

► Policy Brief

October 2022

Assessing complaints mechanisms and remedies for Cambodian migrant workers

Key points

- The formal administrative migrant worker complaints mechanism established in 2013 under *Prakas No. 249 on the complaint receiving mechanism for migrant workers* has had positive impacts and resulted in considerable amounts of compensation being ordered to benefit migrant workers.
- This complaints mechanism, along with other complaints processes migrant workers can access, however retains hurdles that impair migrant workers' access to justice. These include:
 - inaccessibility of the complaints mechanism for migrant workers in an irregular migration status;
 - delayed resolution of complaints;
 - lack of access to information about the complaints mechanism;
 - unclear applicability of Prakas No. 249 for resolution of complaints made outside Cambodia;
 - insufficient compensation paid to workers;
 - insufficient penalties imposed upon recruitment agencies; and
 - reluctance to draw down on guarantee deposits made by recruitment agencies, in order to compensate workers.
- In the cases examined for this brief, migrant workers recouped 59.8 per cent of the money they requested through the complaints mechanism.
- Workers generally do not receive full refunds of costs paid to recruitment agencies, and are thus not adequately restored to the position they were in prior to the violation.
- Conversely, recruitment agencies tend to receive payment for services rendered prior to violating the workers' rights, and return only part of this payment to the workers.
- Without sufficient penalties, it has been observed that some of the same recruitment actors are responsible for repeated violations of workers' rights and do not appear to be deterred from committing violations.
- When migrant workers succeed in a criminal case related to human trafficking, restitution is paid to them only after the convicted trafficker's jail sentence is complete - entailing to a significant delay in restitution.
- Many cases are settled informally – outside the complaints mechanism – due to the formal mechanism's cost or the lengthy time taken to reach a resolution. Informal settlement of cases results in rights' violations committed by recruitment agencies not being reported to the government.
- This policy brief draws on the experience of the civil society organization Legal Services for Children and Women (LSCW) in providing aid to migrant workers from 2017 to 2020, supported through the ILO TRIANGLE in ASEAN programme with funding from the Australian Department of Foreign Affairs and Trade.

► Summary

This policy brief provides an overview of international labour migration from Cambodia; the legal framework for the Complaint receiving mechanism for migrant workers (or “complaints mechanism”); the work of Legal Services for Children and Women (LSCW) to resolve migrant worker complaints; and recommendations for the improvement of the complaints mechanism based on the experiences of LSCW. The brief provides an up-

to-date compliment to the ILO’s 2016 *“Assessment of the complaints mechanism for Cambodian migrant workers”* and 2017 regional study *“Access to justice for migrant workers in South-East Asia”*. Recommendations for policy reform and development are included, along with suggestions for removing barriers to implementation of the mechanism.

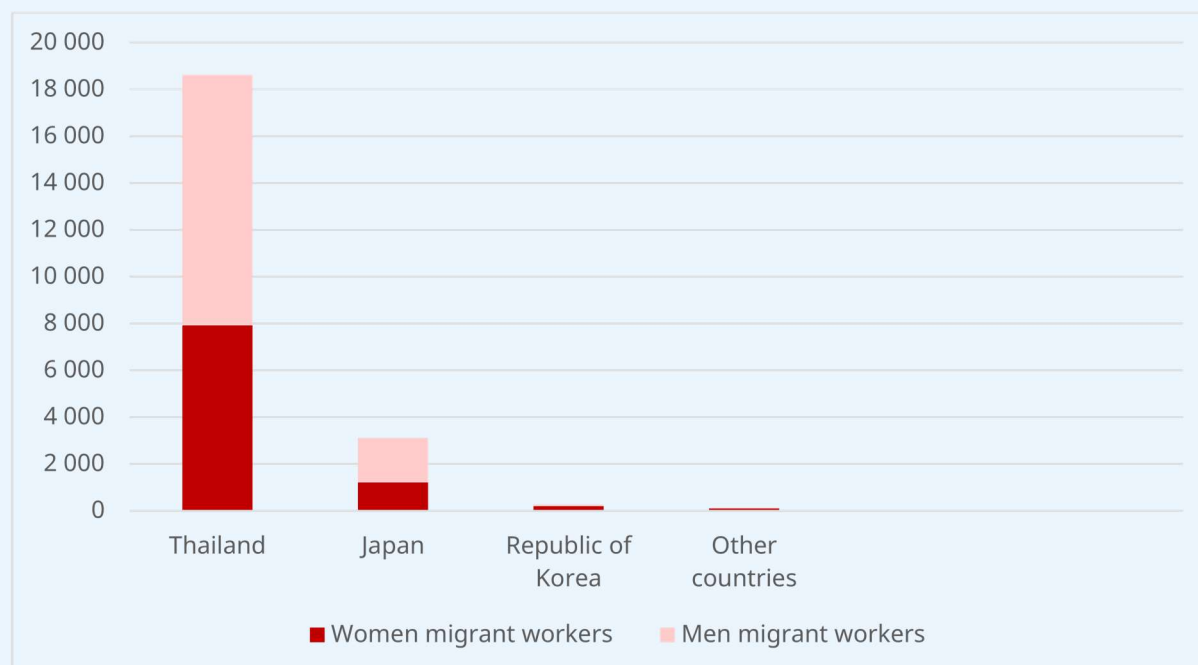
► Background: International labour migration from Cambodia

Cambodia is primarily a country of origin for migrant workers. Cambodia has a growing labour force, with the working-age population (15-64 years old) of 11 million in 2020, projected to rise to 12.3 million by 2030.ⁱ This increased workforce and low wages in Cambodia, in comparison with wages in migrant destinations, fuel labour migration. Wages available in destinations, like Thailand, the Republic of Korea and Japan, are significantly higher than those in Cambodia, leading many Cambodians to seek work elsewhere.

The most common sectors of employment for migrants include fishing, agriculture, construction, manufacturing, and service industries including domestic work.ⁱⁱ Over 1,100,000 Cambodian citizens were abroad in 2020, 54 per cent of whom were women.ⁱⁱⁱ The major destination for Cambodian migrant workers is Thailand, which as of 2020 was the destination for 82 per cent of Cambodian workers placed abroad by licensed recruitment agencies.^{iv} Other destinations in which licensed recruitment agencies placed workers in 2020 include Japan (14 per cent) and the Republic of Korea (04 per cent), with small numbers of workers placed in Singapore, Malaysia and other countries (see figure 1).^v With data from the Ministry of Labour and Vocational Training (MoLVT), the International Labour Organization (ILO) International Labour Migration Statistics database (ILMS) identifies

that in 2020 during the first year of the COVID-19 pandemic approximately 22,800 Cambodians (9,400 women) migrated regularly to work abroad. The numbers of documented outward migrants generally had been increasing prior to the pandemic, with 105,000 migrating in 2018 (41,600 women), 40,800 in 2015 (16,300 women), and 2,200 in 2005 (1,300 women).

Early in the pandemic, the ILO estimated that 100,000 migrant workers had returned to Cambodia by August of 2020 as a result of COVID-19 (sex disaggregated data is not available) and estimated that 8.4 million workers in Thailand were at risk of losing their jobs – with jobs in the manufacturing, tourism and other service sectors particularly at risk.^{vi} These sectors rely relatively heavily on migrant workers. By December 2021, the Cambodia National Committee for Counter Trafficking reported that more than 260,000 Cambodian migrant workers had returned.^{vii} In an attempt to address the impacts of the COVID-19 pandemic on labour migration between Cambodia and Thailand, in 2021, the two countries came to an agreement that permitted regular migration from Cambodia to Thailand while also providing for additional public health measures to support this migration. The first Cambodian migrant workers to be placed in accordance with the agreement came to Thailand in February 2022.^{viii}

► **Figure 1. Workers placed abroad by licensed recruitment agencies, by destination and sex, 2020**

Source: ILOSTAT 2020.

Despite this regular migration framework, the majority of Cambodian workers are estimated to migrate irregularly. A 2017 study by the ILO and International Organization for Migration (IOM), which interviewed 457 returned Cambodian migrant workers who had worked in Thailand and Malaysia, identified that 69 per cent of these workers had migrated using irregular channels.^{ix} Reports of Cambodian workers migrating irregularly to Thailand have continued during the COVID-19 pandemic.^x Irregular migration channels are attractive to migrant workers due to, on average, shorter migration timeframes and reduced migration costs for workers. The ILO and IOM study further found that workers who migrated using irregular channels were, on average, able to migrate within 18 days, in comparison to an average of 136 days for those using regular channels. Similarly, the average migration cost for workers using irregular channels was US\$123 in comparison to US\$548 for those using regular channels.^{xi} Despite these factors, migrating through irregular channels increases the risk that the migrant workers may be exploited, abused, or subject to forced labour or human trafficking. A 2016 IOM study, which

surveyed 667 returned Cambodian migrant workers, noted that regular migration was associated with increased migrant worker safety. Workers with a regular migration status were more likely to be paid by their employer and were more likely to be able to access medical care whilst in destination.^{xii} The 2017 ILO and IOM study reported that 72 per cent of Cambodian migrants who used irregular channels encountered problems during their migration, somewhat higher than 66 per cent among those using regular channels.^{xiii}

It may be more difficult for migrant workers with an irregular status to resolve these problems. Migrants with an irregular status do not have proper travel documents and may fear seeking support because of their migration status. Cambodian migrant workers with an irregular status face substantial difficulties making a complaint about problems they face during their migration, as they are legally and practically excluded from accessing the complaints mechanism in Cambodia. Cambodian migrant workers with an irregular status may only be able to access criminal or civil law remedies

for their complaints, which can be difficult to access and take a lengthy time to reach a resolution.

Migrants with an irregular status may also rely on brokers to obtain employment – with 26 per cent of surveyed Cambodian workers in the 2017 ILO and IOM study reporting that they used the services of a broker to irregularly migrate.^{xiv} Migrant workers have reported that brokers are responsible for egregious violations of workers' rights, including failing to obtain a job for workers and abandoning them upon arrival in destination, after collecting recruitment fees.

A 2017 study by the ILO of 490 complaints made by Cambodian workers or their families through the Complaint receiving mechanism for migrant workers (including prospective migrant workers who were not placed abroad at the time) identified the five most common worker complaints (cases may have involved multiple complaints) as:

- ▶ 61 per cent experienced delay in deployment or a job not being provided;
- ▶ 56 per cent experienced a passport not being provided;
- ▶ 28 per cent made a worker's compensation claim;
- ▶ 16 per cent related to a missing person; and
- ▶ 12 per cent related to the non-payment or underpayment of wages.^{xv}

The results of this study appear to suggest that migrant worker complaints lodged through Cambodia's

complaints mechanism most often relate to the conduct of private recruitment agencies, as opposed to employers in destination.^{xvi} This is mostly because of the limitations of the mechanism itself (with relation to cross-border complaint handling), rather than the type of abuses experienced by migrants. These complaints often relate to predatory recruitment practices with a majority of complaints relating to recruitment agencies not performing the services they promised to workers.

The labour migration context of Cambodia has a number of characteristics that impact upon workers' ability to access complaints mechanisms. These include:

- ▶ a growing number of migrant workers– particularly to Thailand – leading to an expected increase in the number of worker complaints;
- ▶ significant expense and lengthy deployment timeframes for workers undertaking migration through regular channels, which is a push factor towards irregular migration;
- ▶ the majority of Cambodian migrant workers currently utilizing irregular migration channels and excluded from access to the Complaint receiving mechanism for migrant workers as a result; and
- ▶ a majority of migrant worker complaints relating to unfair or exploitative recruitment practices – including payment of fees without deployment and the promising of deployment timeframes that are subsequently not met.

► Legal framework: The Complaint receiving mechanism for migrant workers

A formal administrative complaints mechanism has been developed in Cambodia to provide for the formal conciliation and resolution of complaints brought by migrant workers. The regulatory framework for this complaints mechanism is contained in *Sub-Decree No. 190 on the management of the sending of Cambodian workers abroad through private recruitment agencies 2011*,^{xvii} *Prakas No. 249 on the complaint receiving mechanism for migrant workers*^{xviii} and the 2018 *Guideline on dispute resolution for migrant worker grievances*.^{xix} Of note, national legislation has not been adopted governing labour migration in Cambodia, and this framework consists entirely of subordinate legislation and guidance that has been developed and authorized by the executive Government of Cambodia. Thus, this framework is not legislation, but rather a regulatory framework guiding and constraining the powers of the MoLVT in managing Cambodia's labour migration. Breach of this regulatory framework may provide some recourse for injured parties and may guide behaviour of labour migration actors – especially where the MoLVT imposes penalties for failure to comply with the regulatory framework.^{xx}

Sub-decree No. 190

The dispute resolution section of *Sub-decree No. 190 on the management of the sending of Cambodian workers abroad through private recruitment agencies 2011* is comprised of Articles 29 and 30 which provide limited detail regarding resolution of migrant worker complaints. These sections clarify law applicable to settle disputes arising prior to a worker departing Cambodia, and the roles and responsibilities of private recruitment agencies and consular staff.

Sub-decree No. 190 also provides for payment of a guarantee deposit by private recruitment agencies that can be used by the MoLVT, amongst other uses, to compensate workers for damage caused to them by recruitment agencies in a limited set of circumstances.^{xxi} Each recruitment agency is required to make a guarantee deposit of US\$100,000 into the bank account

of the MoLVT.^{xxii} Article 10 of the Sub-decree provides that recruitment agencies who do not:

- fulfil any conditions in either the contract between workers and the agency or the contract between the agency and the MoLVT; and
- fail to resolve the issue or issues in accordance with “the conciliatory principle”; and
- thereby cause harm to the interests of the workers, shall have their guarantee deposit withdrawn and used by the MoLVT to settle the issues.

The decision-making process for the MoLVT to follow when using the guarantee deposit of recruitment agencies is not further articulated in Sub-decree No. 190. The Sub-decree also provides no detail of the process of conciliating a dispute between a worker and recruitment agency. The details of the conciliation process are instead contained in Prakas No. 249 and the Guideline.

Article 39 of Sub-decree No. 190 also authorizes the MoLVT to issue sanctions against private recruitment agencies that do not comply with “any provisions” of Sub-decree No. 190. Three types of sanctions may be issued under Sub-decree No. 190:

- a written warning;
- temporary suspension of authorization to operate as a recruitment agency; and
- revocation of authorization to operate as a recruitment agency.

How the MoLVT is to apply Article 39 of the Sub-decree is ambiguous. It is unclear how a decision is made to impose a sanction, what offences may result in a more severe sanction than others and whether repeated violations of the Sub-decree might lead to progressively more severe sanctions.

It is important to note that Sub-decree No. 190 defines migrant workers and prospective migrant workers as those who are recruited, or are being recruited by, a licensed private recruitment agency.^{xxiii} This means that migrant workers who have migrated using irregular channels are excluded from the Sub-decree's coverage, including migrants who have migrated irregularly but have subsequently regularized their migration status in

destination. Migrant workers with an irregular status are unable to access the remedy for migrant worker complaints in Article 10(b) of Sub-decree No. 190.

Prakas No. 249

Prakas No. 249 on the complaint receiving mechanism for migrant workers provides the framework for a conciliation process to resolve complaints concerning migrant workers. The process is administered by both the Department of Employment of Manpower (DEM), a unit of the MoLVT and the Provincial Department of Labour and Vocational Training (PDoLVT). Prakas No. 249 does not specify who may bring a complaint to initiate the conciliation process, or against whom a complaint may be brought.^{xxiv} Presumably, this means that any person – including juridical persons – could make a complaint about the actions of another person through the conciliation process, provided that the complaint in some way related to a migrant worker.

The term “migrant worker” is not defined in Prakas No. 249, and thus it is unclear whether workers who have migrated irregularly are able to utilize the conciliation process in Prakas No. 249. It appears that the term “migrant worker” in the Prakas uses the definition of “worker” contained in Sub-decree No. 190, which defines a worker as a person who has signed a “job placement contract” with a licensed recruitment agency.^{xxv} In this case, it would appear that the complaints mechanism would exclude complaints related to both: workers who have migrated irregularly; and prospective migrant workers who have yet to sign a “job placement contract”. It is worth noting however that while Prakas No. 249 does not mention prospective migrant workers, Sub-decree No. 190 does state that it applies not only to “workers” but also to “migrant workers candidates” who have yet to sign a “job placement contract”.

Importantly, there is no time limit for filing a complaint in Prakas No. 249, and complaints related to migrant workers may be made at any point after the incident or incidents from which they arise. To make a complaint using the procedure in the Prakas, a person, or their representative, must submit their complaint to the DEM

or the PDoLVT.^{xxvi} The complaint may be oral or in writing, and must include:

- ▶ the subject of the complaint;
- ▶ the names and addresses of complainant and respondent;
- ▶ the cause and background of the complaint;
- ▶ the date and place of the case;
- ▶ the amount of compensation claimed; and
- ▶ supporting documents – if there are any.^{xxvii}

The DEM or the PDoLVT have 10 working days to review written complaint submissions, and each party may be invited to provide further evidence to resolve the dispute and to attend conciliation meetings.^{xxviii} For non-written complaints, the DEM or PDoLVT are expected, in accordance with Prakas No. 249, to address the complaint immediately and follow the conciliation procedure to facilitate resolution.^{xxix} If the complainant is invited to provide additional information or attend conciliation meetings and does not do so within the timeframes in Article 5 of Prakas No. 249, the complaint is nullified. Conversely, if the respondent is requested to provide additional information and does not do so within the timeframes in Article 5 of Prakas No. 249, the respondent shall be deemed to be responsible for the allegations in the complaint. It is unclear whether any action is taken against a respondent deemed to be responsible for the allegations in the complaint – such as imposition of sanctions or ordering of compensation. The LSCW has not been involved in a case where the MoLVT has used a recruitment agency’s guarantee deposit to provide compensation to a worker. Following the conciliation process, a conciliation minute outlining the proceedings is produced, signed by the dispute resolution official of the DEM or PDoLVT and distributed to all parties.^{xxx}

Where the PDoLVT is conciliating, the dispute and does not fully resolve it within 20 working days, the dispute will be referred to the DEM for further conciliation. If the DEM cannot resolve a dispute within 30 working days, then the dispute resolution officials will notify the parties of the lack of resolution and inform them of their rights and existing legal procedures.^{xxxi}

Prakas No. 249 also provides for complaints to be submitted outside Cambodia with the timeframe for complaint resolution prolonged as per destination law.^{xxxii} Complaints submitted outside Cambodia are to be supported by a representative of the Cambodia recruitment agency in the destination and may be submitted to the Cambodian Consulate or Embassy, a representative of a Cambodian private recruitment agency or a competent authority of the destination.^{xxxiii} Prakas No. 249 is unclear regarding the process for resolution of complaints made outside Cambodia.

Prakas No. 249 specifies that all agreements reached before the dispute resolution officials of the DEM or PDoLVT are binding ones.^{xxxiv} However, there is no established procedure for enforcing the conciliation agreement – either through the courts or by the MoLVT. No power to enforce the conciliation agreement is provided for in Prakas No. 249. Sub-decree No. 190 does provide a power to the MoLVT to use the guarantee deposit of a recruitment agency to compensate workers in some circumstances if conciliation is unsuccessful at resolving the matter.^{xxxv} However, this power to compel compensation payments is only available as an enforcement method:

- ▶ where monetary compensation is sought;
- ▶ if the respondent is a recruitment agency;
- ▶ if the complainant is a migrant worker who migrated regularly; and
- ▶ if the agency has failed to fulfil any conditions in either the “job placement contract” or the contract between the agency and the MoLVT and has harmed the interests of the workers as a result.

Additionally, LSCW notes that the power in Article 10(b) of Sub-decree No. 190 has not been used in relation to any case they have been involved with. The “binding” nature of an agreement reached through the conciliation process is undercut by the lack of power available to the courts or the MoLVT to enforce the agreement itself. Instead, following conciliation and regardless whether an agreement was reached or otherwise in the conciliation proceedings, either party may initiate a civil lawsuit to attempt to enforce their

rights or the MoLVT may utilize Article 10(b) to compensate workers.

Guideline

The *Guideline on dispute resolution for migrant worker grievances* was developed subsequently to Prakas No. 249 and aims to provide additional detail about the process of resolving complaints and the roles of the parties involved. A number of terms used in the Guideline are defined as follows: complainant – a migrant worker or their representative; and respondent – an employer or private recruitment agency. The Guideline also includes a number of overarching principles that are designed to provide general advice to dispute resolution officials about how to implement the complaints mechanism. One of these overarching principles is “applicability”, which notes that the dispute resolution process should be available to “all Cambodian migrant workers regardless of their legal migration status in the destination and not be restricted to regular migrant workers or those who travelled with licensed PRAs”. That is, migrants with an irregular status should be able to access the complaints mechanism.^{xxxvi} As discussed above, the wording of Sub-decree No. 190 and Prakas No. 249 appear to prevent migrant workers with an irregular status (including migrants who have migrated irregularly but may have subsequently regularized their migration status in destination) from accessing the complaints mechanism. If Sub-decree No. 190 and Prakas No. 249 do prevent workers, who have migrated using irregular channels from accessing the complaints mechanism then this prevails over the wording of the Guideline to the contrary. In order for workers who have migrated irregularly to access the complaints mechanism, clarification of the inclusion of irregular workers may be needed, with possible consideration of changes to Sub-decree No. 190 and Prakas No. 249.

The Guideline also articulates in greater detail the process of inviting parties and/or their representatives to provide additional information and attend conciliation meetings. The process is outlined as four steps:

- inviting the complainant and respondent to attend conciliation meetings;
- meeting with the respondent to discuss the complaint;
- meeting with the complainant to discuss the complaint and any response from the respondent;
- meeting with both parties to conciliate the complaint and attempt to come to an agreement.^{xxxvii}

If the matter remains unresolved following these four steps and was conciliated through a PDoLVT, it should be referred to the DEM. Once conciliated through the DEM following these four steps, the conciliation process is complete. In addition to the conciliation process, or at the conclusion of the process, the dispute resolution officials of the PDoLVT or DEM may do the following:

- if the complaint relates to a matter that cannot be conciliated as it is outside the competence of the PDoLVT or MoLVT, refer the matter to the appropriate authority: such as anti-trafficking or police officials;
- if the matter has not been resolved, the DEM may provide support to the complainant to initiate court proceedings;
- if a private recruitment agency is a respondent to a dispute and the dispute is resolved by an agreement involving compensation, or the recruitment agency does not take part in the conciliation process and compensation has been sought by the complainant, the PDoLVT or DEM should monitor payment of compensation by the agency and consider sanctioning the private recruitment agency if it is not paid:
 - if compensation has not been paid in 10 days, a written *warning* should be issued to the recruitment agency that payment must be made in the next 20 days or the matter will be referred to court, with the respondent liable for all expenses. The recruitment agency has the option to pay the compensation via withdrawal of the *guarantee deposit*, which then must be topped up subsequently.
 - if the complaint remains unresolved, *temporarily suspending the recruitment agency's authority to operate*.
 - if a private recruitment agency has received three written warnings, *revoking their authority to operate as a recruitment agency*.^{xxxviii}

As noted above, Sub-decree No. 190 Article 10(b) provides the MoLVT with the power to utilize the guarantee deposit to compensate workers in some circumstances. The permission of the recruitment agency is not required for the exercise of this power.

The Guideline also provides guidance on complaints involving delay in placement overseas or non-provision of a promised job, noting the worker is ordinarily seeking full refund of all costs and fees paid to a recruitment agency and may also seek additional compensation for lost wages and/or further guarantees from the recruitment agency that they will be prioritized for placement in the shortest legally possible timeframe.^{xxxix}

Where a complaint is initiated outside Cambodia, the Guideline notes it is the responsibility of the Cambodian Embassy or Consulate to act as the dispute resolution official. If the complaint requires the participation of a MoLVT official or the services of legal counsel, costs should be borne by the recruitment agency.^{xl} *Prakas 252 on on-site service of the private recruitment agency and repatriation* provides details of responsibilities of recruitment agencies and Cambodian Consulates and Embassies in the event of labour disputes, abuse of a worker, worker disappearance, or death of a worker.^{xli}

Private recruitment agencies are responsible to:

- provide counselling for workers in relation to their labour rights and dispute resolution options;^{xlii}
- provide support to workers to engage in conciliation and other legal processes in accordance with destination law;^{xliii}
- report to the Cambodian Embassy or Consulate if conciliation is unsuccessful at resolving a dispute and providing legal services for the worker;^{xliv}
- support workers to make complaints of a criminal nature involving abuse or violation of their rights;^{xlv}

- report missing or deceased workers to the Cambodian Embassy or Consulate and support the location of missing workers or repatriation of deceased workers.^{xlvi}

Further, under Prakas No. 252, Cambodian Consulates and Embassies are responsible for:

- receiving reports from recruitment agencies regarding: unsuccessful conciliations of labour disputes in accordance with destination law; instances of abuse or rights violations experienced by workers; and missing and deceased workers;^{xlvii}
- providing updates to workers' families, the MoLVT and the Ministry of Interior regarding searches for missing workers.^{xlviii}

Civil and criminal court proceedings

In addition to this administrative complaints mechanism, migrant workers may also seek resolution of issues through civil and criminal legal proceedings. A civil legal proceeding may be initiated by a migrant worker after undertaking a conciliation meeting or as an alternative to the complaints mechanism. The institution of civil proceedings may be a lengthier and more costly dispute resolution alternative to the complaints mechanism and may act as a barrier to workers' resolving the dispute.^{xlix} *Prakas No. 253 on minimum standards of job placement services abroad contract* which provides guidance on the content of the contract between recruitment agencies and migrant workers notes recruitment agencies are contractually responsible to seek legal aid for workers if they are "abused, exploited, trafficked or disappear during employment or pre-departure training" or when a dispute occurs during the worker's performance of an employment contract that cannot be resolved through negotiation, reconciliation or facilitation.^l

Migrant workers may also be victims of criminal conduct by recruitment agencies, brokers or their employers. They may be able to make a criminal complaint to the competent authorities. Of particular relevance are crimes in the *Law on the Suppression of Human Trafficking and Sexual Exploitation 2008*, including: unlawful

recruitment for exploitation^{li} and the buying, selling or exchanging of persons.^{lii} However, making a criminal complaint can frustrate a migrant worker's attempt to obtain compensation for harm caused to them. A criminal case must be prosecuted in the courts, which can be both lengthy – taking multiple years to resolve – and difficult to navigate. Migrant workers may require the assistance of legal practitioners and may have trouble accessing any compensation that the court awards. For crimes contained in the *Law on the Suppression of Human Trafficking and Sexual Exploitation 2008*, any restitution ordered by the courts is paid to workers following the completion of the convicted trafficker's jail sentence.^{liii} Even if a migrant worker's criminal complaint is successfully prosecuted, the receipt of compensation may be significantly delayed. Financial compensation is the last step in the process even though it is often the first priority for migrants.

As noted earlier, migrant workers with an irregular status in destination and/or who migrated from Cambodia using irregular channels may be unable to access the complaints mechanism. This includes those who migrated through irregular channels to Thailand or other destinations and have subsequently regularized their migration status in accordance with the law in the destination. The exclusion is a result of the practice of the MoLVT, in addition to the previously noted direct exclusion of migrants using irregular channels in Sub-decree No. 190 and Prakas No. 249. The LSCW has observed that workers with an irregular status are deemed by the MoLVT, PDoLVT and DEM to have complaints outside their competence and which must instead be referred to anti-trafficking or other criminal investigation bodies. This referral occurs even if the circumstances surrounding the worker's migration and employment suggest that they have not been trafficked, but only were in an irregular status.

Thus, abused migrants in an irregular status may face a situation where their complaint is not accepted by labour authorities because they were not in a regular status, but after referral to anti-trafficking authorities, their case cannot be prosecuted because the abuse they faced does not fit the trafficking definition.

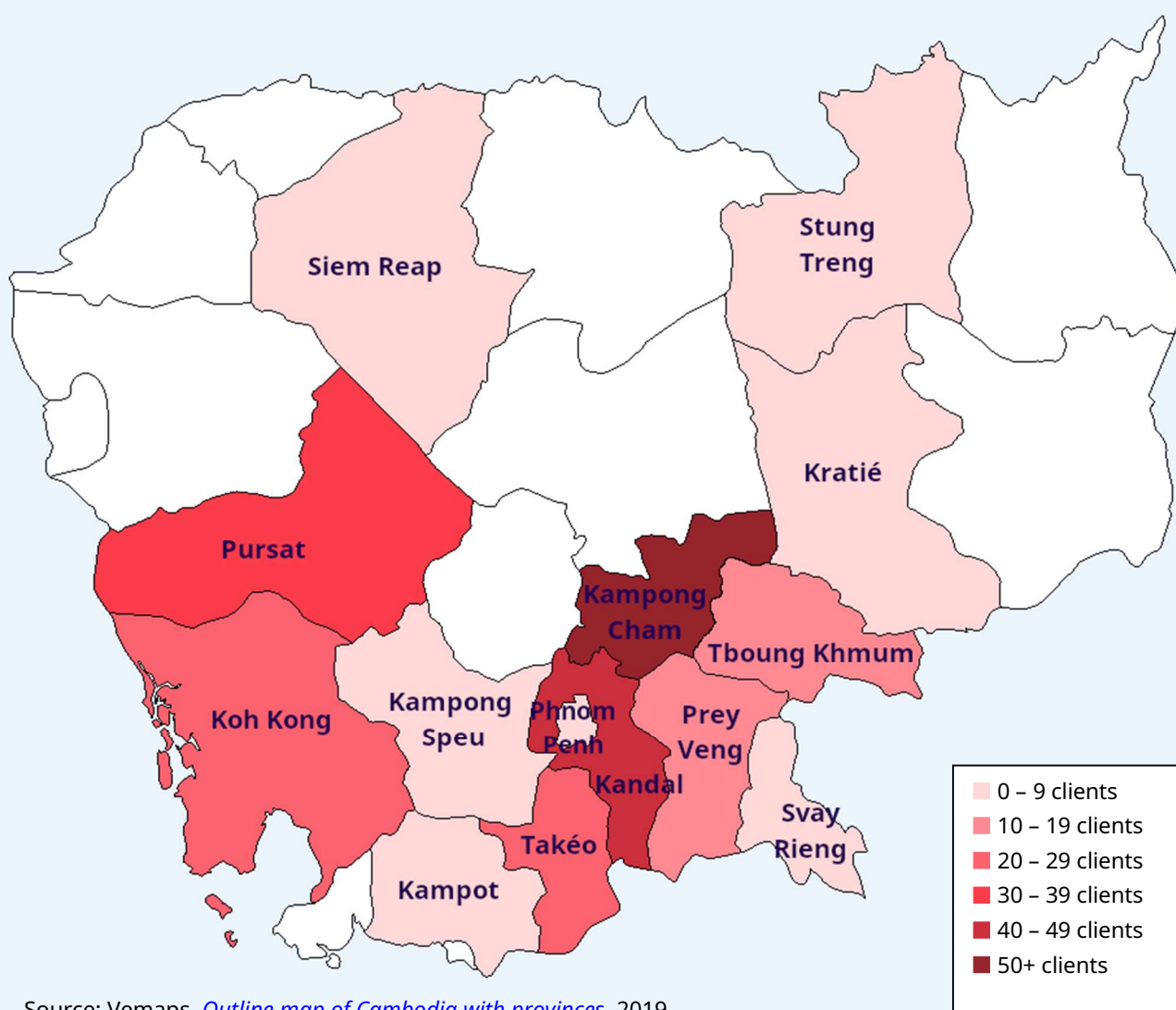
► Cases handled by LSCW

The LSCW, with the support of the ILO's TRIANGLE in ASEAN programme, provides gender-responsive legal aid and other services to migrant workers. From April 2017 to October 2020, LSCW represented 388 Cambodian clients (124 women and 264 men), both migrant workers and prospective migrant workers. These clients were represented in 43 separate cases involving only 14 recruitment agencies and six brokers. As the numbers above show, the LSCW has observed that unscrupulous recruitment actors are responsible for repeated violations of workers' rights and do not

appear to be deterred from committing violations by worker complaints.

The 388 migrant workers came from many different provinces, with 196 originating from Kampong Cham; 41 from Kandal; 36 from Pursat; 26 from Koh Kong; 25 from Takéo; 17 from Tboung Khmum; 16 from Prey Veng; nine from Kampot; nine from Kratié; six from Phnom Penh; four from Siem Reap; one from Steung Treng; one from Svay Rieng; and one from Kampong Speu (see figure 2). The majority of the clients were

► **Figure 2. Migrant workers supported by LSCW, by origin province, April 2017 - October 2020**



Source: Vemaps, *Outline map of Cambodia with provinces*, 2019.

prospective migrant workers (100 women and 180 men), who were seeking employment abroad but who had not been placed abroad.

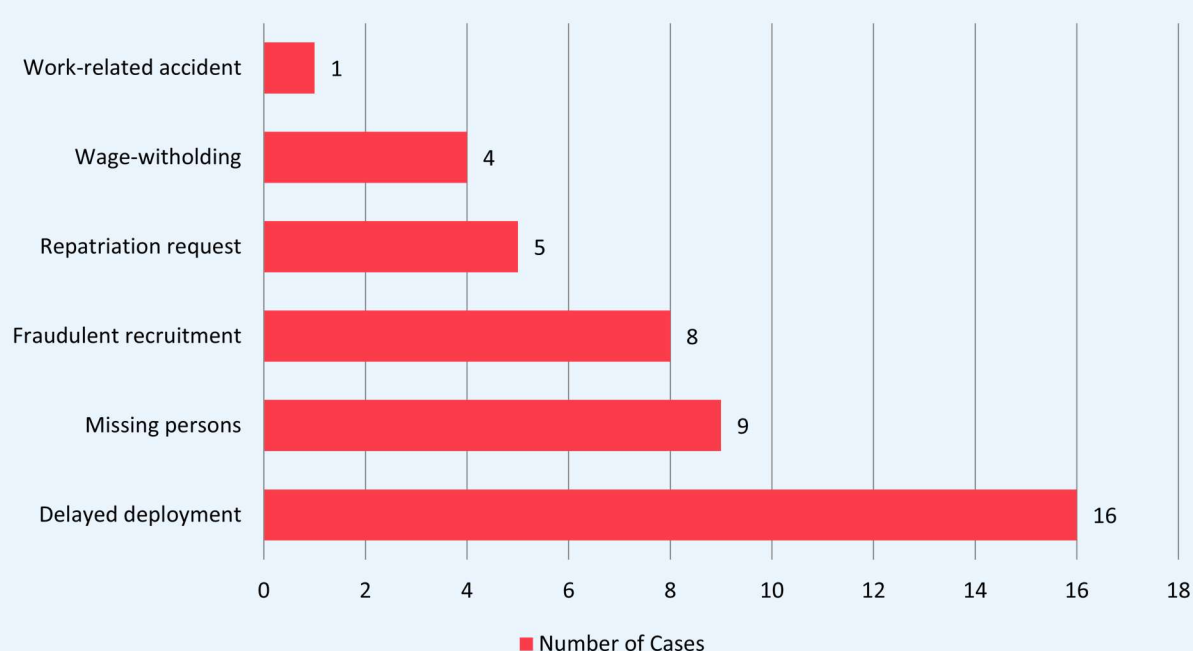
It is clear from the numbers above that more men than women are lodging complaints and accessing the complaints mechanism. As previously noted in the 2016 ILO report on the Cambodian complaints mechanism, it may be more difficult for women to lodge complaints independently as some women may not want to travel alone for safety reasons.^{liv} Women may also have less access to knowledge on where to go to lodge a complaint and less time to make complaints because of domestic responsibilities. Further, more women than men migrate irregularly because the employment sectors available to them are irregular. This greater irregular migration among women is also a deterrent for complaint filing, as the complaints mechanism is not open for those in an irregular status. Finally, some women report feeling less likely to be taken seriously by authorities when they make complaints.

Of the clients represented during the period, delayed deployment was the most common grievance,

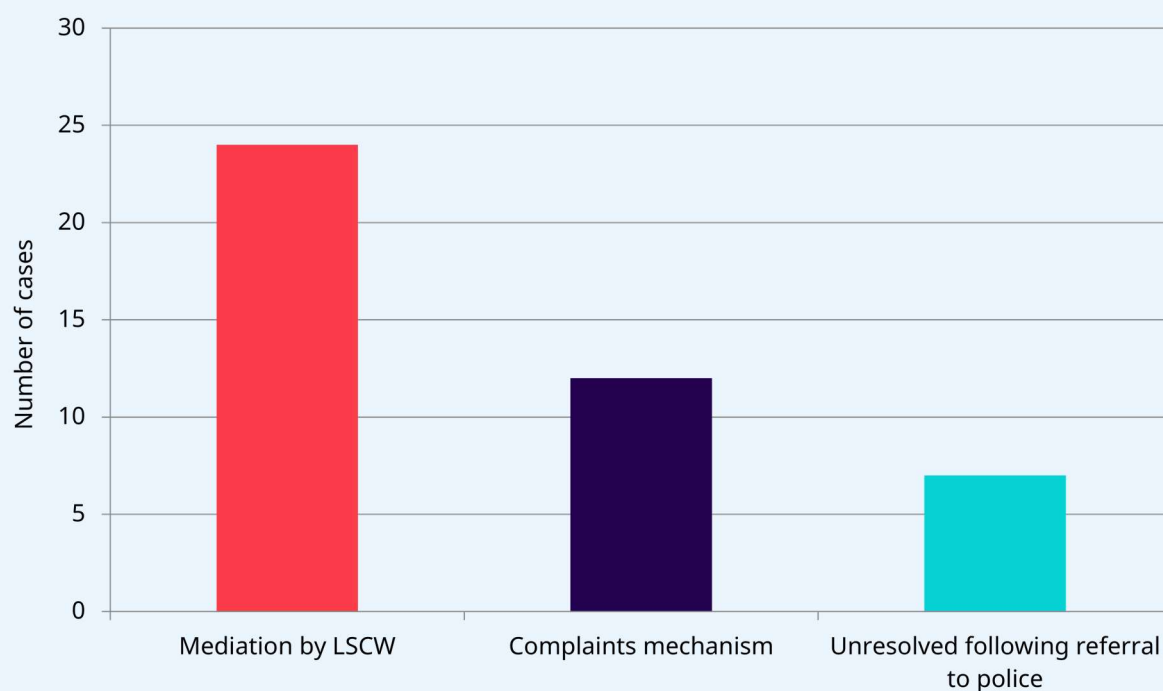
representing the main complaint in 16 of the 43 cases. The other cases concerned missing persons (nine cases); fraudulent recruitment by an unregistered recruitment agency/broker (eight cases); repatriation support (five cases); withholding of wages (four cases); and work-related accidents (one case) (see figure 3).

The LSCW utilizes different avenues to provide support to clients to resolve complaints. These avenues include: informal negotiations, conciliation through the complaints mechanism and referrals of cases to competent authorities for criminal prosecution. The majority (n=24) of the 43 cases that the LSCW handled in the period were resolved following informal negotiations with respondents facilitated by the LSCW (see figure 4). In contrast, 12 of the 43 cases were resolved through the Complaint receiving mechanism for migrant workers outlined in Prakas No. 249. The LSCW also referred seven cases involving alleged fraud by brokers to the police. Of these cases, all seven are unresolved, due in part to a lack of evidence, in part to an unwillingness by the authorities to conduct further investigations and in part as a result of clients deciding not to pursue the cases. Whilst one of these cases was

► **Figure 3. Cases handled by LSCW, by complaint subject, April 2017 - October 2020**



► Figure 4. Client complaint resolution avenues, April 2017 - October 2020



brought before the court, it was eventually discontinued. A significant factor in the discontinuance of these cases was the time taken for them to proceed through the criminal prosecution process. One case was pending prosecution for almost two years prior to being discontinued, and after the lengthy wait the workers involved in the case were no longer able to be contacted.

A total of 139 clients (52 women and 87 men) were assisted by LSCW to lodge the 12 aforementioned complaints through the complaints mechanism. Three of these cases concerned withheld wages, while nine cases involved delayed deployment. Notably, seven of the twelve cases were resolved within the timeframes specified in Prakas No. 249. In addition to experiencing delayed proceedings, the complainants received less compensation than they requested. Aggregating the 12 cases, the clients received compensation totaling US\$98,431, amounting to 59.8 per cent of the US\$164,431 requested. The aggregated compensation sought by migrant workers was for payment of the costs and fees they paid to, or are owed by, respondents. That is, the aggregated payment amounts sought do not

include requests for additional compensation for interest on the compensation amount, loss of income caused by delayed deployment or other payment for loss suffered by workers and caused by a delay in the worker's deployment or a delay in the payment of wages. A 2016 study of the implementation of Prakas No. 249 by the ILO also noted that the amounts of compensation received by workers at that time included only the return of amounts paid by the worker or owed to them – with no additional compensation received for harm suffered by the worker.^{lv} These limited compensation payments may not achieve the broader policy objectives that should be addressed by remediating workers:

- correcting an instance of violation of a worker's rights;
- providing restitution to restore a worker to the position they were in prior to the violation; and
- preventing future violations of worker's rights by discouraging abusive or exploitative actors.^{lvi}

Box 1**Case study: Insufficient compensation and sanctions**

In 2017, a recruitment agency advertised jobs in Japan, stating that workers would receive a salary of up to US\$9,000/month. Prospective workers were required to study Japanese at a language center for three to six months before they could be deployed. Individuals from Kampong Cham, Takéo and Kampot provinces registered, each paying the private recruitment agency between US\$2,500-4,000. To afford these expenses, many of the workers obtained a loan from a bank or microfinance institution, and some sold their home or land in exchange for money. Yet, six months after registration, they were still not deployed. Consequently, the trainees requested a return of their money. The recruitment agency reimbursed the prospective workers up to 50 per cent of their payments.

As a result, a group of 17 men and 21 women filed a complaint with the MoLVT and a criminal complaint of fraud with the Phnom Penh Municipal Court before requesting legal assistance from the LSCW. The administrative complaints process was delayed beyond the timeframes in Prakas No. 249, with the MoLVT, workers and the private recruitment agency undergoing five rounds of conciliation before failing to reach an agreement. The reason for this extended conciliation process was that the recruitment agency sent a different representative to each conciliation, with each representative claiming they were not authorized to make an agreement on behalf of the agency.

The criminal complaint was also unsuccessful, with the prosecutor deciding to discontinue the charge on the basis that the facts appeared to indicate that a contractual breach, rather than fraudulent conduct had occurred. The matter remains the subject of further court proceedings.

The workers also sought assistance from the Prime Minister's office, which issued an order to the MoLVT to speedily resolve the dispute. Following this order, the recruitment agency agreed to compensate the workers an additional 25 per cent of the costs that they had paid (on top of the 50 per cent amounts already paid as compensation). The recruitment agency stated that the reason they were unable to compensate the workers for the full amount of the costs they had paid was that they had expended these costs on food, accommodation, training and document processing for the workers.

Despite the recruitment agency previously having had its license suspended for one month in relation to another complaint in the months beforehand, the MoLVT did not sanction the recruitment agency for its actions in relation to this complaint. However, the recruitment agency had previously had its license suspended for one month in relation to another complaint in the months beforehand.

The LSCW observes that the discrepancy between compensation sought and compensation agreed to, has been most marked in cases of delayed deployment. In these cases, the workers ordinarily sought a full refund of the costs they had paid to the recruitment agency for their placement. However, the recruitment agencies claimed that they had spent these costs to conduct necessary administrative procedures for the worker's departure – such as obtaining passports or conducting training – and as a result the agency could not afford to pay full compensation to the clients.

The costs that the agencies alleged were spent on these administrative procedures tended to be higher than the published costs for these procedures (for example: the costs that recruitment agencies claimed were spent obtaining a passport for a worker were higher than the published government fees necessary to obtain a passport) and appear to include provision for the recouping of the agency's staffing costs (see box 1 and 2). In other words, agencies have generally been allowed to keep money spent, and migrants have not

been given back money they spent on services unrendered.

The discrepancy between the compensation requested and the compensation received is also seen in informal negotiation of cases, where clients have typically agreed to accept these lower compensation amounts and resolve the case. The LSCW observes that the clients who accepted compensation agreements for a lesser amount then requested did so due to:

- an inability to afford the costs of attending further rounds of conciliation to resolve the dispute – such as transport costs to the conciliation venue;^{lvii}
- concerns that not accepting the agreement would substantially delay the payment of compensation, which may be necessary for the immediate costs of the worker; and
- avoiding the lengthy and unclear process of making an application to the court for compensation, if an agreement is not reached at conciliation.

Box 2

Case study: Delayed deployment

In June 2018, a group of five prospective migrant workers from Kampong Cham registered to work in Thailand with a private recruitment agency after hearing an advertisement on the radio. Each of the prospective migrant workers paid the recruitment agency US\$600, but the agency failed to deploy them to Thailand in August as promised. Instead, the recruitment agency requested that they wait until February 2019, guaranteeing they would receive a full refund of the costs they had paid if they were not deployed. Yet, the company failed again to deploy them in February 2019 and instead asked them to wait until March.

The prospective migrant workers requested a refund. However, the company said they could only provide a partial refund of US\$200. In response, the prospective migrant workers requested the help of LSCW and Phnom Srey Organisation for Development (PSOD). On behalf of the prospective migrant workers, LSCW and PSOD jointly filed a complaint with the PDoLVT of Kampong Cham. After receiving the complaint, the PDoLVT invited both parties to a conciliation meeting. Following the meeting, and within one month of filing the complaint, the prospective migrant workers agreed to receive compensation of US\$300 as well as the documents acquired on their behalf. The recruitment agency indicated that they had expended US\$300 in acquiring these documents, both for the costs of the documents and the agency's costs in obtaining them. No additional sanctions, compensation or fines were paid by the recruitment agency.

The lesser amounts of compensation received, in comparison to those requested, appear to be caused by a power imbalance between migrant workers and respondents. The financial circumstances of workers compounded by loss of livelihoods -usually also part of their complaints- are a key factor in workers accepting agreements for less compensation than they sought. This is an unfortunate feedback loop of inequality, where the party with less money to begin with emerges from the complaints process with even less.

Addressing these issues of power and resource imbalance may support workers to obtain restitution that adequately restores them to the position they were in prior to the violation of their rights by the respondent. Addressing this imbalance could be undertaken by: providing financial support to workers to support the pursuit of an appropriate remedy; and increasing the protections afforded to migrant workers under labour migration legislation – including the elimination of worker-paid fees to private recruitment agencies.

Another consequence of workers accepting agreements of less compensation than they requested, is that respondents may not be adequately penalized for violating a worker's rights and the complaints mechanism may not effectively prevent the reoccurrence of these violations. If a complaint is resolved through the complaints mechanism, the only penalty faced by respondents may be the compensation, if any, that they agree to provide to the complainant. If this compensation amount is low and allows the respondent to make a profit, or make no loss from, committing a violation then there is no incentive for the respondent to respect the labour rights of a migrant worker.

If the respondent to a complaint is a private recruitment agency, they may also be subject to a sanction, in addition to any compensation paid. Private recruitment agencies who fail to place migrant workers in a job abroad within the timeframe agreed in the “job placement contract” (the contract between the worker and the recruitment agency) may be in violation of Article 24 of Sub-decree No. 190, which states:

“recruitment agencies shall be responsible for sending the workers to the workplace in the receiving country according to the contract”. These enterprises may then be sanctioned by the MoLVT in accordance with Article 39 of the Sub-decree, which provides the MoLVT with the power to sanction private recruitment agencies. The MoLVT does not have the power to sanction any other entities under Sub-decree No. 190. If another respondent – such as an employer – violates a migrant workers' rights, there is no power for the MoLVT to impose a sanction on this actor in the Sub-decree. The reasons for this limitation upon sanctions appear to be:

- employers and other recruitment actors in destination countries are not overseen by the MoLVT and may be unable to be sanctioned. The MoLVT's jurisdiction does not extend to destinations, although it may be possible for the MoLVT to “sanction” some destination actors by removing the authorization – per Prakas 047/13^{lviii} - for a private recruitment agency to work with their registered overseas partners; and
- the three sanctions listed in Sub-decree No. 190 relate to the removal of a recruitment agency's authorization to operate, which would not effectively penalize another recruitment actor.

The LSCW has observed that sanctions are rarely imposed upon private recruitment agencies. Sanctions were imposed on respondents in two of the twelve cases that proceeded through the complaints mechanism. In three cases (relating to withheld wages), the employer was the respondent and no power exists for the MoLVT to sanction them. The other nine involved a recruitment agency as a respondent, meaning that MoLVT does have the power to sanction them. These nine cases all related to delayed deployment: a failure by a recruitment agency to place migrant workers abroad, in accordance with the agreed timeframe. Two of these recruitment agencies received sanctions.

Given the amounts of compensation paid by respondents and the lack of sanctions imposed against private recruitment agencies, it appears that the complaints mechanism has not sufficiently penalized respondents. Additionally, and as noted above, where a

conciliation agreement is made for the payment of compensation to a worker, it appears that this agreement cannot be enforced. Thus, there is little to prevent private recruitment agencies and other respondents from repeatedly violating the rights of

workers with impunity. Indeed, LSCW has observed that several agencies have repeatedly violated worker's rights and been respondents in multiple complaints cases during the period of study in this report.

► Key challenges and lessons learned

Drawing from its experience engaging with the Complaint receiving mechanism for migrant workers and offering legal aid to Cambodian migrant workers over several years, the LSCW has identified the following key challenges and systemic barriers facing migrant workers who seek to make complaints.

Access to information

Cambodian migrant workers – including prospective migrant workers – lack critical information to obtain redress for their grievances. The LSCW has observed that many migrant workers were unaware of the existing complaints mechanisms before receiving legal counseling. This appears to be, in part, due to a lack of adequate or appropriate dissemination of information – particularly in rural areas. The 2017 ILO and IOM report, discussed earlier in this paper, identified that over two-thirds of Cambodian migrant workers – both those who migrated through regular and irregular channels – experienced problems in the migration process.^{lix} Yet, compared to this large number with problems, it is likely that only a small fraction file complaints. A 2016 ILO report showed that in total between December 2013 and April 2015, 1,524 Cambodian migrant workers (556 women and 968 men) made complaints through ILO partners to the complaints mechanism that were finalized (either successfully or unsuccessfully).^{lx} An estimated 24,400 workers migrated from Cambodia regularly in 2014.^{lxi} Using these numbers, an estimated 4.4 per cent of workers who migrated regularly made administrative complaints that were finalized through ILO partners.^{lxii} While migrants may have accessed remedies through other channels including in

destinations, there may be a large gap in problems that go unaddressed (at least through formal channels). This may, in part, be due to a lack of information disseminated about this mechanism, however other barriers play a role, as below.

Further, the LSCW has observed that migrant workers are unaware of the labour protections that are contained within Sub-decree No. 190 and its associated Prakas. As an example, workers that the LSCW has supported who were recruited by unlicensed agencies and brokers were unaware that recruitment agencies must be authorized by the MoLVT. Workers have been also generally unaware that private recruitment agencies are required to register the partner agencies that they work with in destination, in accordance with Article 2 of *Prakas 47/13 on private recruitment agency*. Regularly updated lists of authorized private recruitment agencies by country of destination are publicly available on the MoLVT website.^{lxiii} The lists, as of August 2022, do not include the partner agencies in destination. Knowledge of these lists, as well as the addition of partner agencies in destination, could help prevent workers being defrauded by an unregistered agency.

Additionally, the LSCW has observed that the memoranda of understanding (MOUs) signed between Cambodia and migrant worker destinations, which provide specific detail of the rights and responsibilities of different actors in the recruitment process, are often not widely available to the public or even to recruitment agencies. Limited access to these important documents prevents migrant workers and recruitment agencies

from understanding their rights and responsibilities – including in relation to employment contracts and pre-departure training.

A lack of migrant worker knowledge regarding labour protections and the complaints mechanism suggests that the pre-departure training afforded to workers may not be adequate. Increasing the dissemination of information about the recruitment process, the roles and responsibilities of the actors in the process and monitoring the adequacy of pre-departure training may support the protection of workers and increase access to complaints mechanisms and protection of workers' rights. Current levels of information asymmetry result in a power imbalance that brokers, private recruitment agencies and employers can use to put workers in situations of vulnerability or abuse.

Timely proceedings

The timeliness of the finalization of a migrant worker complaint is a key factor in determining the benefit of the outcome for the worker. Long timeframes for the finalization of migrant worker complaints are a significant factor leading migrant workers to accept resolutions that they are not completely satisfied with.

^{lxiv} Of the 12 cases that the LSCW supported through the formal administrative complaints system from April 2017 to October 2020, seven of the cases were resolved within the 30 working days timeframe stipulated by Prakas No. 249. Meeting this timeframe is important, as lengthy proceedings increase the costs that workers must expend to pursue them. In particular, workers may be unable to afford the transport costs required to attend multiple conciliation conferences, if these are undertaken (see box 1).

The timeliness of a complaint's resolution thus impacts the cost that workers must pay to pursue a complaint. The overall expected cost bars some workers from being able or willing to access restitution. To prevent workers from being excluded from making a complaint, the MoLVT could consider establishing a complaints fund that covers some of the costs of pursuing a complaint. Expenses that the fund may cover include: travel costs

for workers to attend conciliation meetings and a subsistence allowance for workers making a complaint in destination, who remain in destination to pursue the complaint. Migrant workers should not be the financial source of the complaints fund and the fund should be available to migrant workers regardless of migration status.

The Philippines has implemented insurance coverage for all migrant workers which, amongst other things, provides financial support to workers pursuing a complaint. Section 37A of *The Migrant Workers and Overseas Filipinos Act 1995* provides that compulsory insurance must be secured for migrant workers by private recruitment agencies. The cost of the insurance cannot be passed on to workers. This insurance must include coverage for a subsistence allowance for workers who are pursuing a complaint in destination.

The experiences of the LSCW suggest that the timeframes and process for the Complaint receiving mechanism for migrant workers in Prakas No. 249 and the Guideline are not consistently implemented by dispute resolution officials. To support the timeliness of dispute resolution for migrant workers, reduce the associated costs of dispute resolution and improve outcomes for workers, the implementation of the timeframes in the formal dispute resolution should be monitored and improved.

Insufficient compensation and sanctions

Insufficient compensation, particularly financial compensation, received by migrant workers and a lack of sanctions imposed upon private recruitment agencies remains a significant further challenge. In the 12 cases, in which the LSCW aided workers to pursue a complaint through the complaints mechanism, migrant workers recouped 59.8 per cent of the compensation they requested. In the nine cases where workers were pursuing a complaint of delayed or non-deployment, the compensation amount requested by workers covered, at most, only a return of the fees they had paid to the recruitment agency. The compensation requested did

not include compensation for the economic loss workers suffered from foregoing other employment opportunities, interest for the delay in payment of compensation or the cost of interest accrued on loans the workers had taken out to pay for recruitment or other expenses. Thus, in the main, private recruitment agencies that collected fees from workers retained some of the money that workers had paid them after failing to meet their obligations under the contract. Ultimately, workers were not restored to the position they were in prior to the violation of their rights but instead suffered a loss following the violation of their rights and receipt of compensation. Conversely, the private recruitment agencies received payment prior to violating the workers' rights and returned only part of this payment to the workers – potentially resulting in no loss or a profit to the recruitment agency following the violation. This would suggest that the recruitment agency was not adequately penalized for its actions and not discouraged from engaging in future violations of workers' rights.

As discussed above, the Guideline does provide some advice to dispute resolution officials regarding the resolution of complaints relating to delayed deployment. In these instances, the Guideline notes that the worker is ordinarily seeking a full refund of all costs and fees paid to a recruitment agency and may potentially also seek additional compensation for lost wages or an expedited placement overseas. However, the LSCW has observed that since the introduction of the Guideline in December 2018, there does not appear to have been any increase in the amount of compensation received by migrant workers or prospective migrant workers. Additionally, the introduction of the Guideline does not appear to have increased the use of sanctions by the MoLVT to encourage private recruitment agencies to resolve the complaints of workers.

In addition to the inadequacy of compensation paid to workers, private recruitment agencies were infrequently sanctioned for their actions. A 2017 ILO study, which looked at 490 resolved worker complaints in Cambodia, identified that 61 per cent of these complaints related to workers not being deployed in accordance with the

timeframes promised in their contracts. However, sanctions were ordered against respondents in only 5 per cent of these complaints, with 4 per cent of the complaints being sanctioned by a warning of the recruitment agency and 1 per cent by a monetary fine.^{lxv} Penalties for unscrupulous actors must be sufficient to deter these actors from perpetrating further violations if they are to be effective.

Article 10(b) of Sub-decree No. 190 provides an opportunity for the MoLVT to use the guarantee deposit of recruitment agencies to compensate workers where the agency does “not fulfill any conditions stipulated in the contract between the recruitment agencies and workers or between the recruitment agencies and the MoLVT” and the agency fails to resolve the issue through conciliation. As noted above, the permission of the recruitment agency is not required for the exercise of this power in the Sub-decree. The LSCW has observed that the MoLVT rarely uses this provision to draw from the recruitment agency's guarantee deposit to compensate migrant workers and has not done so in any case that was aided by the LSCW.

The current Complaint receiving mechanism for migrant workers provides for workers to engage in a conciliation with a private recruitment agency (or other respondent) and, if unable to reach an agreement, to then initiate court proceedings for final adjudication of the dispute. This mechanism limits the compensation that workers receive, as workers may be barred from initiating court proceedings due to their length, cost and complexity. The LSCW has observed that workers who are unable to reach an agreement through conciliation may be unable to initiate court proceedings due to these difficulties. As a result, migrant workers may be ultimately left unable to resolve their complaint if conciliation fails. In order to provide workers with adequate compensation and adequately penalize recruitment agencies for their violations of workers' rights – the use of Article 10(b) of Sub-decree No. 190 could be incorporated into the Complaint receiving mechanism for migrant workers. The following changes could be considered:

- ▶ revising Sub-decree No. 190 to define migrant workers as both workers who have migrated through regular and irregular channels;
- ▶ developing an additional Prakas outlining the process of utilizing the guarantee deposit per Article 10(b) of the Sub-decree; and
- ▶ including an additional step in the formal administrative complaints process that permits workers and recruitment agencies to request an MoLVT official to make a binding decision regarding the complaint, if an agreement is unable to be reached through conciliation.

If complaints could be remitted to the MoLVT for a binding decision, the MoLVT could then assess the complaint, seek any additional information that may be necessary and decide the complaint. The amount of any compensation ordered could then be withdrawn from the recruitment agency's guarantee deposit and used to compensate the worker. Withdrawal of an agency's guarantee deposit should also cover sub-agent's actions. These additional steps should be available to as many migrant workers as possible, including migrant workers who have migrated through regular or irregular channels. Development of this review process would require the drafting of a Prakas or policy guiding the MoLVT decision-making process in utilizing Article 10(b) of Sub-decree No. 190.

A similar review mechanism is incorporated into Vietnamese labour migration legislation.^{lxvi} Workers – or prospective workers – who make a complaint engage first in a conciliation with the private recruitment agency that placed them or agreed to place them in a job abroad. If unable to satisfactorily resolve the dispute through conciliation, the worker may then request the Vietnamese Department of Overseas Labour to assess the complaint and make a decision. This decision, including the ordering of any compensation, is binding. If either party does not agree with the decision, they may initiate court proceedings for the final adjudication of the dispute.

In addition to incorporating an additional step into the formal administrative complaints process, the de facto

practice of sanctioning of private recruitment agencies by the MoLVT could be reviewed. Increasing the use of sanctions and progressively increasing the severity of sanctions against private recruitment agencies that commit repeated violations may act as a deterrent for unscrupulous labour migration actors.^{lxvii} Severity may be increased through higher fines, or longer periods of revoked licenses and bans on application for a new one. Sanctions may also be utilized as a means of encouraging recruitment actors to resolve labour migration violations that they have perpetrated. Advising recruitment agencies that sanctions will be imposed if the agency does not adequately resolve a violation that they have committed, may support the effective resolution of disputes and receipt of adequate compensation by workers.^{lxviii} The Guideline provides guidance relating to the use of sanctions as a means of encouraging dispute resolution and the implementation of the Guideline could be reviewed to ensure it is being consistently applied.

Support for irregular migrant workers

The majority of Cambodian migrant workers migrate through irregular channels and are not afforded adequate protection of their labour rights as a result.^{lxix}

Migrant workers with an irregular migration status are excluded from accessing the formal administrative complaints mechanism in Cambodia. It appears that this exclusion comes from the wording of Sub-decree No. 190 and Prakas No. 249, as outlined above, and also occurs practically as the MoLVT refers migrants with an irregular status to other competent authorities to resolve their complaints. As discussed previously, the Guideline specifically states that migrant workers with an irregular status should be able to utilize the administrative complaints mechanism, however, prevailing wording in Sub-decree No. 190 and Prakas No. 249 appear to exclude these workers from this complaints mechanism. The Cambodian government should consider revising the existing legal framework to ensure that it does not exclude migrant workers with an irregular status from the complaints mechanism.

Additionally, the MoLVT deems complaints received from migrants with an irregular status to be outside their area of competence and instead refers these complaints to anti-trafficking authorities in Cambodia. This includes complaints where no actual trafficking has occurred and complaints from migrant workers who have, after migration, regularized their migration status in Thailand but who initially emigrated through an irregular channel. This practice may prevent them from pursuing a remedy in Cambodia if anti-trafficking authorities cannot pursue a prosecution. Migrant workers with an irregular status may be able to initiate a civil lawsuit against a party who has violated their rights, but the expense, complexity and difficulty of pursuing a civil lawsuit may act as a barrier to this complaint pathway.

Migrant workers with an irregular migration status may also be unable to pursue a complaint in destination. Migrants with an irregular status are frequently excluded from coverage under national labour laws in destination.^{box} Where migrant workers with an irregular status are covered by destination labour law, they may face practical barriers – such as language and cost barriers – to making a complaint, in addition to the risk of being reported to immigration officials if they pursue a claim.^{boxi}

The Cambodian government should consider clarifying the roles and responsibilities of the MoLVT and anti-trafficking and police officials in addressing complaints brought by migrant workers with an irregular status. This clarification should set out clearly the responsibilities of anti-trafficking and other policing authorities in relation to complaints by workers and the responsibilities of the MoLVT to conciliate complaints brought by workers who migrated through irregular channels. This clarification should guide the MoLVT and criminal authorities to determine when a matter does not relate to a criminal complaint and may only be conciliated, and when migrant workers with an irregular status may be able to participate in a conciliation

process whilst anti-trafficking officials are pursuing a criminal matter related to the complaint.^{boxii} The outcomes of complaints by migrant workers with an irregular status – whether criminal or otherwise – should be closely monitored by the MoLVT to ensure that brokers and unlicensed recruitment agencies, and the individuals operating these services, are appropriately penalized. Penalties issued by the MoLVT and anti-trafficking authorities should be sufficient to restore migrant workers to the position they were in prior to the violation of their rights and discourage the operation of unlicensed brokers and recruitment agencies.^{boxiii}

In providing access to the complaints mechanism to migrants with an irregular status, the MoLVT should ensure that workers do not face reprisals resulting from making a complaint. That is, reporting labour rights violations should not result in migrant workers being investigated or prosecuted for their irregular migration status.^{boxiv}

In addition to providing full access to the complaints mechanism, irregular migrant workers' rights should be protected through changes to the legislation. Migrants with an irregular status are more vulnerable to exploitation than those who have utilized regular migration channels. Push factors that encourage irregular migration are high costs and long waits for deployment. To reduce these push factors, the costs of regular migration and the administrative procedures that increase delays in worker deployment should be addressed. In particular, consideration could be given to eliminating the charging of recruitment costs and related fees to migrant workers and instead mandating the payment of these costs by employers in destination. Eliminating worker-paid fees accords with best practice in the regulation of labour migration as contained in Article 7(1) of the ILO's *Private Employment Agencies Convention, 1997 (No. 181)*.^{boxv}

► Recommendations

Based on the LSCW's experience in assisting migrant workers in complaints mechanism proceedings, it is recommended that, to increase workers' rights and improve the enforcement of these rights through complaints mechanisms, considerations should be given to the following:

1. **Consider further developing the Complaint receiving mechanism for migrant workers to incorporate the use of Article 10(b) of Sub-decree No. 190 by the MoLVT to make a binding decision on complaints and increase the implementation of sanctions** – the MoLVT should consider incorporating an additional step in the Complaint receiving mechanism for migrant workers utilizing Article 10(b) of Sub-decree No. 190 to decide workers' complaints where an agreement has not been reached through conciliation. This additional step may improve compensation outcomes for workers and reduce inaccessibility of the complaints mechanism by providing an alternative to pursuing a complaint through the courts if resolution is not found through conciliation.
2. **Provide clear guidance that the Complaint receiving mechanism for migrant workers can be utilized by migrant workers with an irregular status** – the Government should ensure that workers who migrated for work using irregular channels are able to access the complaints mechanism in line with the Guideline. MoLVT should ensure migrant workers with an irregular status are not practically excluded by MoLVT referrals to anti-trafficking authorities, particularly if the case does not meet the criteria for trafficking or the worker does not want to make a criminal complaint. Migrant workers with an irregular status should not be excluded from obtaining restitution due to a gap in the implementation of labour migration and anti-trafficking law. This may necessitate revision of the legal framework and require establishment of clear guidelines regarding
3. **Develop an additional Prakas outlining the process of utilizing the guarantee deposit per Article 10(b) of Sub-decree No. 190, and increase use of the deposit to compensate workers where agencies are not compliant** – the LSCW has observed that though article 10(b) provides an opportunity for the MoLVT to use the guarantee deposit, this is rarely done, and it may be in part because the process is not fully developed. If complaints could be remitted to the MoLVT for a binding decision (per recommendation 2), the MoLVT could decide the complaint, and the amount of any compensation ordered could then be withdrawn from the recruitment agency's guarantee deposit in order to compensate the worker. Withdrawal of an agency's guarantee deposit should also cover sub-agent's actions.
4. **Increase the use of sanctions** – in order to meaningfully deter offenses, the MoLVT could consider increasing the rate of sanctions issued against private recruitment agencies. Sanctions may also be utilized as a means of encouraging recruitment actors to resolve labour migration violations that they have perpetrated. Advising recruitment agencies that sanctions will be imposed if the agency does not adequately resolve a violation that they have committed, may support the effective resolution of disputes and receipt of adequate compensation by workers.
5. **Increase compensation awarded and severity of sanctions** – the MoLVT could consider increasing amounts of compensation awarded in order to financially restore the worker to their situation before the violation. The severity of sanctions to

the responsibilities of the MoLVT and anti-trafficking authorities in relation to complaints made by irregular migrants and how these agencies can coordinate their activities to successfully resolve migrant worker complaints.

recruitment agencies can be increased and include progressive increases in severity of sanctions for repeat violations. Severity may be increased through higher fines, or longer periods of license revocation and prohibition on new applications.

6. Increase dissemination of information about the complaints mechanism and labour migration legislation – the MoLVT and PDoLVT should work with dispute resolution officials, Migrant Worker Resource Centres, non-governmental organizations, trade unions, private recruitment agencies, migrant workers and communities to improve knowledge of the Guideline, the complaints mechanism and labour migration legislation.

7. Operate a telephone system for submission of complaints – the MoLVT should develop a clear and simple phone system for migrant workers to lodge complaints. This would reduce the need for migrant workers to travel to take part in conciliations. The system should be designed in consultation with stakeholders in the migration process and should promote the accessibility of the mechanism for all regardless of status or signing of contract with a recruitment agency. Training should be provided to the staff who receive complaints in responding to workers who have experienced trauma – including gender-based violence. Consideration should be given to recruiting women to receive complaints.

8. Ensure that the timeframes and procedure for the Complaint receiving mechanism for migrant workers established in Prakas No. 249 and the Guideline are implemented – the MoLVT should ensure that dispute resolution officials have received appropriate training and that there are sufficient dispute resolution officials to meet the 30-working day timeframe for resolution of complaints.

9. Capacity building of dispute resolution officials – dispute resolution officials, Cambodian Embassy and Consulate staff, MRC staff and staff of civil

society actors who work with migrant workers should receive appropriate and gender-sensitive training to conciliate disputes and support the making of complaints. Consideration should be given to recruiting more women as dispute resolution officials and amongst Cambodian Embassy and Consulate staff – with a goal of women accounting for at least half of the dispute resolution officials and Embassy and Consulate staff conciliating disputes in destination employed. The recruitment of women officials may support outcomes for women migrant workers who may be discouraged from making a complaint by the need to disclose sensitive information to a male dispute resolution official.

10. Develop an inclusive complaints fund – the MoLVT should consider establishing a fund that supports workers in regular and irregular status to pursue a complaint by covering some of the costs workers incur in doing so, including: travel costs for workers to attend conciliation meetings and a subsistence allowance for workers making a complaint in destination. Migrant workers should not provide the financial source of this fund, and this should also be available to workers whose cases do not have access to guarantee deposit funds.

11. Reform labour migration legislation to reduce push factors that lead migrant workers to migrate through irregular channels – the MoLVT should consider simplifying administrative procedures to encourage the use of regular migration channels by workers. These changes should include:

- a. Promote fair recruitment practices by eliminating worker-paid recruitment fees in line with Article 7(1) of the ILO's Convention No. 181, recruitment fees should instead be borne by employers in destination; and
- b. reducing the length of time that workers wait prior to placement in destination.

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- ⁱ ILO, “Working-age population by sex, age and citizenship (thousands)”, ILOSTAT database, accessed 29 June 2022. Cambodia, Ministry of Planning, General Secretariat for Population and Development, *National Population Policy: 2016-2030*, December 2015, p. 7.
- ⁱⁱ ILO, *TRIANGLE in ASEAN Programme Quarterly Briefing Note: Cambodia (January-March 2019)*, p. 1.
- ⁱⁱⁱ United Nations Department of Economic and Social Affairs, *International Migration Stock*, 2020.
- ^{iv} ILO, “Outflow of nationals for employment by sex and country of destination (Persons)”, ILOSTAT database, accessed 29 June 2022.
- ^v ILO, “Outflow of nationals for employment by sex and country of destination (Persons)”.
- ^{vi} Anna Olsen and Veth Vorn, *COVID-19: Impact on Cambodian Migrant Workers* (ILO, 2020), p. 2.
- ^{vii} Lay Samean, “Over 260K Migrants Return since COVID-19 Outbreak”, *The Phnom Penh Post*, 21 December 2021.
- ^{viii} Thailand, Ministry of Labour, *MOL Visits and Monitors Import of First Batch of Foreign Workers Through MOU at Khlong Luek Immigration Checkpoint in Sa Kaeo*, 2022.
- ^{ix} Benjamin Harkins, Daniel Lindgren and Tarinee Suravoranon, *Risks and Rewards: Outcomes of Labour Migration in South-East Asia*, (ILO and IOM, 2017), p. 34.
- ^x Anna Olsen and Veth Vorn, *COVID-19: Impact on Cambodian migrant workers* (ILO, 2020), p. 4.
- ^{xi} Harkins et al., p. 36.
- ^{xii} Brett Dickson and Andrea Koenig, *Assessment Report: Profile of Returned Cambodian Migrant Workers* (IOM, 2016), p. 8.
- ^{xiii} Harkins et al., p. 36.
- ^{xiv} Harkins et al., p. 34.
- ^{xv} Harkins and Åhlberg, p. 26.
- ^{xvi} Note that some Cambodian migrant workers try to access complaint resolution in countries of destination before returning to Cambodia. See Harkins and Åhlberg.
- ^{xvii} *Sub-Decree No. 190 on the management of the sending of Cambodian workers abroad through private recruitment agencies 2011* (Cambodia).
- ^{xviii} *Prakas No. 249 on the complaint receiving mechanism for migrant workers 2013* (Cambodia).
- ^{xix} *Guideline on dispute resolution for migrant worker grievances 2018* (Cambodia).
- ^{xx} LSCW, *Domestic Workers and Sub-Decree 190: Time to Protect Cambodia's Migrants*, 2013, p. 6.
- ^{xxi} *Sub-Decree No. 190*, art. 10.
- ^{xxii} *Sub-Decree No. 190*, art. 8.
- ^{xxiii} *Sub-Decree No. 190*, art. 4.
- ^{xxiv} *Prakas No. 249*, arts. 1-3.
- ^{xxv} *Sub-Decree No. 190*, art. 4.
- ^{xxvi} *Prakas No. 249*, art. 2.
- ^{xxvii} *Prakas No. 249*, art. 3.
- ^{xxviii} *Prakas No. 249*, art. 4.
- ^{xxix} *Prakas No. 249*, art. 4.
- ^{xxx} *Prakas No. 249*, arts. 7-8.
- ^{xxxi} *Prakas No. 249*, art. 9.
- ^{xxxii} *Prakas No. 249*, art. 9.
- ^{xxxiii} *Prakas No. 249*, art. 10.
- ^{xxxiv} *Prakas No. 249*, art. 8.
- ^{xxxv} *Sub-Decree No. 190*, art. 10(b).
- ^{xxxvi} *Guideline on dispute resolution for migrant worker grievances 2018* (Cambodia), p. 2.
- ^{xxxvii} *Guideline on dispute resolution for migrant worker grievances 2018*, pp. 10-12.
- ^{xxxviii} *Guideline on dispute resolution for migrant worker grievances 2018*, pp. 12-14. Emphasis added.
- ^{xxxix} *Guideline on dispute resolution for migrant worker grievances 2018*, p. 15.
- ^{xl} *Guideline on dispute resolution for migrant worker grievances 2018*, p. 16. *Sub-Decree No. 190*, art. 30.
- ^{xli} *Prakas 252 on on-site service of the private recruitment agency and repatriation 2013*, (Cambodia), arts. 4-7.
- ^{xlii} *Prakas 252*, art. 3.

xlili *Prakas 252*, art. 4.

xliv *Prakas 252*, art. 4.

xlv *Prakas 252*, art. 5.

xlvi *Prakas 252*, arts. 6-7.

xlvi *Prakas 252*, arts. 4-7.

xlvi *Prakas 252*, art. 6.

xlvi ILO, *Assessment of the Complaints Mechanism for Cambodian Migrant Workers*, 2016, p. 11.

^l *Prakas 253 on minimum standards of job placement services abroad contract 2013*, (Cambodia), annex 1, art. 4.

^{li} *Law on the Suppression of Human Trafficking and Sexual Exploitation 2008* (Cambodia), art. 12.

^{lii} *Law on the Suppression of Human Trafficking and Sexual Exploitation 2008*, arts. 13-16.

^{liii} United States of America, Office to Monitor and Combat Trafficking in Persons, *2021 Trafficking in Persons Report: Cambodia*, 2021.

^{liv} ILO, 2016, p. 18.

^{lv} ILO, 2016, p. 5.

^{lvi} IOM, *Practical Guidance for Effective Remediation Schemes*, 2021, p. 24.

^{lvii} The MoLVT has reported attempting to include the costs of migrant worker travel to attend a conciliation as part of the compensation agreement and notes that recruitment agencies may pay for one instance of a worker's travel costs to the conciliation meeting, but are less likely to pay for any additional travel expenses. ILO, 2016, p. 10.

^{lviii} *Prakas 047/13 on private recruitment agency 2013*, (Cambodia), art. 2.

^{lix} Harkins et al., p. 36.

^{lx} ILO, 2016, p. 5.

^{lxi} United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP), "[Labour Migration Outflow Database](#)", accessed 3 March 2022.

^{lxii} Complaints data for 17 months from December 2013 to April 2015 was prorated to estimate 12 months of complaints over the period, then divided by the 2014 ESCAP figure of migrants in a regular status, see previous footnote.

^{lxiii} Cambodia, Ministry of Labour and Vocational Training, [ក្រសួងការងារនិងបណ្តុះបណ្តាលវិជ្ជាជីវៈ](#).

^{lxiv} ILO, 2016, p. 11.

^{lxv} Harkins and Åhlberg, p. 39.

^{lxvi} *Decree providing for settlement of complaints about and denunciations of labour, vocational education, Vietnamese guest workers, employment, occupational health and safety and hygiene 2018*, (Viet Nam), No. 24/2018/ND-CP.

^{lxvii} Harkins and Åhlberg, p. 8.

^{lxviii} Maria Luz Vega and René Robert, *Labour Inspection Sanctions: Law and Practice of National Labour Inspection Systems* (ILO, 2013), p. 20.

^{lxix} Max Tunon and Benjamin Harkins, "Addressing Irregular Migration and Violations of Migrant Workers' Rights", in *Safeguarding the Rights of Asian Migrant Workers from Home to the Workplace* (ADB, OECD and ILO, 2017).

^{lxx} Bassina Farbenblum and Laurie Berg, *Migrant Workers' Access to Justice for Wage Theft: A Global Study of Promising Initiatives*, (Migrant Justice Institute, 2021), p. 23.

^{lxxi} Harkins and Åhlberg, p. xiii.

^{lxxii} Rebecca Napier-Moore, *Closing the Migration-Trafficking Protection Gap: Policy Coherence in Myanmar* (ILO, 2021), p. 59.

^{lxxiii} United States of America, Office to Monitor and Combat Trafficking in Persons.

^{lxxiv} Platform for International Cooperation on Undocumented Migrants (PICUM), *Undocumented Migrant Workers: Guidelines for Developing an Effective Complaints Mechanism in Cases of Labour Exploitation or Abuse*, 2017.

^{lxxv} United States of America, Office to Monitor and Combat Trafficking in Persons.

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