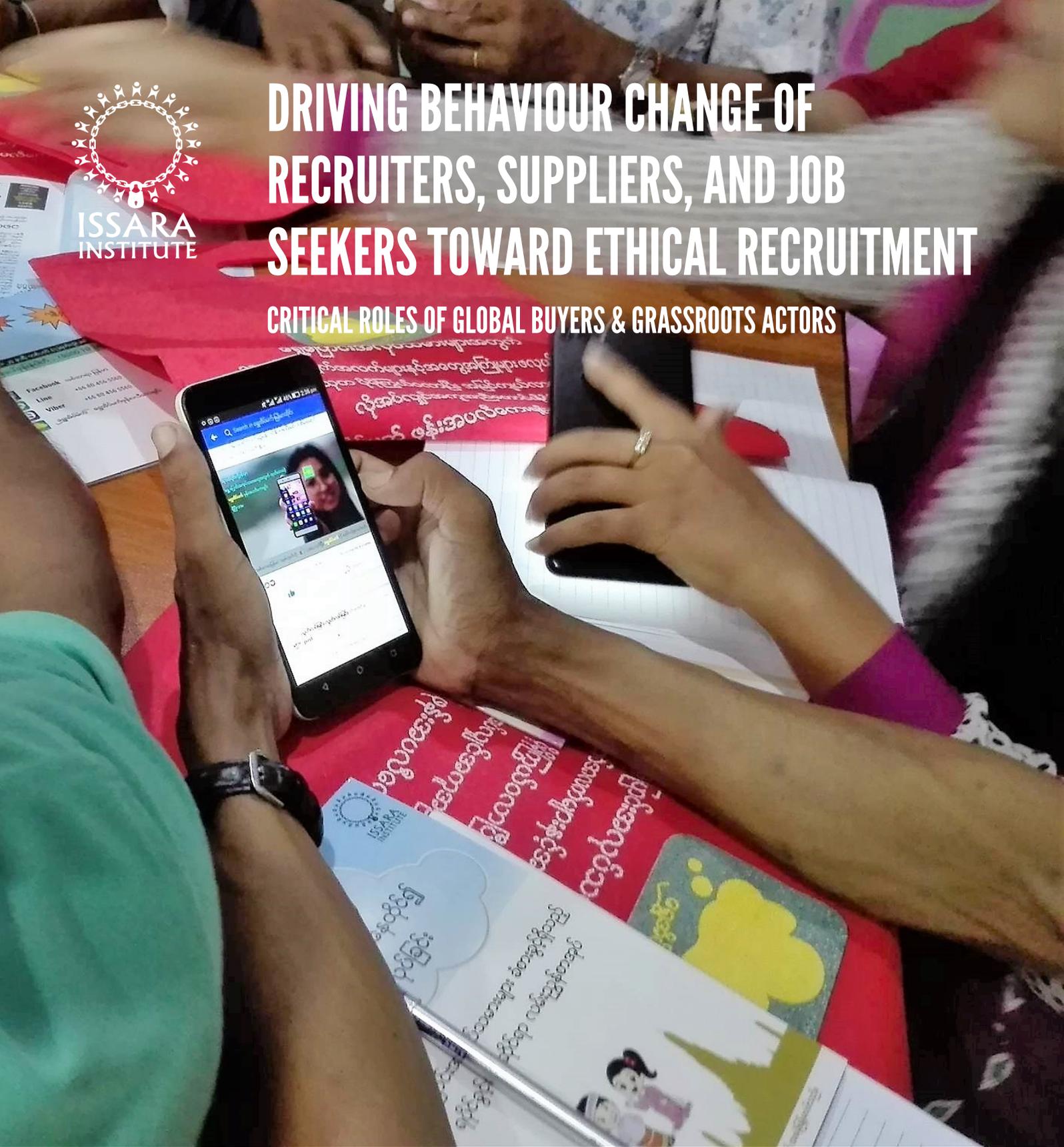




DRIVING BEHAVIOUR CHANGE OF RECRUITERS, SUPPLIERS, AND JOB SEEKERS TOWARD ETHICAL RECRUITMENT

CRITICAL ROLES OF GLOBAL BUYERS & GRASSROOTS ACTORS



FOCUS ON ETHICAL LABOUR RECRUITMENT IN SUPPLY CHAINS | SERIES PAPER 2

September 2018

Prepared by Dr. Lisa Rende Taylor and Ohnmar Ei Ei Chaw, Issara Institute

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Critical Roles of Global Buyers and Grassroots Actors

Issara Institute

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ISSARA INSTITUTE

info@issarainstitute.org

www.issarainstitute.org

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Issara Institute is an independent U.S. not-for-profit corporation based in Thailand, Myanmar, and the United States tackling issues of trafficking and forced labour through data, technology, partnership, and innovation. People—including worker voice and feedback—are at the center of Issara’s data and intelligence work, and at Issara Labs we conduct a wide range of research, analytics, and technology development related to human trafficking in global supply chains—the people, the policies, the impact, and how to eliminate it.

Informed consent: The respondents featured in this report have all provided fully informed consent for their stories and photos to be shared.

Front cover: Outreach activities to job seekers and community members in Ayeyarwady as conducted by Myinttamon and Action for Dignity in Development (ADD).

Back cover: Outreach activities to job seekers and community members in Mawlamyine, Mon State, as conducted by Confederation of Trade Unions, Myanmar.

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EXECUTIVE SUMMARY

Issara Institute programming in Myanmar and Thailand over the past year has focused on driving more ethical recruitment systems, down to the ‘first mile’ where risk of job seekers falling into debt is high. Ethical recruitment systems feature the majority of costs (all fees related to the recruitment process) borne by the employer, rather than job seekers paying agents, recruitment agencies and bearing other fees. Eliminating first-mile debt is key to zero-fees recruitment as well as to eliminating risks at destination that are linked to indebtedness, such as restrictions on freedom of movement, excessive wage deductions and underpayment, and discrimination. In the origin country of Myanmar, Issara piloted partnering with a network of civil society organizations and progressive recruitment agencies to displace middlemen brokers. Issara also created a range of digital resources such as the Golden Dreams smartphone application, which directly connects job seekers to progressive recruitment agencies, provides a wealth of know-your-rights information, and offers varied communications channels for workers to verify and report the conditions of their recruitment. Strategies in the destination country of Thailand centered on professionalizing and transforming the labour recruitment practices of Thai suppliers in the supply chains of Issara Strategic Partners (global brand, retailer, and importer companies), where supply chain leverage and responsible sourcing encouragement from Issara Strategic Partners has been crucial given the fact that labour recruitment in Thailand has generally been low-to-no fees paid by the employer, rather than low-to-no fees paid by the worker.

Key findings based on preliminary impact assessment during the first year of Issara’s ethical recruitment program strongly suggests that efforts in the origin country to identify and eliminate upstream debt are highly effective, since job seeker trust of CSOs and use of digital technologies is high, and Burmese recruitment agencies seem generally open to more ethical recruitment business models where employers pay the costs of recruitment rather than workers. However, most Thai employers and their agents continue to lack transparency in their recruitment process and fee structure and there is widespread practice of Thai agents forcing Burmese recruitment agencies to “pay to play” (informal fees that are external to stated recruitment costs just for the opportunity to place workers with their representative employer). This underscores the importance of the employer directly engaging with the origin-side recruitment agency and having a transparent service agreement (ideally long-term) between the two. Considerably more global buyer power is needed to enable and/or push Thai businesses to shift from profiting from labour recruitment (paying below true market rates due to workers bearing the brunt of costs) to paying for all costs of labour recruitment. Isolated cases of employer-pays ethical recruitment as verified by worker voice exists within Issara supply chains, but they are mainly due to the strong efforts of a few global buyers that incentivize and stand behind suppliers who are willing and able to adopt transparency and pay for labour recruitment.

ISSARA ETHICAL RECRUITMENT PRINCIPLES

1. Legal compliance: respecting all relevant laws
2. Ethical and professional conduct toward workers and each other
3. Free-of-charge services to jobseekers and workers
4. Transparent, ethical terms of engagement
5. Transparent wages, deductions, and benefits
6. Healthy, safe, exploitation-free working and living conditions
7. Access to remedy and functional, credible grievance mechanisms

Promoting job seeker empowerment and ethical recruitment beginning from the first mile in the origin country

With funding from Walmart Foundation, Issara Institute launched its Empowerment Incubator in mid-2017, which has been providing support to a nascent network of grassroots civil society organizations in Myanmar, the Civil Society Organization Network to End Trafficking (CSO-NET) (members are listed in Table 1). The main objectives of CSO-NET are to empower both jobseekers and returned migrants, including trafficked persons, to support other migrants and drive change in the labour migration system. Over the course of the past year, Issara Institute has provided financial and technical support for regular convening, networking, and coordination of joint outreach and casework, as well as intensive technical trainings on topics such as empowerment; behaviour change communications and the Opportunity, Ability, and Motivation (OAM) model; ethics and human rights in anti-trafficking; basic counselling; and, case management and referrals. Sub-grants were also given to support CSO activities and operations relating to CSO-NET’s objectives across 49 townships of 12 states and divisions of Myanmar (see Figure 1).

Jobseeker empowerment is a key component of Issara’s approach to ethical recruitment, on the premise that jobseekers that are more empowered with facts, knowledge, and choices will be able to more successfully navigate the migration process and life and work in a foreign country - and if they face challenges to their rights, they will know how to seek assistance.

TABLE 1. LIST OF CORE CSO-NET MEMBERS ACTIVE IN JOB SEEKER AND MIGRANT EMPOWERMENT

1. Action for Dignity and Development (ADD)
2. Action Labour Rights (ALR)
3. Association for Labour and Development (ALD)
4. Confederation of Trade Unions Myanmar (CTUM)
5. Agriculture and Farmers Federation of Myanmar (AFFM)
6. Friendly Child (FC)
7. Future Light Center (FLC)
8. Genuine People’s Servants (GPS)
9. Good Shepherd Myanmar Foundation (GSMF)
10. Hlaing Thar Yar Youth Network (HYN)
11. Impulse Case Information Center Myanmar (ICICM), YMCA
12. Karen Baptist Convention (KBC)
13. Karuna Mission Social Solidarity (KMSS)
14. Myittamon
15. Paei Kine Shin (PKS)
16. Ratna Mahal Education Care Group
17. Solidarity of Trade Unions Myanmar (STUM)
18. Yangon Karen Baptist Women Association (YKBWA)

There are two key challenges to jobseeker empowerment (and to the more traditional approaches to ‘safe migration’ programming) in Myanmar:

1. **Sociocultural and political.** Economic migrants to foreign countries such as Malaysia and Thailand come from nearly every state/division of Myanmar, and large and diverse geography comprised of 135 ethnic groups, each with their own culture and language or dialect¹. There is a history of internal conflict in several ethnic minority states including Kachin, Karen, Rakhine, and Shan states, and conflict between ethnic groups as well, including along religious lines².
2. **Legal.** Economic migration to foreign countries can either go through the legal MOU channel to Malaysia and Thailand, or, migration into those countries can be informal, often (but not always) facilitated by informal brokers. For the formal MOU channel, which comprises 5-10% of migration to Malaysia and Thailand, the current legal framework in Myanmar requires jobseekers to migrate through registered recruitment agencies, all headquartered in the capital of Yangon. There are no branch offices dispersed through the countryside nor any robust mass media advertising on the part of recruitment agencies, only brokers (who are 'freelance' middlemen with relationships with many recruitment agencies) and licensed sub-agents (who are only allowed to be registered under a single recruitment agency, and the recruitment agency must register them) advertising job opportunities to people in the provinces³.

FIGURE 1. MAP OF CSO-NET'S OUTREACH COVERAGE IN MYANMAR.



Because of these two main challenges, Issara Institute and CSO-NET identified the following strategies to their jobseeker empowerment:

1. **Partnership with 18 local grassroots organizations** (and/or their provincial branches) to ensure that outreach and education in source-side hotspots is responsive to the local beliefs and patterns of job seeking and migration;
2. **Strengthening a network of over 800 Ambassadors**, comprised of engaged individuals such as seasoned returnees, community members, and grassroots staff, to conduct outreach and job seeker support across Myanmar (and in Thailand) on an ongoing basis;
3. **Activities with progressive recruitment agencies**, sometimes with joint CSO-recruitment agency outreach activities in communities, to advertise real jobs to jobseekers in the provinces as well as know-your-rights information, and to add transparency; and
4. **Expansion of digital outreach and marketing** of information to inform job seekers and cultivate exchange between migrant workers, specifically through the Issara Golden Dreams Android application, which contains regularly updated information on rights of migrant workers in Malaysia and Thailand, and information on recruitment agencies, including ratings and reviews of agencies by Burmese migrant workers.

Of course, it was recognized that empowering vulnerable populations to claim their rights alone cannot solve the problem if there is continued impunity for those who exploit these populations in the destination countries - a focus of destination-side work with businesses that continues to challenge the interests of the welfare of Myanmar migrant workers, which is addressed through:

- ***Issara Ethical Recruitment Program and Diagnostic:*** The Issara Institute Ethical Recruitment Program was integrated into Issara’s wider supply chain improvement work in late 2017, centering on partnerships and trust with business as well as workers. To help get businesses on an ethical recruitment track, Issara brings employers and recruitment agencies together to identify strengths and weaknesses of their current recruitment practices through a diagnostic tool and analysis, receive worker voice feedback, and make improvements, so that job seekers are more ethically recruited, screened, processed, transported and managed. Engagement of job seekers early in the migration process, often before they even leave their own home village or pay the first fees to brokers, allows worker voice to drive ethical recruitment from beginning to end, capturing information on fees and treatment even at the very beginning stages of recruitment where most debt bondage begins.

ETHICAL RECRUITMENT: MORE THAN JUST ZERO FEES FOR JOB SEEKERS AND WORKERS

Ethical recruitment means that workers are not charged any costs or fees related to the recruitment process. Ethical recruitment, however, is more than just an employer pays principle or “zero fees to workers” model. It is also about hiring workers lawfully, treating the worker with dignity, and ensuring transparency, accountability, and worker safeguards are embedded throughout the process.

Employers who go beyond legal requirements and pay for source-side recruitment fees but still have workers pay for health checks, visa, and work permit (all legal under Thai labour law) are making progress but are still not practicing ethical recruitment, as defined by the international community and stakeholder bodies such as the International Labour Organization (ILO), International Organization for Migration (IOM), World Employment Confederation (WEC), Consumer Goods Forum (CGF), and Institute for Human Rights and Business (IHRB).

METHODOLOGY

In order to conduct preliminary assessments of effectiveness and impact of jobseeker empowerment and ethical recruitment efforts to date, with a focus on assessing the source-side pilot programming, Issara Institute researchers conducted qualitative research in Myanmar and Thailand in July-August 2018. Individual in-depth interviews and focus groups were conducted with 51 key informants from the following stakeholder group categories:

- Burmese recruitment agency representatives
- Registered sub-agents
- CSO members of CSO-NET
- CBOs
- Golden Dreams Ambassadors
- Jobseekers in Burmese communities where CSO-NET partners were active, in Bago and Twantay, Yangon
- Burmese workers in factories in Samut Sakhon and Bangkok, Thailand, including those who migrated through the formal MOU channel and those who migrated through informal channels

The Issara field team interviewed six Burmese recruitment agencies, including some that have a good relationship with CSOs, others in the process of building trust with CSOs, and others that do not have a relationship with CSOs at all. Additionally, the field team conducted interviews and focus group discussions with members of the Myanmar Overseas Employment Agencies Federation (MOEAF) and with Golden Dreams Ambassadors during an Ambassadors' training conducted by Issara Institute and some CSO-NET members. The Ambassadors that participated originated from different regions of Myanmar, including Ayeyarwady; Mon; Naypyitaw; Sagaing; and Twantay, Yangon. A saturation approach to sampling was used to determine the number of jobseekers and workers participating in the interviews and focus group discussions; demographic and geographic diversity was maintained whenever possible. Business perspectives and information to fill gaps were also collected from both Thai businesses and global buyers.

KEY FINDINGS

KEY FINDING 1. Recruitment risk, job seeker vulnerability, and behaviour change can be addressed at the village level.

Job seeker trust of CSOs is high. It was previously hypothesized that job seeker trust of local brokers would be difficult to supplant through CSO engagement in communities (that is, getting job seekers to trust the information about migration from CSOs as opposed to what was being promised by brokers). Indications so far are that this is true in situations where the local broker is someone who is very local and a community leader, for example a monk. However, this trust does not necessarily extend to unregistered brokers who may be operating in the vicinity but who are not necessarily from the locality.

In these cases, local and grassroots community-based groups have the trust of community members more so than visiting brokers. As one focus group with job seekers in Bago discovered,

“We believe that the community-based organizations that provide information have a high influence in the community, and people trust them. None of us have had experiences with brokers, so we do not know how many of them are in the area or the influence they have. We have some friends that are currently working in Thailand who used a broker, but had to pay more money than they should have as compared with regular channels (MOU process).”

Community members in Twantay, Yangon, added:

“Religious leaders are very influential among some members in our community, and it is often easy to just get information from them. Many monks have also traveled abroad – or have disciples who have lived abroad – so they feel that they could have useful information. When a monk told one person that he had connections to a recruitment agency in Yangon, she listened to him. She ended up using his contact information to connect with an office in Yangon, but when she physically went to Yangon to check the office, she realized that it wasn’t really a recruitment agency because the office wasn’t real. It was probably just a broker...”

...In response to CSO activities, many brokers are now telling community members that CSOs are lying to them and giving them false information. For people who have attended CSO events, they know that it is actually the brokers who are lying. But for those people who haven’t been reached by CSO outreach yet, it is often hard for them to believe that zero-fees recruitment is a real idea because they only hear about that from a few other job seekers and find the idea to be “too good to be true.” Many brokers also tell them that if they go through with zero fees recruitment, they will end up in terrible factories, which may persuade people to use brokers instead.”

In interviewing different groups of migrant worker returnees, including one that was exploited in the seafood industry in southern Thailand, they confirmed their belief in the value that CSOs can add to transparency and safety in the migration process, but then clearly outlined the challenge of CSOs and progressive recruitment agencies scaling up to meet the needs of the people.

“Because job seekers now know about the real costs, they do not overpay for things. For example, before the CSO outreach events, most people were paying very large amounts just to get their passport processed. They have now learned about what is allowed and not allowed under the MoU process after they get to Thailand, which makes things slightly easier once you get there. The ones who have attended CSO events have stopped using brokers. However, penetration of CSO outreach is still fairly low in the community. There are many rural areas where the CSOs haven’t been able to reach yet. People in these communities still continue to use brokers.”

They went on to recommend:

“CSOs can be very beneficial for workers. There is a lot of potential to share information on do’s and don’ts of safe migration, give detailed information about the details of work contracts, and...encourage job seekers to think twice before actually migrating abroad for work because it is a very big and important decision. CSOs should also provide migrating workers with the contact information of organizations they can contact if they end up in trouble, both in Myanmar as well as at their destination.”

All groups argued that there is not enough CSO activity in the provinces to reach all the prospective migrants who are migrating in a relatively uninformed manner. The group that had been exploited in the Thai seafood sector explained how they had never heard anything about CSOs raising awareness and supporting job seekers while they were still in Myanmar and looking for a job. The only social organizations they knew to be active in their community were the Department of Social Welfare (Myanmar Government) and the International Organization for Migration (IOM), which they only knew as organizations who go into communities to conduct interviews. So, they used a broker to find a job, who deceived them into forced work on a fishing boat.

Job seeker use of digital and smartphone-based applications and technologies is high. Given the challenges of scale faced by CSO outreach to empower job seekers in large, geographically and culturally diverse Myanmar, mobile phone and smartphone penetration in Myanmar has presented promising alternatives for mass education and empowerment of job seekers, with over 90% mobile phone penetration in Myanmar, and over 85% smartphone. Issara Institute has seen similar shifts in usage of the Issara worker voice channels - toll-free phone helpline, Issara Facebook (including closed chats), Issara messenger apps (Line and Viber, which are similar to Whatsapp), and Issara's Golden Dreams Android application in the past two years: calls and messages to Issara's worker voice channels have shifted from being over 90% to the toll-free helpline and 10% smartphone-enabled, at around 5,000-6,000 total calls per year in 2015-2016, to being 50% helpline and 50% smartphone-enabled (messages and calls through Golden Dreams, Facebook, Line, and Viber), now totaling 2,500 calls per month on average or 30,000 per year—an over 500% increase in total volume in the past 2 years. Many CSOs, job seekers, and migrant workers attest to their usage of these channels in their daily life and decision making:

“I learned from the Agriculture and Farmers Association and CTUM about the Golden Dreams app. They told me about how to use it to find information about recruitment agencies and how I can contact them. They also told me that brokers are bad because they cheat people and that we should not work with them. So I found the contact information [for my recruitment agency] on Golden Dreams. I contacted many recruitment agencies in Yangon and then went to Yangon myself to check out different ones. They were all expensive but I finally found one that I liked, who then found me a construction job in Thailand.”

“From Ratanamahala we got information about the Golden Dreams app, how to apply for a passport, how to go through the recruitment process, what a contract was, and that we should not use brokers because they charge exorbitant amounts. The CSOs gave us the contact information and address of a recruitment agency. This was after the CSO had initially given many options to the worker for good agencies, but suggested that we try [the ones with] zero-fees recruitment. Afterwards, the CSO reached out to the agency directly and told them a worker from Twantay might be reaching out to them.”

It is important to note that the “ground game strategy” for dissemination and education about Golden Dreams and other channels for educating and networking job seekers is critical, and that the technology itself would not successfully achieve its goals without engaged (and financially and technically supported) grassroots partners and Ambassadors spreading the word. As explained by one CSO actively engaged in CSO-NET's job seeker empowerment efforts,

“The CSOs have been conducting public awareness events under Issara’s pilot project, although they had conducted a few events on safe migration before the pilot had started as well. They have conducted 3 workshops in each region they work in [around 10 regions] over a 3 month pilot. In each workshop, they train 10 ambassadors and one focal point. These 10 ambassadors are then asked to reach out to at least ten people in their community and explain the migration process to them properly. It is the focal point’s responsibility to follow up with the ambassadors, make sure that they are providing good and accurate information, and report back to the CSO if necessary. The ambassador spreads word about their role through the village and as word reaches prospective workers, they can reach out to the ambassador to ask for more information.”

KEY FINDING 2. ‘Zero fees’ recruitment between Myanmar and Thailand is still very rare because many Thai businesses are still shifting costs to workers or Myanmar recruiters, rather than paying the true cost of recruitment

Emerging zero fees recruitment in Myanmar is only occurring into the Thai apparel and footwear sector.

Based on this assessment as well as additional insights from Issara’s work in Thailand, there are only a very small number of factories in Thailand committed to employer-pays recruitment of migrant workers—only a small number of apparel and footwear factories. One, closely examined here, is within the supply chain of one very active and progressive UK apparel and footwear brand owner: Pentland Brands. The Thai apparel factory supplying to Pentland Brands, Castle Peak Holdings, submits their request for workers directly to their partner recruitment agency in Myanmar, Aye Lin Let Htut, rather than using Thai recruitment agencies. As discussed in the next section, many Thai recruitment agencies make Myanmar recruitment agencies pay (informal fees that ultimately end up being paid by the workers) to win their business, which still seems to be common—and which is avoided in this model. Castle Peak Holdings pays Aye Lin Let Htut all the necessary fees to manage the recruitment and migration process so that Aye Lin Let Htut is able to recruit workers at zero cost to the workers. This is managed through a transparent process. As reported by Myanmar recruitment agencies more generally, if they are able to collect 150,000 kyat (US\$100) per head from the employer, they will have sufficient margins and cash on hand to manage the entire process without needing to seek other sources (such as from jobseekers or using informal brokers). In order to find job seekers, current employees at Castle Peak refer their family and friends who are in Myanmar to Aye Lin Let Htut in Myanmar. Since there are no hidden debts or fees, the recruitment agency does not hesitate to contact and collaborate with CSO-NET members to conduct know-your-rights outreach with their applicants. In fact, these recruitment agencies say they now see brokers as a risk and no longer a necessity. As explained by the Managing Director of Aye Lin Let Htut:

“There are not many factories recruiting workers with zero fees [for workers]. Workers going to Castle Peak Holdings are doing very well as their recruitment costs, including passport, are covered by CPH. It would be good if all the factories could practice zero fees policies so workers can go without being in debt and can support their family better. We do hope that buyers, suppliers, and recruitment agencies can work together to make this happen.”

It is noteworthy that Pentland Brands is one of the only known global buyers who visits Myanmar to meet with the recruitment agencies that are a part of their suppliers’ labour recruitment processes. Other Burmese recruitment agencies, upon hearing about this, have noted that not only do global buyers never contact them for due diligence, audit, or remediation purposes, but also in most cases even the Thai employers often do not have a relationship with the Burmese recruitment agency, relying instead on intermediary Thai agents to liaise with Burmese agencies.

Tim Pilch, Pentland's Head of Ethical Trade, explains the importance of direct business relationships and engagement in driving ethical sourcing in their supply chain:

"We believe that business should be conducted honestly, fairly, and with respect for human rights and our policy is to work only with suppliers that adopt 'Our Standards' or have policies that reflect the same values. The issue of who pays fees is incredibly important to us, and to enable responsible implementation we needed to know all the risks, the supply chain touch-points and the operational challenges facing ethical recruitment. Being an informed and involved partner to our suppliers, and their contracted recruitment agencies, in delivering a 'no fees to recruits' policy was our intention from the outset, and key to delivering this has been the support of the network we have built with local experts and CSOs.

In Thailand and Myanmar we are very excited with the progress we are making working with Issara Institute on implementation of our migrant worker policy, and providing training and labour monitoring on the ground. It is important we understand and prioritise improvements workers feel are important. We have very long standing relationships with our suppliers in Thailand that provides the required basis for trust and transparency; we have been working with Castle Peak for 20 years.

With economic migration a growing trend in our industry, we will need to replicate the model across global supply chains and we will be best placed to do that with an experienced and informed approach."

Castle Peak Holdings provides more insight on how employer pays ethical recruitment is seen as beneficial to their business and not just a standard pushed by their customer:

"Foreign migrant workers comprise a significant percentage of our work force and it is important to us that they are not having to pay high fees and find jobs through informal brokers. We are implementing a zero recruitment fees to workers approach, which is also a requirement of our customer, Pentland Brands. It can be difficult to have visibility of the recruitment process in Myanmar, but working directly with the Myanmar recruitment agency and having our workers communicate job opportunities to their friends and family, has been an effective way to remove risk and fees. Having Issara in Myanmar supporting the recruitment agency in educating the workers on their rights and migration processes, before they come to Thailand, is also valuable to us as the workers' employer."

"As a business, ensuring that we operate in good conscience is one of our guiding principles. With the support of local experts, tools that now mean that workers in our supply chain can have a voice are moving from policy into action. Our goal is to support our partners and our industry in protecting human rights, and providing people with the basic right to decent work."

- Matt Rock, President—Asia Pacific, Pentland Brands

Many Thai employers and agents are making money from the recruitment process rather than paying for recruitment. Many Thai businesses and employment agencies are continuing to drive non-ethical recruitment whereby Thai agents are reportedly insisting that Burmese recruitment agencies pay an additional informal fee of 5,000 to 12,000 Baht (US \$156-\$375) per worker in order to win the business of the Thai employer. Burmese agencies wanting to follow national law⁵ and/or be compliant with the Code of Conduct for Myanmar Recruitment Agencies⁶ cannot pay that amount or they will operate at a loss. The only way to be able to pay Thai agents these informal “pay to play” fees is to pass the charges on to the job seekers, who pay excessive fees up front for the job opportunity. Myanmar recruitment agencies that want to avoid charging these illegal fees to workers simply will not be able to win the business of those Thai companies.

According to CSO-NET members, they perceive most Burmese recruitment agencies as wanting to make changes to their business model and not charge money from workers; however, the costs and bargaining power are driven by businesses on the Thai side. If Burmese agencies did not have to pay these “under the table” fees, it is perceived that they would be incentivized to change, and more responsible recruitment practices and business models would emerge. Additionally, it would remove a key driver for the commonly used practice of local brokers collecting illegal fees from jobseekers which creates additional risk and possible financial penalties for the recruitment agency under Burmese law⁷.

Other high-profile sectors besides the apparel and footwear sector still do not have ethical recruitment in place, just as the majority of apparel and footwear factories do not have ethical recruitment in place. There are some employer efforts underway to get on a more ethical recruitment track in Thailand, which include employers working with Issara on strengthening recruitment practices (such as transparency of terms and conditions), and reducing recruitment fees, worker vulnerabilities, and indebtedness, but most are not yet following an employer pays principle. Many Thai employers still fall short by requiring workers to pay for health checks, visa, and work permits - legal under Thai labour law but not compliant with ethical recruitment.

On the source-side there are some Burmese recruitment agencies recruiting workers into a variety of industries that aim to have a business-wide ‘zero-fees for jobseekers’ strategy, but they are struggling to win the business of Thai employers because they cover industries such as seafood, construction, and electronics, in addition to apparel and footwear, and the employers in those sectors do not agree to zero fees for jobseekers. As explained by the managing director of one of these progressive Myanmar recruitment agencies,

“Yes, other Myanmar agencies are interested [in the ethical recruitment model] but the problem is that 98% of the employers from Thailand do not want to pay for the recruitment expense of the jobseekers so they ask the Thai agency to get the workers and the Thai agency contacts different recruitment agencies in Myanmar and give the offer to the agency that would pay better for it, so the agency in Myanmar would have to ask for money from the jobseekers.”

For the Thai seafood sector, in the past year there have been 39 Thai seafood companies recruiting Burmese workers from 22 different Burmese recruitment agencies⁸. Some seafood companies noted to have more “ethical” or “responsible” recruitment policies⁹ were found to be charging fees to workers at one point, and in at least one case, forcing workers who could not pay fees to take out loans from the company and make payment when each paycheck was received. There is also movement away from working with the Burmese recruitment agencies who are transforming to a more ethical

recruitment model, shifting their business instead to new, less established agencies in what is perceived by CSOs to be trading off established service agreements and improving business practices for an attempt to keep their own transaction costs low.

For the Thai electronics sector, in the past year there have been 20 Thai electronics companies recruiting Burmese workers from 20 different Burmese recruitment agencies¹⁰. None are zero fees, according to workers (current and former), recruitment agencies, and CSOs. Electronics factories seem to have working conditions that are getting better, however, the recruitment agencies and local brokers are still collecting informal fees from jobseekers going into electronics; this is acceptable according to national law but not any other international standard such as that of the Electronics Industry Citizenship Coalition (EICC) / Responsible Business Alliance (RBA).

High fees for Burmese migrants going to Malaysia who have to pay, but also reductions in fees and increasing instances of zero-fees recruitment. Burmese recruitment agencies report that there are an increasing number of Malaysian employers and recruitment agencies recruiting Burmese workers to Malaysia with zero fees or reduced fees to workers; this is understood to be due to very recent buyer pressure, and competition to fill their quotas. CSO-NET partners also report, however, that—for Burmese who still have to pay to migrate to Malaysia—deductions from migrant workers' salary for 6 months is reportedly not uncommon, according to direct reports from recent workers in and returnees from Malaysia. More information on recruitment from Myanmar and Cambodia to Malaysia will be shared in a forthcoming report.



Prospective migrants at a pre-departure training complete a quiz to reflect and self-assess their preparedness for life and work abroad.

KEY FINDING 3. Myanmar and Thai Government policies hinder any real efforts toward ethical recruitment, or even job seeker access to information and options

Myanmar and Thai laws allow workers to be charged fees; competitively, this makes it difficult for any progressive businesses to pay for fees that their competitors are not paying for. In short, Thai law states that workers can be charged fees for costs deemed to be their responsibility, such as for passports, health checks and work permits; that recruitment agencies cannot charge recruitment fees to workers; and, that there are limits to what can be charged to employers¹¹. Myanmar law states that workers can be charged 150,000 kyat (US \$100) on the Myanmar side and 10,000 Baht (US\$ 312) on the Thai side - more than what is allowed by Thai law¹²! When laws state that it is legal to charge workers fees, the vast majority of businesses will do so because they are not being disincentivized by the law - unless they are sufficiently incentivized to meet a higher standard. Myanmar and Thai laws stating that it is appropriate to charge workers this much money for the costs of formal labour recruitment is highly problematic since it 'excuses' behaviour that is known to make workers highly vulnerable, such as debt bondage, freedom of movement, and excessive wage deductions.

And obviously, it runs directly counter to international standards and definitions of ethical recruitment where no fees are charged to workers. Absent legal reform, in order to drive employer-pays recruitment, global buyers who are serious about having ethical recruitment in their supply chain will have to make strong and focused efforts to incentivize their suppliers to start paying for recruitment— even when their competitors are not, which is likely the case—unless the buyers and/or suppliers can form a pre-competitive coalition to jointly push ethical recruitment across entire industries.

Myanmar law limits the marketing ability of recruitment agencies and maintains space for brokers. Burmese recruitment agencies cannot go and recruit directly from communities on their own unless they have approved demand at that moment. The agencies are mostly based in Yangon, and their marketing staff are prohibited by the Myanmar Law Relating to Overseas Employment (1999) and departmental directives from going into the provinces and conducting general marketing and outreach about their company's services. Interestingly, according to this law, the Myanmar Government (MOLIP and local township) only allows registered sub-agents to recruit in communities, who must be registered by a recruitment agency, and who can only be registered with a single recruitment agency. Recruitment agency staff can only go into communities if they go along with a CSO, on the premise that they are providing information on legal channels and other useful information for safe migration. Still, the great majority of MOU recruitment is done by unregistered 'freelance' brokers with connections to multiple recruitment agencies and varied job opportunities, rather than by sub-agents; the number of sub-agents is small compared to the number of functioning brokers in any given area. As mentioned by one sub-agent, "...there are only 3 registered sub-agents in the region, while there are more than 100 brokers."

CSO-NET members perceive that most brokers would like to apply for a license because they know they are perceived as a risk, and, because prosecution of recruitment abuses is on the rise. However, brokers cannot apply for a license directly to the MOLIP; instead, the recruitment agency must apply on behalf of the broker, and each broker can only be registered with one recruitment agency, which is quite different from the current model where brokers in an area may have relationships with several recruitment agencies, to be able to offer a wider array of job opportunities to job seekers and to have a higher likelihood of job placement success.

In addition, despite the fact that the registration process is free, some recruitment agencies reportedly ask brokers for US \$400 - \$1,000 to register them. Brokers also often perceive recruitment agencies as not taking full responsibility to protect their registered brokers, so there may be little incentive to get registered to an agency, especially if only one must be committed to. Recruitment agencies respond that they may sometimes hesitate to have registered sub-agents because it is difficult to monitor and control their actions, and, it is difficult to guarantee that they will have quotas or demand year-round—because sub-agents are typically paid per-head for job seekers recruited.

CSOs are helping to reduce reliance of both recruitment agencies and job seekers on middlemen, though reach is still limited. Five CSO-NET members especially active in job seeker empowerment described collaboration with 6 progressive recruitment agencies (out of the 111 sending workers to Thailand) on community-based awareness raising sessions, where they jointly explain processes, fees, and rights of workers to potential job seekers. CSO-NET members noted the importance of job seekers seeing this collaboration, to build trust and credibility between job seekers and recruitment agencies, and decrease reliance on middlemen. One recruitment agencies' registered sub-agents was described as showing their licenses and registration papers to community members, to educate potential migrants and their families about how to discern between legal and illegal brokers, and what information they should insist on before paying any money to any brokers, or signing any documents. Some CSOs are also more actively linking job seekers with progressive recruitment agencies. As one CSO explains,

“When one sub-agency has job opportunities, he/she will contact us and then we would contact our Ambassador contacts [in the communities]. We give them information about the factories in Thailand, basic salary, and details of the job from the recruitment agency. The exact nature of information varies from recruitment agency to recruitment agency. Job seekers are already contacting the Ambassadors, so the Ambassadors will transfer their names and contact information to us, and we would pass it on to the sub-agent. We tell the Ambassadors to not take any money from job seekers. Then the sub-agent would contact the worker directly. Then after the recruitment process, the sub-agent would give us the recruitment process statistics on how many job seekers were accepted, how many cleared the interview stage, how many cleared the medical test, and so on.”

CSO-NET partners meet in August 2018 to exchange information and emerging good practice on how they are working with recruitment agencies and brokers to make migration safer.

All partners, regardless of where in Myanmar they worked, acknowledged the challenge of overcoming the “too good to be true” feeling of job seekers when learning about ethical recruitment, since for years the anti-trafficking sector has told community members to not trust offers that seem too good to be true. This gives local brokers opportunities to collect money from job seekers, even if recruitment agencies do not.



CSOs noted that they are clearly performing functions of education and outreach to job seekers, but may sometimes be perceived or accused of acting as brokers, because sometimes, job seekers try to contact recruitment agencies and have no luck, so then they contact CSOs again for assistance. The CSOs then contact the agencies who are known to be sending workers at zero cost or through more responsible business models. However, because CSOs have to be careful about being perceived as illegal brokers, they recommend that when job seekers call a recruitment agency they mention the specific name of the CSO to the agency, so that the agency can know that the job seeker is not being referred by a broker who may be charging a fee for that referral service. Of course, if a recruitment agency does not clearly understand the role that CSOs are trying to play, they may perceive the CSO as functioning as a broker; thus, broad-based awareness across the entire MOEAF membership is needed.

Some recruitment agencies acknowledged the benefits of working with some CSOs, but provided insight on barriers to trust and collaboration with CSOs. As one MOEAF representative explains,

“There are some good CSOs, and others that work only for their benefit. When MOEAF has problems with MOU workers, not all CSOs collaborate...only 40-50% collaborate in these situations. Recruitment agencies don’t trust CSOs because in the past, some were known for exaggerating situations and shaming recruitment agencies. There is a need to build trust and show recruitment agencies the benefit of working with CSOs.”

Another MOEAF representative explains,

“There are advantages of CSO engagement: workers are more aware of information and so are more prepared when they approach recruitment agencies. And, CSOs develop good levels of trust with workers, and MOEAF can then work together to handle cases easily because workers already trust the CSOs. MOEAF and some agencies would like to join events in the community organized by CSOs. They can share information about the nature of work available, and what opportunities exist for jobseekers. It would also be good to have local authorities and MOLIP join such events if possible. But some recruitment agencies feel that it is unsafe to work with CSOs if they don’t understand the business side of things and are too strict on agencies about following government regulations. CSOs don’t understand how much of the equation depends on the Thai side and so is not in the control of Myanmar recruitment agencies! They don’t understand how Myanmar recruitment agencies have to pay high fees and taxes, and have to work with very restrictive government regulations. For example, for workers going to Malaysia, the government charges all recruitment agencies withholding and income tax of USD \$850 per worker – but agencies don’t always receive USD \$850, so if they follow a zero-fees model or even a deduction model where the worker only pays for a part of the cost up front, they lose out on profits...So CSOs can also help to advocate with the government regarding real problems on the ground. Most of these problems exist because of unrealistic rules and procedures that recruitment agencies have to abide by.”

CSOs are supporting exploited workers to file recruitment abuse cases. In Myanmar, CSO-NET members observed that, previously, local authorities and leaders were often themselves directly involved in exploitative recruitment, or, turned a blind eye and did not care to intervene. However, with CSO awareness raising and CSO-recruitment agency joint outreach, more and more cases are being reported, more law enforcement action is being taken by the authorities, and more brokers are being charged and punished.

As one formerly cheated job seeker explains,

“I did not realize initially that I had been cheated by the broker. When I learned from the CBO awareness event that I had been cheated, I first tried to negotiate with the broker on my own to get the money back. The broker refused to return the money. So I threatened that I would tell the CBO about the broker and also sue him...something I had also learned about at the training. In the meantime, I did tell the CBO and they also reached out to the broker regarding the money. After this happened, the broker gave back a share of the money that he owed me.”

CSOs postulate that local authorities seem to have realized that they have to comply with current policies to suppress exploitative recruitment or be punished by central-level authorities who are keeping a closer eye on the situation. CSOs widely agreed that there is a correlation between where awareness raising has occurred, where cases are being reported, and improvements in behaviours (including less corruption) of local authorities. However, it is noteworthy that some CSOs further raised their view that enforcement of the Law Relating to Overseas Employment has not been completely effective because people lack the evidence being required by the authorities to make a strong case, and, the local authorities and even police in many areas are not aware of the law. It is also challenging when monks and religious leaders are recruiting workers, because nobody wants to prosecute a monk. As summarized by a practitioner in the International Labour Organization (ILO),

“Since CSOs are often working to recoup high fees paid by many job seekers, many recruitment agencies are afraid of CSOs. Many CSOs have effectively brought complaints and lawsuits against agencies that are charging high fees. So they are helping get the recruitment agencies in line. It has worked to an extent because many recruitment agencies are now worried about charging high fees. However, because the number of CSOs working on these issues is still low, it is a slow process to get compliance from all recruitment agencies.”



The Myanmar Overseas Employment Agency Federation (MOEAF) and CSO-NET partners collaborate in August 2018 to get brokers to pay back unofficial recruitment fees taken from job seekers.

TABLE 2. SUMMARY OF KEY DEMAND-SIDE CHALLENGES TO DRIVING SUSTAINABLE ETHICAL RECRUITMENT

1. There is currently not enough demand from Thai employers for ethical recruitment. Some Myanmar recruitment agencies have demonstrated that they are willing to change practices for specific customers, but this is supply chain/customer-specific—not a wholesale change to the recruitment agency’s business model. Until sufficient customers are demanding employer pays recruitment, recruitment agencies will have to employ different models and standards of worker fees and safeguards for different clients.
2. There is not consistent demand from those Thai employers that do seek ethical recruitment. Myanmar recruitment agencies are not receiving long-term contracts from those Thai employers and there has been significant switching of recruitment agency service providers, thereby making it difficult for Myanmar recruitment agencies to forecast volume and demand to justify investing in the cost of licensed sub-agents.
3. Even with increased demand from Thai employers and longer term service agreements, if Thai employers are using Thai agents, there is a very high likelihood that the agent is seeking unofficial kickbacks and that undermine the agreed upon pricing structure and margins that the employer and Myanmar recruitment agency agreed upon. This distorts the entire recruitment process, and makes it impossible to operationalize an employer pays business model.

RECOMMENDATIONS FOR WAYS FORWARD

In summary, of the 261 Myanmar recruitment agency members of the MOEAF, there are currently 111 Myanmar recruitment agencies approved to send workers to Thailand, and 150 sending workers to Malaysia. Of these, six have been identified so far that show indications of transforming their business models, including embracing a path of more ethical recruitment across all their service agreements, cooperating well with CSOs, reducing charges to workers, and avoiding suppliers that would require taking large fees from workers. All but one are associated with Issara Strategic Partner suppliers in Thailand; the one that is not is the one run by the Secretary of MOEAF, which collaborates closely with Issara. Other recruitment agencies working in Issara Strategic Partner supply chains seem to be improving a bit, particularly in terms of worker treatment and transparency of terms and conditions; however, many are still totally reliant on informal brokers since they do not have any (or enough) registered sub-agents, and have only a limited ability to control their informal brokers.

Digital outreach and education is showing signs of high positive impact, as is CSO outreach, though the latter is more challenging to scale without the linkage to the digital outreach. However, ultimate outcomes for migrant workers are limited if the great majority of global buyers continue to tolerate their Thai suppliers conducting business legally (in line with local laws) but in contravention of their own codes of conduct and supplier standards for employer-pays recruitment. That is, there are definitely positive impacts of workers being more prepared and educated about cost breakdowns and how to manage certain migration-related processes themselves, such as obtaining their own passports and choosing recruitment agencies and job opportunities. However, if the real-life choices of job seekers are only jobs where the cost to workers still includes shouldering the burden of recruitment costs (or informal fees that Thai recruitment agencies are requiring and Myanmar agencies are passing along), this is far from where the global responsible sourcing community says it would like to be in 2018 in terms of both human rights impacts as well as supply chain risk mitigation. Table 2 summarizes these key challenges further.

Recommendations to the Myanmar Government. Reform laws to be in line with international standards for 'employer pays' ethical recruitment. It is recommended that specific focus be paid to eliminating tolerance for charging workers fees, expecting employers to pay all fees related to labour recruitment, and allowing a more free market in terms of flow of information about job opportunities and labour rights to all Myanmar people, both digitally and in person.

Allowing job seekers across all states and divisions of Myanmar equal access to information about the diversity of international jobs available to Myanmar workers, and allowing recruitment agencies and the sector as a whole to professionalize, should include: (a) permitting registered recruitment agencies to recruit and market themselves directly in the provinces; (b) permitting registered sub-agents to be registered to multiple recruitment agencies; (c) continuing to enforce laws punishing illegal brokering while disseminating awareness among local officials of the difference between CSO community-based awareness raising versus illegal brokering; and, (d) sharing approved demand publicly in an easy to find manner, so that CSOs can help share available jobs widely to job seekers.

Recommendation to the Royal Thai Government. Reform laws to be in line with international standards for 'employer pays' ethical recruitment. It is recommended that specific focus be paid to shifting the market from Thai employers and agents expecting to make money off recruitment, to employers and agents paying per head for recruitment. For example, laws should prohibit Thai employers and employment agencies from asking source-side recruitment agencies to bid for and pay

unofficial fees to win their demand, and should make receipt of such unofficial payments illegal.

Recommendation to Issara Strategic Partners and other global buyers. Issara Strategic Partners and other global buyers of products from Thailand (and Malaysia) should strongly encourage their suppliers with foreign workers to sign long-term service agreements with one of the progressive recruitment agencies committed to an ethical recruitment path (if not already implementing a zero-fees-to-recruits model) and collaborating with CSOs and current workers to recruit job seekers fee-free from Yangon and the provinces. Global buyers should ensure that their suppliers pay the recruitment agencies a fair price up front, at least 150,000 kyats per recruit in the case of Myanmar, and require debt-free, zero-fees recruitment down to the first mile as verified by worker voice.

Recommendation to industry bodies in destination countries (Seafood Task Force and industry associations). Make a significant contribution to driving measurable improvements in your industry by requiring your membership to commit to ethical recruitment. This coalition approach to raising standards will help even the playing field for those who are willing to improve their labour recruitment practices, particularly in the current policy environment where charging workers fees is legal.

Recommendation to development donors. Support CSO-NET members individually and the coalition as a whole in two key ways:

- First, to support more coordinated and scaled-up awareness raising in the very rural communities where non-compliant brokers are starting to operate because there is less exposure to CSOs and awareness raising (as pictured below and verified by outreach in Thailand that increasing numbers of recent migrants are being recruited from very rural communities by brokers); and
- Second, to assist more exploited job seekers and migrants on reporting cases of recruitment abuses. This kind of work is demonstrating a lot of promise and realizing real results for exploited workers while also driving forward industry reform and reduction of local-level corruption, but has modest per-case costs and cannot be expected to be solved overnight.



The race to the interior. Outreach by Action for Dignity in Development (ADD) and Myinttamon is reaching ever more remote areas in Myanmar where informal brokers are beginning to operate.

ENDNOTES

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8. Department of Labor, Ministry of Labor, Immigration and Population - demand data.
9. Their definition of “ethical recruitment” does not match any known conventional definition of “ethical recruitment” since it does not include zero fees charged to workers - just reduced fees.
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