

Chapter 5

Myanmar's Perspective of Legalism and Human Security

5.1 The 'Structured' Security of Myanmar

Migration-related policies and regulations have always shown weakness in the history of Myanmar. Immigration and border control are more or less focused on incoming 'foreigners' than the outgoing of its own citizens. Whether for law and order restoration or peace and tranquility in the country, Myanmar borders were closed for all kinds of reasons for more than thirty years during the socialist regime (1962-1988). The country then faced tremendous phases of transition from civil movement towards democracy to corresponding global standards of 'human security' demanded by the people of new millennium.

Foot(2005: 291) reminds us that, "*there has been a reasonably widespread understanding that... governments were expected to protect individual human rights... A state's reputation no longer rested on its ability to exercise authority over territory and the population that resided within it, but it now also embraced the idea of 'sovereignty as responsibility.* The state's initial step in reclaiming the sovereignty after nation-wide turmoil in 1988 and addressing 'human security' was strengthening its armed forces known as Tatmadaw. The military

government precisely structured the security of individuals by holding onto power for more than two decades (Selth, 2009).¹

Ever since the armed forces created the State Law and Order Restoration Council (SLORC) in 1988, and launched its ambitious military expansion program, foreign observers have tried to determine the number of men and women in the Tatmadaw.² Numerous estimates have been put forward, but none can be considered definitive. It is not disputed that over the past twenty years the Tatmadaw has probably doubled in size, from a baseline of around 200,000. Every year on the country's Armed Forces day that falls on 27th of March, the military parade 300,000 plus army is broadcasted live on the national TV, signaling the country's strongest manpower.

According to Maung Aung Myoe, who appears to have had access to official records, in 1988 the army numbered 184,029, the navy 8,065 and the air force 6,587 (IISS,1989).³ In 2001, a Myanmar military spokesman stated that there were '350,000 plus' in the Tatmadaw (Wain,

¹ The armed forces have ruled Myanmar(Myanmar) since 1962 but, from 1974 to 1988, they exercised power through an ostensibly elected 'civilian' parliament. On taking back direct political power in September 1988, the armed forces abolished the old government structure and created the State Law and Order Restoration Council (SLORC), which ruled by decree. In November 1997, apparently on the advice of a United States (US)-based public relations firm, the regime changed its name to the State Peace and Development Council (SPDC). It still rules by decree, but has announced a seven-step 'roadmap' to a 'discipline-flourishing democracy', the latest step of which was a constitutional referendum held in May 2008. For details, see Selth (2009).

²The Tatmadaw is overwhelmingly male, the small number of Myanmar (Myanmar) women in uniform being restricted to junior medical and administrative positions. See Selth (2009) P-11.

³These figures are a little higher than those published by the IISS. See also Selth (2009) P-11.

1999).⁴ It has since become widely accepted that by 2002 the armed forces had grown in size to around 400,000. This was thought to consist of about 370,000 in the army, 16,000 in the navy and 15,000 in the air force (Selth, 2002:296). Some sources have claimed that 435,000 is more accurate (Tan, 2004). A few reports have put the figure at 488,000, but this seems to include the 72,000 believed to make up the paramilitary Myanmar Police Force (Cordesman & Kleiber, 2006:35). At about 400,000, however, the Tatmadaw would still be the second largest armed force in Southeast Asia (after Vietnam) and, by some counts, the 12th largest in the world.

However, in recent years, the size of armed forces appears to have declined, probably to around 350,000 (Selth, 2009:11). The probable reasons could be difficulties in recruitment and a large number of soldiers who are underage.⁵ In fact, no one really knows the exact number of army and man power in Myanmar. There has been no official census in Myanmar since 1983, and the last reliable nationwide census took place in 1931 and therefore, all the figures presented by either the government or other sources should be treated with caution. One undeniable fact is that including the figures of population and workforce, the government carefully structured the projections to suit its understanding of ‘bringing security and tranquility’ to the public.

⁴ Cited in Maung Aung Myoe, *Building the Tatmadaw*, p. 200. This was the same official who stated in 1999 that the Tatmadaw’s strength was ‘not over 350,000’ and unlikely to grow any further.

⁵ Human Rights Watch claimed in its 2007’s book that these estimates seem to be based on persistent reports of a high rate of desertions – mainly from the army – the regime’s difficulties in finding new recruits, and the large number of child soldiers in the ranks.

The sudden open-door policy adopted by the new military government in 1989 that aimed to reflect international concerns, favored selected neighboring countries, particularly China and Thailand. Over the next two decades, the country witnessed successful cease-fire agreements between the government and some ethnic armed groups that helped the country realize its goals in developing border and remote areas though with a slow pace. However, reports on mistreating, discrimination and killing of ethnic minority groups such as Shan, Kareni, Karen (Kayin) and Rohingya by the military have continuously put the government at international's attention.⁶

Myanmar is a country that consists of more than 100 ethnicities and the state's purpose of security should, by all means, reflect every citizen in the country, not limited to the majority only. The then Thai Foreign Minister Pitsuwan, at the beginning of the year 2000 said that, *'One cannot have support for human security and effectively pursue people-centered development if one is unable to ensure that people are protected from abuse, suffering and deprivation'*. Those constant liberation efforts of ethnic armed groups in Myanmar, until recently, have shown that government cannot achieve human security for its citizens with its structured security scheme.

The United States of America, The European Union, Japan and Australia have all enforced economic sanctions on Myanmar and visa restrictions on senior Myanmar figures

⁶UN special investigator Rajsoomer Lallah cited reports of massacres in which more than 100 minority people had been killed since the beginning of 2000.

(CIA, 2008; DFAT, 2008), but these have thus far had little effect on the human security situation in Myanmar. Failings of the State to provide better levels of human security for its population has resulted in the smuggling of people for sexual exploitation, forced labor and child soldiering (CIA, 2008; FCO, 2008; UN Secretary-General's Report, 2007; UNCHR, 2005). Many parts of Myanmar failed to be operating within the rule of law, with Myanmar estimated to be the world's second largest illicit producer of opium, with eastern parts of the country affected by armed conflict and rebellion, and now suffering from up to 500,000 IDPs (CIA, 2008; DFAT, 2008; FCO, 2008; HRW, 2006; Ling, 2005: 288).

Yet, market monopoly by a handful of tycoons close to the top level government, never left the sight of ordinary and hardworking citizens. The control and command of who should dominate what market came with a strict 'security' concern where the government expressed its fears in potential market instabilities manipulated by 'foreigners'.⁷ With Myanmar joining Greater Mekong Sub-region (GMS) in 1992, the Association of Southeast Asian Nations (ASEAN) and the Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC) in 1997, the Mekong-Ganga Cooperation in 2000, the Ayeyarwaddy-Chao Phraya-Mekong Economic Cooperation Strategy (ACMECS) in 2003, and

⁷ From a conversation with former senior military officer, it is learnt that the government in the late 90s and early 2000s, was too concerned with 'foreign interference', particularly on its increasing partnership with China and Thailand. In his own words : '...the decision makers were always searching for local-breed businessmen who they can trust'.

ASEAN Inter-Parliamentary Assembly (AIPA) as a permanent member in 2011, the scope of its political, social and economic realization has been explicated with more members of the general public and monitored by international community.

On the other hand, the government could successfully strengthen trade ties with five of its neighboring countries China, India, Thailand, Malaysia, and Singapore, where the ties accounted for 70.4% of Myanmar's export and 79.5% of its imports (Kudo, 2007). These trade ties have somehow kindled both legal and irregular migration from Myanmar. The government saw migration more as an upshot of globalization rather than as a byproduct of its political subjugation that many would like to argue. Migration, overseas employment of Myanmar citizens in particular, has challenged the government's ability to address its citizens' human security from many aspects. The government felt a strong need overly protect the people from external penetrations such as foreign propaganda and dire influence of globalization.

Thus, human security of Myanmar can be observed as the formation of a state that has a strong military presence to safeguard the livelihood of its citizens. With regard to people moving out of Myanmar, the government responded by committing to changes and creation of certain laws and enforcing legal rights to individuals directly involved in these matters. The new government's approach include setting up a committee to assist migrant workers in which Myanmar ambassadors as patrons and Myanmar entrepreneurs as members, and to extend

cooperation with local authorities to provide necessary assistances to Myanmar workers. Myanmar embassies in Thailand, Singapore, Japan and UAE are assigned to settle workers' affairs (Ministry of Labor, 2012). This way, the security and rights of migrant workers are promised through proper planning and practice of authority by the government.

5.1.1 Bridging Myanmar to International Labor and Migration Treaties

The UN International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families was introduced in 1990 and contains the most significant and comprehensive international standards to protect and promote the rights of migrant workers and their families. However international signatories to this convention have been limited with only 31 countries in total who are signatories, and who are party to the convention as of July 2010 despite two decades of the Conventions existence. Of the 12 Asian countries (i.e., UAE, India, Pakistan, Bangladesh, Nepal, Philippines, Malaysia, Cambodia, Indonesia, Thailand, Myanmar and Sri Lanka) that have the most active in out-migration, (CARAM, 2010) only two have ratified the UN Migrant Worker Convention – the Philippines and Sri Lanka – both classified as sending countries within this research. The three most popular destination countries (i.e., Thailand, U.A.E. or Malaysia) have signed this treaty.

Many viewed this as limited international protection for migrants in the majority of the countries under study, and their rights were subject primarily to domestic law which also had limited protections for migrant workers. A further level of international legal protection for migrant workers is via the International Labor Organization (ILO) labor standards which provide legal instruments for governments, employers and workers to ensure basic principles and rights at work. All 12 countries in this study were ILO member states and had signed various treaties related to labor rights and protections. Of relevance were the treaties which aim to protect core labor and human rights of migrant workers including Conventions 29 and 105 related to Abolition of Forced Labor, Conventions 87 and 97 related to Freedom of Association and Collective Bargaining, Convention 111 related to Nondiscrimination and Conventions related to Minimum Age and Abolition of child labor.

The three destination countries in this study – Thailand, Malaysia and U.A.E. – had signed the Conventions enabling Non-discrimination, Equal Remuneration and Abolition of Child Labor however had failed to sign the Conventions related to the Right to Organize and Collective Bargaining which left migrant workers with little bargaining power in their workplaces abroad. Furthermore Malaysia had actually rescinded its signature to the Forced Labor Convention which it denounced in 1990 due to divergences with the ILO in the

interpretation of national legislation with regard to this Convention⁸ (ILO, 2008). Myanmar stands out amongst sending countries in terms of its minimal level of commitment with only two ILO Conventions signed (Forced Labor and Right to Organize) and even within this context Myanmar has been repeatedly criticized by the ILO for breaches to the Forced Labor convention with alleged forced conscription of child soldiers and forced labor at the hands of the military (CEACR 2008).

The Myanmar government has in fact signed two of the UN human rights conventions – related to the Rights of the Child and Elimination of Discrimination Against Women (CEDAW) and ratified the ILO Conventions against Forced Labor and Right to Organize. In reality however there has been consistent criticism and documentation of violations of all these conventions by various international human and labor rights advocates and governments over the last fifty years (CARAM, 2010). Myanmar’s military government has used forced labor in many forms, from building roads to carrying military supplies through the jungle with reports of people being forced to act as human shields in minefields in ethnic states. In 2009, the Network for Human Rights Documentation recorded continued human rights violations perpetrated by state authorities including forced labor, murder, rape, forced relocation, torture, and more (Network for Human Rights Documentation ND, 2009).

⁸ ILO Country Baseline Review Malaysia 2008

5.1.2 Labor and Migration Policy of Thailand

Following the Cabinet decision in April 2004, the Thai ministry of Interior registered 1,280,000 foreigners during the month of July; 814,000 of those had applied for work permits by mid- December (Huguet and Punpuing, 2005:34). Of 814,000 applicants, 610,000 were from Myanmar, which counted for three quarters of the total applicants. Tak province with 50,932 permits ranked third, following Bangkok with 98,308 permits and Samut Sakhon with 67,799. Tak Province is one of the places where abundant Myanmar workers are available and employable. This effort can be seen as Thai's government response to employers to allow them to hire foreign workers to fill labor shortages in industry, in particular for work called the three Ds; Difficult, Dirty and Dangerous(Kudo, 2007:11).

In 2003, the Thai government instigated a series of Memorandum of Understanding (MOU) with Laos, Cambodia and Myanmar, aimed at regularizing migration – via implementing a system to legalize those migrants who have entered the country undocumented. The MOU stipulate that undocumented migrants in Thailand must participate in a Nationality Verification (NV) process with officials of their own government. After verification, migrants will receive a temporary passport from their own government with a visa issued directly by Thai Immigration, thereby legalizing their entry into Thailand. Migrants with a temporary passport and visa will then be permitted to travel throughout Thailand without restriction. All workers who do not

apply through the NV process however will become undocumented and liable for deportation (Thailand Migration Report, 2011).

A quota system was also instigated whereby all new workers are required to be processed through source country recruitment agencies. While Laos and Cambodia have had some success with the NV process over the last few years, there has been limited success within Myanmar. The NV process has seen delays in implementation in Myanmar, with no significant efforts being made until 2009, when the NV process was officially started. Unlike Cambodia and Laos where verification is done via their consular officials in Thailand - the NV process for Myanmar requires that that all Myanmar migrants must return to one of three border towns in Myanmar to apply for nationality verification.

On January 20, 2012, the National Committee on Alien Workers Administration met to decide on the operation of five new NV centers in Bangkok, SamutPrakarn, Samut Sakorn, Surat Thani, and Chiang Mai. These five new NV centers together with the three existing NV centers will provide NV services for Myanmar migrant workers in Thailand. The five new NV centers are expected to begin operations in February 2012. Around eight Burmese officials from line ministries will be deployed to each new NV center, and Thai immigration officers will be present in the five new centers to provide visa services for migrant workers (IOM, 2012).

On February 1, 2012, the Ministry of Labor proposed to the Cabinet to allow the renewal group of migrant workers to request the extension of their work permits until June 14, 2012. The ministry's proposal is being considered by the Cabinet. The renewal group refers to migrant workers who registered in 2010, renewed their work permits in 2011 (which expire on 20 January or 28 February 2012) and have not yet completed NV. A cabinet resolution is expected to be issued to confirm the extension before the end of February. This means that both the work permits of the renewal group and the newly registered group will expire on the same date, and the deadline for completion of NV for both groups was June 14 2012 (IOM, 2012).

Migrants who have already submitted NV application forms but have not yet received any news on their applications, can contact MOL or provincial employment offices to follow up on their applications (IOM, 2012). While in principle, migrant workers are accorded the same rights as Thai nationals – there are exceptions including specific exclusions on the right to establish and lead a labor union for any migrant worker. In terms of collective action of migrant workers, this essentially means that the state prevents them from legally forming trade unions and acting as union committee members which inhibit their ability to negotiate with employers. Migrants are only able to join existing Thai trade unions however, given the high levels of discrimination faced by Myanmar workers in Thailand, their participation within the Thai trade union movement is relatively unheard of (Arnold, 2007:22).

In 2005, Thailand passed a resolution on the mechanism to provide access to education for all non-Thai and non-documented people. Migrant children often access the education system through migrant schools operated by NGOs or local communities, with only a small percentage of them accessing the state education system. Shortages of teachers and associated costs make education inaccessible for some migrant families. Since 2004 migrants with a temporary ID card or migrant workers card and their dependents were able to access the universal health care scheme. In a positive move made in October 2009, the Thai government began permitting registration of children of registered migrant workers holding work permits. However, in some cases local officials insist on onerous documentation requirements that effectively frustrate this benefit (Human Rights Watch Thailand, 2010).

Undocumented migrants and their dependents have to pay full costs for medical treatment and many of them fear exposing themselves as undocumented and therefore have limited access to health services. This has led many to face vulnerable situations where they are forced to make contacts with smugglers and traffickers. The Thai government is currently working with the ILO to develop a Decent Work Country Program which is said to include extension of health and safety protection to all workers including informal economy workers and migrant workers in Thailand. Thailand has ratified 14 ILO conventions on labor standards,

however has been criticized for its denial of work compensation to migrants from Myanmar as a breach of its obligations as a signatory to ILO Convention 19 (CEACR, 2010).

Thailand has not ratified the United Nations International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families. (Please refer to Chart 1). The Thai government has signed a number of regional level treaties through its membership of ASEAN, including the ASEAN Declaration Against Trafficking in Persons Particularly Women and Children in 2004 and the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers in 2007 – which unfortunately does not uphold the rights of undocumented workers. Apart from the range mechanisms noted above, the Thai government is a signatory to bi-lateral labor agreements with sending countries such as Myanmar, Laos and Cambodia in areas related to the NV process discussed above as well as in the area of HIV prevention and anti-trafficking.

Concurrently, improved cooperation between Thai and Myanmar authorities signals progress towards ensuring over 850,000 migrants who registered in the final registration round in 2011 are able to complete the Nationality Verification (NV) process. In 2011 alone, 543,535 Myanmar migrant workers have received work permits. Out of 108,099 total number of migrants who have been recruited through MOU from September 2005 to December 2011, number of workers granted permission to work in Thailand are 10,545 where 7,280 workers are working in

Thailand with work permits. A full-time Labor Attaché is now stationed at the Myanmar Embassy in Bangkok with the purpose of providing protection for Myanmar migrant workers in Thailand although the Labor Attaché will not be involved in the renewal of passports (IOM, 2012).

5.1.3 Undocumented Migrants and NV Process

National Verification (NV) process has resulted in increased costs for Myanmar migrations and documented incidents of corruption and over-charging by recruitment agents who have been quick to take advantage of the vulnerable situation of many Myanmar migrants (Human Rights Watch 2010). Furthermore since the nationality verification is determined by the military government of Myanmar – the State Peace and Development Council (SPDC) – there are also added risks for migrants from some ethnic groups in Myanmar. The NV process excludes Rohingya⁹, a Muslim minority population in Myanmar that is denied citizenship by the SPDC and also puts migrants from Shan and Karen ethnic groups at risk of persecution by the SPDC, as these groups have been involved in long-term insurgencies against the Myanmar military government (Human Rights Watch Thailand, 2010).

⁹Some argued Rohingya as ethnic but controversies drawn among major ethnic groups like Rakhine in Myanmar

Migrants are also at risk of imprisonment or fines for violating Myanmar's own Immigration Act through undocumented migration. In addition to these issues, The NV process has been criticized by migrant advocacy groups due to the long delays in documentation processes due to under-resourcing, the lack of information provided to migrants, weak implementation, and disagreements on issues related to recruitment and use of agencies (Mekong Migration Network, 2012). As of January 25, 2010, a total of 147,381 migrants had successfully completed the NV process: including only 18,904 from Myanmar/Myanmar with another 800,000 migrants entering the process to become eligible for the temporary passport (IOM, 2010). All of those who have not registered with the NV process or made official steps to start the process are subject to deportation leaving potentially hundreds of thousands of workers at risk of deportation in the current situation (CARAM, 2010).

Undocumented migrants face heightened risk of deportation, with the 'circulation' of migrant workers from Myanmar now a common phenomenon in Thailand. This occurs when undocumented workers are arrested by Thai Immigration authorities, transported to the Myanmar border via bus, car, or truck, forced to cross the border into Myanmar, and inevitably return undocumented to Thailand – sometimes immediately sometimes after a few days or weeks (Migration Assistance Program, 2010).¹⁰ In February 2008, the Alien Employment Act BE 2551

was revised to regulate the hiring of low-skilled and semi-skilled workers in Thailand, and has a number of new provisions that the government is exploring. Of concern are those which require migrant workers to contribute to a 'repatriation fund' for deportation costs at the expiry of the work permit, increased penalties for both employers and employees and a reward system for 'informers' of undocumented migrants.

These provisions likely increased the security risk and vulnerability of migrant workers within Thai communities. In addition in June 2010, as part of the NV process noted above the Thai government proclaimed a further crackdown on migrants in Thailand, and established high level committees with representation from government as well as the military, who are tasked with the arrest, and deportation of all undocumented migrant workers in Thailand. This has seen an increase in deportations and abuse of migrants in the country (Wing, 2010). Over the last fifteen years the policy context of migration within Thailand has had a detrimental effect on the security, safety, working conditions and quality of life of migrant workers. Migrant workers face an unpredictable environment, where they are continually at risk of arrest, abuse and deportation and are vulnerable to the erratic changes in migration policy.

¹⁰ Asia migration experts call this system is rot with corruption, bribes and abuse perpetrated by both Thai and Burmese authorities and leaves migrant workers in precarious and sometimes life threatening situations within the current legal context in Thailand.

In August 2009, a Burmese migrant woman was killed and three others wounded as a result of the violence in the Pattani province¹¹. In addition to the risk of death faced by migrants working in areas of high risk, the deaths of Myanmar migrants in Thailand is reported on regular in the media. Migrant advocacy organizations collect data on death cases which show that during 2010 alone, there have been already been 23 reported deaths of migrant workers resulting from acts of suppression. This includes incidents such as the shooting of nine Karen job-seekers in Phop Phra district allegedly after being unable to pay a bribe to local police; the death of three migrant children (a three year old, six year old and sixteen year old) shot dead when soldiers fired at the car transporting them, and the death by drowning of two young sisters trying to escape a police raid on their camp (Migration Assistance Program Thailand, 2010).

It should be noted that there are no accurate statistics recording deaths of migrant workers in their place of employment which is a significant issue given the lack of work and safety standards in many workplaces. All these issues lead Thai government to adopt and enforce stronger mechanisms. Mechanisms for protection of migrant rights in Thailand include: The Thai Constitution, the National Human Rights Committee and the recently formed ASEAN Intergovernmental Commission on Human Rights. Thai labor law under the Labor Protection

¹¹ The *Irrawaddy* news agency reported Burmese women shot in the Southern part of Thailand on Wednesday, August 19, 2009.

Act of 1998 (amended in 2008) allows protection for all workers irrespective of their immigration status.

5.2 Challenges for Current Immigration Policies and Laws

As much as the government wants to promote its image as a strong interventionist against migrants' export, it cannot hide the growing labor export policies it has been adopting. The motto of the Myanmar Ministry of Immigration and Population is "The Earth will not swallow a race to extinction but another will" portraying the protectionist approach to migration inherent in government policy. The stated aims of the Ministry are:

- to prevent the illegal movement of foreigners into Burma and control the movement of foreign citizens within Myanmar;
- to prevent citizens of Myanmar who have left illegally from returning; and
- to collect demographic data of Myanmar citizens for population census and security purposes (Myanmar Ministry of Information and Population Government and Policy).

The Ministry of Immigration, established in 1995, supervises the Immigration and Manpower Department to execute immigration services, under an extensive system of nation-wide offices including the Head Office, 14 State/Division Offices, 64 District Offices 324 Township Offices, 22 Teams for Preventing illegal immigrants and the Border Immigration

Headquarters (Maungtaw) with a strength of 641 officers and 8,623 of other ranks totaling 9,264 (Myanmar Ministry of Information and Population Government and Policy). The Ministry also oversees numerous border trade areas along its borders, including three checkpoints and official trading zones along the Thai Burma border.

To support overseas employment for Myanmar nationals, the Department of Labor collaborates with a select number of source and destination countries (Wongboonsin, 2003). The Department provides economic migrants with information on the policies and regulations of certain destination countries and operates a formalized emigration process undertaken through government recruitment agencies or the Department of Immigration. Major countries of destination of migrants from Myanmar are Australia, India, Indonesia, the Philippines, Thailand, and the United States (Migration Policy Institute database). According to UN Population Division estimates, the foreign population represented 0.2 percent (117,435) of the total population of Myanmar in 2005 (UN Population Division, 2006).

Any citizen requires three documents to travel outside Myanmar: a passport from the Ministry of Home Affairs; a revenue clearance from the Ministry of Finance and Revenue; and a departure form from the Ministry of Immigration and Population (Home Office UK Border Agency, 2010). Since August 2004 migration policy has allowed citizens to retain their passports after completing trips abroad through their validity dates, namely: one year for incidental travel;

three years for dependents; four years for employment; and 18 months for those travelling on business. In January 2005, the government announced that new passports would be issued within a week. However, it is still common for citizens to wait for several months to receive a passport, as the government implements rigorous control of passport and exit visas in a climate of rampant corruption (CARAM, 2010).

In 2005, applicants were forced to pay bribes of up to \$230 (300,000 kyat), the equivalent of a yearly salary (Home Office UK Border Agency, 2010). Furthermore applicants may be denied passports on political grounds, and many people from the country's ethnic groups such as Karen and Shan groups, are vulnerable to this exclusion due to continued and historical resistance of these groups to the rule of the central government. The formal migration channel however is essentially inaccessible to the majority of the population, as the process of obtaining a passport is expensive, difficult to obtain, and relies on the applicant having well-placed connections, and the ability to pay large amounts of money. Generally, only the wealthier and more educated Burmese are able to utilize these channels (Asian Migration Yearbook 2005).

In addition, Myanmar law prohibits males under the age of 18 and females under the age of 25 from travelling abroad without a legal guardian (SERC, 2010). The impact of this law as well as the costs associated with formal migration means that many young people and those from poorer areas in Myanmar migrate illegally or through informal channels. National ID

procedures in Myanmar still have not reached some rural populations, and in some cases, many ethnic minority groups and those escaping political persecution are unable to access documentation. In July 1999, the overseas employment Law was enacted, followed by the Memorandum of Understanding between Myanmar and Thailand in 2003 to cooperate in the employment of workers (Ministry of Labor, 2004). The conditions of Myanmar workers in Thailand are reported to have been improving as more migrants are becoming legal work permits.

As a continued process, on July 15, 2009, the Thai and Myanmar governments agreed to implement a new temporary passport system. The temporary passports were designed to legalize migrant workers from Myanmar. Myanmar government formed a special committee to assist (Myanmar nationals) illegal migrant workers working in Thailand on 17th July, 2009. The purposes, according to the chairman of this committee U Aung Thein, Myanmar Ambassador to Thailand, are as follows:

- To assist Myanmar workers in their process to pursue legal jobs;
- To reach out as many Myanmar as possible in informing them regarding the process of legalizing unauthorized workers;
- To raise awareness and educate migrant workers about human traffickers that take advantage of the illegality of Myanmar workers;

- To help solve problems and issues facing Myanmar migrant workers¹²

On January 31, 2011, this committee has expanded its members to include several Thai company presidents to raise efficiency of the committee. And again on 27th May, 2011, the government formed Supervising Committee for Working Overseas (ပြည်ပတွင်အလုပ်လုပ်ကိုင်မှုကြီးကြပ်ရေးကော်မတီ) in accordance with the President's directions and policies to enforce full legal rights for Myanmar migrant workers, especially for the two million workers in Thailand. The West considered these efforts as desperate movement the new government in gaining international recognition, following the release of country's renowned opposition leader Aung San SuuKyi on November 13, 2010.

Following recent bilateral negotiations between Thailand and Myanmar/Burma together, there is a renewed focus on making the MOU recruitment process as streamlined and efficient as possible. Myanmar migrants are to be recruited from Yangon and Myawaddy through accredited recruitment agencies and sent to Thailand. The Myanmar/Burmese Government is currently trying to identify the main agencies to be involved in the recruitment of workers. The recruitment agencies will negotiate on behalf of migrants to attempt to ensure migrant workers in Thailand receive minimum wages according to provincial minimum wage rates. Temporary passports are also to be issued in Yangon for those migrants who wish to travel by air to Thailand.

¹² Available in Myanmar language (issued by Myanmar Embassy in Bangkok, 17th July, 2009) Letter No.026-1064/45-09

5.2.1 Reconfiguring Migrants' Rights

The new civilian government stresses on the requirement that every migrant worker should be legal so that their rights are protected (Ministry of Labor, 2012). Migrant workers who are now working overseas through contracts with state-approved overseas employment companies are regarded as legal workers and according to the government, they are working as skilled workers after attending training courses in respective ministries and private training schools. Respective government departments and private sector opened Maritime University and Maritime Training Institute to assist Myanmar sailors and for them to enjoy their rights relevant ministries and Myanmar Oversea Seafarers Association (MOSA) are supervising their affairs.¹³

Under the new president's supervision, ministers of particularly Ministry of Home Affairs, Ministry of Foreign Affairs, Ministry of Labor, Ministry of Immigration and Population, Ministry of Border Affairs have to work collectively in handling migrant affairs. On the 15th-day-session of PyiDaung Su Hluttaw, Minister of Labor discussed three cases of Myanmar migrant workers to the parliament. The first case was about 1000 Myanmar workers, working at fishing net factory in Khon Kaen, Thailand. On September 9, 2010, these workers demonstrated

¹³In addition, civil aviation such as cockpit crew and cabin crew will be conducted to create job opportunities for Myanmar citizens in international airlines. See *New Light of Myanmar* newspaper, 28th March , 2011.

on not getting salary from the factory. Officials from Myanmar embassy in Thailand got involved and solved the problem.

Second was the case on January 5, 2010, where some of 600 illegal Myanmar workers working at garment factory in Amman, Jordan quarreled with some Bangladeshi workers there. The company had arranged to send Myanmar workers back. Myanmar ambassador and officials from the Embassy settled the problem that resulted in workers getting compensation while given the opportunity to continue working there. Third was the case where more than 2,700 illegal workers detained at immigration camps in Malaysia were sent back to Myanmar. With the cooperation of two governments, it started from September 4, 2009.

In the past, the illegal migrant workers that were deported sometimes ended in the hands of human traffickers. With mutual understanding among respective governments, it is expected that Myanmar workers will have a chance to work in decent working environments in foreign countries while enjoying the rights. The government is now sending new workers who want to work in Thailand legally in cooperation with respective ministries. It is only hopeful that more options will be available for migrant workers in the future. Even though migration has brought a phenomenal impact to the migrant-sending societies and raised issues of border and immigration control, Myanmar society as a whole still needs to be explicated about the term “migration” itself.

According to U Kyi Myint, a parliamentarian from Latha Constituency, the term “migrant worker” should be used as “Myanmar citizens working abroad for earnings”. In order to add strong arguments to the creation of necessary department in handling migrant workers’ affairs, a definition on a migrant worker and his earnings are stated with legal references: “*A migrant worker is a person who has decided to live in a foreign country for good. He may send remittances to his family or relatives, but illegally. The remittance of a citizen staying abroad for earnings is part of the mother country’s GDP and taxes. A national worker overseas may need help from the society of mother country, and the society is willing to extend a helping hand*”.

As Myanmar shares a 1,800-kilometer-long border with Thailand, it is not surprising to find many Myanmar workers in Thailand at border-crossing camps. Not only dealing with the remittance issues but also in tackling further exploitation occurring at the work place or in acquaintance with the broker, a department that focuses on migrants’ issues in particular is strongly needed. This was the basic fact mentioned in the proposal made by the parliamentarians. Minister of Labor stated that migrant workers should be termed documented migrant workers or undocumented migrant workers. The ASEAN Declaration issued at the 12th ASEAN Summit manifests that receiving states have to protect migrant workers in accordance with the law. Sending states are also protecting their national migrant workers through Memorandum of Understandings (MoUs) with receiving states concerned.

Myanmar government and Thai government signed a MoU on appointment of workers and cooperation on June 21, 2003. Under the MoU, two countries agreed that temporary Myanmar passport centers be located at Myawady, Kawthoung and Tachilek in Myanmar and at Ranong in Thailand. From July 10, 2009 to February 28, 2011, temporary Myanmar passport and identity cards were issued to 408,160 workers. Many more workers are being sent to Thailand through the centers according to the orders. In 2001, MoUs were signed between Shwe Inwa Agency Co Ltd of the Myanmar War Veterans Organization and agencies in Malaysia to send Myanmar workers to work in. According to the MoU signed between Myanmar and the Republic of Korea, Myanmar has been sending national workers with Employment Permit System (EPS) since 2009.

Organizations for protecting Myanmar workers were formed in Malaysia and Thailand in 2009. A Myanmar official of the Ministry of Labor was sent to Republic of Korea in January 2011 to provide assistance to national workers there. In 2010 alone, the two training centers under the ministry and four training centers of agencies trained 5,210 skilled workers. Skilled workers were sent only 1.8% of the migrant workers in 2001, and 19.46% in 2010. National Skill Standard Authority (NSSA) formed in 2007 will be upgraded to an organization at ASEAN level. To maintain positive relationship with labor-receiving countries, Myanmar should be attentive to its own immigration discourse.

The government should regulate out-migration by discouraging migrants from attempting to seek employment in those countries that are currently imposing limits to employment visas and are not in favor of reaching labor agreements with the government. As highlighted by the Minister of Labor, the country needs to sign more bilateral agreements and upgrade the signed MoUs and MoAs to the ones that can guarantee that can safeguard the interests of Myanmar workers. According to the state media, the Ministry of Labor is also trying to expedite tasks with the help from IOM. The government has urged everyone in favor of the interests of migrant workers is urged to render assistance and hold talks for institutional development and cultural change. It is important that local and foreign employment agencies and Myanmar migrant workers learn more about the transitions in the government and changes in immigration policies before they plan right tracks.

5.2.2 Illegal Charges and Legal Documents

With Thai government issuing legal work permits and Myanmar government issuing temporary passports to legalize illegal migrant workers, one would imagine an ideal working environment for migrant workers where they can have a decent living. However, the reality tells a different story. Ko Win Naing Oo, of the Raks Thai Foundation that works with migrant workers and their families in Thailand said that the time period for application was very short

that many workers missed the deadline and had been charged by their employers illegally for the documentation. Since the authorities limited the time for processing and identification for documents to migrants, migrants had to tolerate the abuse of power by their employers (IMNA,2008) .

One migrant worker stated that they would be fired from the job and deported if they refused to pay the money asked by the employer. And in most cases, the employer already deducted the money from their monthly salaries. According to Migrants' Rights activists in Mahachai, still there are many factory owners taking money from the workers to make legal migrant worker's document in Samutsakhorn province, central Thailand. According to Ko Kyaw Maung from the *Young Chi Oo* worker's organization and a representative of the Mahachai area, workers have to pay about 12,000 baht (387 US dollars) per person for the legal document. His organization estimated that more than 10,000 people have paid their employers.

Thai police officer Chalit Katesrimek said Myanmar migrant workers cross the border every week, so they are unable to issue documents all the time (IMNA,2008). Therefore many of them do not have legal documents and because of this issue, many migrants may face many problems. Without a legal document, it is very difficult for Myanmar migrant workers to find a job¹⁴. Most Myanmar migrant workers in Thailand are being cheated by their employers with

¹⁴ From an interview with a Mon migrant worker in Mahachai.

fake work permit. According to Ko Myo Naing, a leader of Mons working in Mahachai, employers charge workers double to triple the amount of original cost of work permit and the work permit handed over to the workers are mostly fake. Employers fear that workers would run away and report suppression at work, they gave fake documents to the workers so that the workers will get arrested once they approach the police to report. Similarly, with fake documents, workers sometimes get arrested by the police even when they were only going for shopping in the city. In that case, the employer then has to bail them out and would eventually force workers to pay back the bailed money.

According Ko Shan, an activist for migrant workers' rights in Bangkok, the employers deduct money in advance from workers' wages to make legal work permits. They would only begin the application process after they receive the full amount of money they require from the migrants. As the period of processing is limited, workers sometimes cannot pay in time and employers give them fake documents. Usually, employers do not give workers original documents and workers can only have a document copy. They fear that workers might leave their work after getting work permits and they are left with problems like a shortage of labor. And when employers do not want to pay back the money to workers, they ask the police to arrest undocumented migrant workers.

In addition, some factory owners take money from the workers to bribe police officers however, frequent police raids at factories where many migrant workers are working, lead to the arrest of many workers. Although both Thai and Myanmar governments are trying to solve migration-related problems at a national level, many issues remained unsolved and untouched. Migrant workers are already frustrated with dilemma of whether legal documents could give them a decent living or could cost them a fortune and drive them into the hands of traffickers. It is difficult to determine whether the document in their hands is real or fake. Therefore, most of them rarely leave their work place and are trapped in these situations.

5.3 A Path to Legalization of Irregular Migration

“The problems of illegal immigration will be solved should Myanmar government provide a path to legalize migration in its country”, U Tun Tun Win, a former Myanmar prosecutor, shared his belief of illegal immigration in Thailand ¹⁵. At least 2 million Myanmar work in Thailand of which one fourth has valid work permits.¹⁶ In Mae Sot, the border town of Thailand that is right across from Myawaddy town of Myanmar, hundreds of Myanmar illegal migrants can be seen picking out and recycling plastic and glass bottles. Their homes are dump

¹⁵ U Tun Tun Win (pseudonym), fled the country to seek asylum in United States in 2008, was arrested by the military government along with several other prosecutors and officials during the 2004 dismissal of former Prime Minister Khin Nyut. He was sentenced to 44 years in prison for treason.

¹⁶ Mizzima that follows Burma (Myanmar) news and multimedia group have conducted a private research in March 2008 on illegal migrants in Thailand. For details, see mizzima.com

sites and even that change occasionally as they fear of being caught by Thai police. Many of them have been going back and forth between Thailand and Myanmar for decades without having any legal permits.

Myanmar is not the only country that is facing and dealing with illegal and irregular migration issues. According to the International Organization for Migration (IOM), “most States in the world (and not just in the developing world) lack the capacity to effectively manage the international mobility of persons today, not to mention respond to new dynamics,” (IOM World Migration Report 2010). Even the United States, which defines itself as a nation of immigrants, still has to face “an estimated 11 million undocumented immigrants. Some crossed the border illegally. Others avoid immigration laws by overstaying their visas,” (Obama Immigration Reform Speech, 2011). Europe is also facing an increasing illicit migration problem, with “an estimated 400,000 people entering Europe illegally each year,” (Shelly, 2010:4).

Migration comes in many forms: from the ordered processes of managed immigration of skilled people and families, to the chaotic consequences of armed conflict; from the determinations of refugee status under the Refugee Convention to the irregular movements of economic migrants and those subjected to trafficking. While migration also has profound social and economic effects, the legal regulation of migration has significant effects on some of the most vulnerable people in the world, who are crossing territorial boundaries in hope, in

expectation and always in fear. When the rule of law is operating fully, these people will benefit from transparent regulations, accountability of decision-making, good governance, application of human rights and protections justice in the operation of a legal system.

Myanmar still has to solve many social and economic problems facing its entire population at grass- root levels before it can take suitable actions towards legalizing migration, the issue that has been purposely overlooked for many years. The establishment of the rule of law is the most crucial task of the government as without it, development of most-needed infrastructures can hardly make any changes. Myanmar's opposition leader and parliamentarian Daw Aung San Suu Kyi famously said¹⁷:

".. the rule of law is very important. It is needed for the mental safety of our people in order to bring development for the country. Judicial bodies must be independent and clean. Until such judicial body emerges in our country, we won't have rule of law. I understand it is very important for a country and also essential for democracy. To strengthen democratic structures, a free and fair judicial body is critical."

Despite emotional and political arguments about immigration around the world, legalization is still estimated to be an essential and widely used tool to manage illegal migration,

¹⁷On the first anniversary of her release from House Arrest (14th November 2011), at National League for Democracy (NLD)'s HQ in Bahan Township, Aung San Suu Kyi called on the government to ensure the rule of law. For news article, see: "Daw Aung San Suu Kyi calls on government to ensure rule of law", by YadanaHtun and Shwe Yin Mar Oo, November 21-27,2011 Myanmar Times Newspaper (English Version). For full speech, see <http://www.nldburma.org>

“and often the only realistic way to reduce the existing stock of unauthorized immigrants,” (Rosenblum, 2010). With the changing political atmosphere, both the government and the country are witnessing the most important changes that Myanmar can ever witness since its independence in 1948.¹⁸ Migration-related problems do not happen in a day or year and to solve the most necessary issues, both the state and the civil society need to tackle the challenges in sync. Myanmar is now carefully revisiting the issues facing many citizens that forced them to leave the country. By observing the immigration and migration policies of its neighboring countries, the country can cooperate with the governments of these destination countries of most Myanmar migrants to protect the best interest of its citizens.

5.3.1 Lessons from China : Towards Legalization of Immigration

China, where 39,776 registered Myanmar migrant workers are currently working, viewed legalization as a “whole new immigration strategy.” According to Shen Haimei, professor of Anthropology at Yunnan University, local governments in border region of Yunnan province, near Myanmar, have explored a more flexible “Blue Card” policy in order to register and certify Myanmar “foreign brides.”¹⁹The “Blue Card” strategy plays several roles. First, it

¹⁸Aung San Suu Kyi mentioned that one of the most important changes was that the new generation was paying more attention to politics and joining the NLD, which will encourage the struggle for democracy in the country.

¹⁹“The Documented Registration Certificate for Border Residents in the Cross-border Marriages,” named by local residents the “Blue Card” because the cover of certification is blue color.

encourages local residents who are in cross-border marriages to register their marriages with the local government, which increases the proportion of documented cross-border marriages and improves the government's ability to administer the region. Second, it legalizes these marriage immigrants, and separates them from the illegal immigrants. Third, it provides benefits for the brides themselves, enabling them to obtain the new rural cooperative medical care and other public health welfare services.

According to Professor Shen, the "Blue Card" approach does have limitations. It is currently only a pilot program, and is only authorized by one prefecture (Dehong) in Yunnan province and therefore its influence is limited to a small region. However, this creative local policy practice represents an important step toward the legalization of marriage immigrants in China. Full legalization would imply the creation of fundamental and comprehensive immigration administration structures. Such a structure should include five major aspects:

- 1) The formulation of national immigration strategies for responding to the global competition for talented human resources and dealing with the immigrant population in regional security.
- 2) The formulation of immigration laws, regulations, and relevant policies to prevent irregular migration and promote regular migration, such as increasing the quota of Chinese "Green Card"; initiating programs of earned legalization for irregular migrants.
- 3) The building of migration mechanisms and a professional civil service, such as to establish a

“State Administration of Immigration” and “Office of Refugee Affairs”; there should be an explicit division of responsibility and cooperation between internal departments; and quality training for immigration officials.

4) National capacity-building for immigration governance, management, protection and service, such as cooperation between international organizations, the national and local governments, and NGOs; developing civil societies for immigrants, and training of social workers; developing stronger capacity to evaluate immigration policies.

5) Improving the overall effectiveness and operational response to international migration of the Public Security and Board Guard, such as enhancing the capability and techniques in border enforcement, and state and local enforcement.

If China can adopt full legalization, many Myanmar migrants there are expected to have much safer working environments and, if the system is consistent, it will help the fight against horrendous trafficking in the region. Myanmar can strategically plan legalization by following other successful examples. It needs to change many of its outdated immigration laws to reflect global standards and demands of its people. Stopping illegal immigration depends on innovation in systems of immigration and developing new immigration strategies to formulate an Immigration Law, to establish a “State Administration for Immigration” and an “Office of

Refugee Affairs,” and to strengthen its capacity both in law making and mechanism building to effectively manage transnational migration, both legal and illegal (Shen, 2011).

5.3.2 Lessons from India : Remedies for Migration

India, one of the world’s largest economies that always had a friendly and supportive nature with neighboring Myanmar, is also leading towards legalizing migration in the region. In order to protect the migrants from facing vulnerable situations, ‘profile’ of migrant workers should be changed from ABCD categories to low-skilled, semi-skilled, high-skilled migrant workers. Simultaneously, revolting migration system should be eliminated.²⁰ At 2nd ADBI-OECD Round Table on Labor Migration in Asia, India’s Ministry of Labor proposed the following remedies for migration:

-Strict enforcement of migration laws by Labor sending countries, including elimination of fraudulent and unscrupulous Recruitment Agencies (RAs) and their sub agents/ touts, benchmarking the RAs through Credit rating, setting up State sponsored Foreign Employment Agencies, etc.

²⁰ Exploitation of migrant workers, especially the low skilled workers by both the employers in the foreign land and the recruiting agents, back home; Overcharging by Recruitment Agencies (RAs) leading to high cost of migration, Visa trading, Contract substitution, Underpayment of wages, unhealthy working and living conditions, Sponsorship system and denial of change of Employers resulting in illegal status of the migrant workers even though recruited legally; Absence of minimum wages prescribed for the migrant workers due to unhealthy competition among Labor sending countries. For details, see Babu Cherian’s presentation available at <http://www.adbi.org/files/2012.01.20.cpp.day3.sess6.1.cherian.lessons.learnt.way.forward.pdf>

- Standardization of Work Contracts for overseas employment,prescribing Minimum Wages for different categories of workers,strengthening the Labor Attaches/ Representatives in the CountryMissions.
- Bringing in E - governance on migration management by way of online attestation of Job contracts and visas, bringing allstakeholders and activities on an electronic platform so as to ensure verification of the Employers, RAs, and migrant workers on real - time basis.
- Extending financial assistance to the migrant workers at the lowend spectrum to meet the initial costs of migration through Bankloans, providing Insurance cover for the workers and theirdependent families, Creation of Welfare Funds for the migrantworkers at the Mission levels.
- Providing Skill up - gradation and pre - departure Orientation training to the migrant workers to equip them with the required skill setsto facilitate their moving up in the wage chain and preventexploitation by unscrupulous employers.
- Capturing accurate data of all migrant workers through amandatory Registration system for all categories of workers andproviding Smart Cards for identification while employed abroad.

- Providing efficient and speedy Grievance Redressal system²¹ through electronic platforms (24x7 Help lines with global access) and a window for settlement of grievances through cooperation of both sending and receiving countries.
- Ensuring decent wages to the migrant workers of various categories pegged at minimum levels for all nationalities in the Call of Duty (COD), if necessary by cartelization of the Chief Operating Officer (COO) for which the COO should rise above their parochial interests.
- Providing Social Security measures in the host countries including portability of the Workers contributions after they return home.
- Ensuring transfer of hard earned remittances through reliable Banking channels at minimum cost to the workers and avenues for channelizing the remittances for productive uses on long term basis through State interventions.
- Setting up Return & Rehabilitation Schemes for the migrant workers so that the returnee workers are assured of gainful employment and utilization of the knowledge skills earned.

Migration problems around the world are interconnected and they cannot be solved if individual countries do not change or improve their national policies on migration. Very rarely does the world see countries that are solely migrant 'sending' or 'receiving.' Industrialized

²¹ Respective ministries in India have launched 'Grievance Redressal System to allow the people (of the state) to lodge their complaints related to issues such as health and social so that the state's respective departments can address them in a time-bound manner. For details, see http://www.delhigovt.nic.in/griev_red.asp

countries that are used to be known as ‘migrant receiving’ countries, now face with the reality of ‘out-migration’ as the global economy demands people to shift from one place to another. China and India, two of the world most populated countries that have millions of work force, were known as migrant-sending countries until their economies boomed. Both India and China have strong economic partnerships with Myanmar as Myanmar can supply both man power and natural resources that are scarce in these countries (from export of natural gas and electric power to rice and beans, etc.). Myanmar, having the advantage of sitting between these two giant economic powers, can strategically manage its policies to better tackle problems facing its human resource, the resource that is essential in reshaping and development of the nation.

5.3.3 Labor Liberalization

Legalization of migration sometimes contradicts with the notion of liberalizing labor, which Myanmar might need to implement. Liberalization of labor allows intraregional migration and encourages both sending and receiving countries to adopt policy frameworks that have tremendous welfare gains for all countries concerned (Manning & Sidorenko, 2007). Numerous studies have predicted substantial gains from liberalizing the movement of labor. Back-of-the-envelope estimates from Rodrik (2004) and Winters (2001) indicate that even

modest liberalization of temporary migration from the less developed to the developed north economies can lead to global welfare gains of hundreds of billions of dollars.

Numerical analyses by the World Bank (2006) and Walmsley et al. (2007) using bilateral migration models and data also predict that greater liberalization of labor movement from the south to the north would lead to global welfare increases, with the migrant-sending, less developed countries receiving a large share of these welfare gains (Walmsley & Ahmed, 2008). In Asia, liberalization of the movement of labor, combined with the region's already significant growth, has the potential to alleviate excess demand for labor and facilitate further growth. Increased liberalization of migration can reduce wage and employment pressures and fill the skill gaps in the fastest growing Asian economies, while providing further opportunities to those economies in the region with high population growth rates and slower economic growth. The result is an improvement in the welfare of both sending and recipient economies.

Ahmed and Walmsley (2006) examined the impact of liberalizing Indian migration to developed economies and found that such liberalization has a positive effect on the real incomes of Indians remaining in India. Welfare increased due to the flow of remittances sent back from the new Indian expatriates, which counteracted and exceeded the initial welfare loss due to brain drain. Migration within Asia is considerably more temporary in nature than migration elsewhere. There are several possible reasons for the temporary nature of migration in Asia, including the

focus of migration within Asia on supplementing family income; policies and contracts that make it difficult for migrants to bring their families with them; the various challenges associated with long-term integration (e.g., discriminatory government policies); and in some cases, the lack of legal protection for migrants in the host country.

For these reasons, as growth in the region spreads to the migrants' own economies, thereby alleviating unemployment and raising real wages, migrants are likely to return home. The migration of skilled workers to Europe, Oceania, and US, on the other hand, are less likely to be temporary in nature. Moreover, for the reasons stated above, it is also argued that migration within Asia is closely linked to growth opportunities (Wickramasekera 2002). Migration increases as growth increases and in some cases reverses when growth rates fall (e.g., the Asian crisis). Longer-term migrants who have made a commitment to move their families abroad are less likely to return home when the host economy is thrown into recession.

ASEAN economies have revived in Spring 2009 and are gaining momentum in global economy. Asian Business Cycle Indicators showed that economies of Indonesia, Malaysia, Singapore, the Philippines and Thailand began to expand in the early 2010 after experiencing the downturn between January and April 2009 (OECD,2010). This created a lot of job opportunities for many Myanmar migrants who were hit hard by global financial crisis in 2008. ASEAN recovery was sparked by rebound in exports accompanied by inventory restocking where

shipment to China accounted for a large share of ASEAN export growth. However, the global financial crisis has underscored the need for Southeast Asian economies to rethink their past growth strategies, particularly the export-oriented growth strategies, that came to show their weaknesses (OECD,2012).

In the post 2008-era, Southeast Asian countries need to look for new growth model, based on exploiting new sources of growth (OECD,2012:28). Managing migration to support inclusive and sustainable growth has become one of the most highlighted tasks of governments. Migration is an individual's choice and the role of the governments is to facilitate and to ensure the protection and welfare of emigrant workers, especially at the low end levels (Cherian, 2012). Facilitation of migration through legal migration and prevention of illegal migration through State legislations are the most feasible strategies in solving migration-related problems.

5.4 Regulating Remittances and Repatriation

Despite the increasing reliance of labor export policies by sending countries to increase their GDP in line with the drive for development, the fact remains that remittances have not been sufficiently analyzed in the context of the wider social costs for migrants and their families or the economic dependence and vulnerability that these migration policies lead to. Moreover, many developing countries continue to overlook the fact that the increasing dependence on the use of

labor export has in fact resulted in a greater dependence on foreign states to employ their citizens. The recent economic downturn has resulted in millions of migrant workers being deported from destination countries, which in turn increases the economic vulnerability of states that rely on this capital (CARAM, 2010).

Remittances are contributing to source countries GDP with significant profits being made by national and international financial institutions who gain from the earnings sent home by migrant workers through the implementation of fees and charges. There is a growing trend for governments, researchers and migration stakeholders to focus on how migrant remittances can be effectively utilized by the families who receive them, to ensure that their spending supports productive investments and local economic development within their home communities. However this practice can add yet another layer of burden on migrant workers that is not placed on other productive sectors, whose workers are not questioned about whether their earnings are being used to accelerate the development of the country (Ramirez et.al.,2005).

Ko Zaw Zaw, a migrant worker who has been working in Thailand for nearly 18 years, said that the effectiveness of these policies and systems will depend greatly on how much the government can interpret the reality facing Myanmar workers working in neighboring countries as general workers. During the 15th-day-session of PyiDaung Su Hluttaw held on March 28,

2011²², Minister of Labor stated that embarking upon migrant workers' affair has been regarded as national plan and that it has been implemented since 2005. It emphasized that legal work permit in Thailand and passports have been issued to more than 400,000 Myanmar workers and that the government does not collect income taxes²³.

For most migrants, "tax" stands for "burden and stress" as more than two third of the interviewees stated their dislike over having had to pay 10% income tax to the embassy of Myanmar on top of having their salaries deducted by the factories/ companies they work for as income tax for Thai government, and the remittance fee on receiving end being unreasonable. According to International Organization for Migration's 2010 Regional and Country Report, the annual remittance inflow to Myanmar in 2008 was 150 million US dollars, while GDP per capita PPP in 2007 was 904 US dollars. Myanmar ranked 138 in 2009's Human Development Index country ranking where the lowest is 182.

In 2010, the State got 26.92 million US dollars from migrant workers alone as income taxes in which the Minister of Labor agreed that income taxes collected were remittances. With

²² On 28th March, 2011, three parliamentarians (Hluttaw representatives Dr Myat Nyana Soe of Yangon Constituency 4, U Paik Htwe of Kanma Constituency and U Win Oo of Yebyu Constituency made a proposal on 'Call on the government to form a migrant workers' affair department under a suitable ministry', at Pyidaungsu Hluttaw in Nay Pyi Taw. Minister of Labor acknowledged the issues and challenges. Although there is a strong need to establish a department that deals specifically with remittance issues, the government requires both legal and illegal migrant workers (Nationals of Myanmar) to declare all facts truly before such department can be formed.

²³ All Myanmar migrants working overseas are obliged to pay income tax to Myanmar embassies in respective countries. They need to submit tax clearance form upon arrival in Myanmar and if they fail to submit the form, they are fined and liable to pay the sum of income tax they did not pay while working overseas.

proper taxation and remittance policies, the country can benefit greatly from its millions of citizens working overseas. Analysis of the impact of migration and remittances cannot be limited to macro-economic variables as migration is undertaken by people: men, women, families and communities are intimately involved in the migration equation. The experience of migration and the impact of migration are real life events that result in lifelong impacts on the relationships, health, psychology and life paths of the people who migrate, their loved ones, their neighbors and colleagues (CARAM, 2010: 22).

According to CARAM's research on 12 migrant sending countries' (UAE, India, Pakistan, Bangladesh, Nepal, Philippines, Malaysia, Cambodia, Indonesia, Thailand, Myanmar and Sri Lanka) migration and labor policies, all sending countries were found to have inadequate implementation of migration policy which led to greater exploitation of the migrant workforce from these countries. In addition there was evidence of sending country governments acting in direct opposition to their stated policy aims. Another area that stands out as policy failure included the lack of effective monitoring of recruitment agencies and departure processes in both source and destination countries which resulted in the exploitation of migrant workers. In many countries there was a focus within national law and policy, on the procedural aspects of migration and fairly weak clauses and implementation when it came to the protection of migrant workers and their families.

As an effort to assist migrant workers, in August 2011, the government announced that tax rate for Myanmar citizens living at home and abroad who earn foreign exchange with salary were reduced from 10 percent to 2 percent which was effective from August 19, 2011 to Feb. 18, 2012. On December 22, 2012, the government again announced that starting from January 1, 2012, Myanmar has exempted its citizens living abroad from paying income tax in foreign currency out of their salary earning there. This reduced a lot of burden from the migrants and is welcomed across the board. However, many are still liable to pay taxes for last year. A Myanmar could not have his or her passport (valid for only three years) renewed unless they paid the right amount of tax.

Another common gap for sending country policy was the lack of repatriation, and reintegration programs to assist returning workers and their families. All sending countries in the study showed evidence of inadequate programs and limited effectiveness in terms of services to assist migrant workers in reintegration with their communities or finding employment on return (CARAM, 2010:23). Many returned migrants in the study have stated their struggle over being jobless for more than 6 months from the day of their arrival back to Myanmar. Most of them are living on the savings they have made while they were working overseas and in most cases of

Mon migrants, they are looking for contacts to go back to Thailand as it is difficult for them to find a proper job.²⁴

Human Rights activists and freelance news media (such as the *Irrawaddy* and *Mizzima*) have covered news relating to the unofficial taxes charged on remittances migrant workers and their families. In 2008, WCRP issued a report saying migrant workers' families are forced to pay money as 'tea money' or 'donation money' by the township authorities in Mon state. They were collected not income tax but based on the remittance they received from their family members working overseas. Remittances are still made through illegal brokers and a lot of information relating remittances is missing. Many migrant workers' families have been exploited by *hundi* money transfer system operated by illegal brokers.

Lack of protection for the rights of migrant workers with inadequate health, safety and labor protections included within all of the destination country labor laws and a lack of access to destination country justice systems for protection or redress for migrant workers have worsen such exploitation. Migrants worker do not have favorable conditions upon repatriation as well. In November 2010, Thai government issued an official law to employers stated that 400 Baht must be deducted from the wages of Myanmar and Cambodian migrant workers every month for 6 to

²⁴ Returned migrants in some communities are regarded as 'privileged' (or 'exceptional') for having had an opportunity to work abroad. Several cases in Chaungzone Township showed that returned migrants who were used to be farm laborers are refused by landlords to be given a job in the farm. Therefore, they end up finding jobs in a different location that are usually far from their families, sometimes under demoralized conditions. Such community behavior discourages migrants to return and reintegrate in their communities.

cover repatriation costs. Laotian migrant workers must have 350 baht deducted each month for 6 months. The new law also stated that for those migrant workers who do not pay, 20% of their monthly salary will be taken by the government as a fine.

The money deducted and collected for travel expenses to return home can be requested by the migrant three months before they are due to go back to their country. As a result of this government plan, which was announced in November 2010, some factories had already begun to deduct money from their migrant workers monthly salaries before the postponement announcement had been made. The Thai Government has postponed their plan to collect over two thousand baht from documented migrant workers for repatriation purposes until 2012. The postpone order was officially issued on January 4, 2011. The migrant working group (MWG) suggested that those workers who already had salaries deducted should ask their employers to return the money to them. The workers are encouraged to ask for help from NGOs focusing on migrant issues if the employer did not return the money.

The flood crisis of 2011 forced many migrant workers in Thailand to flee flood-affected areas and return to their countries of origin – a substantial number of which are thought to have since returned to work in Thailand. Thai government announced that irregular migrants who had permission to temporarily stay and work in Thailand but were affected by the flood and thus returned to Myanmar, must go through the MOU process in order to come back and work in

Thailand. Many Myanmar migrants have had their passports held by agent companies and they were charged by the companies upon their departure from Myanmar after the flood crisis. This shows lack of proper assistance and supervision from the government. However, with the new government's efforts to open up the economy fully, migrant workers are hoping that there will be an increase in job opportunities inside Myanmar.

According to the president of Thai Real Estate Association (TREA), the real estate sector in Thailand is facing severe labor shortage, causing delays in several housing construction plans many Myanmar construction workers who returned to their home country during the flood devastation in 2011 never came back because they have found more job opportunities in Myanmar. There are fears that if Myanmar fully opens up its country, Thailand would face a huge labor problem. In the meantime, the government of Myanmar is luring more repatriation of its labor by introducing Dawei Project.²⁵ The Dawei deep-seaport that is intended to become one end of a bridge for freight linking India, Africa and Europe with China and other east Asian

²⁵The \$8.6 billion project is the first Special Economic Zone (SEZ) in Myanmar. In May 2008, the foreign ministers of Myanmar and Thailand signed a memorandum of understanding on the US\$ 58 billion project. The Dawei Development Project includes construction of industrial zones, a new city, deep-sea ports, a chemical fertilizer plant, a coal-fired power plant, a steel plant, chemical fuel plants, oil refineries, ship maintenance buildings, a railroad, roads and oil and natural gas pipelines. Japan has articulated its interest in developing the main infrastructure; including port and roads, as well as the upstream steel project, as part of its policy to promote the Greater Mekong sub-region. Nippon Steel has already invested in the first phase of the Dawei project. See <http://www.daweiport.net/>

Nations and replacing the longer and often pirate-patrolled sea route through Malacca Strait. During the Thai-Myanmar Joint Trade Commission (JTC) meeting in April 2010, the two countries set a goal of tripling bilateral trade in five years, from US\$4.3 billion to US\$13 billion in 2015. Thai officials announced after the JTC meeting that the Dawei project would allow Thailand and Myanmar to meet the target, and that the deep-sea port could realize Thailand's dream of becoming the logistics hub of Southeast Asia.

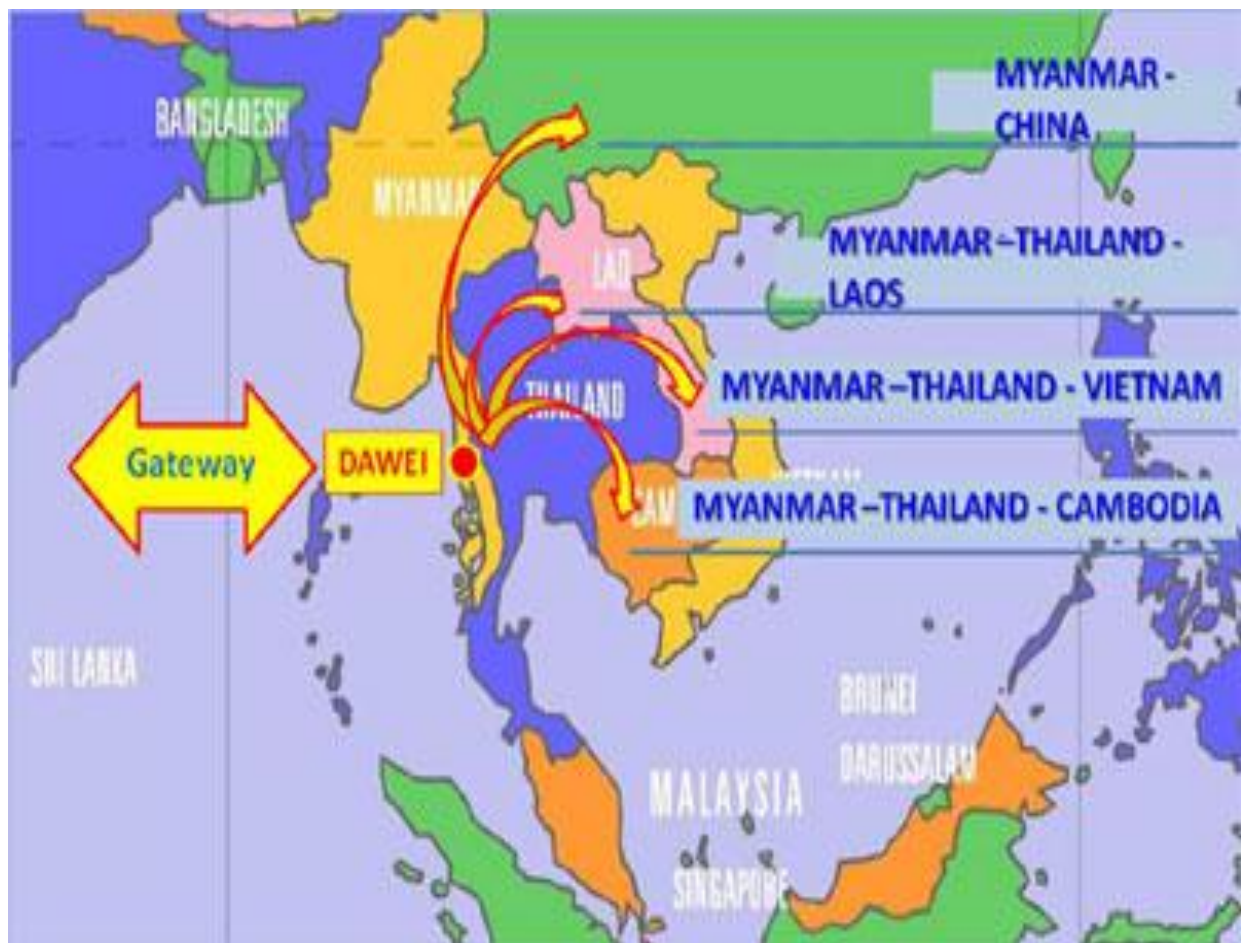
The Dawei project has also been touted as an effective link within the region corresponding to the plan for greater "ASEAN Connectivity."²⁶ This project will profit traders from Myanmar and Thailand as it is linked to the ASEAN highway system²⁷. With more economic freedom and improved conditions, it is expected that Myanmar will regain its lost human resources although the sustainability of these projects and changes still remains a question. It is certain that successful implementation of such projects will demand Myanmar to insert thousands of labor for the flow of raw materials to regional markets smoothly and quickly.

²⁶ The Heads of State/Government of the Member States of the Association of Southeast Asian Nations (ASEAN) discussed the concept of ASEAN Connectivity at the 15th ASEAN Summit in Cha-am HuaHin on 24th October, 2009. Enhancing intra-regional connectivity within ASEAN and its sub regional grouping would benefit all ASEAN Member States through enhanced trade, investment, tourism and development. The concept of ASEAN Connectivity would also complement the ongoing regional efforts to realize a people-oriented ASEAN Community by 2015 with a focus on fostering a sense of shared cultural and historical linkages. See <http://www.aseansec.org/23573.htm> for details.

²⁷ The ASEAN Highway Network Project was signed in 1999. The network consists of 23 designated routes totaling 38,400km. The project aims to upgrade all designated national routes to Class I standards by 2020, although Class II standards would be acceptable for low-traffic, non-arterial routes. The ASEAN Transport Sectoral Action Plan 2005–2010 identifies priority road infrastructure projects for the ASEAN Highway which include the Mawlamyazine-Thabyzayat section in Myanmar; the Attapeu-Phia Fai section in Lao PDR; and the QuangNgai-Kon Tum section in Vietnam. See Bhattacharyay, 2009.

Improvement in job opportunity and income will impact tremendously on the social and economic conditions of the migrants' families. Unless there are favorable conditions to repatriate for migrants that left Myanmar, Myanmar migrant families will remain overseas while their family members could be working as guest workers in their own country.

Figure 5.1 Dawei Deep-Sea-Port



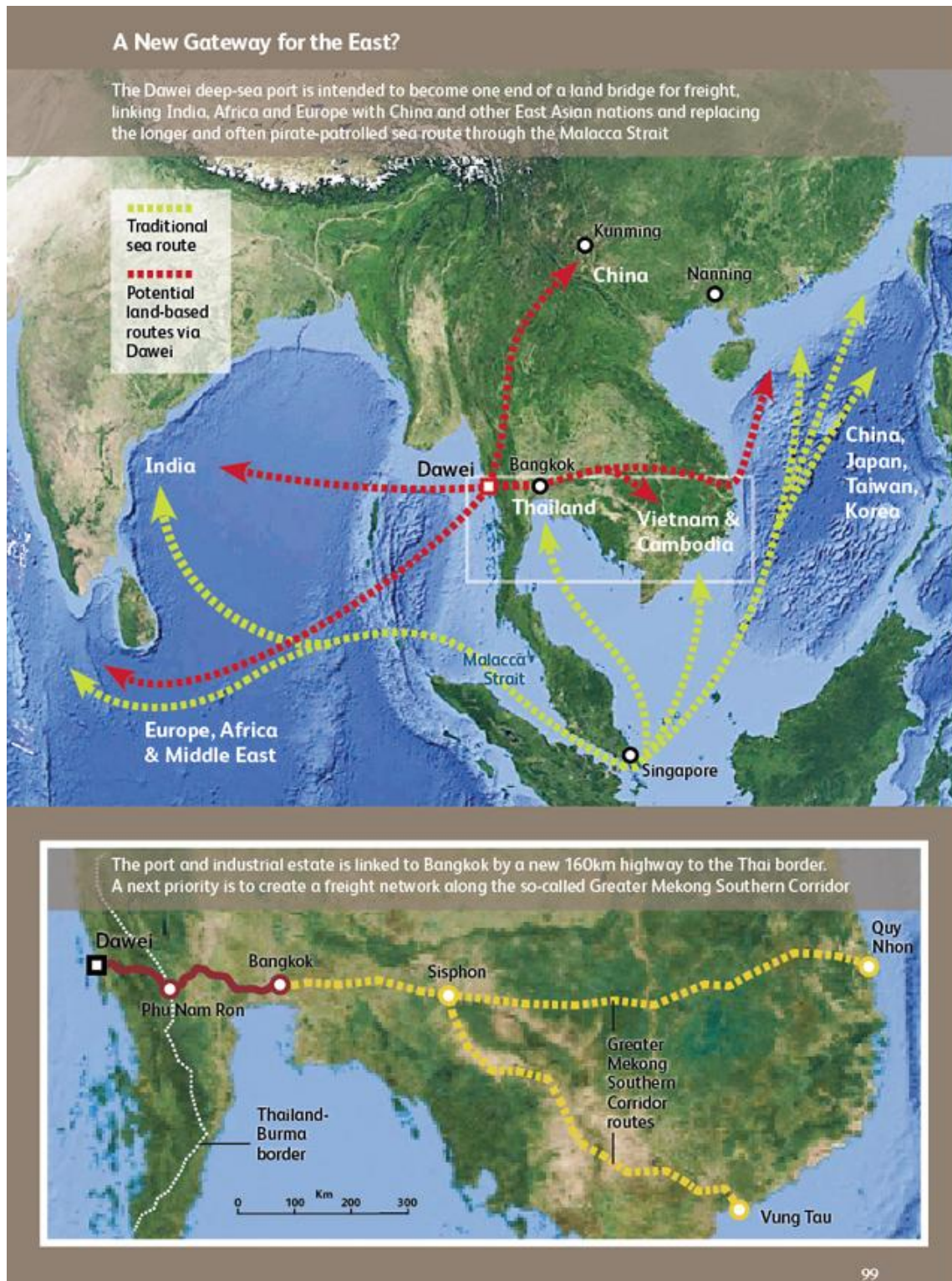
Source: Dawei Development Project

Figure 5.2 ASEAN Highway Network



Source: ASEAN Highway Network (aseansec.org)

Figure 5.3 Location of Dawei and the Potential Routes via Dawei



Source: Global Asia (globalasia.org)

5.5 Summary

Nations endeavor to achieve human security, in its literal meaning, is to present the people with the very freedom they deserve as human being. Every year, hundreds of meetings are held between leaders, governments and actors who seek to limit the prerogatives of all states and yet, no summit or a meeting can come up with the best approach to address human security. It is because the authorities are reluctant to even drop a few control over the people and find the balance between protecting their citizens and 'the national interest'. Yet, human security has been applied and implemented primarily through legalistic initiatives.

The consolidation of international humanitarian law and the construction of supranational courts like the International Criminal Court (ICC) have been outstanding symbols of the human security agenda. However, this has not been sufficient to alter radically the constitutional foundations of global legal order (Fransceschet,2005:1-23). Legalism tends toward 'utopianism' if states and other relevant actors do not have political interests and incentives to follow through on obligations (Carr,1939). Similarly, law is only effective if grounded in a particular political context: if there is a too wide gap between law and political will, law is bypassed, lacks influence and is eventually discredited (Ku, 2001). To the extent that human security agenda has depended so heavily on legalist initiatives, it has been subject to these shortcomings of legalism (Fransceschet,2006:35).

Myanmar's military, that ruled the country since 1962 until 2011, although the new government is led by former military officials, often referred to the country's colonial experience whenever the country is solicited to address human rights and humanitarian legal standards. Because the government believed that the enforcement of these would allow the West to maneuver the regime, as the human rights movement emerged in the 1970s, especially from former socialists in eastern and Western Europe, with major contributions also from the United States and Latin America (Moyn,2010). Especially after the 1988 nation-wide uprising in the quest of democracy, the regime devoted in properly structuring security for the people and barring people from outside to enter Myanmar.

However, recent developments in Myanmar have paved ways for human security in the country. The social and political realities provided by legalism have progressed the human security of Myanmar migrant workers in Thailand. The more the MOUs between Myanmar and Thailand are effective, the more there will be legitimate basis for action. Legalism is crucial for the human security of not only migrant workers but every individual as it will free individuals to interact and influence each other in ways that challenge the power to justify inequalities and injustices that have created human insecurities. The creation of 8.6 billion-dollar Dawei special economic zone has already gaining momentum in benefiting the country with repatriation of its lost labors and ever-increasing foreign direct investments.

Although Myanmar has shocked the international community with its rapid reforms since March 31, 2011, the world is watching closely at the accuracy of these reforms. Achievements in economic growth highlight the potential of the country's future human security progress. As the government is now gradually stepping into the highly competitive globalized economy, they pave ways to meet demands of people, like no other Myanmar government has done before. Market liberalization and democracy are two main goals that the government is said to be intensely working to achieve with full momentum. While they admit that the system needs to be fixed and rejuvenate with more feasible policies, they form partnerships with civil society groups to pursue certain forms of legalism. Because liberalizing and cosmopolitan features of the politics of global legalism means that states do not entirely control the legal agenda, non-state actors are involved in the promotion and monitoring of norms and compliance (Ku,2001:26-34).