plan of Action to Combat Trafficking in Persons (2017-2021) aims to align with the Coordinated Mekong Ministerial Initiative Against Human Trafficking (COMMIT) and to take into consideration suggestions made in the US Trafficking in Persons report.<sup>85</sup> Its three strategies are: 1) to prevent and suppress trafficking; 2) to protect trafficked

<sup>84</sup> Interview: IOM, Yangon, 14 February 2018.

<sup>85</sup> CBTIP, 2017.

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persons; and 3) to prevent forced labour of child workers. It plans to revise and adopt the Anti-Trafficking Law, as well as its accompanying rules and regulations; to establish the fund called for in the Law; to organize awareness raising and pre-departure training for migrants; to create a blacklist of companies that have trafficked persons; to strengthen the capacity of those working in the criminal justice system; to ensure the protection of victim witnesses and the rights of trafficked persons through a victim-centred approach; to upgrade shelters; and to develop support based on the needs and suggestions of trafficked persons.

The NPA to combat trafficking in persons calls for the following:

- Policy and cooperation: “To sustain and strengthen cooperation among local organizations, related countries and governments, and international organizations in the action plans of anti-trafficking in persons.”
- Prevention c(15): “Enhancing capacity of personnel from related departments (including embassy staff in foreign countries) on prevention of trafficking in persons.”
- Prosecution b(1): “Cooperation in investigation, prosecution and adjudication of trafficking in persons shall be strengthened.”
- Prosecution b(2): “Guidelines on sharing information about trafficking in persons and cooperation among the relevant government departments/organizations in the signatory countries as well as home country shall be developed and practised.”
- Protection f(3): “... cooperating with the relevant government departments/organizations, private businessmen, and civil social organizations for securing employment [of trafficked persons on return].”
- Protection f(4): “Ensuring that victim protection service providers such as the relevant government departments/organizations and civil society organizations shall know and follow the national guidelines on reception, returning to home, reintegration with family of trafficked persons.”

Several bodies are responsible for supervising implementation of the NPA:

- The CBTIP establishes policies and guidelines for its implementation.
- The CBTIP working groups supervise work under each theme.
- A National Task Force on Implementing Planned Activities coordinates implementation under each theme and reports on progress to the CBTIP.
- The National Task Force also supervises the work of regional, state, district and township bodies for the suppression of trafficking in persons.
- Finally, a Monitoring Team makes field visits, supervises, and monitors progress.

Annual Work Plans for NPA implementation are published by the CBTIP, and NPA Annual Progress Reports are published annually.

### ***Bilateral anti-trafficking and border cooperation mechanisms***

There are no Standard Operating Procedures (SOPs) on cross-border referrals between China and Myanmar.<sup>86</sup> Anti-Trafficking Border Liaison Offices are present on the China border in accordance with the 2009 MOU with China on Strengthening Cooperation on Combating Human Trafficking.

<sup>86</sup> Interview: IOM, Yangon, 14 February 2018.

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They facilitate joint investigation, repatriation of trafficked persons, and handing over of suspects, as well as information exchange. In 2016, 128 letters were sent between border liaison offices requesting trafficked persons to be assisted or offenders arrested. In total, eight forced marriage cases were jointly investigated that year (ATIPD, 2016). District Level Cross Border Committee meetings also take place on the China border at frequent intervals, at least monthly.<sup>87</sup>

The Border Cooperation on Anti-Trafficking in Persons (BCATIP) mechanism on the Myanmar-Thailand border also supports cooperation in cross-border cases. It was established following the 2009 anti-trafficking MOU between Myanmar and Thailand: the two countries hold regular meetings to coordinate the return of trafficked persons from Thailand to Myanmar. During 2016, ATIPD reports that two letters were sent between offices of the BCATIP on either side of the border requesting that 32 trafficked persons be assisted, and that two offenders be arrested. Four fishing-related cases were jointly investigated that year (ATIPD, 2016).

On 15 March 2013 the bilateral SOPs between Myanmar and Thailand on management of cases and the repatriation and reintegration of victims of trafficking were agreed by Myanmar's MSWRR and the Ministry of Social Development and Human Security in Thailand. Trafficked persons are received at a reception centre on the Myanmar side of the border, where they are accompanied by staff of the Thai Department of Social Development and Welfare, the Myanmar Department of Social Welfare (DSW) regional or state officials, DOI, ATTF, GAD, and any relevant Myanmar CSOs. The scope of cooperation includes, inter alia: bilateral exchanges of victim information after admission into Thai shelters; verification of nationality and family tracing and assessment, and joint monitoring and evaluation of the effective application of the bilateral SOPs by both parties. MOLIP is not mentioned in the SOP. The SOPs allow for trafficked persons' case information to be collected in a Matrix of Basic Victim Data. Myanmar and Thailand agree to cooperate on the transfer of victims' compensation, wages, and/or assistance grants, facilitated through a Receipt of Compensation and/or Assistance Grant Form. The form is to be handed over to Myanmar DSW at the border to ensure that monies are received even after persons return to Myanmar. It is not known how well this process of transferring compensation or assistance works for trafficked persons, but it is a system with potential for non-trafficked migrants who are also due compensation from Thai labour courts.

To allow migrant workers better access to justice and the right to remain in Thailand during a case which has been taken to the labour court, DOL may also wish to explore replicating the bilateral SOP system for trafficked persons which allows trafficked persons to stay in Thailand to participate in legal proceedings. The information in the Matrix of Basic Victim Data could provide useful information to DOL, highlighting particular areas (geographical, sectoral, and other) where trafficking is occurring, and named agencies or brokers can be cross-checked to ensure that they are on the appropriate blacklist.

### ***National trafficking mechanisms and guidelines***

In 2012 DSW issued National Guidelines on the Return and Repatriation of Trafficked Victims. In April 2018 the MMSWRR issued SOPs for Case Management, Repatriation and Reintegration of Victims of Human Trafficking from Thailand. The SOPs include procedures for Myanmar and Thailand to follow regarding case management and assistance, and are to be used to train government agencies, police, and border guards (IOM, 2018a). A National Referral Mechanism for Victims of Trafficking is also currently under development and final review by MHA and DSW. The adoption of this mechanism and accompanying Guidelines or SOPs is pending.

<sup>87</sup> Interview: DOI, Lashio, 7 March 2018.

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### ***Non-governmental and CSO coordination***

A Human Trafficking Working Group has coordinated the activities of UN agencies and non-governmental international organizations. It was instrumental in developing the NPA on anti-trafficking, including annual detailed plans, and was responsible for implementing parts of the government's annual NPA Work Plans. Its work also includes coordination and advocacy with the government. With the new Development Assistance Policy and structures for coordination and sectoral groups, a human trafficking technical working group may be formed (MIMU, 2018).

The former Australia-Asia Programme to Combat Trafficking in Persons (AAPTIP), now the ASEAN-Australia Counter-Trafficking Programme, works to build the capacity of the justice system to address trafficking. AAPTIP established a National Programme Steering Committee, which has served as a quarterly anti-trafficking collaboration meeting with CBTIP members, though typically only junior officials attend, and MOLIP and judges do not. AAPTIP saw a need for better coordination between agencies, since the CBTIP only meets once a year. However, a culture of discussion and collaboration has yet to emerge even when the floor is open and discussion is on the agenda.<sup>88</sup>

<sup>88</sup> Interview: AAPTIP, Yangon, 14 February 2018.

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**Box 8: ATIPD and cases filed using LROE Article 26**

In some instances, anti-trafficking bodies have pursued cases using the LROE for irregular migrants who are not trafficked.<sup>89</sup> CSOs say that it is more effective to start by approaching ATIPD rather than DOL.

“Sometimes we help with non-trafficking cases. We do not have authority if it’s not trafficking, but we do help some, sometimes.” – ATIPD official<sup>90</sup>

“ATIPD receives our cases and gives notice that they have been received, but the case has to go through local police. Does ATIPD handle cases that aren’t trafficking? Yangon Regional ATIPD handles cases whether trafficking or not.” – CSO representative<sup>91</sup>

The 2016 Annual Progress Report on Myanmar’s National Plan of Action (NPA) on Trafficking details proceedings taken under Article 26 of the LROE against unregistered OEAs, subagents and brokers (ATIPD, 2016). Coordination with MOLIP is not mentioned in CBTIP’s report on these, and the charges were made at local police stations.

Case 1: “On 10 February 2016, Ma xxx was sent to Kyae Kaung, China by [anonymous person]. She lied that Ma xxx would get 20 million MMK (US\$ 14,797) if she worked at a factory which manufactured cigarette container boxes by signing a contract for one year, and then she sent [the migrant] without an Overseas Employment Licence. [The perpetrators] were charged under section 26 of the Overseas Employment Act. [One person] was sentenced to two months’ imprisonment with a 1,000,000 MMK (US\$ 740) fine. If she refused to pay the fine, she would be sentenced to six months’ imprisonment.”

Case 2: “Eight persons including Mg xxx were sent to Malaysia without Overseas Employment Licences. The [perpetrators] were charged under section 26 of the Overseas Employment Act ... at Tarmwe Township Police Station on 17 June 2016.”

Case 3: “Three persons including Ma xxx were sent to Singapore to work as [domestic workers] without an Overseas Employment Licence. [The perpetrators] were charged under section 26 of the Overseas Employment Act ... at Twan Tay Township Police Station.”

Case 4: “[Recruiter] told three persons, including a mother and daughter, that they would get 3 or 4 million MMK (US\$ 2,220 – 2,959) if they worked at a garment factory in Bangkok, Thailand, and she would [deduct] travel expenses from their salary. She sent them to Thailand without an Overseas Employment Licence. On 20 June 2016, she was charged under section 26 of the Overseas Employment Act at Hlaing Tharyar Township Police Station.”

These are ad hoc and occasional responses, however, and there are other instances where “migrants in distress” and irregular migrants are not assisted or able to pursue justice.

#### **4.5 Related strategies and mechanisms on forced labour**

The Supplementary Understanding to develop a mechanism for forced labour complaints was signed by Myanmar and the ILO on 26 February 2007 in response to complaints received at the International Labour Conference on the use of forced labour by the ruling military. It was extended until 31 December 2018, when it expired. A complementary Action Plan for the Elimination of Forced Labour is part of the 22 January 2018 MOU recording Myanmar and ILO’s agreement on the Action Plan.

<sup>89</sup> Interview: ATIPD, Nay Pyi Taw, 9 March 2018.

<sup>90</sup> Interview: ATIPD, Nay Pyi Taw, 9 March 2018.

<sup>91</sup> Interview: CSO, Yangon, 13 March 2018.

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Myanmar residents can file complaints of forced and bonded labour. The 1907 Village Act and Towns Act had left a colonial legacy of authorities having the right to force people to work, and were only repealed in 2011. Upon receipt of complaints, the ILO Liaison Officer determines whether the case constitutes forced labour. If so, the Liaison Officer refers the case (excluding confidential information) to the government High Level Working Group on Forced Labour, composed of the Directors-General of MOL, MFA, GAD, the Law Department, and the Judiciary. Note that ATIPD is not represented in this working group. MOLIP serves as the working group secretariat, and when cases are received, the MOLIP minister's office refers them to the relevant working group member or to the Ministry of Defence, which is also not represented in the working group. Working group members investigate, and the working group sends a reply to the ILO in which it states whether it agrees or disagrees that the case constitutes forced labour. If the ILO does not agree, the case is not closed, but a report is made to ILO headquarters in Geneva.

Most cases received through the mechanism relate to domestic under-age recruitment to the military and forced labour, and the perpetrators are mostly government officials. The mechanism is only set up to respond to cases of forced labour by the State or ethnic armies, but some cases reported relate to forced labour in migration. Between 2013 and March 2016, the ILO received 29 complaints from international migrants or their families primarily regarding trafficking for forced labour in Thailand (10), Malaysia (7), Singapore (4), China (4), Egypt, Indonesia, Japan, and the Republic of Korea. Some cases related to missing persons, unpaid wages, and irregular migration (ILO, 2016a). When these cases are received, the ILO coordinates with ATIPD and the MOLIP complaints mechanism, as well as other international organizations, unions, CSOs, and embassies, if needed, to locate missing persons, facilitate compensation payments, or ensure proper documentation.<sup>92</sup>

## 5. Gaps and incoherence in policy and practice

“In my opinion the weak point is between the anti-trafficking police and DOL. The coordination platform is weak. Myanmar needs to consider how to make them work together.” – OEA representative<sup>93</sup>

Myanmar's labour migration and anti-trafficking policies and governance mechanisms lack the oversight needed to ensure that the different measures taken do not counteract each other and that they cover all Myanmar migrant workers. The previous sections have described the current state regarding coherence and cooperation between labour migration and anti-trafficking measures, such as focal points tasked to ensure coherence between NPAs, the sharing of case details, inter-agency awareness raising efforts, and nascent efforts to address gaps in meeting migrants' and trafficked persons' needs, including the DSW providing shelter space on occasion for “migrants in distress”, ATUs and ATIPD working to assist non-trafficked migrants, and CBTIP issuing new preventative protocols on fishing.

Yet there remain many more gaps that need to be addressed in order to ensure horizontal and interagency coherence in policy and practice.

This section examines: 1) exploitative migration situations not covered by existing measures; 2) gaps in organizational remit; 3) gaps in coordination bodies' work; 4) gaps in the regulation of

<sup>92</sup> ILO, 2016a.

<sup>93</sup> Interview: Anonymous, March 2018.

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overseas employment; 5) gaps in services; 6) gaps in access to justice; and 7) practical barriers to coherence and coordination.

## **5.1 Situations of labour migration or trafficking not covered by existing measures**

Below is a list of situations and scenarios in which migrants typically find they are not covered by existing measures to protect their rights.

### ***Irregular migrants who have not been trafficked***

The number of migrants who fall into this category is large. Though exact data is not available, the majority of migrant workers from Myanmar may fall into this category.

Persons who leave or try to leave Myanmar without the correct documents, without government approval, and/or through an unlicensed agent or broker, have a high chance of not being able to access assistance or remedy if they need it. They may be charged excessively high fees, deceived about the work they will do, not paid, or otherwise abused.

While the MD states that the receiving centres for trafficked persons in Myawaddy and Tachilek can also be used by irregular migrants,<sup>94</sup> other actors interviewed reported that it was unusual for irregular migrants to be able to access the shelters. DOL usually refers cases of irregular migrants to ATIPD (see Box 1), rather than opening proceedings under the LROE or trying to negotiate with the unlicensed broker. When people are sent to ATIPD but do not meet criteria in the trafficking definition, ATIPD does not have a mandate to assist them (though it does on occasion).

CSOs further report that migrants are sometimes told by officials that trafficking or other exploitation is their fault because they migrated irregularly. Therefore, they feel they cannot seek help, and they fear arrest.

“Whatever happens to migrants – trafficking or labour exploitation – authorities say: ‘You migrated illegally, so you face exploitation because of your illegality.’” – CSO representative<sup>95</sup>

Some government officials believe that non-trafficked migrants do not need assistance:

“People who are in trouble are trafficked victims. I have never seen a non-trafficked victim in trouble. If there are any cases like this, we would know about it. When people migrate to China, it is seasonal. Even if people are exploited, they get a lot of money, so they go and come back with a lot of money.” – DOI official<sup>96</sup>

### ***Migrants in situations of forced labour, but not trafficking***

Some irregular migrants are in forced labour situations (that is, they are not being paid, are not free to leave, and did not agree to the terms and conditions), but they were not trafficked – that is, the person who assisted their migration to the country of destination is not profiting from their work.

Such people who find themselves in irregular status and forced labour situations discover that their current employer is forcing and exploiting them. This is therefore not considered a transnational crime but a crime in the country of destination. This should generally be addressed in countries of

<sup>94</sup> Interview, DOL, Nay Pyi Taw, 9 March 2018.

<sup>95</sup> Interview: CSO, Lashio, 6 March 2018.

<sup>96</sup> Interview: DOI, Lashio, 7 March 2018.

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destination, but it is important that a mechanism be available for recruiters in countries of origin to know and no longer place workers in such workplaces. In Myanmar recruiters are required to check and assess the quality of workplaces before placing workers. Thus, liability for recruitment to forced labour situations abroad needs to be clear.

### ***Migration, including trafficking, from conflict areas***

More than one-third of the country's 330 townships, with 12.3 million people, are affected by subnational conflict. Ethnic armed organizations, which have signed the ceasefire and are present in 94 townships, engaged in armed clashes during 2015-2016 in 40 per cent of these townships (Asia Foundation, 2017). IOM estimates that the majority of trafficking from Myanmar is from conflict and non-government-controlled areas: Chin, Kachin, Northern Rakhine, and Northern Shan. ATIPD and DOL cannot operate in areas not controlled by the government. ATIPD tries to overcome this gap by translating materials into local languages in conflict areas and asking other bodies to distribute them. Nonetheless, neither of the key ministries working on labour migration or anti-trafficking is able to operate in these parts of the country, leaving migrants who face problems there with no protection. Such areas are controlled by the Ministry of Border Affairs.<sup>97</sup>

### ***Migrants recruited outside of Yangon or Mandalay***

OEOs can only be licensed to practice in Yangon and to a lesser extent Mandalay. Anyone recruited outside of these areas is recruited by a semi-licensed subagent or an entirely unauthorized broker, and then faces problems in having grievances addressed because they are perceived to have chosen not to use a licensed agency (see Section 5.4).

### ***Child migrants of legal working age***

The Assembly of Myanmar voted unanimously to ratify the ILO's Minimum Age Convention, 1973 (No. 138) on 3 December 2019. This will complement Myanmar's existing ratification of the Worst Forms of Child Labour Convention, 1999 (No. 182). The Minimum Age Convention establishes 15 years as the minimum age for work in general, or 14 years for some developing countries. It prohibits hazardous work that jeopardizes the health, morals or safety of children under 18 years. Where health, morals, and safety are protected, children over 16 years can engage in this type of work, following adequate training.

There is some incoherence in international law relating to child labour and human trafficking. The Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons holds that: "the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered 'trafficking in persons'" (Article 3(c)) even if this does not involve the use of threats, violence or deception. In Myanmar, children cannot migrate internationally for labour through regular channels until they are 18 years of age, meaning they only have the option of using irregular channels, although those aged 15 to 17 are of legal working age.<sup>98</sup>

Migrant children who work are subject to multiple forms of vulnerability. They have not reached legal adulthood, they are pushed into the informal economy, they do not have the safety net of their home community, they may not speak the local language, and those without legal status typically

<sup>97</sup> Interview: ATIPD, Nay Pyi Taw, 9 March 2018.

<sup>98</sup> Huijsmans, R., and Baker, S. (2012). Child Trafficking: "Worst Form" of Child Labour, or Worst Approach to Young Migrants?, in *Development and Change*. July 2012.

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have less access to social services such as education and health care. Overall, migrant child labourers are even worse off than local child labourers: they have lower pay, work longer hours, and have lower school attendance and higher death rates at work.<sup>99</sup>

To fill in policy gaps and better serve the needs of children of working age, mainstreaming a labour rights perspective together with a child rights perspective is necessary in the migration governance structure, both for internal and international migrants. It is legitimate for children of working age to migrate for work, and their needs are necessarily different than those of underage children. There is a need for cross-border cooperation on migration of children of legal working age, and increased access to decent work, including the right to join or associate with trade unions, access social protection and legal assistance.<sup>100</sup>

### ***Stranded persons and missing migrants***

There is no internationally accepted definition of stranded migrant, who they are, or what international and national obligations apply to them. This contrasts with the definitions and institutional structures that exist in relation to the protection of trafficked persons, refugees, and regular migrants. The European Migration Network (EMN) of the European Commission defines a stranded migrant as “a migrant who for reasons beyond their control has been unintentionally forced to stay in a country”. This has been operationalized mostly as an emergency response to natural or man-made disasters through evacuation and repatriation. But both internationally and nationally this does not cover the nuanced layers that result in migrants becoming stranded. The case of Myanmar fishers stranded in Indonesia provides such an example: they were stranded for many years after the Thai vessel on which they were working was detained for fishing in Indonesian waters and abandoned by the Thai owner. A whole range of scenarios needed addressing beyond repatriation, including migrants who had married, had children, or had settled but due to lack of documentation from their own country could not obtain Indonesian documentation.

### ***Migrants in detention***

Migrants may be in detention for a whole range of reasons. Those in prison may have committed criminal acts; those in immigration centres administrative offences. But the lines are not always so clearly drawn, and a trafficked person may be arrested for performing an illegal act even though they have been forced or groomed to commit it. Migrants are protected in such cases under international law, but on the ground, under national laws, this is not always the case. Even migrants who have been trafficked may prefer not to identify themselves as such while they are in detention, as many migrants know that trafficking cases are lengthy and often involve being kept in a shelter with little or no freedom. When fishers and others have been in detention centres in Malaysia, DOL has said they only handle cases of labour migration, but not detention cases. In one such instance in 2016, after a time of uncertainty as to which ministry would take responsibility, MSWRR assisted some returnees in coordination with MHA and MFA.<sup>101</sup> MOLIP reportedly met some returnees at Yangon airport in 2016 (MOI, 2016). There is no standard procedure or focal point for such situations. Nor is it not clear whether or not they were trafficked.

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<sup>99</sup> ILO. Migration and Child Labour – Essentials. Available at: <http://www.ilo.org/ipecinfo/product/download.do?type=document&id=16975> [Accessed 6 Dec 2019]

<sup>100</sup> Ibid.

<sup>101</sup> Correspondence: IOM, 16 February 2018.

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## ***Migrants who move for marriage***

Legal migration to China for marriage is very limited, and acquiring requisite permission is difficult. Most people who migrate for marriage use a border pass and overstay the terms of it. In areas where people had migrated for marriage, people remaining in the area reported that they had done so in the hope of being able to support their families in Myanmar and not to be a burden to them; and in the expectation that they would be able to work and have an independent income. All cases of Myanmar women migrating to China for marriage are classified by Myanmar authorities as trafficking. Thus, not only can a woman not move to China legally for marriage, but the only support available is that applicable to trafficking. Should a woman want to take civil action rather than criminal action, then it is almost impossible. Myanmar authorities define all women's migration to China for marriage as trafficking:

“[How do you know if a marriage is trafficking?] If they have met for only three days, how can they become lovers? The hidden objectives are so clear. So, there is sexual exploitation, and it also equals trafficking.” – ATIPD official <sup>102</sup>

“If women have gone to China already, we cannot do anything, and women are defined as trafficked.” – DSW official <sup>103</sup>

“Chinese men without permission to marry or without a relevant visa to be in Myanmar can be caught. GAD can make a case, and the police can make an arrest. But if they have gone to China already, we can't do anything, and women are defined as trafficked.” – DOI official <sup>104</sup>

“I feel sorry because women's situations are so bad that they will marry anyone. Sometimes Chinese parents want someone to take care of their disabled or mentally ill son. Some women say they voluntarily marry. Some women are told to get married, and if they give birth, they will get two million kyat. If the woman is not pregnant, then the father takes her. If she gives birth to a baby boy, they can sell the woman on. If no birth, then they sell on at a discount. These are real cases. That's why we define it as trafficking.” – ATIPD official <sup>105</sup>

According to the Anti-Trafficking NPA Annual Progress Report, “proactive prevention” of trafficking includes government officials learning that a woman has been promised or has been given money to marry a Chinese man, upon which the persons arranging the marriage are arrested, charged and sentenced (ATIPD, 2016). Studies are needed to understand the effectiveness of this approach and to study the positive and negative consequences. Not all women already married may want to return home; some women may find themselves in a better situation than at home, others may have had children and be afraid of losing them if they return home.

On a practical level, if women leave for marriage, it is important that they have access to information before they go, including information about marriage, divorce, and custody laws; contacts of organizations that can provide assistance if needed; knowledge of where young newlyweds or mothers gather and meet; etc.

<sup>102</sup> Interview: ATIPD, Nay Pyi Taw, 9 March 2018.

<sup>103</sup> Interview: DSW, Lashio, 6 March 2018.

<sup>104</sup> Interview: DOI, Lashio, 7 March 2018.

<sup>105</sup> Interview: ATIPD, Nay Pyi Taw, 9 March 2018.

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## ***Migrants overstaying border passes: unregulated labour migration on the Myanmar-China border***

Unless they are “skilled” migrants travelling via airports, people from Myanmar can only go to China with a two-week Border Pass or a one-week Temporary Border Pass.<sup>106</sup> The DOL does not issue authorization for recruitment of migrant workers to China.

ATIPD is present on the China border, has bilateral cooperation agreements with China, and assists trafficked persons that their counterparts in China identify and return. However, there is no MOU with China to coordinate labour migration, and the DOL is not involved in any migration authorizations to China. Instead, DOI issues seven- and 14-day border passes,<sup>107</sup> which many people overstay so that they can work in the country for longer before returning. Other people violate these by travelling beyond the border province or by working without obtaining labour authorization from the Chinese government.

Chinese authorities arrest and deport Myanmar migrants who have overstayed or do not have documentation to work. ATIPD reports that sometimes 20 to 30 people are deported in a single day, and that figure can reach hundreds a day.<sup>108</sup> When people are deported, DOI reports conducting awareness raising, telling migrants: “Please work in accordance with Chinese labour law or you will go to prison for 5, 10, or 20 days. If you go to prison, it makes it difficult for us to negotiate for you at the District Level Cross Border Committee meetings.”<sup>109</sup> According to CSOs, some migrants who are arrested for immigration violations are used to build roads while they are held in detention in China.

DOI officials in Northern Shan State report that when Myanmar people are arrested in China, DOI verifies their nationality before they are allowed back to Myanmar. “We check with immigration offices throughout the country where the individuals come from. They stay in China until nationality is verified.”<sup>110</sup> CSOs on the border stated that migrant workers stay in jail sometimes for up to four months before deportation through Muse and Chin Shwe Haw.<sup>111</sup>

If migrants want to work in China after crossing, their Chinese employers must apply for labour permits at one office location in China.<sup>112</sup> DOI notes, “people get arrested on the way to that office... because they are working already and because they overstay.”<sup>113</sup> DOI suggested that more Chinese migrant labour registration locations are needed, and noted that DOI is discussing this regularly with China.

Registered OEAs are not meant to recruit to China, but Myanmar-based companies are sending people to China for work. DOI describes the process as follows:

There are Myanmar citizens [not residing in border districts] and a Myanmar company facilitates employment in China for them. DOI gives a one-year border pass for them. It is negotiated at the local level. It is not a formal agreement – not in the MOU. It is to give

<sup>106</sup> Ibid.

<sup>107</sup> See section 3.2.

<sup>108</sup> Interview: ATIPD, Nay Pyi Taw, 9 March 2018.

<sup>109</sup> DOI summary of awareness raising messaging to migrants deported from China. Interview: DOI, Lashio, 7 March 2018.

<sup>110</sup> Interview: DOI, Lashio, 7 March 2018.

<sup>111</sup> Interview: CSOs, Lashio, 6 March 2018.

<sup>112</sup> Interview: DOI, Nay Pyi Taw, 9 March 2018.

<sup>113</sup> Interview: DOI, Lashio, 7 March 2018.

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employment opportunities to other people also [outside the border districts]. There is mutual interest for both sides – China gets workers, and our workers get employment. The Myanmar company guarantees that they will be responsible for the Myanmar people when in China. They send workers in groups to companies in the Chinese border districts. They are not a broker or agent. <sup>114</sup>

This ad-hoc and alternative migrant worker recruitment system is operating without oversight or the accountability mechanisms that have been established for labour migration to other countries, namely: the LROE, the MOLIP Complaints Mechanism, and the COC for OEAs. Further research is needed to evaluate the ad hoc arrangements.

Further, one LEO near the Chinese border reported a gap in MOLIP coverage for migrants, saying that the LEO does not work on migration issues, <sup>115</sup> and that Chinese labour law covers migrants in any case, yet, as above, it is very difficult to access documentation for that coverage.

“From Muse people go to China for 7 days and come back and apply again. China labour law protects them there. There are no agencies here – they are only in Yangon. The LEO office gets no cases regarding brokers. Former migrants come back and recruit groups or individuals.” – LEO official <sup>116</sup>

Local and international CSOs also have little to no ability to do cross-border work with migrants in China, and point to a large assistance gap for Myanmar migrants there:

“We can’t provide help to workers in China, so should the broker be the only help to them?”  
– CSO representative <sup>117</sup>

CSOs on the border further report that some immigration officials unofficially let migrants pay more money to get a border pass without having to show their Citizenship Scrutiny Card. Some migrants do not have the card for a variety of reasons – statelessness, conflict, or inaccessible bureaucratic procedures. There can be negative ramifications in China. Police in China ask to see migrants’ border pass as well as their National Registration Card (NRC). If migrants do have their NRC and are in trouble, Myanmar and Chinese authorities negotiate and facilitate their return to Myanmar. Without their NRC card, migrants are detained for four months in prison, and then “dropped” at the border. <sup>118</sup>

### ***Migrants leaving Myanmar for domestic work: impact of the 2014 ban on domestic workers’ migration***

In 2014 MOLIP issued a ban on migration to any country for domestic work. <sup>119</sup> This has resulted in a vacuum of assistance before, during and after migration, as well as increased exploitation by recruiters in Myanmar and countries of destination, and employers who take advantage of the resulting impunity. <sup>120</sup>

<sup>114</sup> Interview: Government official, Myanmar, March 2018.

<sup>115</sup> See section 5.4 for a discussion of location of OEAs. Interview: LEO, Northern Shan State, 7 March 2018.

<sup>116</sup> Ibid.

<sup>117</sup> CSO representative, National Migration Stakeholders Meeting, 15 February 2018.

<sup>118</sup> Interview: CSO, Lashio, 6 March 2018.

<sup>119</sup> See Table 5 earlier in this report.

<sup>120</sup> ILO, 2017c.

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When women experience exploitation abroad, Myanmar has tended to react by imposing restrictions on women’s labour migration, including a ban on domestic work and a requirement that women migrate in groups of at least five on some MOU governed corridors.<sup>121</sup> While the ban was lifted for Hong Kong (China), Macau (China), Singapore, and Thailand on 5 March 2019, no legal instruments have yet been enacted to activate migration, meaning potential migrant domestic workers remain in limbo. ILO’s 2017 interview-based study of domestic worker bans along the Myanmar–Singapore corridor showed that these restrictions result in several effects that run counter to the policy-makers’ intentions.

“I don’t understand why the agent in Myanmar is illegal, and the one here in Singapore is legal. I want both agencies in both countries to be legal so women can get better protection and help.”

“The agent had said there is a ban so if you want to go, you have to pay the 250,000 MMK (US\$ 190) bribe. I paid the 250,000 MMK at [anonymized location].”

“The [2014 Myanmar] ban didn’t change anything. Agents are still awful.” – Myanmar Domestic Worker in Singapore<sup>122</sup>

Women still migrate for domestic work despite the ban, but do not exit Myanmar with permission to migrate to work. This leaves no “legal trail” of accountability in Myanmar’s recruitment system.

Small, unregulated recruiters have increased in Myanmar, as has deception in recruitment and contract substitution. Migration costs have increased, as informal payments are made at exit ports and when domestic workers transit through third countries.

Migrant domestic workers do not have access to the protective elements afforded by regular migration, including pre-departure training, standard employment contracts, access to complaints mechanisms, or recourse to regulated recruitment agency or origin government assistance (ILO, 2017c).

The ban has further delegitimized domestic work, already a stigmatized occupation. A significant degree of women’s migration is not included in official figures. Policies are hence being made on inaccurate evidence.

Where the country of destination also recognizes the ban, domestic workers will not enjoy any social protection, and Myanmar will then be responsible in cases of injury or death. In 2016 CSOs working with domestic workers in Hong Kong advised that the ban was recognized in Hong Kong, and this made it a particularly unsafe destination for domestic workers.

Since women are too afraid to approach government officials for assistance due to the ban, it perpetuates distrust and lack of confidence in government authorities and services, including the LEOs, and thus undermines the regular migration processes.

## **5.2 Gaps in definitions and mandates: who is trafficked, and who is not? Which ministries are responsible?**

Actors do not consistently agree on who is classified as trafficked or on how to classify people who are recruited by a broker without a licence or otherwise move irregularly. The MD regularly

<sup>121</sup> See section 3.2.

<sup>122</sup> All three quotes are from Interview: Myanmar domestic worker, Singapore, 18 September 2016, in ILO, 2017c.

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assesses irregular migrants as trafficked, but ATIPD does not. There is neither a national trafficking identification guideline nor a directive to provide assistance to all migrants in need.

**Box 9: International cooperation and incoherence in trafficking definitions**

***Thailand to Myanmar referrals and repatriations***

In some cases, when people are repatriated back from Thailand as trafficked persons, ATIPD decides that they do not fit the trafficking definition in the Anti-Trafficking Law. ATIPD reports that in these cases the person goes back home.<sup>123</sup>

***China to Myanmar referrals and repatriations***

ATIPD reports that the transfer of trafficked persons from China mostly involve marriages of Myanmar women to Chinese men, and that both sides are clearly in agreement that forced marriage is trafficking. “This is clearly trafficking, so there is no conflict of definition with the China side.” Issues relating to nationalism and a perceived need to protect Myanmar women from foreign marriage, as well as the women’s own agency (not all marriages are forced) remain unacknowledged.

Ministries cited mandate limits as barriers to collaboration or to working for some groups of migrants.

“Labour migration is under MOLIP, but we cover trafficked persons.” – DSW official<sup>124</sup>

“There are a large number of migrant workers. We can’t work for them all.” – MSWRR official<sup>125</sup>

“We [MOEAF] inform DOL about cases of OEAs and workers negotiating. DOL has said before: ‘The case is not concerned with us’. Similarly, CSOs also bring cases to us after DOL brushed it off first.” – MOEAF representative<sup>126</sup>

Other actors have also noted publicly that MOLIP is able to deal with regular migrants but does not seem to be able to do anything for the vast majority of workers who do not have employment contracts (irregular migrants).<sup>127</sup> Anti-trafficking officials have asked MOLIP for clarity on mandates in cases that are clearly not trafficking, saying that there are many cases of migrants not receiving proper wages, or having their wages deducted. They have asked MOLIP to clarify who in MOLIP is responsible, who they should contact, and who will take action. MOLIP has suggested that cases be handed to local LEOs, who will then refer to the Complaints Mechanism, though it is not clear if the intention is for LEOs to screen cases first.<sup>128</sup>

ATTF officers are not allowed to open or handle cases, a process that is currently the responsibility solely of local police. As noted previously, while local police have authority, they often do not understand the Anti-Trafficking Law or the LROE. AAPTIP has developed guidelines for cooperation between ATTF and local police trying to bridge this mandate gap.<sup>129</sup>

<sup>123</sup> Interview: ATIPD, Nay Pyi Taw, 9 March 2018.

<sup>124</sup> Interview: DSW, Lashio, 6 March 2018.

<sup>125</sup> Interview: MSWRR, Nay Pyi Taw, 8 March 2018.

<sup>126</sup> MOEAF response when asked whether they discuss cases with DOL before or during worker-OEA negotiations. Interview: MOEAF, Yangon, 13 March 2018.

<sup>127</sup> Discussion: GAD, ATU and LEO, Mandalay ILO Training on Safe Migration for GAD and LEO 24 April 2018.

<sup>128</sup> Discussion: GAD, ATU and LEO, Mandalay ILO Training on Safe Migration for GAD and LEO 24 April 2018.

<sup>129</sup> Interview: AAPTIP, Yangon, 14 February 2018.

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While mandate silos can divide clear responsibility, they also hinder the cooperation needed to cover all migrants and trafficked persons in need. Interviews for this paper also showed some places where agencies are reaching across mandates (see Box 10).

**Box 10: Examples of agencies reaching across mandates**

Many gaps between labour migration and anti-trafficking governance occur when no agency feels that a migrant's case falls within its mandate. But there are instances where agencies reach across their traditional mandates to serve migrants in need, no matter what their category.

Anti-trafficking bodies report having provided assistance to some non-trafficked migrants. If returned or potential migrants contact them, ATUs say they investigate the abuse, whether exploitation or trafficking, and help if they can, working with police in the country of destination, GAD and CSOs. For Thailand and China, Myanmar's anti-trafficking bodies say they are well established, with staff on the border who can speak local languages and connections with police in countries of destination. ATUs report that they give information to people about formal channels of migration and raise awareness of regular migration and trafficking. They also report conducting a section of Myanmar's pre-departure training programme.

ATIPD and DSW report that on occasion "migrants in distress" go to shelters that are meant for trafficked persons, and DSW helps migrants trace family on occasion, though its mandate is more directed towards assisting trafficked persons. MSWRR would like to increase their capacity to shelter migrants in need.<sup>130</sup>

### 5.3 Gaps in coordination bodies' work

#### ***Siloed coordination mechanisms vs. horizontal lines of discussion***

There are problems with the capacity and structure of existing coordination mechanisms. However, perhaps the biggest problem relevant to this paper is that the coordination mechanisms do not interact with each other. Many of the same ministries sit on both anti-trafficking and migration bodies and several of their working groups, but the individual representatives that attend may not report link between the discussions to the two committees. This can lead to situations in which neither the OESC or CBTIP address irregular migration, forced labour, marriage migration, or a number of other migration scenarios. A foreign embassy official consulted for this paper stated:

If irregular migrants are being left out of ministries' mandates, that means that CBTIP is not working at a functional level. It should mediate between two ministries with opposing views." – Foreign embassy official<sup>131</sup>

The same can be said of the OESC. Clear guidelines are needed defining horizontal lines of discussion and how new or "overlooked" migration situations will be handled by either or both committee structures.

#### ***Labour migration bodies***

The LROE states that both the OECC (mandated to create policy) and the OESC (mandated to implement it) are responsible for ensuring the rights of migrant workers, not only those who migrate

<sup>130</sup> Interview: Deputy Director-General, Department of Rehabilitation, MSWRR, Nay Pyi Taw, 8 March 2018.

<sup>131</sup> Interview: Foreign embassy official, Yangon, 15 March 2018.

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regularly. The OESC Working Committees have opportunities for regular coordination, but the full OESC does not meet regularly, and thus there is little opportunity for cross-committee work.<sup>132</sup>

The OECC and OESC mandate to ensure the rights of migrant workers is not insignificant. They comprise between 10 and 20 per cent of the labour force of Myanmar and voluntarily seek employment overseas, relieving unemployment in the country and remitting vast amounts of money that contributes to the country's development. It might hence be expected that the OECC and OESC would meet regularly at a time when new labour markets are opening, when neighbouring countries are becoming frustrated with the lack of documentation of migrants, and when global actors are trying to enforce ethical standards throughout global supply chains. The need for new policies is critical, and the OECC should be consulting with OEAs, workers, and migrant support groups in the development of new policies; while the OESC should not only meet more regularly to address the problems and oversee the implementation of policies, but should also be more transparent, allowing media to cover the meeting results and posting official statements on decisions.

The OESC functions at the national level. The LROE allows the inclusion of non-government actors in the OESC (Article 7(d)), but no worker or migrant support group has been invited to be part of the OESC. The work of the committee and its working groups is opaque. Government actors have requested that this committee be replicated at state, region, district, ward and administration levels.<sup>133</sup> MOLIP and the OESC could seek advice from ATIPD on the establishment of anti-trafficking bodies at these lower levels. It should also be noted that the draft NPA on labour migration lacks full coordination mechanisms. Existing coordination efforts are at national level, but not others.<sup>134</sup>

With regard to horizontal coordination on labour migration, not all officials respect the competence of officials in different ministries. This is a missed opportunity for collaboration and cooperation. Vertical coordination between union and local levels is also essential for any nationwide guidance or mandates to turn into day-to-day working practice on the ground. Local level examples are illustrative: a local district-level labour official stated that they had no formal or informal cooperation with ATTF or DSW. Similarly, local immigration officials said they had no contact with DOL.

### ***Anti-trafficking bodies***

Anti-trafficking coordination mechanisms have existed for much longer, and there has been international pressure to see results from them. One foreign government official commented in interview that there is government commitment to the CBTIP, but it nevertheless remains weak and limited.<sup>135</sup> CBTIP meets only once a year, for three hours, and there is no time for more than relatively positive reporting about what has been achieved in the previous year. The three working groups do not have time for meaningful cross-group discussion. Interviewees consulted for this paper suggested the CBTIP meet more frequently and meaningfully, so as to become a platform for discussion, challenges, and recommendations. As with OESC, the three Working Groups are siloed, and there is no authority bringing them together.

<sup>132</sup> Interview: MOLIP, Nay Pyi Taw, 14 June 2016, in ILO, 2017a.

<sup>133</sup> Discussion: GAD, ATU and LEO, Mandalay ILO Training on Safe Migration for GAD and LEO 24 April 2018.

<sup>134</sup> Interview: IOM, Nay Pyi Taw, 15 February 2018.

<sup>135</sup> Interview: Foreign embassy official, Yangon, 15 March 2018.

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“CBTIP should mean that there are open phone lines between members, but that does not seem to be the case. I have questions about whether CBTIP ensures coordination. It may be getting things done, but it relies on the enthusiasm of police, and on international pressure.”  
– Foreign embassy official <sup>136</sup>

## 5.4 Gaps in regulating overseas employment

“The overseas employment and anti-trafficking laws exist in parallel. The LROE should be enforced. In reality, migrant workers rely on brokers and lose a lot of money. When they have no rights, trafficking cases happen.” – MOEAF representative <sup>137</sup>

### *Legal reform and uncertainties*

Some people fall through the gaps between labour migration and anti-trafficking efforts where there is insufficient regulation of OEAs and regulations do not meet migrants’ needs. The LROE and the current MOUs have been criticized for not allowing migrant workers any easy way to migrate regularly, meaning that most do so irregularly. As one CSO respondent said, “the weakness of law is that it pushes people to [go irregularly, and risk getting] trafficked. The OE law is for recruitment agencies, not workers, and not for undocumented workers.” <sup>138</sup> Another stakeholder recently commented that because the LROE is under review, its enforcement is particularly weak. <sup>139</sup> The LROE and Anti-Trafficking Law reforms create uncertainty around actors’ roles and responsibilities.

### *Regulating all brokers*

The restrictions on OEAs licensing outside of Yangon or Mandalay has fed an industry of subagents in the migrant source communities around the country. In order to hire subagents, licensed agencies submit to MOLIP the list of names of subagents and the township where they will operate for authorization. Agents and subagents have a contract which, ILO has noted, should be amended to include provisions preventing exploitative practices and holding subagents accountable. <sup>140</sup> MOEAF does not have a policy or guideline with regard to hiring subagents, and notes that subagents often charge a discreet and undeclared fee above the legally allowed maximum. MOEAF has said that subagents’ fees should be regulated in the same way that agents’ fees are, and that they often charge more because the allowed recruitment fee does not reflect the fees to be paid to subagents. <sup>141</sup> Moreover, subagents often subcontract to entirely unlicensed brokers. These brokers generally recruit in their own communities, where they are known and trusted, but if the workers are exploited, they will blame the main company who in turn will typically blame the broker. However, there is no mechanism in place for holding the brokers accountable. The 2014 Rules and Regulations for MOEAF do not address these issues at all. According to the Rules, the MOEAF is supposed to supervise OEAs, who bear responsibility for migrants’ safety throughout their journey

<sup>136</sup> Interview: Foreign embassy official, Yangon, 15 March 2018.

<sup>137</sup> Interview: MOEAF, Yangon, 13 March 2018.

<sup>138</sup> Interview: CSO, Yangon, 14 February 2018.

<sup>139</sup> Discussion: National Migration Stakeholders Meeting, 15 February 2018.

<sup>140</sup> ILO, 2016a.

<sup>141</sup> Ibid.

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and employment, and are required to cooperate in any legal proceedings taken against persons engaged in human trafficking and sending workers overseas through illegal channels.<sup>142</sup>

**Box 11: The Philippines – rules and regulations related to OEAs and brokers**

In 2016 the Philippines issued the Revised Philippines Overseas Employment Administration (POEA) Rules and Regulations Governing the Recruitment and Employment of Landbased Overseas Filipino Workers. Article 76 of the POEA Rules and Regulations states that the use of brokers (or any non-licensed person or person not holding authority) constitutes illegal recruitment.

MOEAF suggests that there is insufficient focus on subagents and brokers, partly because it is thought that registered OEAs are frequently targeted by MOLIP when there are problems.<sup>143</sup> One way of regulating subagents and brokers would be to allow overseas employment agencies to be licensed throughout the country. This may entail repealing or reforming the 1959 Restriction of Employment Act or issuing directives. Secondly, systems can be set up locally, perhaps through the GAD One Stop Shops, for brokers to register their details and provide regular reports on the persons they have recruited. Unregistered brokers state that registration is bureaucratic and cuts into their profits.<sup>144</sup> Efforts must also align with other ministries that are working with “companies” recruiting workers to China (see Box 12 below), and must clearly examine how to address individual brokers. The draft NPA on labour migration calls for MOLIP to “identify and review different options of regulating local brokers and subagents to enhance transparency and accountability, for example, by extending the licensing system to local brokers.” The section on migrants overstaying border passes above illustrates that there is also a very large gap in the regulation of recruitment to China.

<sup>142</sup> Articles 2 and 6.

<sup>143</sup> Interview: MOEAF, Yangon, 13 March 2018.

<sup>144</sup> Interview: CSO, Yangon, 16 February 2018.

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**Box 12: No Department of Labour role in recruitment to China: A problem for anti-trafficking**

In 2014, MOEAF and the DDG of DOL went to Muse on the Myanmar-China border. They found trafficking cases, but the DOL continues to play no role there, unlike the DOI and ATIPD roles. Several interviewees saw this as a big gap in migrant protection, with ATIPD saying the following:

“We encouraged MOLIP to negotiate a government-to-government agreement with China. MOLIP attempted, but China did not agree. Therefore, ATIPD tells migrants: ‘Don’t go to China.’ But people say: ‘Where is the job for me here?’ So ATIPD and MOLIP are both stuck [because MOLIP cannot work to make migration to China safer, and ATIPD has to deal with trafficking as a result].” – ATIPD official

At the time of writing, DOL was considering whether to approve sending workers to Chinese fisheries even without an MOU. China was reportedly under international pressure to replace the North Korean workers it had recruited to fisheries on its coast, and was looking to Myanmar to avoid EU sanctions. An MOU on labour migration was also under negotiation between China and Myanmar.

## 5.5 Gaps in services

### *Services primarily for trafficked women and children*

Trafficked women and children receive the most comprehensive services of all migrants, including shelter, counselling, training, education, livelihood support and other rehabilitation and reintegration services from DSW. Trafficked men over 18 only receive travel money and a short-term daily allowance.

“Trafficked people are usually women. Mainly marriage to Chinese cases are referred to us. Hardly any labour cases. There is no shelter for men, but they can stay at the DSW shelter temporarily and go back to their community. DSW can have legal custody over a trafficked person if they are under 18.” – DSW official <sup>145</sup>

In Myanmar generally, needs are high and resources are minimal for social welfare service provision. DSW is the primary provider of state services. It has limited staff resources, limited training among those it employs, and little to no budget for travel or for security provision when travelling. It is mandated to help trafficked persons, and on occasion can help other migrants on return.

Anti-trafficking offices similarly do not have enough resources to meet the needs of all trafficked persons on return. CSOs report, for instance, that some ATTF officers pay for food for trafficked persons out of their own pockets. MOLIP is supposed to offer returned trafficked persons access to job opportunities, but in practice they cannot do this because there are few jobs, and because few employers use LEOs to post job opportunities. Non-trafficked persons have little access to DSW services in practice unless the service provision is mandated by national level officials. <sup>146</sup>

Some migrants see little utility in using LEO services. An LEO employee in Northern Shan State said, “Maybe people do have problems but they do not come to the LEO.” <sup>147</sup> CSOs in Northern Shan State were asked if migrants saw the LEOs as useful, and one replied, “No one ever goes there

<sup>145</sup> Interview: DSW, Lashio, 6 March 2018.

<sup>146</sup> Ibid.

<sup>147</sup> Interview: LEO, 7 March 2018.

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or gets a labour card. Getting a labour card doesn't make a difference any way to how you are treated at work.”<sup>148</sup>

### ***Embassies abroad assist regular migrants***

A migrant assistance CSO in Thailand reports that, while the labour attachés in Thailand participate in events and listen to complaints, the attachés in both Chiang Mai and Mae Sot only assist regular migrants. The CSO also observed that labour attachés only speak Burmese, and not the migrants' languages dominant in the north near Thailand.<sup>149</sup> It also remains problematic that there are only male labour attachés, making the service unwelcoming for women, especially when they are victims of gender-based violence.

### ***CSOs filling gaps***

Returned or potential migrants must look to CSOs almost exclusively for service provision. Anti-trafficking bodies, GAD, DSW and others also rely on CSOs for ground-level delivery:

“When Chinese police hand people over to ATTF in Muse, if they are not trafficked, ATTF calls the churches to come and collect them even if they don't live in this area. The churches pay transport and then provide any care. [Does ATTF coordinate with DOI, DSW, or LEOs at all or only churches?] In these cases, only churches – because [they] have money for transport and food, and can help trace relatives.” – CSO representative, Lashio<sup>150</sup>

“GAD looks at the nature of a case, and looks at the needs of a person and refers them to the ministry with a relevant mandate. If there is none, then we ask the CSOs that are in place.” – GAD official<sup>151</sup>

CSOs are relied upon in some cases to find trafficked persons in China and bring them back to Myanmar (see Box 13). CSOs note this costs a lot of money and that they do not often have ATTF's support or collaboration.<sup>152</sup> Extreme caution needs to be taken when CSOs or state actors remove trafficked persons from exploitative situations.<sup>153</sup> Yangon CSOs provide some legal aid, but say donors are not currently prioritizing money for this. Migrant workers cannot make complaints without access to free legal services. Members of the CSO and LO Network for Migrants use their own, not donor funds for legal aid.

<sup>148</sup> Focus group discussion: CSOs, Lashio, 6 March 2018.

<sup>149</sup> Correspondence: Thai CSO, 14 March 2018.

<sup>150</sup> Interview: CSO, Lashio, 6 March 2018.

<sup>151</sup> Interview: GAD, Nay Pyi Taw, 9 March 2018.

<sup>152</sup> Interview: CSO, Lashio, 6 March 2018.

<sup>153</sup> GAATW, 2007.

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**Box 13: CSO assistance over the border**

The following case was recounted by YMCA staff in March 2018. The YMCA is present on the Myanmar-China border. The CSO staff emphasized that when they have requested government assistance to help Myanmar people in China, they have not always received it:

“A 14-year-old adolescent was sold to a disabled Chinese man by her sister's friend. She was in China for ten years. Her in-laws said that if she had a baby boy, she could go back home. She was locked in the family compound. Eventually she was allowed to work outside the family compound, but not allowed to keep her earned wages. However, she kept a small amount of money and saved to buy a phone. Through an app, she gave her friend in Lashio (Northern Shan State) her address in China. The friend gave the address to her parents. YMCA coordinated assistance with the girl's relative who lives in China. ATTF was not involved; YMCA did it ourselves.”

## 5.6 Gaps in access to justice: offenders using horizontal incoherence to their advantage

“Because judicial avenues are ineffective, whatever we do for migrants and trafficked persons, it doesn't solve problems.” – CSO representative <sup>154</sup>

As stated above, CSOs feel they are simply marking time, since without an effective judiciary to prosecute OEAs, subagents and brokers, problems in migration will persist. Migrants, including trafficked persons, face major barriers in trying to access justice.

### *Women and men fear authorities*

Of all the migrants who accessed the MOLIP Complaints Mechanism from 2011 to 2015, 84 per cent were men, and only 16 per cent were women. <sup>155</sup> Partly this is because women are restricted from regular migration as a result of the ban on migrating for domestic work, but it may also be due to a fear of violence or harassment from authorities. Women activists and service providers in CSOs and labour organizations report that they try to avoid accompanying migrants to police stations to handle cases, citing potential danger to themselves if they go. There is a history of sexual and other violence perpetrated by officials. <sup>156</sup> Some CSOs have responded to this situation by developing Standard Operating Procedures on what migrant women can do in cases of sexual violence. MAP Foundation, together with migrant and refugee women groups from Myanmar throughout Thailand, have developed an “Automatic Response Mechanism (ARM),” advising migrant women and their support groups on what to do in the event of sexual violence. After extensive discussions with migrant women and their support groups, it also advised women not go alone to police stations in Myanmar and Thailand, and to remain cautious even if they went with CSO representatives. If relatively empowered women activists are afraid of approaching a police station, migrant women are very unlikely to report problems to police or other officials. Not only do women fear police, but some communities are so fearful and distrustful of authorities that they ask exploited migrants or their families not to file cases. <sup>157</sup>

<sup>154</sup> Interview: CSO, Lashio, 6 March 2018.

<sup>155</sup> ILO, 2017a.

<sup>156</sup> Human Rights Watch, 2010.

<sup>157</sup> Focus group discussion: CSOs, Lashio, 6 March 2018.

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## **Cases passed back and forth**

When migrants do file cases, government actors often pass cases on to each other, citing different mandates. This has ramifications for the justice process. See Box 14 regarding the current process of case transfers in Myanmar, and Box 15 on detailed procedures for labour officials' participation in case handling in the Philippines.

### **Box 14: MOLIP and ATIPD passing cases back and forth**

#### ***MOLIP to ATIPD***

When MOLIP transfers an LROE Article 26 or other case to ATIPD, DOL issues an official letter stating whether it considers that the case involves trafficking. DOL sends this to MHA for ATIPD to take action. <sup>158</sup>

If ATIPD thinks the case does not qualify under Myanmar's trafficking definition, ATIPD replies that the police should be contacted or that the case is for MOLIP's LROE Act 26. <sup>159</sup>

#### ***ATIPD to MOLIP***

When a case is made to ATIPD that does not fit the trafficking definition, but relates to overcharging or deception of migrants, ATIPD refers these to MOLIP for legal action to be taken under the LROE. ATIPD also transfers cases to the police, particularly when they concern missing rather than trafficked migrants.

Cases have been dropped or perpetrators released during the time that cases are passed back and forth. For example, CSOs report that in cases of domestic workers in Singapore, ATTF has said that the cases do not involve trafficking, so CSOs go to MOLIP to invoke the LROE. Whether trafficking or not, the CSOs have to file the cases at the local police station. The police will generally hand cases initially to ATTF, who then have to redirect them again if they do not involve trafficking. Meanwhile, the traffickers and other offenders are released. <sup>160</sup>

<sup>158</sup> Interview: MOLIP, Nay Pyi Taw, 9 March 2018.

<sup>159</sup> Interview: ATIPD, Nay Pyi Taw, 9 March 2018.

<sup>160</sup> Migrant Workers Rights Network, National Migration Stakeholders Meeting, 15 February 2018.

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**Box 15: The Philippines: Department of Labor and Employment's role in trafficking cases**

In the Philippines the 2012 Expanded Anti-Trafficking in Persons Act lists exact roles for the Department of Labor and Employment (DOLE) and the POEA in anti-trafficking measures.

The more recent 2016 Philippines Revised POEA Rules and Regulations Governing the Recruitment and Employment of Landbased Overseas Filipino Workers provides further details. This may be an example Myanmar may want to follow. In coordination with other relevant agencies, POEA is to adopt policies and procedures and implement programmes to eradicate illegal recruitment and trafficking, including legal assistance and counselling in collaboration with the Department of Justice prosecutors; investigation and assistance during arrests; closing businesses; and information and education campaigns.<sup>161</sup>

Articles 78 – 87 of the Rules and Regulations clearly state the following DOLE actions in cases of trafficking:

- POEA is to establish an anti-illegal recruitment fund to support victims of illegal recruitment and trafficking during investigation and prosecution.
- Persons who have been recruited illegally or trafficked may file a complaint with DOLE or its regional offices, or POEA or its regional centres or extension units.
- POEA or DOLE regional officials may, of their own initiative, conduct surveillance of the alleged illegal recruitment activities and trafficking. They may conduct a preliminary examination to determine whether the activities of a non-licensee violate existing laws or will lead to further exploitation of jobseekers. They may take testimonies under oath. If they are satisfied that there is a violation of the law or danger or exploitation exists, a written order can be issued to close a business.
- All officers and employees of the business that is recruiting illegally are included in the list of persons disqualified from participating in the government overseas employment programme.
- The Secretary, the Administrator or the DOLE Regional Director concerned, or any aggrieved person, may initiate a criminal case. Where a complaint is filed with the Administration, the POEA shall endorse the complaint and supply supporting documents to the prosecution office.

***Bribes and bail***

Conflicts of interest and bribe taking were reported in several interviews. These also result in offenders escaping justice. The MOEAF, CSOs and labour organizations report that traffickers and other exploitative agents or brokers are often released on bail while authorities consider which law should be used to prosecute the offender.<sup>162</sup> CSOs and labour organizations report further that offenders regularly bribe police so the offender can choose under which law he or she should be prosecuted. Some laws give easier access to bail, resulting in impunity for OEAs, agents and brokers, who are able to bribe police and judges to halt the case when they are released on bail. Bail gives them more time and freedom of movement to do this:

“Police expect bribes before starting a case. They will delay if you don’t give them a bribe... When ATIPD inform local police about a case, local police ask the broker or trafficker for a payment and then ask what law they should use: LROE Article 26 (recruiting without a licence) or Penal Code Article 420 (fraudulent deals). Penal Code Article 420 carries less punishment, and you can get bail. Under LROE Article 26 you cannot get bail, except in rare circumstances related to age or disability, but the brokers get bail. We have

<sup>161</sup> Article 78.

<sup>162</sup> Interview: MOEAF, Yangon, 13 March 2018. Focus group discussion, CSOs and labour organizations, Yangon, 13 March 2018.

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no successful cases over brokers because of the bail situation. They can freely negotiate with police and judges. The government prosecutor should reject the bail request, according to the law, but they are corrupt as well so they don't do this." – CSO representative <sup>163</sup>

At other times bail is given, even when it is not legally allowed (see Box 16). Under the Myanmar Code of Criminal Procedures, it is stated that if offences are punishable with death or imprisonment for seven or more years, the offence shall not be bailable. <sup>164</sup> The offence under Article 26 of the LROE is non-bailable, as it is a criminal offence subject to seven years' imprisonment. The 2018 US Trafficking in Persons Report notes that because people are not detained during their trial, they abscond or remain at large. The following is the USDOS review of prosecution successes in 2017:

"Authorities reported prosecuting 532 individuals [in 2017] – an increase from 145 in 2016 – but a significant number of these were conducted in absentia. All 156 convicted traffickers received sentences of at least five years' imprisonment, but only 86 went to prison; the remaining 70 – who were not kept in pre-trial detention during the proceedings – absconded, were convicted in absentia, and remained at large at the end of the reporting period" – USDOS, 2018.

**Box 16: Bago case to dispute bail given under LROE Article 26**

The following case is the first of its kind to address bail as one major barrier to justice for migrants and trafficked persons.

In 2016 two brokers were sued under LROE Article 26. The township court granted the offender bail with only the judge's decision. Bail is not permitted under LROE Article 26, yet it is often granted. The plaintiff and lawyer do not agree with the bail, and have taken a second case purely about the bail decision to the district level. The bail dispute is now at the regional Bago court, and the township court case on LROE Article 26 is on hold. <sup>165</sup>

***LROE Article 26: Loopholes and improper use***

Use of LROE Article 26 poses one of the largest barriers to justice in practice. As noted earlier, DOL has handed many cases of unregistered brokers to ATIPD rather than file a charge themselves under LROE Article 26. Pro bono lawyers, ILO, labour organizations, and CSOs all agreed that the LROE is very hard to use because of this.

Article 26 of the LROE prohibits unlicensed recruitment (see Box 1). MOLIP regularly interprets this as trafficking, though the LROE does not mention trafficking. Cases have been regularly handed to ATIPD for charge under the Anti-Trafficking Law, yet the definition of trafficking in Article 3 of the Anti-Trafficking Law does not include unlicensed recruitment as part of the offence. In legal terms, therefore, unlicensed recruitment should not be linked to Article 3 of the Anti-Trafficking Law.

This policy incoherence and the way the policies are currently interpreted in practice result in lengthy disagreements over case handling between government agencies about the definition of trafficking. The fundamental incoherence in the law and current policy interpretation presents a legal gap, with impunity for unlicensed recruitment.

<sup>163</sup> Focus group discussion: CSOs and labour organizations, Yangon, 13 March 2018.

<sup>164</sup> Schedule II, Code of Criminal Procedures, "Offences against other Laws".

<sup>165</sup> Focus group discussion: CSOs and labour organizations, Yangon, 13 March 2018.

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Unregistered brokers and traffickers hence reportedly take advantage of the fact that DOL primarily only uses the LROE to charge registered OEAs. Unless their actions constitute the full definition of trafficking (necessary to be charged under the Anti-Trafficking Law), then brokers are convicted of more minor infractions such as withholding the NRC cards of migrants, knowing that they most likely will not be charged under the LROE.<sup>166</sup>

On a practical level, because of the differences in legal interpretation, neither MOLIP nor ATIPD see unlicensed recruitment as part of their own mandate, but rather as part of the other agency's mandate.

While several of the actors interviewed for this report confirmed that MOLIP regularly passes Article 26 cases to ATIPD, DOL's Director-General stated in an interview that DOL is now using LROE Article 26 to institute proceedings against unlicensed brokers. The Director-General shared two current 2018 court cases (see Box 5).

DOL was not able to provide the ILO with updated data on how LROE cases proceed or what prison terms or fines are given to offenders. DOL stated that courts do not inform them of the results of the cases.<sup>167</sup> Available data is from 2014, when LROE Article 26 was used four times, with three cases resulting in 1 to 1.5 years imprisonment with labour.<sup>168</sup> LROE Article 26 allows for up to seven years' imprisonment, a much higher sanction than is given in practice.

“Some judges just let cases go, but DOL can't do anything at that point. DOL can't appeal without a budget to do so. [Q: Do you need a budget to take the case in the first place?] There is no barrier to LEO making the initial legal complaint.” – Director, MD<sup>169</sup>

CSOs and ILO representatives say that police and judges do not understand the law:

“I went to the police station with LROE 26. No one understands LROE, so it needs to be put in awareness raising. I take copies of the law with me to the police station.” – CSO representative.<sup>170</sup>

“Article 26 has 7 years punishment. Police and judges don't know about Article 26, so advocates and migrants can't use it in practice.” – ILO representative<sup>171</sup>

### ***ATIPD and DOL have limited power in cases***

ATIPD cannot file or institute proceedings in trafficking cases, and DOL cannot adjudicate over labour migration cases. The Director-General of DOL, U Win Shien, stated that after MOLIP files the case, it is no longer MOLIP's responsibility: “Our main responsibility is to file the complaint. The judge decides the penalty, not us.”<sup>172</sup>

Anti-trafficking bodies are not able to investigate cases, a role now belonging exclusively to local police. Both ATIPD and DOL note that when cases are in the hands of local police, they have only limited power. Cases are indeed dropped. ILO's analysis has been that DOL officials need the ability to adjudicate over cases themselves, that is, to make formal judgments on complaints in

<sup>166</sup> Interview: MOEAF, Yangon, 13 March 2018.

<sup>167</sup> Interview: DOL, Nay Pyi Taw, 9 March 2018.

<sup>168</sup> ILO, 2016a.

<sup>169</sup> Ibid.

<sup>170</sup> CSO representative, National Migration Stakeholders Meeting, 15 February 2018.

<sup>171</sup> ILO representative, Myanmar Migration Stakeholders Meeting, 15 February 2018.

<sup>172</sup> Interview: MOLIP, Nay Pyi Taw, 9 March 2018.

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accordance with the LROE. Powers of adjudication of complaints for DOL, and also ATIPD, would allow clarity over which government body is handling which type of complaints, and it could lessen the mishandling of complaints. Adjudication powers could result in less expensive and faster legislation than in courts.<sup>173</sup> Parliamentarians interviewed for this report were asked how they felt about LROE revision to grant DOL authority to adjudicate over complaints, replying as follows:

**Box 17: Nepal, Philippines, and Sri Lanka government bodies given adjudication powers over complaints**

Myanmar lags behind other countries in the region in terms of giving adjudicating powers (making formal decisions in accordance with a law) over complaints to specialized government bodies or creating a specialized court, tribunal or commission.<sup>174</sup>

Nepal has two bodies to adjudicate over migrant labour cases, and human trafficking cases are handled by the judiciary. The Department of Foreign Employment (DOFE) has the power to adjudicate over offenses such as excessive recruitment fees, fraud, or failure to pay compensation as ordered by a previous judgment. It can rule that fines be paid and can suspend or cancel OEA licenses. Importantly, it can hold OEAs responsible for employer practice at the destination.<sup>175</sup> The DOFE is able to make decisions on cases without imprisonment as an outcome. The DOFE, however, has some gaps in the types of cases it will handle, and migrants have to travel to Kathmandu to use the mechanism. A second body, the Foreign Employment Tribunal, has three members and is chaired by the judge of the appellate court. Its advantage is speed, and cases can be received and registered the same day, with a hearing set. Judges give their verdicts the day of the hearing. This Tribunal, however, does not have the power to enforce decisions, and

<sup>173</sup> Correspondence: Kimberly Rogovin, ILO Consultant, 22 March 2018.

<sup>174</sup> Country case studies developed in ILO, 2016a. Further information from Correspondence: Kimberly Rogovin, ILO Consultant, 22 March 2018.

<sup>175</sup> Open Society Foundations, 2014.

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complainants have to make a separate application to a district court. This serves as a major disincentive for migrants.<sup>176</sup>

Sri Lanka's Bureau of Foreign Employment has one main adjudication body, a Conciliation Division of 16 staff, and is run by two managers and a supervisor.<sup>177</sup> This has four divisions for different types of complaint handling. The Division has authority to compel OEAs to compensate workers by using the district court to recover funds, cancel licences, suspend current permissions to recruit and send workers, and delay licence renewals.

The Philippines Overseas Employment Administration (POEA) has an Adjudication Office to which any person can file complaints related to the Labour Code or the Revised POEA Rules and Regulations within three years of the violation. The Administrator can reprimand, suspend or cancel OEA licences if the violation occurred prior to employment.<sup>178</sup> Employers may be disqualified from the overseas employment programme. Decisions can be appealed to the Secretary of Labour and Employment.<sup>179</sup>

“Yes, I agree that DOL should be given authority to adjudicate regarding unlicensed agents. Right now, a person who has been tricked has to sue, not the DOL.” – MP, Parliamentary Committee on Local and Overseas Workers.”<sup>180</sup>

### ***Arresting victims***

CSOs reported two cases in which victims of exploitation or trafficking were arrested instead of or along with wrong-doers. The Migrant Workers Rights Network, Agriculture and Farmers Federation of Myanmar, and Impulse Case Information Centre, for example, report a case where an Indian Chin migrant domestic worker was recruited to Yangon with false documents. The CSOs and labour organization received a complaint and reported it to ATIPD. Unfortunately, the Indian woman was arrested, rather than the brokers. She was given an Indian passport and sent back to India.<sup>181</sup>

In another case reported by a legal aid organization in Myanmar, a trafficked person was charged and sentenced to prison under LROE. A man and a woman each recruited one person to move to China, with the aim of trafficking them. One of the recruited people escaped. The second, a Myanmar woman, was sold for surrogacy in China. The woman's parents filed a case using LROE Article 26. The court gave a verdict of ten years' imprisonment for the two recruiters, but a verdict of imprisonment also for the other person who had been trafficked along with the woman (the recruited person who escaped).<sup>182</sup>

<sup>176</sup> Ibid.

<sup>177</sup> ILO, 2013b.

<sup>178</sup> Migrant Workers and Overseas Filipinos Act of 1995, section 10.

<sup>179</sup> Omnibus Rules and Regulations Implementing the Migrant Workers and Overseas Filipinos Act of 1995, Amended by Republic Act No. 10022.

<sup>180</sup> Interview: Parliamentary Committee on Local and Overseas Workers and the Parliamentary Committee on Women and Children's Rights, Nay Pyi Taw, 9 March 2018.

<sup>181</sup> Focus Group Discussion: CSOs, labour organizations, and legal aid providers, Yangon, 13 March 2018.

<sup>182</sup> Note that both cases are from CSO reports and not corroborated with court transcripts. Focus Group Discussion: CSOs, labour organizations, and legal aid providers, Yangon, 13 March 2018.

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## ***International policy incoherence inhibits justice***

“Myanmar recruiters are illegal, and Singapore recruiters are legal. Migrants are legal there in Singapore. When ATIPD coordinates with Singaporean authorities, they say: ‘Yes the employer slapped the domestic worker, but it is not trafficking.’ But here in Myanmar, the workers had been illegally recruited. So, we can’t build a concrete case.” – ATIPD official

Areas of incoherence between Myanmar’s labour migration policy and that in countries of destination can cause problems for trafficked persons and other migrants seeking justice on their return to Myanmar. One major policy incoherence relates to Myanmar’s 2014 ban on women migrating for domestic work. The Singapore Ministry of Manpower says, “We urge [agencies] to comply with requirements imposed by source-country governments. [...] However, Singapore is not able to enforce the laws of another country”.<sup>183</sup> Prospective migrant domestic workers headed to Singapore are able to receive a Singaporean in Principle Approval (IPA) for domestic work with a visa before they leave Myanmar. Prospective domestic workers do not show their IPA to Myanmar authorities on exit, but are then nevertheless legal when they enter Singapore.<sup>184</sup> ATIPD in Myanmar is not able to build trafficking cases, as Singapore and Myanmar disagree on trafficking definitions related to deception over movement. Myanmar ATIPD considers the illegal recruitment in and from Myanmar to meet this criterion, but Singaporean authorities view such migrants as having arrived regularly. It is important for Myanmar to lift the ban on domestic workers to reduce this policy disconnect, and to provide migrant workers with more rights and protection abroad (see 5.1, “Migrants who overstay border passes”).

### **5.7 Practical barriers to coherence and coordination**

Monetary resources are a major barrier to coordination. Police, for instance, regularly claim they have no money for travel, and Yangon-based CSOs say that they have to do the work to link officials to each other. In a recent court case CSOs communicated between police in Bago and on the border. They also had to deliver the summons from the court to the police station.<sup>185</sup> Capacity issues in terms of staff trained to handle labour migration and anti-trafficking is also limiting:

“There is weak legal capacity in ATIPD and local police. We train them. When we file a case, we hand the police a printed copy of the law so they know it exists.” – Labour organization representative.<sup>186</sup>

Myanmar’s centralized political system and historical hierarchical norms often require senior approval on many matters, and a senior government body or Vice-President must ask separate ministries to coordinate. This affects both horizontal and vertical coordination. As regards local officials acting to bridge mandates horizontally, DSW officials need a directive from above before engaging to support migrant workers who are not trafficked, and who are hence outside DSW’s

<sup>183</sup> Ponniah, 2013.

<sup>184</sup> Singaporean employment agencies apply for work permits through Singapore’s MOM. MOM issues the IPAs through the Immigration Department via email. The recruiter then prints out the IPAs and visas and gives them to women in Myanmar via Myanmar recruiters. Most women do not show these IPAs to Myanmar immigration officers at the airport, but do show them to immigration officers in Singapore. Upon arrival in Singapore, immigration officers retain discretion over who they allow to enter the country, as the IPA does not guarantee entry; nor does it guarantee a work permit. Once admitted to Singapore, women must pass a medical check before receiving a work permit. ILO, 2017c.

<sup>185</sup> Focus group discussion: CSOs, labour organizations and pro bono lawyers, Yangon, 13 March 2018.

<sup>186</sup> Ibid.

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anti-trafficking mandate.<sup>187</sup> For more minor matters such as horizontal coordination meetings, although some officials talked about their good personal relationships with friends in other ministries, onerous official requirements may make it difficult for officials in one ministry to hold a meeting with those in another: “If one ministry wants to coordinate or arrange a meeting, officials need a letter from their superiors, as well as travel and meeting funds. They can’t just go and talk.”<sup>188</sup>

With regard to vertical coordination, another example is that at the Migrant Reporting Counters in Yangon airport: when the staff identify cases, neither they nor their counterparts at DOL have decision making power. Superiors in DOL must be reached before any action can be taken. The delay is reportedly inefficient for the migrants and officials concerned.<sup>189</sup>

## 6. Stronger policy coherence: opportunities and benefits

“MOLIP’s work to regularize migrants is helping reduce trafficking. MOLIP’s safe migration action in Thailand has positive impact on trafficking cases.” – ATIPD official.<sup>190</sup>  
“When migrants [travel] somewhere they can get trafficked. In this case migration and trafficking are part and parcel. Sometimes traffickers are greedy and give incentives to migrants to go. Sometimes people lack awareness of trafficking. Sometimes people believe in what agents or brokers say because they need to migrate for their survival. The root cause of all migration, trafficking, and child labour is poverty.” – MP, Parliamentary Committee on Local and Overseas Workers<sup>191</sup>

As the above quotations show, many government officials know that labour migration and trafficking are interlinked; that systemic root causes underlie them; and that their work impacts on the work of other agencies and vice versa. At recent ILO workshops, ATIPD and LEOs, for instance, have repeated that they need to work closely together. At the 2018 ILO-organized National Migration Stakeholders Meeting, ATTF said that a major priority in 2018 is the amendment of the LROE so that migrants’ rights are met in overseas employment.<sup>192</sup> Recently, Anti-Trafficking Unit officials emphasized that they cannot work alone, and need to collaborate with others.<sup>193</sup> DOL also stated in consultation for this paper that coordination is not currently adequate. Verbal commitment is present, and there are several opportunities for policymakers and government officials to increase efforts to close gaps in policy and practice.

As new labour migration and anti-trafficking policies are currently being reviewed and reformed, there is a unique opportunity to clarify actors’ roles in policy, to foster understanding that there will be times when migration and trafficking situations will be blurred, and to establish what should be done in cases where grey areas and gaps in protection emerge. Stronger, better coordinated labour migration and anti-trafficking governance can positively affect wider development in the country,

<sup>187</sup> Interview: DSW, Lashio, 6 March 2018.

<sup>188</sup> Interview: CSO, Yangon, 14 February 2018.

<sup>189</sup> Ibid.

<sup>190</sup> Interview: ATIPD, Nay Pyi Taw, 9 March 2018.

<sup>191</sup> Interview, Parliamentary Committee on Local and Overseas Workers and the Parliamentary Committee on Women and Children’s Rights, Nay Pyi Taw, 9 March 2018.

<sup>192</sup> ATTF representative, National Migration Stakeholders Meeting, 15 February 2018.

<sup>193</sup> Discussion: GAD, ATU and LEO, Mandalay ILO Training on Safe Migration for GAD and LEO 24 April 2018.

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creating better migration journeys where exploitation does not feature in migrants' experiences; where migration outcomes are empowering, rewarding, and positive; and where access to remedy and justice are guaranteed in cases where problems do occur.

There is also an opportunity to decentralize power at this juncture of reform. If actors at all levels are given varying decision-making powers, they will be better able to coordinate horizontally with counterparts in other ministries. Empowerment of the OESC and CBTIP working groups, for example, could involve empowerment to coordinate with other working groups. Empowerment of MD and ATIPD and other anti-trafficking bodies could give them power to efficiently make decisions on complaints and cases against brokers. This could allow for clear, coherent coverage of all migrants in need of assistance and remedies. Similarly, parliamentary committees that work on labour migration and trafficking issues could expand their focus to support policy coherence. Empowerment of these committees could result in their engaging more fully in migration and anti-trafficking governance. Decentralization offers officials greater autonomy and responsibility, which is necessary as Myanmar further democratizes.<sup>194</sup>

Appendix 4 contains a case study showing the gaps and difficulties Nepal faces in coordinating policy and practice on labour migration and anti-trafficking. Nepal's legislation is similarly under review, and officials from the two countries could perhaps take the opportunity to learn from coherence gained in respective legal reform processes.

**Box 18: Good practice - GAD coordinating local-level actors**

Coordination in policy and practice can be very difficult. CSOs in Lashio particularly highlighted the Lashio GAD's coordination efforts as a good practice example. The township GAD Officer holds bi-monthly open and transparent meetings at the town hall in Lashio, where members of the public and civil society can attend, ask questions, raise concerns, and get answers from a forum of township level government officials from all ministries, except the military. The GAD officer takes notes and asks responsible ministry officials to respond directly at the meeting when questions are asked, or he follows up to ensure that the public receive a response at the next meeting.<sup>195</sup>

This good practice is not limited to horizontal policy coherence between labour migration and anti-trafficking, and is a wider effort at inter-agency democracy, public participation in governance, accountability and, importantly, coordination in responses. These open question-and-answer type fora could be replicated in other townships and at higher levels of government. They could also be replicated with a specific migration and trafficking focus.

## **7. Recommendations for policy coherence on labour migration and anti-trafficking in Myanmar**

The following recommendations were developed through consultations and interviews with tripartite stakeholders. Stakeholders were particularly asked about gaps and inconsistencies between policy and practice, as well as their recommendations for closing gaps and ensuring the governance system covers all Myanmar migrants. The recommendations below address identified

<sup>194</sup> ILO, 2017b.

<sup>195</sup> Focus group discussion: CSOs, Lashio, 6 March 2018.

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loopholes and weaknesses in migration and anti-trafficking measures which make migrants more vulnerable to exploitation and in some cases to trafficking. Only if these loopholes and weaknesses are addressed can Myanmar have policy coherence on safe migration, as well as reduced exploitation and trafficking. The labour migration and anti-trafficking frameworks, particularly NPAs, include overarching and guiding recommendations for policy coherence and ministry collaboration:

“Under the NPA 2018-2-22, the Government is committed to further strengthen the protection of migrant workers and their families and their rights, regardless of their legal status. . . and will continue the work started under the first NPA (2013-2017) with its focus on coherently drawing together policies, laws, institutional and operational arrangements, and rules/regulation and procedures necessary for the sound governance of international labour migration in Myanmar.” – NPA on the Management of International Labour Migration (2018-2022)<sup>196</sup>

“Enhance capacity of personnel from related departments (including embassy staff in foreign countries) on prevention of trafficking in persons [...] Sustain and strengthen cooperation among local organizations, related countries and governments, and international organizations in the action plans on anti-trafficking in persons.” – Anti-Trafficking NPA <sup>197</sup>

## **Recommendation 1: Clarity of mandates in LROE and Anti-Trafficking Law revisions**

Review and specify, in laws and directives, the mandate and roles of all ministries involved in labour migration and/or anti-trafficking processes. Rationalize agency roles and responsibilities to avoid duplications and gaps. <sup>198</sup> Develop these mandates in a consultative and coordinated manner with input from all relevant parties, including social partners and civil society groups.

The LROE could be revised to grant MD with the authority to adjudicate over complaints against agencies related to fraud, overcharging of recruitment fees, operating without a licence and failure to otherwise comply with the law or with other ministry directives, rules or orders. The law should provide fines, penalties and mechanisms to enforce or appeal a decision, as well as incentives for high performing agencies, such as reducing administrative requirements.

The capacity of LEOs should be developed to mediate certain types of complaints and deploy lawyers to the offices to offer investigation and/or mediation services.

ATTF officers should be granted investigative power and the authority to open cases.

MD and ATTF should further develop relations with labour organizations and CSOs to provide counselling and receive complaints, which could then be referred to the LEO, ATTF or a central compliance mechanism.

<sup>196</sup> Pp 9 and 16.

<sup>197</sup> Articles on Prevention (c(15)) and Policy and Cooperation (d).

<sup>198</sup> See example in Table 9.2 “Korea’s first basic plan for immigration (2008–12): Division of oversight roles regarding low-skilled migration” in World Bank, 2017, pp. 274-275.

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## **Recommendation 2:**

### **Better utilization of current mechanisms (OECC, OESC, CBTIP, NPAs) and development of new mechanisms**

The current mandated OECC, OESC and CBTIP frameworks should be better utilized to provide greater overall policy guidance, ensuring regular meetings (at least quarterly) where the work of the three committees is shared, discussed, and effectively coordinated. Information and reports should be made publicly available.

Labour migration coordination needs to extend beyond the union level. Government stakeholders consulted for this paper offered two suggestions in this regard:

- The OESC should be replicated at state and region, district, and ward administration levels; or
- The Department of Labour (DoL) could coordinate labour migration responses through the One Stop Shop housed at GAD.<sup>199</sup>

The OESC and CBTIP should formalize processes for transferring cases outside the mandate of the mechanisms to another ministry, department, or mechanism, or to the formal court system. This requires clear guidelines to define horizontal lines of discussion between OESC and CBTIP and between their working groups and committees.

## **Recommendation 3:**

### **Improved cross border coordination**

Similar bilateral systems to transfer compensation and wages could be developed for trafficked persons and for migrants who have been exploited; and to allow both victims of trafficking and of labour exploitation the right to stay and where possible, work, in the country of destination for the duration of the legal proceedings.

The current Myanmar-Thailand bilateral system of cooperation on the transfer of trafficked victims' compensation, wages and/or assistance grants should be studied to assess its efficiency. It should also be considered for non-trafficked migrants who are due compensation from Thai labour courts and who wish to return to Myanmar. Further, DOL should explore replicating the bilateral system which allows trafficked persons to stay in Thailand to participate in legal proceedings, for migrants with cases in Thai labour courts.

The information in the Receipt of Compensation and/or Assistance Grant Form (for trafficked persons returned from Thailand), as well as in the Matrix of Basic Victim Data, could provide useful information to DOL. The data may highlight particular areas (geographical, sector, or other) where trafficking is occurring, and named agencies or brokers in such cases should be cross-checked to ensure that they are no longer allowed to operate.

Negotiate bilateral agreements for the portability of social rights. Migrant workers should be given the choice of either maintaining their social rights (pension, health insurance, etc.) in their country of employment or transferring them to their country of origin.

<sup>199</sup> Discussion: GAD, ATU and LEO, Mandalay ILO Training on Safe Migration for GAD and LEO, 24 April 2018.

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## **Recommendation 4:**

### **Coverage of irregular migrants**

The LROE and Anti-Trafficking Law revisions and accompanying rules and regulations should clearly indicate the responsible bodies and what action they should take in migration situations where there are current gaps in coverage including: 1) irregular migration that does not amount to trafficking; 2) forced labour that does not amount to trafficking; 3) migration and trafficking from conflict areas; 4) recruitment by semi-licensed subagents and unauthorized brokers; 5) direct hire; 6) migration for marriage that does not amount to trafficking; 7) stranded or missing migrants; 8) migrants in detention; and 9) migration for domestic work.

MOLIP (and MFA at embassies) should urgently expand their mandates and working practices to cover irregular migration and respond to humanitarian needs in collaboration with DSW. MOLIP, and MFA should work towards agreements with countries of destinations that provide migrants who have been exploited or who have become victims of crime, with the right to remain and when possible work during the course of their legal case and until they have received due compensation and/or other remedies.

The principle of non-discrimination should be clearly set out in the preamble to the new LROE, ensuring that access to services and rights is not dependent on migration status. Revised laws and subsequent SOPs and other guidelines should be framed as needs-based rather than according to migration/trafficked status.

Coordination is needed to ensure that all Myanmar citizens abroad are supplied with appropriate Myanmar identity documents.

## **Recommendation 5:**

### **Increasing regular migration channels with rights protections**

Focus on developing labour markets that provide equitable and decent work opportunities for women and men.

Governance structures regarding labour migration to China should be established, possibly in the form of an MOU. MOLIP should continue to advocate with its Chinese counterparts for the opening of more office locations where migrants can register for permission to work.

The Government may wish to consider regularizing direct hire labour migration mechanisms.

## **Recommendation 6:**

### **Full regulation of subagents and brokers**

Following MOLIP's directive in 2019 allowing licenced overseas employment agencies to set up branches in States and Regions, inspection and oversight powers could be devolved to regional government.

Identify and review different options for regulating subagents and local brokers so as to enhance transparency and accountability, for example, by extending the licensing system to local brokers, and requiring brokers and agents to complete training and to pay a deposit in order to operate. Systems can be set up locally – perhaps through the GAD One Stop Shops – for brokers to register

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their details and provide regular reports on their activities. MOLIP might consider an incentive for registration, and taking legal action against those which are not registered.

Rules and regulations made under the LROE should clearly state the relationship between the main office of OEAs and contracted subagents, and clearly define the responsibility and liability of both parties.

## **Recommendation 7: Closing the gaps in the Law Relating to Overseas Employment**

The LROE revision process should include tripartite consultations on the introduction of joint and several liability between OEAs and employers, meaning that OEAs could be held individually liable for contractual infringements, including unpaid wages, death and disability benefits, and repatriation costs. This gives OEAs a significant incentive to work with reputable employers and to monitor conditions of work and accommodation.

Steps should be taken towards ratifying and applying the ILO's Private Employment Agencies Convention, 1997 (No. 181), which does not permit the charging of service fees.<sup>200</sup> All costs and fees including details of who is responsible for paying each fee, should be made publicly available by overseas employment agencies and MOLIP.

## **Recommendation 8: Increased capacity and resources of government service providers**

Local-level and front-line service providing offices – particularly DSW, LEO, and labour attachés – need increased human and financial resources and training so that they can provide quality services to migrants.

Labour attachés and MFA staff should be experienced in migrant protection and have strong references to account for their integrity and ability to represent Myanmar. Labour attachés should be selected with respect to the ethnicity and gender of migrants in the country of destination.

A mechanism should be established for embassies together with other service providers to access funding for the provision of legal aid to migrants in need.

DOL should give a mandate for LEOs to provide staff to the GAD One Stop Shops not only for trafficking cases, but also to provide safe migration information and counselling for potential and returned migrants and their families.

LEOs should survey and keep up-to-date records of job trends in their areas in order to provide meaningful employment information to returned migrants.

<sup>200</sup> C181 Article 7(1) states: "Private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers."

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**Recommendation 9:  
Corruption tackled**

Policies should be designed in full awareness of the fact that corruption has thrived not only as a result of gaps and weaknesses in policy, but also despite procedures being in place to protect migrants. Reports of cases of corruption should be independently investigated.

Systems must be put into place to allow migrants to report corruption without fear of retribution and to ensure that cases are investigated and appropriate action taken.

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## Appendix 1: Trafficking data

**Table 1: Reported domestic and international human trafficking cases, disaggregated by sex, 2016-2018, ATIPD**

Year	Women	Men	Total number of trafficked persons	Number of trafficking cases filed
2016	213	94	307	113
2017	286	74	360	225
2018 (1 January-9 March)	61	2	63	47

Sources: Interview, ATIPD, Nay Pyi Taw, 9 March 2018. Also, ATIPD: 2016 Annual Progress Report, Myanmar Five Year National Plan of Action to Combat Trafficking in Persons (ATIPD, 2016).

**Table 2: Reported international human trafficking cases, by destination, 2013-2016, ATIPD**

Year	Destination country	Number of trafficking cases filed
2013	China	59
	Thailand	23
	<b>Total</b>	82
2014	China	77
	Thailand	18
	Malaysia	3
	<b>Total</b>	98
2015	China	80
	Thailand	13
	Malaysia	21
	<b>Total</b>	114
2016	China	88
	Thailand	6
	Malaysia	6
	<b>Total</b>	100

Sources: ATIPD: 2013, 2014, and 2016 Annual Progress Reports, Myanmar Five Year National Plan of Action to Combat Trafficking in Persons (ATIPD, 2013, 2014, 2016); ILO: *Country of Origin Complaints Mechanisms for Overseas Migrants from Myanmar* (ILO, 2016).

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## Appendix 2: International law, regional agreements, and regional cooperation

Key international law relevant to Myanmar's labour migration and anti-trafficking efforts include, but are not limited to the following.

The ILO's eight fundamental Conventions cover the following rights at work –

- freedom of association and the effective recognition of the right to collective bargaining (Nos. 87 and 98)
- the elimination of all forms of forced or compulsory labour (Nos. 29 and 105)
- the effective abolition of child labour (Nos. 138 and 182)
- the elimination of discrimination in respect of employment and occupation Nos. 100 and 111).

ILO Conventions related to migration, which include –

- the Migration for Employment Convention (No. 97)
- the Migrant Workers (Supplementary Provisions) Convention (No. 143)
- the Migrant Workers (Supplementary Provisions) Convention, 1975
- the Private Employment Agencies Convention (No. 181).

The UN Convention against Transnational Organized Crime and its supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

The UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. This states that migrant workers, whether documented or not, shall enjoy rights.

The UN Convention on the Elimination of All Forms of Discrimination against Women, and particularly its General Recommendation No. 26 on women migrant workers.

The ILO Domestic Workers Convention, 2011 (No. 189) and its accompanying Domestic Workers Recommendation, 2011 (No. 201).

The 2006 ILO Multilateral Framework on Labour Migration, which is a set of non-binding principles and guidelines for a rights-based approach to labour migration. It provides a comprehensive set of rights-based guidelines, principles, and good practices on labour migration developed by governments and social partners.

The 2016 ILO General Principles and Operational Guidelines for Fair Recruitment similarly offer rights-based guidance on recruitment within and across national borders.

At the ASEAN regional level, the 2007 ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers enshrines various forms of protection for migrant workers. On 17 November 2017 governments further signed the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers. On trafficking, in 2004 governments signed the ASEAN Joint Declaration against Trafficking in Persons, especially Women and Children, followed in 2015 by the ASEAN Convention Against Trafficking in Persons, Especially Women and Children and the ASEAN Plan of Action against Trafficking in Persons. All of these enshrine principles of inter-governmental cooperation through the region. The Myanmar government participates in the ASEAN Forum on Migrant Labour (AFML), where governments agree to a set of recommendations annually on various labour migration-related topics.

In 2015 the Government of Myanmar and others in the Greater Mekong Subregion signed the Third Joint Declaration of the Coordinated Mekong Ministerial Initiative Against Human Trafficking (COMMIT Declaration), of which Article 4 declares commitment to collaboration with specific anti-trafficking actors and others more generally, which would include labour migration. Through COMMIT governments have agreed a series of subregional plans of action to combat trafficking.

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## Appendix 3: Members of Working Committees of the Overseas Employment Supervisory Committee

### Administrative Working Committee <sup>201</sup>

- Chairman: Deputy Minister, Ministry of Labour (now MOLIP) <sup>202</sup>
- Vice Chairman: Deputy Minister, Ministry of Home Affairs
- Member: Deputy Minister, Ministry of Transport
- Member: Director General, Consular and Legal Affairs Department
- Member: Director General, General Administration Department
- Member: Director General, Bureau of Special Investigation
- Member: Director General, Department of Marine Administration
- Member: Director General, Immigration and National Registration Department
- Member: Police Major (Information), Myanmar Police Force, Ministry of Home Affairs
- Secretary: Director General, Department of Labour
- Joint Secretary: Director, Department of Labour.

### The Workers' Benefits Committee

- Chairman: Deputy Minister, Ministry of Finance and Revenue (now Ministry of Planning and Finance)
- Vice Chairman: Deputy Minister, Ministry of Foreign Affairs
- Member: Vice Chairman, The Central Bank of Myanmar
- Member: Managing Director, Myanmar Economic Bank
- Member: Managing Director, Myanmar Insurance
- Member: Director General, Consular and Legal Affairs Department
- Secretary: Director General, Internal Revenue Department
- Joint Secretary: Deputy Director General, Department of Labour.

### The Workers' Rights Protection Committee

- Chairman: Deputy Minister, Ministry of Labour (now MOLIP)
- Vice Chairman: Deputy Minister, Ministry of Foreign Affairs
- Member: Vice Chairman, Ministry of Home Affairs
- Member: Deputy Minister, Ministry of Border Affairs
- Member: Deputy Minister, Ministry of Social Welfare, Relief, and Resettlement

<sup>201</sup> Ministry of Labour: "Formation of Three Sub-Committees for Overseas Employment Supervisory Committee", 18 August 2011.

<sup>202</sup> Note that some ministries have changed their structures and/or names since the OESC was formed in 2011.

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- Member: Director General, General Administration Department
  - Member: Director General, Bureau of Special Investigation
  - Member: Ambassador, Myanmar Embassy in the concerned country
  - Member: Director General, Relief and Resettlement Department
  - Secretary: Director General, Department of Labour
  - Joint Secretary: Director General, Consular and Legal Affairs Department.

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## Appendix 4: Nepal case study

In Nepal the Foreign Employment Act, and the Human Trafficking and Transportation (Control) Act govern labour migration and trafficking with two correspondent ministries given responsibilities for implementation: the Ministry of Labour, Employment and Social Security's (MoLESS) and the Ministry of Women, Children and Senior Citizen's (MoWCSC), the latter given jurisdiction over anti-trafficking. A National Coordination Committee on Human Trafficking sits under MoWCSW, with a representative of MoLESS on the Committee. The current two laws are currently under review, and the need for policy coherence has been stressed.

The current laws are not interlinked, and there are gaps in practice similar to those in Myanmar. The anti-trafficking law does not cover labour exploitation, and focuses only on women trafficked for sexual exploitation. While the labour migration law does cover labour exploitation, when labour exploitation is identified, it is never classified as trafficking. Similarly, the mandates of the ministries reveal gaps, as the MoWCSW (responsible for anti-trafficking) is only mandated to cover women and children, so trafficked men are left out. By contrast, MoLE covers men, women and third gender. The law revision process has resulted in complex conversations about what the lines are between labour exploitation and trafficking, who will be responsible for anti-trafficking related to trafficked men, and the fact that trafficking is a socially stigmatizing category so most trafficked women are currently preferring to file cases under the labour migration law rather than the anti-trafficking law. The ILO notes that legal reform needs to even out the incoherent compensation in the two laws: the anti-trafficking law gives compensation of one-half the amount of the fine given to the offender, and the labour migration law provides compensation of 150 per cent of the migrants' recruitment fees, which is usually higher than that awarded in trafficking cases. Finally, labour cases resolved in a more timely manner and easier for migrants/trafficked persons to take in practice.<sup>203</sup>

<sup>203</sup> Correspondence: ILO Nepal, April 2018.



## Livelihoods and Food Security Fund



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The ILO is implementing the Developing International and Internal Migration Governance (DIILM) project supported by the Livelihood and Food Security Trust Fund (LIFT) to improve the safety and benefits of labour migration. Through this, the ILO has produced a series of briefing papers (on complaints mechanisms, recruitment and social protection) to provide technical input into the revision of the Law Relating to Overseas Employment (LROE) and is producing a related series for increased coherence in migration policies, of which this report is one. In 2017, the ILO published a paper, *Building Labour Migration Policy Coherence in Myanmar*, which provided an overview of how and where labour migration management could be interlinked with other policies and where better cooperation and coordination should be fostered, specifically building on the *National Plan of Action for the Management of International Labour Migration*. In 2020, *Policy Coherence for Development: Gender Equality and Women's Empowerment in Labour Migration Governance in Myanmar* was published.

This current paper addresses horizontal policy coherence in labour migration and anti-trafficking arenas, with an examination of the main actors and their roles, the laws and policies involved, and strategies and mechanisms. Stronger, better coordinated labour migration and anti-trafficking governance can positively affect the wider development of the country, creating better migration journeys where exploitation does not feature in migrants' experiences, where migration outcomes are empowering, rewarding, and positive, and where access to remedy and justice are guaranteed in cases where problems do occur.

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