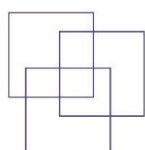




Assessment of the complaints mechanism for Cambodian migrant workers



Tripartite Action to Protect the Rights of Migrant Workers
within and from the Greater Mekong Subregion
(GMS TRIANGLE project)

Regional Office for Asia and the Pacific

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First published 2016

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Assessment of complaints mechanism for Cambodian migrant workers / ILO Regional Office for Asia and the Pacific, Tripartite Action to Protect the Rights of Migrant Workers within and from the Greater Mekong Subregion (GMS TRIANGLE project). – Phnom Penh : ILO, 2016

ISBN: 9789221304289; 9789221304296 (web pdf)

ILO Regional Office for Asia and the Pacific, Tripartite Action to Protect the Rights of Migrant Workers within and from the Greater Mekong Subregion (GMS TRIANGLE project)

migrant worker / workers rights / complaint / dispute settlement / recruitment / judicial procedure / good practices / role of ILO / Cambodia

14.09.2

Also available in Cambodian: Assessment of complaints mechanism for Cambodian migrant workers (ISBN 9789228304282, 9789228304299 (web pdf)

ILO Cataloguing in Publication Data

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Printed in Cambodia

Foreword

Labour migration provides an opportunity to earn higher incomes and upgrade knowledge and skills. However, without effective protection measures these potential benefits of migration cannot be harnessed. For Cambodian migrant workers who face problems, either during the recruitment process, while working abroad or after returning home, access to an effective complaint mechanism is critical. The timely resolution of a grievance can be the difference between a worker returning to Cambodia with confidence in their ongoing financial and occupational security, or returning without access to restitution where harm has been suffered, or a burden of debt that cannot be repaid.

This report is the first assessment of the efficacy of the complaints mechanism available to migrant workers, and explores the complexities facing workers and authorities when a complaint is lodged. *Assessment of the Complaints Mechanism for Cambodian Migrant Workers* presents the results of an assessment that considered the legislation and policy governing migrant worker complaints and the experiences of migrant workers and authorities in navigating the complaints system. This report provides important context regarding the challenges that arise during the complaints process, prompting recommendations to strengthen the system.

The assessment finds that the legislative framework launched in December 2013 to enable complaints has provided migrant workers a clear avenue and process for lodging complaints and receiving compensation. The assessment finds that there has been considerable use of the complaints mechanism by migrant workers and that staff from the Ministry of Labour and Vocational Training (MOLVT), Provincial Departments of Labour and Vocational Training (PDOLVT), Migrant Worker Resource Centres (MRCs), trade unions and service providers have demonstrated strong commitment to pursuing migrant workers' right to justice through the dispute resolution process. The assessment also reveals inconsistencies in the implementation of these processes, and provides recommendations to address these gaps.

The International Labour Organization (ILO) Tripartite Action to Protect Migrant Workers within and from the Greater Mekong Subregion (GMS TRIANGLE project) has supported labour migration governance in Cambodia through improving policy legislation, capacity building of stakeholders, and support to migrant workers, including in the receipt and resolution of complaints. This assessment of the complaints mechanism will contribute to improving migration governance in Cambodia by initiating analysis and beginning an evidenced-based discussion on the complaints process with stakeholders.

The ILO is grateful for the support for this assessment from its partners, in the research and validation of this report. The ILO would like to acknowledge the MOLVT, the PDOLVTs, and MRCs in Prey Veng, Kampong Cham and Battambang, as well as Legal Support for Children and Women and the National Union Alliance Chambers of Cambodia for their role in facilitating the complaints mechanism, and beginning to examine how this process can enable greater access to justice for Cambodia's migrant workers.

Maurizio Bussi

Officer-in-Charge

ILO Country Office for Thailand, Cambodia and Lao People's Democratic Republic

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Acknowledgments

This report was prepared by Jane Hodge, with support from the ILO GMS TRIANGLE project team: Rim Khleang, Anna Olsen, Max Tunon, Jackie Pollock, Benjamin Harkins and Kristin Letts. The authors are grateful to the key informants that agreed to be interviewed as part of this assessment, particularly the staff of various government and non-government agencies involved in various stages of complaints resolution for migrant workers, including the MOLVT, PDOLVTs and MRCs in Prey Veng, Kampong Cham and Battambang (run by Phnom Srey Organization for Development (PSOD), the Cambodian Labour Confederation (CLC) and the National Employment Agency (NEA) respectively), Legal Support for Children and Women (LSCW) and the National Union Alliance Chambers of Cambodia (NACC). The report also benefited greatly from the inputs of a broader set of stakeholders from the Cambodian Government, NGOs, recruitment agencies and trade unions during the validation workshop in September 2015. The production and publication of this report was supported by the Australian Government.

Executive Summary

Establishment of Cambodian complaints mechanism

Until 2013, there was no specific complaints channel for Cambodian migrant workers who had suffered abuse, exploitation or other poor treatment by recruitment agencies, brokers or employers. Instead, these workers and their families only had the opportunity for redress through the regular justice system; a system that is difficult for the average Cambodian to access, and often lacks understanding of the specific challenges faced in cases of access to justice across borders, human rights entitlements, recruitment regulation and practices required for appropriate redress of migrant workers. The development of a mechanism for migrant workers to lodge complaints has helped to address some of those gaps, and also presented the opportunity to strengthen recruitment regulation by identifying unethical recruiters and to impose sanctions for non-compliance with Cambodian law.

In 2012, the MOLVT, requested technical assistance from the ILO GMS TRIANGLE project to draft a number of *Prakas* (ministerial orders) to support the implementation of Sub Decree No. 190 on the Management of Sending Cambodian Workers Abroad through Private Recruitment Agencies. The ILO GMS TRIANGLE project supported MOLVT to form a working group of tripartite constituents to draft the *Prakas*, including *Prakas* No. 249 on Complaint Receiving Mechanism for Migrant Workers. *Prakas* No. 249 outlines the complaints process and the rights and responsibilities of the MOLVT, the PDOLVTs, the complainant and the respondent. In January 2014, MOLVT opened a MRC in Phnom Penh supported by the ILO GMS TRIANGLE project, with the primary function to support the resolution of disputes in line with *Prakas* No. 249.

Purpose of assessment

After a period of 18 months in which the MOLVT and PDOLVTs in Kampong Cham, Prey Veng and Battambang received complaints from migrant workers and conducted dispute resolutions in line with *Prakas* No. 249, it was deemed timely to conduct an assessment of the effectiveness of the processes and identify areas for improvement. This assessment examines how this process has been operating based on consultations with ILO GMS TRIANGLE project partners who are service providers in the complaints procedure: MOLVT, PDOLVTs, MRC implementing partners, trade unions, and legal aid NGOs. Members of the Association of Cambodian Recruitment Agencies (ACRA), and migrant workers who had grievances and attended the reports' validation workshop were also interviewed. Engaging in this assessment process demonstrates the MOLVT's commitment to effective implementation of the Labour Migration Policy goals, particularly policy goal 10 regarding protection and empowerment of migrant workers: that migrants' access to justice is facilitated through implementing the complaints mechanism in an effective, gender-sensitive and timely manner, and that in the event of a crime, judicial processes are initiated to ensure an adequate penalty, and deterrent.

Assessment findings

The assessment reveals that the introduction of the *Prakas* has given migrant workers and their family members a clear avenue and process for lodging complaints and receiving compensation that did not exist prior to its introduction. There has been a high uptake of the complaints mechanism by migrant workers, with 501 complaints cases resolved for 1,524 workers (men = 968, women = 556), and over US\$218,638 ordered in compensation in cases of exploitation and abuse. Although some cases have faced delays, the majority of cases are being handled in a timely manner with 78 per cent of complaints

being resolved in under three months. Staff from the MOLVT, PDOLVTs, MRCs, trade unions and service providers have demonstrated high levels of commitment to assisting migrant workers in access to justice in the complaints and dispute resolution process.

As the complaints process is still new, there are a number of gaps in implementation found in the assessment. These include variation in complaints procedures and deviation from official processes, gaps in compensation sought by migrant workers and compensation received, few sanctions imposed on private recruitment agencies (PRAs) that violate the law, lack of resources in embassies to adequately deal with migrant workers' complaints overseas, low capacity at PDOLVT level to run dispute resolution, and difficulty in maintaining the complaints database. Additional barriers also exist that impede migrant workers' ability to lodge complaints in the first place.

The assessment provides recommendations to address these issues, including procedural improvements that could contribute to the efficacy of the complaints process; the development of dispute resolution guidelines and set costs and fees for migration; adequate resourcing of Cambodian embassies in major destination countries; suggestions for reducing barriers that prevent migrant workers from lodging complaints; and capacity building on dispute resolution for staff of the MOLVT, PDOLVTs, MRCs and other service providers. The Workshop to Reflect on the Implementation of the Complaints Mechanism for Migrant Workers held in September 2015 reviewed these recommendations. Participants' inputs have been incorporated into this assessment and recommendations report, with the workshop serving as the beginning of important and frank evidenced-based discussion on improvement of the complaints process.

Acronyms

ACRA	Association of Cambodian Recruitment Agencies
CLC	Cambodian Labour Confederation
GMS TRIANGLE	ILO Tripartite Action to Protect Migrant Workers within and from the Greater Mekong Subregion from Labour Exploitation
PSOD	Phnom Srey Organization for Development
ILO	International Labour Organization
LSCW	Legal Support for Children and Women
MOFA&IC	Ministry of Foreign Affairs and International Cooperation
MOLVT	Ministry of Labour and Vocational Training
MRC	Migrant Worker Resource Centre
NACC	National Union Alliance Chambers of Cambodia
NEA	National Employment Agency
NGO	non-governmental organization
PDOLVT	Provincial Department of Labour and Vocational Training
PRA	private recruitment agency

Chapter 1: Purpose, methodology and limitations of assessment

1.1 Purpose of assessment

A number of government and non-government bodies are collecting and responding to migrant worker complaints in accordance with *Prakas* No. 249. These include the MOLVT and PDOLVTs in Kampong Cham, Prey Veng and Battambang, the ILO supported MRCs in these three provinces (run by Phnom Srey Organization for Development (PSOD), the Cambodian Labour Confederation (CLC) and the National Employment Agency (NEA) respectively), trade unions, and legal aid NGOs. After 18 months of *Prakas* No. 249 being operational, an assessment of the complaints process was commissioned to assess its effectiveness and identify areas for improvement.

Key questions the assessment set out to address included:¹

- What types of grievances are migrant workers lodging and what is the best way to address or regulate these complaints to ensure the most just outcomes for migrant workers?
- What are the gaps in service providers' knowledge and capacity? What needs to be included in dispute resolution training or information dissemination to roll out dispute resolution processes to the remaining 22 PDOLVTs that are not carrying out dispute resolution processes?
- What are the challenges and barriers in lodging and resolving complaints and how can these be overcome?
- How can the coordination between MOLVT, PDOLVTs, MRCs, NGOs and trade unions be improved in the complaints process?
- What impact has the complaints process had on government regulation of private recruitment agencies, and suspensions or revocations of licenses?
- How is the complaints database operating? How is the information of complaints and dispute resolution results coordinated between PDOLVTs and MOLVT? How could this be improved?
- What are the gaps between compensation sought by migrant workers and compensation received in the complaints process and how could this better be resolved?

1.2 Assessment methodology

The scope of the assessment was to examine the complaints processes' current service providers. Interviews were conducted with ILO GMS TRIANGLE project partners who are service providers in the complaints procedure; MOLVT, PDOLVTs and MRCs in Prey Veng run by CLC, Kampong Cham run by PSOD and Battambang run by NEA, the legal aid NGO, LSCW, and the trade union NACC. All ILO GMS TRIANGLE project partners' biannual reports since 2011 were examined, and monitoring and assessment data on cases was collected for analysis. Some nominated member agencies of ACRA, and representative migrant workers who attended the reports' validation workshop were also interviewed. Inputs were also provided from other government departments, trade unions, NGOs and international organizations during the validation workshop.

¹ See assessment questionnaires at Annex 1 and Annex 2.

1.3 Limitations of assessment

Timely collection of data was difficult as the MOLVT's labour migration and complaints database was not fully functioning at the time of the assessment. Due to the current nature of data collection between MRCs, PDOLVTs, and MOLVT it was difficult to obtain a data set of cases received (the total amount of cases lodged by migrant workers), as opposed to a data set of cases closed (cases which have been resolved). This issue occurs as some cases have been escalated from MRCs to PDOLVTs to MOLVT (in line with the procedures outlined in the *Prakas*), but due to the lack of an information management system, it is very difficult to determine which cases received have already been accounted for and double counting may occur. Comparing cases received to cases closed would also be a good measure of efficacy of the complaints mechanism.

Chapter 2: Migration in Cambodia

With 300,000 young Cambodians entering the labour market each year, a youth unemployment rate of 3.8 per cent, and no nationally set minimum wage, more Cambodian workers are looking to employment opportunities and higher wages offered abroad. In 2010, the World Bank estimated there were 350,485 Cambodian workers migrating for employment.² However, much higher numbers of migrant workers move irregularly than regularly, to Thailand in particular, and because of porous borders and seasonal migration flows, it is difficult to obtain exact figures. A more realistic sense of the numbers of Cambodians migrating for work can be seen in the Thai Government data, where in the three months between July to October 2014 alone, 693,630 Cambodian migrant workers and 42,395 dependents registered in Thailand.³

Thailand is the main country of destination for Cambodian migrant workers, and due to the relative ease of border crossing, less than 10 per cent of people migrate through the legal channel established under the Memorandum of Understanding (MOU) between the two countries in 2003.⁴ The number of migrants using legal channels to migrate to Thailand increased from 9,476 in 2007 to 34,804 in 2012,⁵ but then declined again in 2013, at least in part due to the repeated regularization opportunities in Thailand. Up until 2010, Malaysia was almost equal to Thailand as the major destination country for Cambodian migrant workers under MOU arrangements; from 2005 to 2010, legal migration to Malaysia increased from 1,776 to 16,394.⁶ However, following a series of reports of abuse and exploitation, in October 2011 the Cambodian Government imposed a temporary ban on sending domestic workers to Malaysia, thus the number of migrant workers going to Malaysia has dropped dramatically. Since 2010, the Republic of Korea has become the second most popular destination for Cambodian workers to migrate through an MOU, with 27,384 Cambodians migrating to the Republic of Korea for work since 2006.

Cambodian women migrant workers tend to migrate into low-skilled jobs in the construction, agriculture, manufacturing, entertainment, hospitality and domestic work industries. Reports of abuse and exploitation of domestic workers have been recorded in all countries where Cambodian domestic workers are employed.⁷ With ageing populations in Thailand, Malaysia and Singapore, demand for domestic workers in the region is expected to continue to grow. At the same time, countries like Indonesia and the Philippines that have typically deployed large numbers of domestic workers are looking to reduce the number migrating abroad to work in the sector. As of November 2014, 299 Cambodian domestic workers had been deployed to Singapore as part of a pilot project. The pilot project will send 400 Cambodian domestic workers to Singapore through private recruitment agencies (PRAs) to see if this is a viable migration option in the future.

In contrast, the fishing sector is almost entirely male dominated, and employs significant numbers of Cambodian migrant men. Since 2010, there have been increased reports of Cambodian men encountering exploitative and abusive working conditions on fishing boats in South Africa, Senegal,

² The World Bank. *Migration and Remittances Factbook*, <http://data.worldbank.org/data-catalog/migration-and-remittances> [accessed 15 May 2015].

³ Ministry of Interior, Thailand, 2014.

⁴ Tunon, M., Rim, K. 2013. *Cross-border labour migration in Cambodia: considerations for the national employment policy*. ILO Regional Office for Asia and the Pacific Working Paper Series. Bangkok: ILO.

⁵ Cambodian Department of Employment and Manpower, MOLVT, figures from 2005-2014.

⁶ *ibid.*

⁷ *Labour Migration Policy for Cambodia 2015-2018*, Ministry of Labour and Vocational Training.

Fiji, Mauritius, Thailand and other destinations.⁸ In the first quarter of 2012 alone, the Ministry of Foreign Affairs and International Cooperation (MOFA&IC) and the Ministry of Interior (MOI) each reported between 170 and 200 cases of exploitation and abuse involving fishers. Whilst the Cambodian Government has not put a formal ban on recruiting and sending Cambodians overseas to work on fishing vessels, the Government has made several statements indicating they do not support regular migration through PRAs into the fishing industry.

2.1 Facilitating access to justice for migrant workers and strengthening recruitment regulation: development of a complaint mechanism in Cambodia

In 2012 the MOLVT identified that a complaint mechanism specifically for migrant workers was needed to ensure that Cambodian migrant workers were protected against abuse, exploitation or other poor treatment. This system needed to be accessible to Cambodian migrant workers and their family members, and responsive to the specific challenges faced in cases of access to justice across borders, human rights entitlements, recruitment regulation and practices required for appropriate redress of migrant workers' grievances.

In December 2013 the MOLVT launched *Prakas* (a ministerial order) No. 249 on Complaint Receiving Mechanism for Migrant Workers (see *Prakas* in annex 4) to outline a clear and accessible framework for workers who have experienced exploitation or abuse to lodge complaints and seek redress from employers and recruitment agencies. This *Prakas* supported the implementation of Sub Decree No. 190 on the Management of Sending Cambodian Workers Abroad through Private Recruitment Agencies (passed in 2011), which alluded to the establishment of a complaints mechanism. *Prakas* No. 249 outlines the MOLVT's responsibility to establish a section to receive complaints concerning migrant workers at the central (MOLVT) and provincial (PDOLVT) levels, and advise, conciliate and resolve cases or refer them to other appropriate institutions. *Prakas* No. 249 outlines the content needed to lodge a complaint, the timeframes for conciliation, and the rights and responsibilities of the MOLVT, PDOLVTs, the complainant and the respondent during the complaints process. Both regular and irregular migrant workers can lodge complaints through the complaints process.

In January 2014, MOLVT opened an MRC in Phnom Penh with the primary function to support the resolution of disputes in line with *Prakas* No. 249. To operationalize *Prakas* No. 249 the MOLVT, supported by the ILO GMS TRIANGLE project, designed complaints forms to be used throughout the process (see Annex 3) and worked on establishing a labour migration and complaints database, developed with support from Winrock International.

After the adoption of *Prakas* No. 249, the ILO GMS TRIANGLE project supported MOLVT to conduct trainings on the complaints process with Provincial Governors, Chief of Bureaus of the PDOLVTs, provincial chairpersons of the Provincial Committees to Combat Trafficking (PCCTs) in all 25 provinces; all member agencies of the Association of Cambodian Recruitment Agencies (ACRA); NGOs; and staff from ILO GMS TRIANGLE supported MRCs.

⁸ *Labour Migration Policy for Cambodia 2015-2018*, Ministry of Labour and Vocational Training.

Chapter 3: Complaints mechanism achievements

The complaints process is demonstrating improved access to justice for migrant workers. As can be seen in the summary of closed complaints cases below (table one), uptake of complaints procedures among men and women migrant workers and their family members, MOLVT, PDOLVTs and service providers, has been high. Closed cases are defined as cases that have been resolved or cases that have been dropped in situations where migrant workers cannot be contacted after lodging the complaint (seven cases in the above data), or cases that have been found to be without grounds.

With 501 cases closed for 1,524 complainants (complainants can lodge group complaints if they have the same complaint against the same respondent) and over US\$218,638 received by migrant workers in compensation, it is evident that the introduction of the *Prakas* has given migrant workers a clear avenue and process for lodging complaints and receiving compensation that did not exist prior to its introduction.

In table one, it can be seen that the low amount of compensation requested reflects migrant workers' lack of knowledge on what they can request in lodging a complaint. The term 'compensation received', as used in table one and figure three, means a recompense of money outlaid by or owed to migrant workers, not any financial compensation on top of the amount requested. To date, there have been no compensation payments awarded on top of any refund of migrant workers' money, even if costs were incurred as a result of delay of either pay or in being sent abroad. It is noted that in the 'compensation requested' and 'compensation received' categories in table one, the actual amount of compensation is higher than in the data collected, as it was not always recorded in a dollar figure, in some cases it was just noted that financial compensation was requested or received. The fact that in some cases financial compensation was just noted as requested or received rather than recorded in a dollar amount explains why the amount of compensation received is higher than the amount requested – this does not directly correlate with specific cases but reflects the total cumulative data. In figure one, Cambodia is situated next to four of the other countries where the ILO GMS TRIANGLE project operates. Thailand and Malaysia are destination countries, and compensation could be higher here because complaints are overwhelmingly about wage related abuses (for example, non-payment and payment below the minimum wage), and these are typically much easier to resolve while migrants are in-country. Also, the MRCs in Malaysia and Thailand pursued some large cases where entire factories were not being paid or were underpaid, resulting in large amounts awarded.

Although some cases have faced delays, the majority of cases are being handled in a timely manner with 78 per cent of complaints being resolved in under three months. In 'type of sanction applied', an administrative penalty includes actions such as suspending or revoking a PRA's license so they cannot send workers overseas. However, it remains unclear how many PRA licenses have been permanently revoked in Cambodia. A fine refers to a charge to the respondent on top of returning the money owed to migrant workers. No warning letters have yet been issued from the complaints process, and whilst a prison sentence has not been a direct result from the MOLVT complaints process, this does not mean that cases referred from the MOLVT to either judicial proceedings or other parties such as the Department of Anti-Human Trafficking and Juvenile Protection at the Ministry of Interior (MOI), have not resulted in prison sanctions.

In figure two, Cambodia is compared with four of the other countries where the ILO GMS TRIANGLE project operates. As can be seen across the five countries, respondents usually receive no penalty in cases of migrant worker complaints. This could be for a number of reasons. As the rate of

resolution of cases is quite high, it is possible that authorities are reluctant to hold registered PRAs and employers accountable for abuses against migrant workers beyond providing a resolution such as return of fees. As a result, most of the sanctions are being applied to brokers or other parties operating illegally.

Table one: Summary of Cambodian closed complaints cases⁹ (cumulative as of April 2015)¹⁰

Number of cases closed	501
Number of complainants¹¹	1,524 (Men = 968 / Women = 556)
Compensation requested	US\$152 757 ¹²
Compensation received	US\$218 638 ¹³
Duration of cases	<1 month: 101 1-3 months: 288 4-6 months: 26 7-12 months: 39 >1 year: 16 Unknown: 31
Mechanism for resolution	Administrative process: 355 Informal mediation: 123 Court: 16 Dropped: 7
Type of sanction applied	None: 494 Fine: 5 Administrative penalty: 2 Warning: 0 Prison: 0

⁹ Cumulative cases supported by the ILO from MOLVT, PDOLVTs in Kampong Cham, Prey Veng and Battambang, LSCW, NACC and the MRC in Kampong Cham. The MRCs in Prey Veng and Battambang referred all the cases they received to PDOLVT, MOLVT or other service providers for resolution.

¹⁰ Beginning time periods vary by service provider depending on when they started collecting and resolving complaints cases.

¹¹ There can be more than one complainant per case provided they have the same complaint against the same respondent.

¹² Actual amount of compensation requested will be higher in reality, as it was not always recorded as a dollar figure – in some cases it was just noted that financial compensation was requested.

¹³ Actual amount of compensation will be higher in reality, due to not all amounts being recorded by service providers – in some cases it was just noted that compensation was received.

Figure one: Compensation requested and received across countries in which the ILO GMS TRIANGLE project supports MRCS in USD

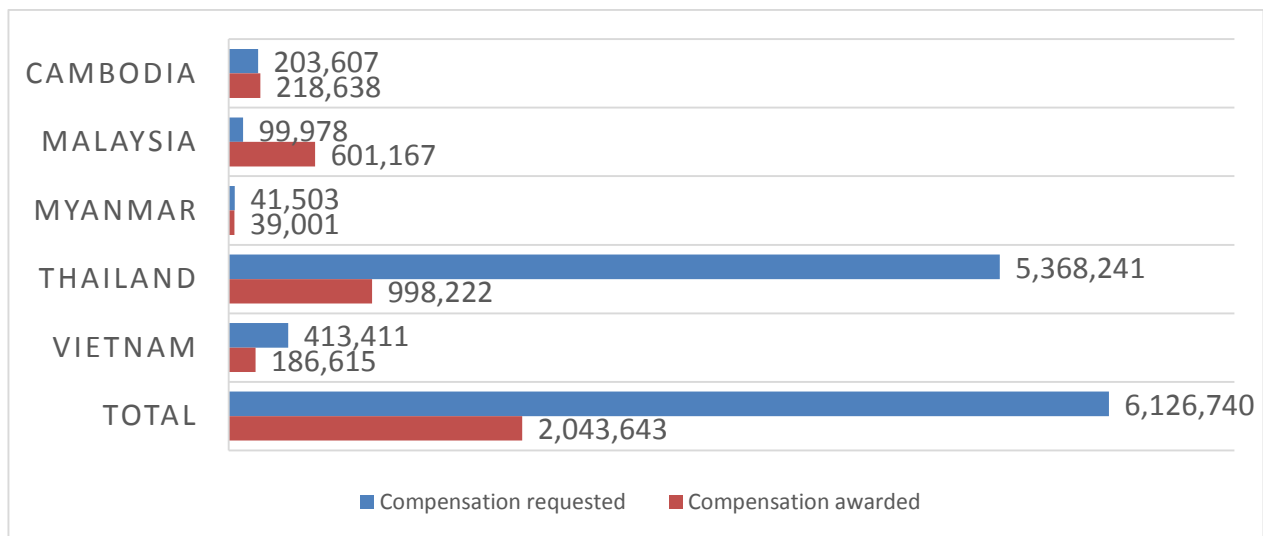


Figure two: Type of sanction applied across countries in which the ILO GMS TRIANGLE project supports MRCS

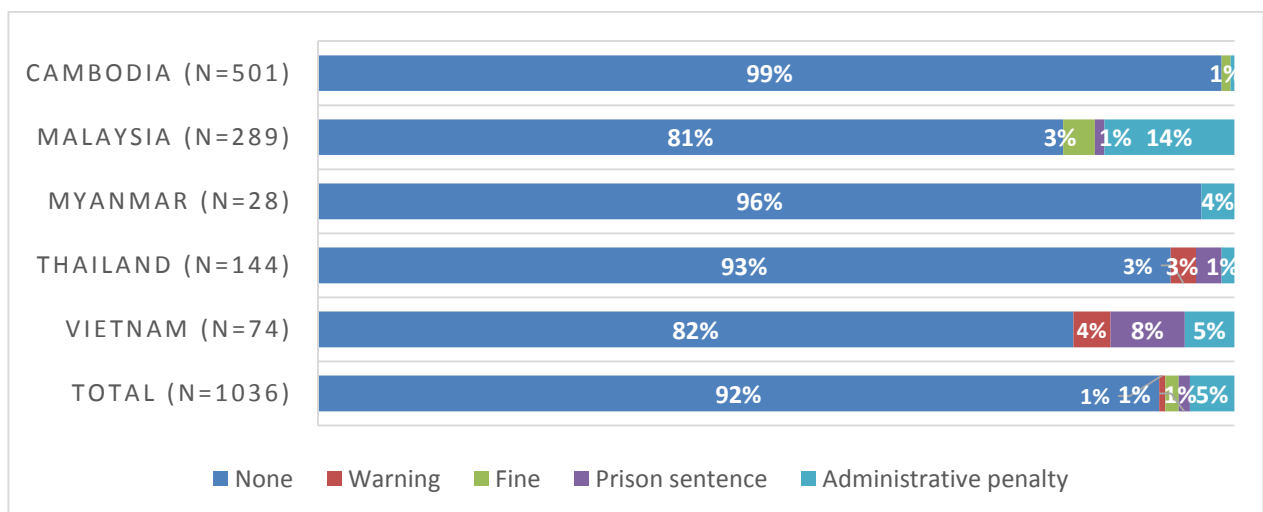


Figure three: Subject of migrant worker complaints

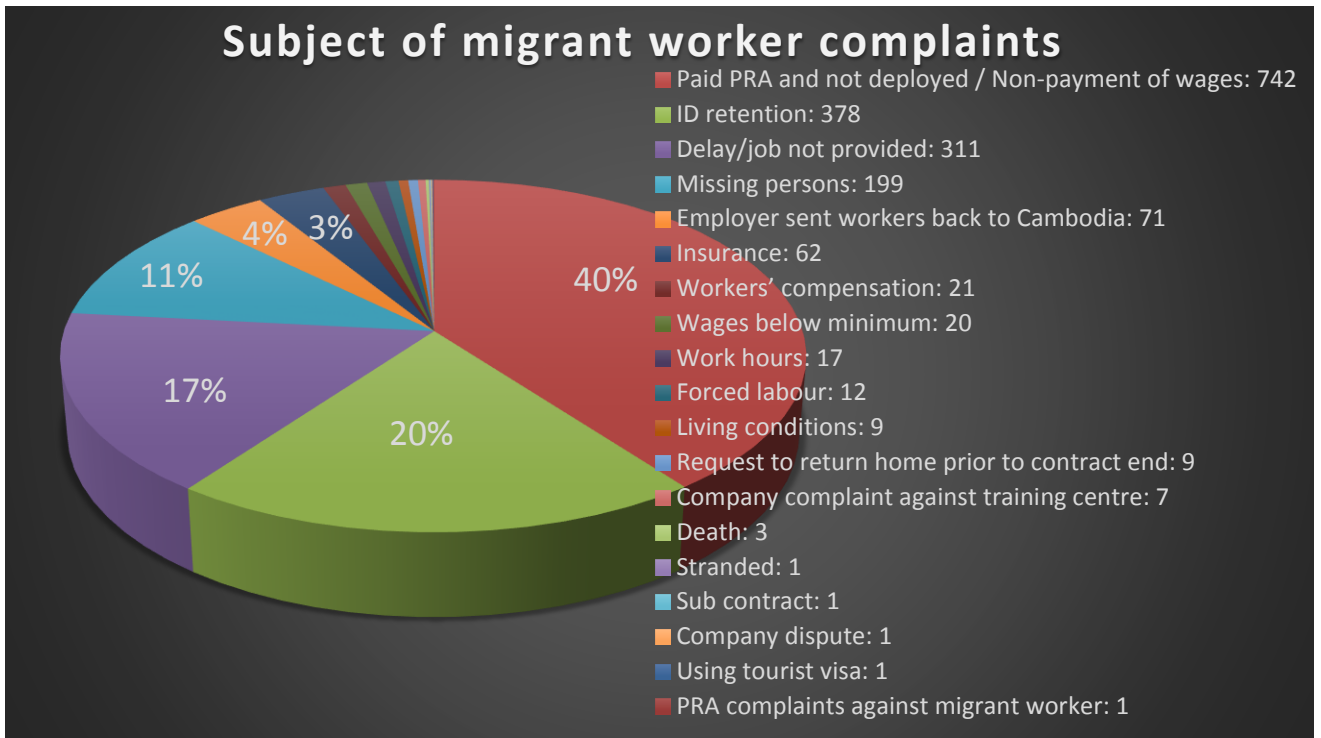
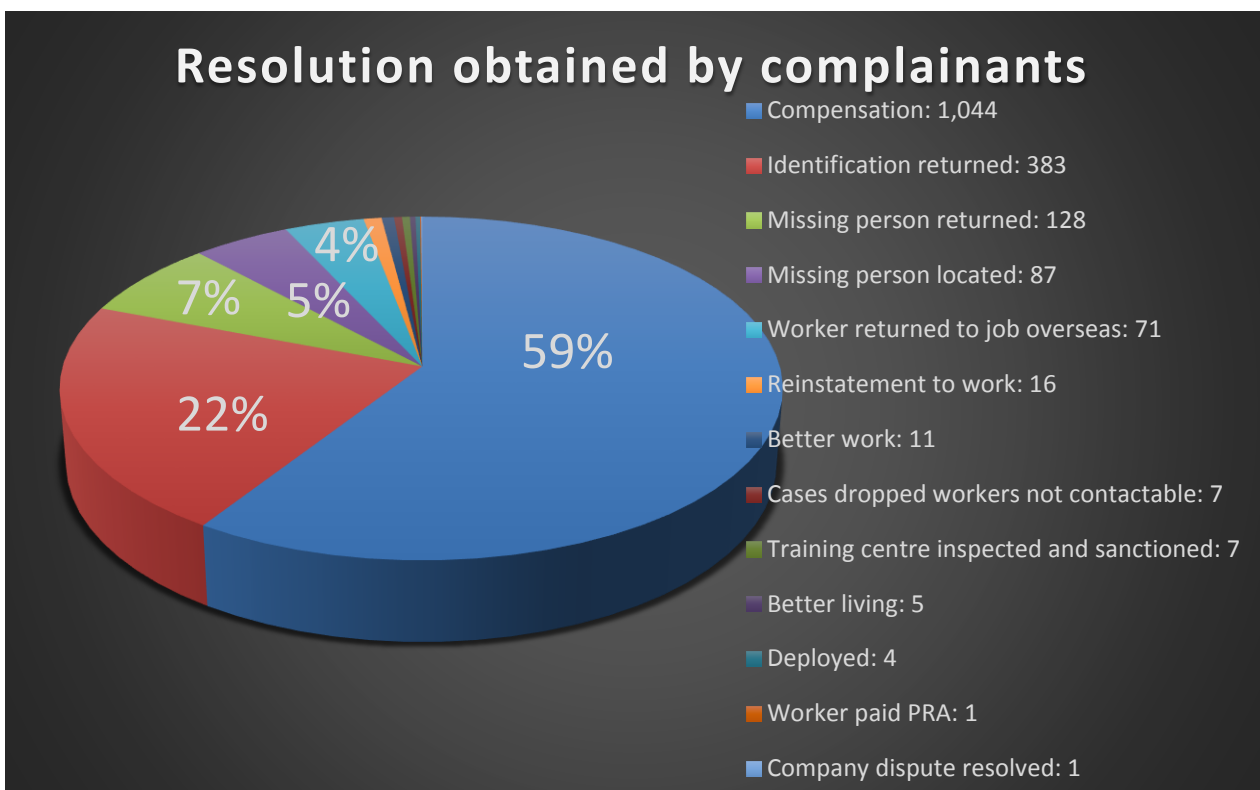


Figure four: Resolution obtained by complainants



The complaints mechanism has been successful at obtaining financial compensation for a large proportion of complainants, with 59 per cent receiving financial resolution (see figure 2). The return of 383 identification documents (see figure 2) means that these potential migrant workers can still choose to migrate regularly should they choose to migrate, given that they have had their documents returned. The gender gap between only 36 per cent of women as opposed to 64 per cent of men migrant workers receiving resolution of cases, reflects that fewer women are accessing the complaints mechanism rather than less resolution in cases for women. Whilst data is not available on the amount of women who lodged complaints cases without resolution, it can be compared to the data set from partners where migrants accessed legal services, seeing 68 per cent of men and 32 per cent of women, with the implication that women are less likely to make complaints but about equally likely to see them through to closure. There is also evidence that more men than women migrate regularly through recruitment agencies in Cambodia. That likely has an effect on both sides of the border as it means women make fewer complaints about delays in deployment and passports not being provided and may also be more likely to avoid complaining if working without regular status. Research indicates that access issues for women migrant workers centre around being more intimidated by the prospect of accessing government services, having less knowledge of the existence of the complaints mechanism, and having more difficulty lodging complaints independently for safety reasons.

A small number of cases received by MOLVT are from migrant workers' families lodging complaints that migrant workers are no longer sending remittances home. As this is not in the purview of the MOLVT, the scope of complaints the MOLVT will receive could be included in dispute resolution guidelines. Similarly, a small amount of complaints have also been received from ACRA lodging complaints against workers who leave their employers before the end of their contract, and companies are lodging cases against training centres that are illegally using their registered name to operate.

Taken as a whole, the complaints mechanism provides the beginnings of a tiered system for resolving complaints – informal mediation leading to an administrative penalty and finally court hearings for criminal violations. Still a very significant challenge remains in sanctioning offenders for violations, as only one per cent of complaints resulted in penalties for offenders.

Chapter 4: Areas for improvement in the complaints mechanism

Whilst the complaints process has had many successes in facilitating improved access to justice for migrant workers, as the process is still new, there are some areas for further improvement.

4.1 Procedural issues in the complaints mechanism

Prakas No. 249 states that on receipt of a complaint, the MOLVT or PDOLVT has ten days to issue an invitation letter to complainants and respondents to attend conciliation hearings, and complainants and respondents have three days to respond. Some MRC, PDOLVT and service provider staff reported that the timeframe set out in *Prakas* No. 249 was not always adhered to. Some service providers thought that migrant workers were not being invited to dispute resolutions through the proper process and that MOLVT would sometimes call and ask if migrant workers could attend a conciliation meeting the next day. Service providers considered this kind of timeframe difficult for migrant workers, particularly those who live in the provinces and need to travel to dispute resolution meetings, especially considering the cost of travel. MRC and service provider staff thought that invitation and proper timeframe practices should be upheld, as long periods of resolution would contribute to a lack of faith of migrant workers in the complaints resolution system and a loss of confidence in MRCs' ability to assist communities. MOLVT is aware that it is difficult for migrant workers to travel from the provinces to Phnom Penh and tried to minimize the amount of travel required through the process outlined below. The MOLVT also tried to include costs for migrant workers' travel to Phnom Penh for the conciliation into compensation obtained from PRAs, however they reported that PRAs were often reluctant to pay for more than one trip.

Exhibiting some difference to process outlined in the *Prakas*, the MOLVT described the operational complaints process as having four steps:

- After receiving a complaint, the MOLVT will prepare the necessary documentation and write a letter or call the respondent to invite them to a first meeting to discuss the complaint without the migrant worker or representative present. The migrant worker is not invited to this meeting as they are usually situated in the provinces and the MOLVT does not want to make the migrant worker travel to Phnom Penh numerous times.
- A second meeting or phone call with the worker or his/her representative will be arranged to discuss the position of the respondent.
- A third meeting is for the two parties to come to an agreement together. If the complainants or respondents do not accept the settlement proposed, the MOLVT will prepare forms for a court proceeding and prepare a lawyer to defend them.
- A fourth meeting will be held to sign an agreement of the resolution and/or enact the resolution if it involves a refund of fees or a return of passport. When progressing through the dispute resolution process, the MOLVT may arrange several meetings to obtain an agreement between parties.

Prakas No. 249, article 9 states:

In a case where the dispute is not resolved by the dispute resolution officials of the Provincial Departments of Labour and Vocational Training within 20 working days, the case shall be

referred to the Department of Employment and Manpower to handle and resolve in accordance with procedures.

As long as the case is still unresolved in the Department of Employment and Manpower, within 30 working days, the Department's dispute resolution officials shall announce to all parties that the case was not able to be resolved and this announcement shall be included in the official conciliation minute signed by the dispute resolution officials and the disputing parties. The dispute resolution officials shall inform each party on their rights and existing legal procedures.

In a case where the dispute occurred outside the country, duration for resolution shall be prolonged in accordance with the law of the receiving country.

MRCs, PDOLVTs, and service providers deemed that the complaints process was not adhering to *Prakas* No. 249 in that dispute resolution was taking longer and migrant workers were losing confidence in the dispute resolution process. PDOLVTs said it was difficult to adhere to this timeframe when PRAs are not cooperative and that sometimes migrant workers and PRAs do not show up for dispute resolution meetings. The MOLVT explained that some complaints are very complicated and take time to resolve. In some cases the MOLVT will need to write a letter to the Ministry of Foreign Affairs and International Cooperation (MOFA&IC) to intervene with a PRA or employer in a destination country, and wait for their response. The same situation occurs in cases of migrant worker deaths, and if migrant workers' passports have been taken by their employers. In cases of missing migrant workers in destination countries, processes may be lengthy due to needing to cooperate with parties in destination countries, and as the third paragraph of article 9 of *Prakas* No. 249 states, when a case occurs outside Cambodia the duration for resolution can be prolonged.

Article 9 of *Prakas* No. 249 also states, "The dispute resolution officials shall inform each party on their rights and existing legal procedures [if a complaint cannot be solved at MOLVT in 30 days]." Most MRC, service provider and PDOLVT staff believed that the *Prakas* stated an obligation of the MOLVT to escalate cases to court, which it actually does not. The MOLVT needs only to "inform each party on their rights and existing legal procedures", which it seems the MOLVT is doing in criminal cases.

An avenue that appears not to have been explored is civil proceedings in cases of breaches of job placement services abroad contract between PRAs and migrant workers. This may be because most cases lodged are where migrant workers did not have a job placement services abroad contract. It must also be noted that the reason that most migrant workers utilize the complaints process is because they do not want to spend time and money on court proceedings and see the complaints process as a simpler, cheaper and faster way to reclaim their fees.

MRCs and service providers reported that complaints cases were not being escalated when the outcome of the process was unsatisfactory, and that cases were left unresolved if the parties could not reach an agreement. The MOLVT, however, stated that they assisted workers to prepare forms for a court proceeding and prepared a lawyer to defend migrant workers if needed. A view suggested by some stakeholders is that unsatisfactory outcomes and long timeframes are reasons that migrant workers may accept resolutions that they are not completely satisfied with, as they do not want to spend any more time on the complaint, and believe that some recompense in fees is better than nothing.

Despite the outline of procedures in *Prakas* No. 249, MRCs, PDOLVTs and service providers reflected that due to the varying nature of timeframes and resolutions, the process of dispute resolution is still not clear. Because of this, expectations of all stakeholders in the complaints process need to be managed. As complaints can be complicated, the MOLVT needs to communicate well, particularly with migrant workers, around the anticipated timeframes and procedural steps. It would be useful to have dispute resolution guidelines to be clear with all stakeholders, as there may be cases where sending a formal invitation letter is not appropriate, or that a 30 day timeframe before announcing that the case was not able to be resolved is not enough time for MOLVT to have resolved the case.

4.2 Gap between resolution sought and received by migrant workers

As per *Prakas* No. 249, PDOLVTs facilitate dispute resolution meetings between complainants and respondents where both parties are encouraged to come to a common agreement on the resolution of the case. Under *Prakas* No. 249, PDOLVT's role is to act only as mediators conciliating the dispute resolution, where MOLVT, under Sub Decree 190 article 39, has the power to deliver the penalties of "a written warning, temporary suspension of authorization, or revocation of authorization" to any recruitment agencies violating any provisions of the Sub Decree. This section considers the gap between resolution sought and resolution received by migrant workers, the lack of dispute resolution guidelines, and the non-application of sanctions imposed by the MOLVT.

4.2.1 Gap between resolution sought and resolution received by migrant workers

The Cambodian complaints mechanism for migrant workers does not draw from judgments and previous cases are not used as jurisprudence to assist in determining current cases; this means that all dispute resolutions are based on both parties agreeing to a resolution. In migrant worker dispute resolution, PRAs will likely have more power than migrant workers, particularly if migrant workers are not supported by service providers in the dispute resolution meeting.

One of the most common migrant worker complaints cases is delayed or non- deployment to the destination country and the loss of fees paid by migrant workers to PRAs for passports, visas, work permits and other migration related costs. These 'delay in deployment' cases most commonly occur when a PRA has recruited workers but does not have jobs secured in destination countries. In 'delay in deployment' cases, migrant workers have paid fees ranging between US\$200 and US\$1,700 and have not been deployed for a time period varying from two months to two years. In most cases, migrant workers have followed up with PRAs numerous times, where the PRA promises to either send them soon or invites migrant workers to pay an 'expediting fee' of an additional US\$20 to US\$50 promising this will expedite their processing time.

When migrant workers lodge complaints about delays in deployment, they are often seeking a full refund of the costs and fees they have paid PRAs. However, dispute resolution for these cases often results in PRAs either just returning migrant workers their passport, or paying back only part of the costs that they initially incurred. For example, a 2014 case dealt with by the MOLVT saw migrant workers requesting compensation of US\$700 per person; however, the compensation they received was US\$150 per person, and the case was deemed to be resolved. PRAs state that the reason for not returning the full amount that migrant workers have paid them is due to PRA running costs – processing fees, office rent, staff salaries and the like. However, the question of what costs have actually been incurred by the PRA remains, given that migrant workers report no services received. Another

complicating issue in some cases, is where migrant workers have taken out high interest loans to pay migration fees, so delayed or non- deployment has caused them to accrue high debts which they cannot pay off because they are not working whilst they are waiting to be deployed. Even if migrant workers have not taken out high interest loans, it can be seen that any period of not working and no-income for low-skilled workers would still put them in a difficult financial situation.

Sub Decree 190, article 29 states that:

Any dispute arising between the recruitment agencies and the workers prior to the departure for overseas work shall be resolved in accordance with the Labour Law and other applicable regulations of the Kingdom of Cambodia.

The labour law and any other applicable regulations of the Kingdom of Cambodia do not contain guidelines that stipulate what dispute resolution officials should do in the situation where migrant workers have paid fees to PRAs and not been deployed. *Prakas* No. 046 on Recruitment Process and Pre-Departure Orientation Training covers this part of the recruitment process. However, similarly to Sub Decree 190, article 16 of *Prakas* No. 046 states;

Each Private Recruitment Agency, shall correctly operate the recruitment process and appropriately provide pre-departure orientation following this *Prakas*.

Any treatment that contradicts the provisions in this *Prakas* and are regarded as offenses as described in the laws and regulations, shall be ordered according to the procedure of effective law.

Like Sub Decree 190, *Prakas* No. 046 does not outline what dispute resolution officials should do when migrant workers have paid fees to the PRAs and have not been deployed. As the labour law and other applicable regulations of the Kingdom of Cambodia do not contain guidelines that stipulate that PRAs should return the entire amount of fees outlaid to them by migrant workers, PDOLVT's struggle to enforce this outcome. As there is no clear outline of what dispute resolution officials should do in situations specific to migrant workers' complaints, there is a need for dispute resolution guidelines. Dispute resolution guidelines would be useful for training MOLVT and PDOLVT dispute resolution officials and as a reference guide to be used during conciliations. The dispute resolution guidelines would bring together all sources of Cambodian labour law, Sub Decrees, *Prakas*, regulations, and international labour standards that have been ratified by Cambodia, into a single, comprehensive guide organized under main areas of disputes.

4.2.2 Non-application of sanctions

Service providers, MRC and PDOLVT staff believed that sanctions were not being applied to PRAs in response to violations of Sub Decree 190, as per Chapter 14 on Penalty, article 39 and 40:

Article 39: Any recruitment agencies violating any provisions of this sub decree shall be subject to the following penalties:

- Written warning;
- Temporary suspension of authorization;
- Revocation of authorization.

Article 40: Any recruitment agencies or persons violating any provisions of this sub decree or applicable laws or using their functions and competence to create inappropriate obstacles for the recruitment activities, and illegally sending workers abroad shall be punished under the applicable laws.

Cases of delayed or non- deployment dealt with at MOLVT level resulted in most PRAs refunding migrant workers' fees minus the passport processing costs, so MOLVT did not think sanctions needed to be made or felt that under law they were not empowered to enforce sanctions. In unpaid wage cases, MOLVT thought that the negotiation needed to exist between the PRA and the employer, and that MOLVT had no right to be involved. In some cases where payment had been made by migrant workers in cash to PRAs without a receipt, MOLVT thought there was not sufficient evidence to make a decision. In these cases, MOLVT calls on the Cambodian PRA to discuss with the destination country PRA or employer. According to MOLVT, the result is that migrant workers regularly receive 50-60 per cent of their claim. The MOLVT was unsure if this money was paid by the PRA or the employer. If both parties are satisfied with this arrangement, the MOLVT writes an agreement for the two parties to sign. If, in this instance, the PRA or employer will not pay the migrant workers' outstanding salary, MOLVT will suggest the migrant worker take their case to court. According to MOLVT, three such cases went to court in 2014, but MOLVT was unsure of the outcomes of these cases, indicating a missing link with the regular judicial system.

The final step in the dispute resolution process is when both parties agree on a resolution at a meeting between the migrant worker and the PRA in the MOLVT officials' presence, where in cases of claiming fees or remuneration the PRA returns what is owed to the migrant worker. If the PRA does not attend this meeting, the MOLVT should determine that the PRA is responsible for the alleged violations as per article 5 of *Prakas* No. 249;

...In a case where the respondent or his/her representative has received an invitation letter and he/she does not show up to the deadline 2 times without providing information on the appropriate reasons, the case shall be determined as unable to be resolved determining that the respondent shall be responsible for violations alleged.

The dispute resolution officials shall immediately notify each party on the nullified complaint or party shall be responsible for violations alleged...

While *Prakas* No. 249 does not make clear what "responsible for violations alleged" means in terms of sanctions, it can be read alongside article 39 of Sub Decree 190, which stipulates penalties for recruitment agencies as "a written warning, temporary suspension of authorization", or revocation of authorization. In this instance some MOLVT staff thought that if a PRA's license is suspended then there will be no one to manage the sending of migrant workers abroad. Instead, the MOLVT refuses to process migrant workers' documents from that PRA for a period of two months if the PRA does not resolve the case with the migrant worker. If the PRA does contact and resolve the case with the migrant worker directly, the MOLVT requires a signed agreement with fingerprint, and in some cases a lawyer must be present. After this process the MOLVT will recommence the processing of documents for migration. While this solution could be classed as "temporary suspension of authorization" as per Sub Decree 190, this solution is problematic for two reasons; firstly, it does not discourage PRAs from engaging in the same behaviour in the future as there is no formal sanction or warning, and secondly, by refusing to process migrant workers' documents and not finding another

avenue or service provider to assist these migrant workers to go abroad, the MOLVT is contributing to one of the most common complaints migrant workers have in Cambodia – delay in deployment.

The MOLVT has so far not issued any letters of warning to PRAs. Even if they had, as the complaints database is not yet fully functional it would be difficult to track these warnings when checking if a PRA had any penalties registered against it. Warnings are pertinent in the operation of draft *Prakas* on Use of Guarantee Deposit of the Private Recruitment Agency, as to withdraw PRAs deposit of US\$100,000, PRAs need to have no penalties registered against them.

Box 1 Use of guarantee deposit
In December 2014 there were two cases where the MOLVT took action against PRAs who obtained licenses and sold them on to other agencies, however it is unclear if the MOLVT has suspended the PRAs licences.
Case One
The first PRA had 179 workers lodge complaints against them, and based on the receipts received by the MOLVT from these workers, the MOLVT withdrew this agency’s guarantee deposit of US\$100,000 to reimburse their fees. In this case, the funds needed to reimburse migrant worker claimants exceeded US\$100,000. As the PRA refused to pay the remaining fees, the MOLVT has referred this case to court. The charges going before the court are for false documentation and fraud. MOLVT will provide a Government lawyer to accompany these workers to court. This case demonstrates migrant workers’ difficulty in waiting for an outcome. So far MOLVT have organised 60 of the original 179 workers to prepare the case – the rest of the workers have dropped the complaint and have either migrated to Thailand for work, or felt they could not trust the court to deal with their case effectively.
Case Two
In the second case, the PRA had included their company name on some receipts (whereas the first PRA did not) so the PRA agreed to pay back 51 workers whose receipt had their name on it. The receipts of other migrant workers had a stamp of a Malaysian owned company that the PRA was working with. In this case, because fees owed to migrant workers were less than US\$100,000 at US\$20,000, the MOLVT stated it was difficult to withdraw the guarantee deposit. This was cited as the reason the MOLVT wished to refer this case to court.

The MOLVT interpreted article 5 of *Prakas* No. 249¹⁴ to mean MOLVT can use the guarantee deposit where the respondent to a case does not attend the conciliation after invitation. After being asked if it would be easier to withdraw the guarantee deposit after the *Prakas* on Use of Guarantee Deposit of the Private Recruitment Agency was passed, MOLVT considered this to be difficult in

¹⁴ *Prakas* No. 249, article 5: ...In a case where the respondent or his/her representative has received an invitation letter and he/she does not show up to the deadline 2 times without providing information on the appropriate reasons, the case shall be determined as unable to be resolved determining that the respondent shall be responsible for violations alleged...

cases where small amounts of compensation were ordered. More investigation is required around why MOLVT believes that withdrawing only US\$20,000 from the US\$100,000 guarantee deposit is not permitted, particularly in light of the draft *Prakas* on the Use of Guarantee Deposit of the Private Recruitment Agency.

In criminal cases of trafficking and forced labour, MOLVT will suggest migrant workers take their cases to the Department of Anti-Human Trafficking and Juvenile Protection at the MOI that also has a complaints process (where MOI officials have the power to arrest), or through the judicial system. Service providers report that in criminal proceedings PRAs have been sanctioned, but it was thought that MOLVT does not follow up these cases. In cases where unlicensed training centres are operating and the training centres have been closed down, this has not been ordered by MOLVT alone, but in association with MOI and the prosecutor as part of a criminal case. When asked if they thought MOLVT would be more effective in preventing unscrupulous brokers or PRAs if sanctions were employed, MOLVT thought that if they suspended PRAs license they would still continue to operate illegally, and even if the PRA ceased operating, the MOLVT worried that there would be no one to protect migrant workers and send them overseas safely.

Whilst the MOLVT thought that there was no article in Sub Decree 190 and *Prakas* No. 249 regarding penalties for PRAs and that these instruments simply stipulated that the labour law needed to be followed, the MOLVT did articulate the difficulty that the labour law covers workers and employers but not PRAs or workers going abroad. The MOLVT stated that whilst under labour law they cannot impose a penalty, they can refer cases to court for penalty.

In Prey Veng, Kampong Cham and Battambang, PDOLVTs and MRCs are cooperating with police in certain cases that fall under their jurisdiction, such as in cases involving brokers, or ex-PRA staff using PRA identification cards from previous employers. In these cases PDOLVTs considered that the key factor in success was the police enforcement power to be able order brokers to return migrant workers' fees in full, to impose charges, or refer cases to proceed through the court process. MOLVT agreed that this is a good practice, as they do not have the authority to penalise brokers or ex-PRA staff, though they noted that sometimes even if these unregistered agents are closed down in one province, they often move to commence operations in another province. PDOLVTs reported that in some cases it is difficult for them to convince PRAs to agree with the resolution or compensation that migrant workers originally request, which they considered to impact migrant workers' willingness to utilise the process.

4.3 Cambodian embassy and labour attachés involvement in the complaints process in destination countries

Under article 30 of Sub-decree 190¹⁵ and article 10 of *Prakas* No. 249¹⁶, when a dispute occurs involving a Cambodian migrant worker in a destination country, the Cambodian embassy or Consulate should

¹⁵ Sub-decree 190, article 30: Regarding a dispute that arises between the foreign employers and the workers who are working abroad, the recruitment agencies and the embassy or representative mission of the Kingdom of Cambodia to the receiving country shall participate in the resolution process. In necessary case which requires the participation of expert officials from the Ministry of Labour and Vocational Training or hiring of a lawyer, all costs shall be borne by the recruitment agencies.

¹⁶ *Prakas* No. 249, article 10: Outside the Kingdom of Cambodia, all complaints shall be submitted to the permanent office of the Private Recruitment Agency's representative, Consulate or Embassy of the Kingdom

be involved in the dispute resolution process. Under *Prakas* No. 252 Articles 4-8, Cambodian embassies in destination countries have an obligation to facilitate and resolve disputes with PRAs (article 4) in cases of abuse and violations against the worker (article 5), disappearance of workers (article 6), death of workers (article 7), and unpaid salaries of workers (article 8). Particularly in cases of unpaid salary in the destination county, embassies role in dispute resolution could be invaluable, as once returning home it is very difficult for MOLVT, PDOLVTs and service providers to negotiate with employers and authorities in the country of destination.

MOLVT reports a good working relationship with the Cambodian embassy in Malaysia and liaises with them on different types of cases. Some cited cases involve workers in irregular situations being deported and have been referred by the Malaysian police to the embassy. Other cases involve migrant workers whose contracts have ended so they are being repatriated. In the few cases where MOLVT, PDOLVTs, MRCs and service providers have been able to cooperate with the embassy the results appear positive. However the number of cases in which the embassy has been proactive remain relatively low. MOLVT, PDOLVTs, MRCs and service providers also deal with employers or representatives of the PRA in destination countries. Most complaints cases lodged at the Cambodian embassy in Malaysia are related to unpaid wages, incorrect migration documents issued to workers by PRAs, and work beyond what is in the employment contract. In these situations MOLVT have issued a letter to the responsible PRA stating that they need to be responsible for the migrant worker, even if the worker has overstayed their work contract.

Some service providers report that working with the Cambodian embassy in Malaysia has improved, and that the embassy's key challenge is lack of resources to properly support migrant workers' access to justice. For example, the Cambodian embassy in Malaysia will often call service providers to request that they shelter Cambodian workers until a sponsor for their repatriation is found. This process can take weeks or years before funds can be raised and thus workers' repatriation is delayed. In similar cases, it has also been reported that embassy staff facilitated migrant workers recommencing work in Malaysia with a different PRA to pay off debts owed to previous PRAs. The embassy does not have the capacity to work on or follow up all cases, and this is part of the reason why abusive employers and perpetrators often escape reprimand or punishment.

Cambodia does not have labour attachés stationed within Cambodian embassies in destination countries. A labour attaché would be a staff member from the MOLVT (all other members of staff at embassies are from the MOFA&IC), whose role includes safeguarding the rights of Cambodian workers in destination countries. At the time of writing there was a labour counsellor (a MOLVT staff member) stationed at the Cambodian embassy in the Republic of Korea; however, no position description was available. Due to the difficulty faced by the MOLVT in dealing with parties in other countries, and the lack of resources at embassies to adequately deal with migrant worker cases, a labour attaché position, or a well-functioning relationship that is well resourced would have great potential in resolving disputes in a more timely, fair and effective manner.

of Cambodia in receiving country or to the Competent Authority of the receiving country. A representative of Cambodian Private Recruitment Agency based in the receiving country shall coordinate and assist the worker to lodge a complaint properly and on time to the Consulate or Embassy of the Kingdom of Cambodia in the receiving country and to the receiving country's Competent Authority.

MOLVT and service providers believed that staff in Cambodian embassies in destination countries would benefit from capacity building training on labour migration and how to effectively deal with migrant worker complaints.

Embassies can also maintain more accurate records on which of their nationals are in the country and where they work. Currently, the MOLVT does not routinely update employer information of migrant workers abroad. This would be useful to cross check that the PRA has obtained positions for the number of migrant workers being recruited to prevent delays in deployment; and in cases where workers are reported missing by their family members, particularly of domestic workers, a system of monitoring PRAs by the embassy rather than solely relying on data from the MOLVT could be very effective. Most domestic worker disappearance cases are the result of domestic workers changing employers because of poor treatment and then losing contact with their families and no one having a record of their new workplace. If embassies monitored PRAs in destination countries bi-annually, recording if workers changed employers, this system should hold PRAs accountable and make it easier for families, government and services providers to be able to locate missing workers.

4.4 Barriers to lodging complaints

MRCs, PDOLVTs and service providers identified factors that may operate as barriers to workers lodging complaints.

4.4.1 Gender concerns

It may be more difficult for women to lodge complaints independently as some women may not want to travel alone for safety reasons. It may be easier for men to travel by themselves to Phnom Penh or to the PDOLVT to lodge a complaint. It was also thought that as a by-product of unequal levels of education, women may have less understanding of where to go to lodge a complaint. It was noted in the research that while mostly male MRC staff travel to communes to provide counselling, and mostly women attend training, there would likely be questions that women would prefer to raise with a female counsellor.

4.4.2 Accessibility and lack of knowledge of complaints process

Lack of awareness about the existence of the complaints process and not knowing who to contact or where to go to lodge complaints was raised as a barrier. As complaints can only be lodged at provincial level and in Phnom Penh, the cost and time involved in travelling to the PDOLVT office is also a challenge. It was also identified that some NGOs running safe migration programs at the commune level are accessible to migrant workers, especially as a trusting relationship has been built, however, when complaints reached the dispute resolution stage, communities had less trust in PDOLVTs. It was thought that through MRC outreach programs that the attitude towards PDOLVTs was changing, but outreach does not currently occur in all provinces. The complaints process could be made more accessible through PDOLVT outreach activities and increasing capacity of staff to provide counselling. Lack of knowledge about retaining evidence was also an issue where migrant workers were not offered or did not keep a receipt to prove how much they had paid to PRAs, or retain some documentation with the name of the PRA on it.

4.4.3 Peers' experiences

Some staff of MRCs, PDOLVTs and service providers considered that when migrant workers' peers experienced poor results or a long, drawn-out process that this would dissuade workers from lodging a complaint. Building trust with migrant communities was identified as a key entry point for PDOLVTs and MOLVT. Timely scheduling of dispute resolution meetings, just outcomes for migrant workers, and follow up with migrant workers in protracted cases would all assist in creating trust.

4.4.4 Trust and fear of repercussion of PRAs

Some migrant workers expressed implicit trust in PRAs, so that even when they were not deployed these workers did not want to lodge a complaint. Focus groups revealed that increased awareness is not always sufficient to encourage migrants to denounce abuse, fearing that if they derail the recruitment process they will get nothing in return for the time and money invested.¹⁷ Other migrant workers do not lodge complaints for fear of repercussions from PRAs. MRC staff identified one case where after making a complaint a migrant worker received abusive phone calls from the accused PRA. The migrant worker informed the MRC of the situation, and the MRC informed the police who were able to mediate the situation and stop the PRA from engaging in this behaviour.

4.5 Identified training needs

MOLVT, PDOLVTs, MRCs and service providers requested training as outlined below.

4.5.1 MOLVT

MOLVT staff identified the need for more human resources because the complaints mechanism work is labour intensive and the current number of staff are having difficulty carrying out the workload. It was also identified that sometimes only female staff members are available to receive complaints, which was not suitable in all cases as workers often feel comfortable with a staff member of the same sex. It was identified by MOLVT staff as important not to keep migrant workers waiting when lodging complaints, so they are still able to travel home to the provinces. This also indicates the need to build capacity at the provincial level so migrant workers do not need to travel to Phnom Penh to lodge complaints. MOLVT also recognised priority given to migrant workers with children and elderly workers means that other workers are kept waiting longer.

All stakeholders identified training for dispute resolution officials as an important capacity building need. MOLVT thought that more dispute resolution officials required training on labour migration governance, policy, *Prakas* and sub decrees, but also effective conciliation and mediation techniques. Communication between MOLVT and PDOLVTs was also identified as an area for improvement. Appropriately completing the MOLVT complaints forms with enough information for proper case management was also identified, along with complex case management strategies.

The need for management strategies, processes and resources to deal with complex cases is evident. An example was given where a migrant worker had written a complaint letter to the MOLVT and attached 90 group complainants with the same complaint against the same PRA. However the attachments for the group complainants just had the migrant workers' thumbprints and insufficient information to further the complaint. As such, the receiving MOLVT official did not complete the MOLVT complaint forms. This case was further complicated by the fact that complainants were

¹⁷ Summary of key results from the ILO end-line surveys, 2015.

requesting different resolutions; some wanted fees refunded, some wanted passports returned, some migrant workers wanted to be sent abroad. In initial discussions around the migrant worker complaints forms, if a group complaint was lodged, all complainants must have the same complaint against the same PRA, but also must be seeking the same resolution. Using this reasoning, this case should have been broken into three group complaints.

The labour migration database was established in the MOLVT in 2014, and Winrock ran training on the database for five MOLVT officials in January 2015. Use of the database has been low; Winrock reports that some staff trained have moved to other areas of the MOLVT, and the MOLVT cites technical issues and lack of staff for data entry. By June 2015, the entry of 56 complaints from 73 migrant workers had been entered into the complaints database. Winrock has a database consultant, who is currently providing support to the MOLVT.

4.5.2 PDOLVT

It was identified that PDOLVT staff involved in the dispute resolution process could benefit from capacity building in interview techniques with complainants to be able to gain more complete information and sufficient evidence to assist with cases. MOLVT identified cases where incomplete case data is received, and follow up with migrant workers occurred; migrant workers explained they had already given their documentation to PDOLVT and it had not been passed on. Identifying gender sensitivities in interviewing, and training on how to use the MOLVT complaints forms were also identified as training needs. Dispute resolution training was identified as a need for staff from all 25 PDOLVTs, as it was recognized that the only PDOLVTs successfully running dispute resolutions were the three ILO GMS TRIANGLE supported PDOLVTs in Kampong Cham, Prey Veng and Battambang. The Prey Veng PDOLVT was still to receive a letter from the MOLVT informing provincial officials to use the MOLVT complaints forms.

Training around labour migration regulations and labour law were identified as a need and it was suggested that lack of knowledge of the content of these instruments resulted in gaps in implementation and enforcement. Training from MOLVT staff on policy changes when they occur was considered vital so that PDOLVT staff can inform local authorities and migrant workers. Monitoring and evaluation of cases after complaints have been lodged was also identified as an area for improvement. It was suggested that communication lines between MOLVT, PDOLVT and MRC staff should be improved to increase the clarity of the complaints process. Some staff at PDOLVT thought that the dispute resolution process was hampered due to lack of human, financial and material resources.

An activity proposed by MOLVT staff was 'field training' where MOLVT staff travel to PDOLVTs and train staff members, such as the Director, the Deputy Director, dispute resolution officials, and other staff, for three days on labour law, how the complaints mechanism functions, dispute resolution training, and human trafficking. It was noted that often at national level trainings, one person from each PDOLVT is sent and they are often not the person who will be actioning the content of the training.

MOLVT expressed that ideally they would like all PDOLVTs to be conducting dispute resolutions so that migrant workers do not have to travel to Phnom Penh for resolution, and can reduce the timeframe of the process, to benefit migrant workers but also to ensure that when the MOLVT gets

to a case the respondent has not moved on to another province. Currently the PDOLVTs and MOLVT have a WhatsApp¹⁸ group so if a PDOLVT official needs to clarify anything they can do so within the list of MOLVT staff in the group. The MOLVT is concerned that if PDOLVT staff lack capacity then migrant workers will lose faith in the complaints process.

4.5.3 MRCs

MRCs, PDOLVTs and service providers identified that MRC staff involved in receiving migrant worker complaints could benefit from capacity building in interview techniques with complainants to be able to gain complete information to assist with cases so that referrals to PDOLVT include complete case notes and complainants do not need to be interviewed again. Training around labour migration regulations and labour law in Cambodia and destination countries were also identified as a need. Some MRC staff identified that they had not been informed of the regularisation process occurring in Thailand, and thus felt ill-equipped to counsel migrant workers on this process. This information dissemination is important as it gives authorities and migrant workers an idea of the scope of their rights and subject matter for complaints. Changes in legislation are often around passports or regularisation in Thailand, which directly affects workers and can be the source of complaints.

Due to human resources, technical capacity and enforcement constraints, most complaints lodged by migrant workers at MRCs are referred to the PDOLVT for dispute resolution. If they cannot be resolved at PDOLVT level they are referred to MOLVT. Upon referral to PDOLVTs, MRC staff considered the process slow and noted that even after cases have undergone the initial dispute resolution process, workers still risk not receiving the compensation requested. MRCs thought cooperation with legal aid service providers had resulted in a better rate of successful cases. This assertion however does not reflect the data, which shows MOLVT and PDOLVTs having high rates of resolution of cases¹⁹. This suggests that MRC staff's perception may have more to do with communication of cases between the MOLVT, PDOLVTs and other parties. MRC staff thought that coordination meetings between all stakeholders – MRCs, PDOLVTs, MOLVT, and service providers – on the complaints process would help to ensure all parties are clear on how the process is currently operating and how the process *should* be operating with appropriate procedural frameworks in place.

¹⁸ WhatsApp Messenger is a cross-platform mobile messaging application which allows users to exchange messages without having to pay for SMS.

¹⁹ MOLVT had a 51 per cent resolution rate in 2014, and a 90 per cent resolution rate in 2015.

Chapter 5: Recommendations

The following recommendations are tailored to address the gaps in implementation of the complaints process as outlined in this assessment.

5.1 Procedural improvements to complaints process

- Bi-annual stakeholder meetings should be scheduled between MOLVT, PDOLVTs, MRCs and service providers for clarity on operational procedures in the complaints process and updates on any changes to the labour migration instruments or developments in policy of destination countries. It is recommended that case management and the process of escalating cases to appropriate bodies be discussed. In the process, identified bottlenecks and realistic timeframes should be set to manage the expectations of all stakeholders.
- Development of an information management system is important to effectively track complaints that are escalated between MRCs, PDOLVTs and MOLVT so all parties are informed during the resolution of a complaint. An information management system would also be effective in monitoring and evaluation of the complaints process between MRCs, PDOLVTs and MOLVT, by improving data collection and reducing the risk of cases being double counted. Comparing cases lodged to cases closed would be a good measure of efficacy of the complaint mechanism.
- As per policy goal 10.3 in the Labour Migration Policy, after establishing a complaints database, the MOLVT should publish annual reports from the complaints processes for review by tripartite stakeholders.

5.2 Development of dispute resolution guidelines

- Dispute resolution guidelines should be developed with the purpose of training MOLVT and PDOLVT dispute resolution officials, as a reference guide to be used during conciliations, and also to reduce current gaps between the compensation sought by migrant workers and compensation received, and the lack of sanctions imposed on PRAs that violate the law.
- Dispute resolution guidelines should bring together all sources of Cambodian labour law, Sub Decrees, *Prakas*, regulations, and international labour standards that have been ratified by Cambodia, into a single, comprehensive guide organized under main areas of dispute. These guidelines should include agreed conciliation measures under areas of dispute decided on by the MOLVT and a tripartite technical working group to be enacted when complaints arise that are not covered by existing law, including refund of fees, timeframes around when PRAs must enact compensation, and sanctions if compensation is not enacted by PRAs. These guidelines could also include when a case should be referred to a judicial proceeding, such as in a civil case of fraud or breach of contract, a criminal case of abuse or exploitation, or a commercial law case around PRAs. When these guidelines are approved, they should be disseminated to all PDOLVT offices and used in training.
- The dispute resolution guidelines should include mandatory support from legal service providers for migrant workers in dispute resolution meetings.
- These dispute resolution guidelines should also include a scope of complaints the MOLVT will receive, to delineate what will not be dealt with through the complaints mechanism.

5.3 Preventing primary grievances

- Complaints are overwhelmingly related to excessive fees charged to migrant workers. A national set of costs and fees for migration would decrease the instance of migrant workers paying excessive fees that increase vulnerability to forced labour.
- When processing migration documents, the MOLVT should cross check that the PRA has obtained positions for the number of migrant workers they are recruiting in destination countries to prevent delay in deployment cases. During PRA bi-annual monitoring, embassy staff or labour attachés can also carry out this check that the PRA has obtained positions for the number of migrant workers they have recorded.
- At least one MOLVT labour attaché should be instituted in all Cambodian embassies abroad to safeguard the rights of Cambodian workers in destination countries.

5.4 Increasing capacity at Cambodian embassies in destination countries

- More human and financial resources should be invested in all Cambodian embassies abroad to assist migrant workers in access to justice and repatriation. Additional staff members in embassies (be it men and women labour attachés or additional MOFA&IC staff) should be trained on how to receive migrant worker complaints, the procedure to escalate cases, and who to liaise with in both Cambodia and the destination country.
- Labour attachés or MOFA&IC staff should monitor PRAs in destination countries bi-annually, noting when workers change employers to increase accountability of PRAs and make it easier for families, government and services providers to be able to locate migrant workers.
- After receiving training themselves, labour attachés or embassy staff should provide training on the dispute conciliation procedure for PRA representatives, local authorities and employers of migrant workers in destination countries. PRA representatives and local authorities should be trained on how to receive migrant worker complaints cases and who to report or refer them to, to facilitate a close working relationship with embassy staff.

5.5 Reducing barriers to lodging complaints

- Ensure that MRC and PDOLVT staff providing outreach counselling are well trained in gender sensitivity and that teams include both men and women.
- In consultations with the community, explore how to improve issues of transportation and safety for travelling to lodge complaints, particularly for women. As the cost and time involved in travelling to the PDOLVT office and Phnom Penh MRC is an obstacle for some migrant workers, PDOLVTs could increase their outreach activities with a bigger capacity of staff to provide dispute resolution in migrant worker communities and explore other options like initial complaint meetings over the phone.
- Information of the complaints mechanism including the role of the PDOLVTs, and migrant worker success stories should continue to be disseminated to raise awareness around the existence of the complaints process and encourage people to utilise it. This should include the preparation of case studies and visible results, for example photos of compensation being given to migrant workers for service providers to use in awareness raising activities. Information on what is required to lodge a complaint, including sufficient evidence, should also be disseminated so migrant workers are prepared when lodging complaints.

- Trust with migrant communities should be built as a key entry point for PDOLVTs and MOLVT to reduce barriers to lodging complaints, which could be done through timely scheduling of dispute resolution meetings, just outcomes for migrant workers, and follow up with migrant workers in protracted cases. Keeping migrant workers updated on the status of their case, the anticipated timeframes and steps in the process is imperative to establish trust in the complaints mechanism.
- Training for NGOs running safe migration programs at the commune level on the complaints mechanism should be ongoing to build on the trusting relationships already established with communities. These NGOs could assist migrant workers to lodge complaints at PDOLVTs.
- In terms of protection mechanisms for migrant workers against reprisals from PRAs, MOLVT should expedite the dispute resolution of cases that include these allegations, and include these allegations in the complaint, escalating the cases if they are of a criminal nature.

5.6 Capacity building training for MOLVT and PDOLVT officials, MRC staff and other labour migration stakeholders

- Capacity building in gender-sensitive interview techniques and basic gender training should be carried out, as well as ensuring that women and men staff members are available to assist with the complaints process in all service providers' offices.
- Training in interview techniques should be carried out to ensure that complete information is gained to assist with cases for proper case management.
- 'Field trainings' should be carried out for PDOLVT staff. MOLVT staff should travel to PDOLVTs and train all staff members, including management staff and dispute resolution officials, or have 'regional' trainings on labour law, *Prakas*, sub-decrees, and policy, how the complaints mechanism works, dispute resolution training including effective conciliation and mediation techniques, complex case management strategies, and human trafficking. These 'field trainings' should be delivered in the remaining 22 PDOLVTs yet to initiate the dispute resolution process, and should utilize the experience of the three PDOLVTs currently conducting dispute resolutions.
- All service providers should be trained in monitoring and evaluation of cases after complaints have been lodged so they can see where gaps in service provision exist. Data collection methods and tools should be refined to collect more detailed data that sheds further light on migration patterns - what countries migrant workers are going to, what sectors they are working in, and what cases could and could not be resolved and why.
- Barriers to the use of and training needs on the labour migration and complaints database need to be examined. The MOLVT should select one or two dedicated staff members to work on the database who can be supported by an assigned technician for at least a one year period.
- Greater engagement with PRAs at MOLVT and PDOLVT level and engagement with ACRA is recommended. MOLVT should conduct trainings for Cambodian PRAs, particularly PRA representatives in destination countries, on labour law, *Prakas*, sub-decrees, and policy, how the complaints mechanism works, and dispute resolution training techniques with the purpose that these strategies could be employed before cases need to be escalated.
- An upscale in human, material and financial resources for dispute resolution officials in MOLVT and PDOLVT offices is required to properly resource the above recommendations.

Annex 1: MOLVT Complaints Mechanism Questions

1. What types of complaints are under the MOLVT mandate to receive?
2. How many complaints did you receive during 2014? How many complaints were resolved in 2014?
3. Are there any aspects of the complaint mechanism that you think have worked particularly well? (E.g. awareness-raising, accessibility, timeliness of resolution, compensation provided, sanction of offenders, etc.) What are the reasons for that success?
4. What are the main obstacles to migrants making complaints?
5. Do you ever receive complaints from irregular migrants?
6. What are the complaints typically about?
7. Do people come directly to the MOLVT to lodge complaints, or are most of the complaints referred from the PDOLVT or MRC?
8. If most are referred from the PDOLVT or MRC, what are ways you think you could encourage more people to lodge complaints at the MOLVT?
9. How could cooperation between the MOLVT and other stakeholders be improved to facilitate the filing or resolution of complaints?
10. What are the steps in the process to file and settle a complaint with your department? Do you have standard operating procedures for handling complaints?
11. How long does it normally take to resolve a complaint case? Are there any expenses involved for complainants? PDOLVTs and MRCs have reported that the process is sometimes long and they don't get follow up from MOLVT.
12. What approaches have you been using for dispute resolution of these complaints?
13. Who is involved in the dispute resolution process?
14. What have the outcomes been from the dispute resolution process? What kinds of remedies are typically provided and why?
15. If the outcome of the process is unsatisfactory, what recourse do migrants?
16. In your experience do complainants often receive the compensation they originally requested when lodging the complaint?

17. If not, why does this not occur?
18. What could be improved in the dispute resolution process to get more just outcomes for migrant workers?
19. Do you think the dispute resolution process would be easier with dispute resolution guidelines? E.g. guidelines that stipulate the sanction required if a PRA cheats a worker – for example, if a PRA takes migrant workers fees and does not send them overseas they are required to pay back all fees.
20. What training / capacity building for staff involved in the dispute resolution process are needed?
21. What policy changes are needed to strengthen the complaint mechanism? What additional resources or budget allocations are needed?
22. What needs to be improved in the referral process to MOLVT?
23. Do you refer any cases for legal representation or to progress through the judicial system?
24. What type of sanctions have been enforced against offenders in response to complaints during 2014?
25. What measures are in place to protect complainants against retaliation from respondents?
26. Do PDOLVT have the power to grant PRA licenses? Do they have the power to suspend them?
27. Do you think PDOLVT's lack of power to sanction PRA impacts their ability to get a fair outcome for migrant workers? E.g. not being able to order PRAs to pay migrant workers fees back in full. There are examples in the provinces of PDOLVT'S referring cases to police, and the police getting outcomes because they can enforce sanctions.
28. What is the gender balance among complainants? Do you think there are any additional obstacles for women to file complaints?

Annex 2: MRC / Service Provider Questions

1. What are the complaints your MRC receives normally about?
2. What group of people is lodging complaints?
3. Do you think this group reflects the people that are really experiencing the most problems with migration? For example more men have lodged complaints with the MRC than women, do you think that men experience more problems migrating, or do you think it is easier for men to approach the MRC and lodge complaints?
4. What group of people do you think is experiencing the most problems with migration? What are these problems?
5. How could these problems be fixed?
6. If it is another group of people that is experiencing problems with migration, what is it that stops them from lodging complaints?
7. How could we encourage this group of people to lodge more complaints?
8. What complaints has the MRC been able to successfully assist with?
9. How have you found the complaints process progressing once you refer cases to the PDOLVT?
10. In your experience do complainants often receive the compensation they originally requested when lodging the complaint?
11. If not, why does this not occur?
12. How long does it normally take to resolve a complaint case? Are there any expenses involved for complainants?

13. What have the outcomes been from the dispute resolution process? What kinds of resolutions are usually provided and why?
14. If the outcome of the process is unsatisfactory, what recourse options do migrants have?
15. What could be improved in the dispute resolution process to get better outcomes for migrant workers?
16. If you could identify training needs / capacity building for the staff involved in the dispute resolution process at PDOLVT, what would they be?
17. If you could identify training needs / capacity building for MRC staff involved in receiving complaints, what would they be?
18. How have you found the complaints process progressing once you refer cases to LSCW or other service providers like LICADHO?
19. What could be improved in this process?

Annex 3: MOLVT Complaints forms

Migrant Worker Complaint Form

Kingdom of Cambodia

Nation Religion King

Migrant Worker Complaint Form
to Department of Employment and Manpower of the Ministry of Labour / Provincial
Department of Labour and Vocational Training

Individual Complainant

My name.....sex.....age.....ID card No.....date of
issuance.....
Address,village.....commune.....district.....provinc
e/town.....Contact No..... Migrant worker's representative
name:..... Contact
number:.....

Group Complainants

My name.....sex.....age.....ID card No.....date of
issuance.....
Address, village.....commune.....district.....province/town.....
Contact No.....representing.....persons whose name list attached to
complaint form.

Complainants from other sources

Complaint from source.....No Date of
issuance.....Address: Village.....
Commune.....district
province/town.....
Contact No.....

Subject matter of the complaint is (tick all that apply):

Table with 2 columns and 6 rows listing complaint categories: Remuneration, Claim money that paid to PRA, Food and Accommodation, Occupational Safety and Health, Job Duties, Workers' Compensation, Harassment, Disciplinary Actions / Termination of Employment, Delay in Deployment/ Job Not Provided, Contract Substitution.

<input type="checkbox"/> Work Hours	<input type="checkbox"/> Missing Migrant Worker-Want migrant worker return home country
<input type="checkbox"/> Days Off	<input type="checkbox"/> Missing Migrant Worker-Want to know information about migrant worker
<input type="checkbox"/> Leave	<input type="checkbox"/> Forced Labour
<input type="checkbox"/> Insurance	<input type="checkbox"/> Other

Other facts of the complaint including place and date or period of time and destination country (if more space needed please attach):

Respondent

Name:.....Address
:.....Contact
Number:.....

Remedy you are seeking for the complaint (check all that apply, more details beside):

- Financial Compensation
Amount owed (if known) _____
How calculated (hours / days): _____
- Reimbursement
Amount owed (if known) _____
How calculated (hours / days): _____
- Find migrant worker to return home _____
- Want to know information of the migrant worker _____
- Want to get passport and other documents _____
- Ask the PRA to clearly determine the date of departure to work abroad _____
- Better Working Conditions _____
- Better Living Conditions _____
- Changes in Company Policies and Practices _____
- Re-instatement of Job Lost _____
- Employment as Promised _____
- Deployment to Destination Country _____
- Enforcement of Original Contract _____
- Apology _____
- Locate Missing Migrant Worker _____
- Other (Explain) _____

If you would like to pursue compensation, PDOLVT/MOLVT can assist by holding a reconciliation with the respondent to reclaim it. If you would like to pursue a criminal case, PDOLVT/MOLVT can refer you to an individual within a relevant department or NGO.

Please attach **photocopies** of the following documents if you have them:

<input type="checkbox"/> passport / ID card photocopy <input type="checkbox"/> certification of employment/training Original <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> work permit Original <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> visas; <input type="checkbox"/> resident cards	<input type="checkbox"/> pay slips; time sheets <input type="checkbox"/> “foreign workers’ affidavits”; <input type="checkbox"/> letters/declarations from witnesses or others who can corroborate your claims <input type="checkbox"/> any other evidence of abuse (e.g. hospital receipts)
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If you are not attaching copies of your contract or any of these documents, please explain why (e.g. you were not provided copies, or you did not sign a contract):

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Please contact migrant worker migrant worker’s representative when following up this case.

Made Day..... Month..... Year 20.....

Signature or thumb print

Name:.....

Kingdom of Cambodia

Nation Religion King

Minute of a meeting with respondent

On statement of year two thousand.....day.....month.....at (hour).....

Referring to invitation letter No.....datedinvitation by call No.....of the department of employment and manpower to inform about.....

Information of Employer:

- 1- Name.....
- 2- Sex.....Nationality.....
- 3- Position.....
- 4- Address of company.....#.....St.....village.....
Commune.....district.....province
/town.....
- 5- Company's contact number.....
- 6- Address.....St.....village.....commune.....district.....
..... Province/town.....

Information of Employer's representative:

- 1- Name.....
- 2- Sex.....Nationality.....
- 3- Position.....
- 4- Address of company.....#.....St.....village.....
Commune.....district.....province/town.....
- 5- Company's contact number.....personal number.....

Attendants:

- 1- Representatives of the Ministry of Labour and Vocational Training:
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.....
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.....
.....

2- Respondents or their representatives:

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.....

After thanking the respondents or their representatives and the Government’s personnel who were attending the meeting, a dispute resolution staff introduced roles and responsibilities of the department of employment and manpower and labor dispute resolution procedure which is in accordance with the existing labor law, Sub Decree and Ministry’s prakas.

It was followed by the respondentwho was asked by the dispute resolution official to provide the following information:

1- Facts of the case.....

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2- Respondents response to remedy requested.....

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3- Recommendation for outcome from resolution officials

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This meeting ended at.....of the same date.

Phnom Penh, Date:

Minute taker

Seen and agreed

Dispute resolution official

Employer or their representative

.....

.....

.....

.....

Kingdom of Cambodia

Nation Religion King

Minute of a meeting with complainant

On statement of year two thousand.....day.....month.....at (hour).....

Referring to invitation letter No.....datedinvitation by call No.....of the department of employment and manpower to inform about.....

Information of Worker:

- 1. Name.....
2. Sex.....Nationality.....
3. Position.....
4. Address#.....St.....village.....
Commune.....district.....province/town.....
5. Place of Birth.....
6. Contact number.....
7. ID card No.....date of issuance.....

Information of Worker's representative:

- 1. Name.....
2. Sex.....Nationality.....
3. Position.....
4. Address: #.....St.....village.....
Commune.....district.....province /town.....
5. Place of Birth.....
6. Contact number.....
7. ID card No..... Date of issuance.....

Attendants:

- 3- Representatives of the Ministry of Labor and Vocational Training:
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4- Worker or their representatives:

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After thanking the worker or their representatives and the Government personnel who were attending the meeting, a dispute resolution staff introduced roles and responsibilities of the department of employment and manpower and labor dispute resolution procedure which is in accordance with the existing labor law, Sub Decree and Ministry's prakas.

It was followed by (the complainant) who was asked by the dispute resolution official to provide the following information:

1. Facts of the case

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2. Complaint and remedy requested.....

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3. Recommendation for outcome from resolution officials

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.....

This meeting ended at.....of the same date.

Phnom Penh, date:.....,

Minute taker

Seen and agreed

Dispute resolution official

Worker or their representative

.....
.....
.....

.....
.....
.....

Kingdom of Cambodia

Nation Religion King

Minute of Labour Dispute Reconciliation

Private recruitment agency's name.....

1- Process of labour dispute reconciliation:

Date of dispute/...../.....

2- Information of meeting:

Date...../...../..... at (hour).....

Meeting was held in the department of employment and manpower

3- Information of worker:

1. Name.....

2. Sex.....Nationality.....Date of birth.....

3. Position.....

4. Address St..... village.....
commune..... district.....
Province/town.....

5. Place of birth.....

6. Contact number.....family's.....

7. ID card No.....date of issuance.....

4- Information of worker's representative:

1. Name.....

2. Sex.....Nationality.....Date of birth.....

3. Position.....

4. Address: St..... village.....
commune.....district.....

Province/town.....

5. Place of birth.....

6. Contact number.....family's.....

7. ID card No.....date of issuance.....

5- Information of employer:

1. Name.....

2. Sex.....Nationality.....Date of birth.....

3. Position.....
4. Company's address: St..... village.....
commune..... district.....
Province/town.....
5. Contact number.....
6. House No..... St..... village.....
commune..... district.....
Province/town.....

6- Information of employer's representative:

1. Name.....
2. Sex.....Nationality.....Date of birth.....
3. Position.....
4. Company's address St..... village.....
commune..... district.....
Province/town.....
6. Contact number.....
7. House No..... St..... village.....
commune..... district.....
Province/town.....

7- Reconciler:

1. Name:
2. Name
3. Name:
4. Name:
5. Name:

The other attendants in the meeting

Name.....Position.....
Name.....Position.....
Name.....Position.....

8- Meeting opened by reconciliation official.....

.....
.....

9- Claims of both sides:

a. Worker.....
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b. Employer.....
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10- Reconciler's recommendations for the two sides.....

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11- The two sides' agreed points

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12- Outcome of the complaint (check all that apply):

- Financial Compensation
Amount owed (if known) _____
How calculated (hours / days): _____
- Reimbursement
Amount owed (if known) _____
How calculated (hours / days): _____
- Find migrant worker to return home _____
- Want to know information of the migrant worker _____
- Want to get passport and other documents _____
- Ask the PRA to clearly determine the date of departure to work abroad _____
- Better Working Conditions _____
- Better Living Conditions _____
- Changes in Company Policies and Practices _____
- Re-instatement of Job Lost _____
- Employment as Promised _____
- Deployment to Destination Country _____
- Enforcement of Original Contract _____
- Apology _____
- Locate Missing Migrant Worker _____
- Other (Explain) _____

13- **Case resolved:** Yes , if no continue to question 14 and 15

14- Not yet agreed points

.....

.....
.....
15- Non agreed points

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.....
.....
16- Action to be followed up on/...../.....(date)

17- The parties attended the reconciliation meeting and signed.

The meeting ended at...../...../.....

After agreeing together as mentioned in 11 of this minute, the two parties shall implement and use it.

If required by law, the department of employment and manpower of MoLVT will help prepare this minute to the court or any competent authority.

This minute indicated real and accurate information on reconciliation agreed and signed by the following parties.

Reconciler	Complainant	Defendant
Signature	Signature or thumb print	Signature or thumb print

Attachment:

- Annex 1, record on worker's statement;
- Annex 2, record on employer's statement.

Kingdom of Cambodia

Nation Religion King

Agreement

The agreement made between by the Employer

With

Number of Workerpersons

My name.....sex.....Nationality.....

is..... representative of employer or Employer name:

.....sex.....Nationality..... Private
Recruitment Agency Address of

company, House No:.....St:.....; Commune/

Sangkak:.....; District/

Khan:.....; Phnom Penh Municipality/

province:.....

My name.....sex.....Nationality..... representative of

workers (Number of workers.....persons) or worker:

.....Sex.....Nationality..... Address:

House No:.....St:.....; Commune/

Sangkak:..... District/

Khan:..... Phnom Penh

Municipality/ province:.....

Both parties of the labour dispute have agreed (resolved) on the number ofpoints including:

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.....

This agreement was made in 3 copies: 1 copy for company party, 1 copy for worker and 1 copy for Department of Employment and Manpower and this agreement is equal value by law.

Both parties should respect the agreement which was agreed above. If any party do not respect this agreement, this party should be responsible by law.

We sign or print thumb print in front of the Labour Dispute Resolution Officers of the Department of Employment and Manpower with promising that will not create any other dispute or problem.

Made Day..... Month..... Year 20.....

Signature or thumb print (Dispute parties)

Party (Company)

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Party (Worker)

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.....

Signature (Labour Dispute Resolution Officers)

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.....
.....

Annex 4: Prakas No. 249 on Complaint Receiving Mechanism for Migrant Workers

Unofficial Translation

Kingdom of Cambodia

Nation Religion King



Ministry of Labour and Vocational Training

No 249

Phnom Penh, 23 September, 2013

PRAKAS

On

Complaint Receiving Mechanism for Migrant Workers

Minister of Ministry of Labour and Vocational Training

- Referring to the constitution of the Kingdom of Cambodia;
- Referring to the royal decree No. 0908/1055, dated 25 September, 2008 on nomination of the Royal Government of Cambodia;
- Referring the royal Krom No. 02/94, dated 20 July, 1994 which promulgated the law on organizing and functioning of the cabinet;
- Referring to the royal Krom No. 0105/003, dated 17 January, 2005 which promulgated the law on establishment of the Ministry of Labor and Vocational Training (MoLVT);
- Referring to the sub-decree No. 52, dated 01 April, 2005 on functioning and organizing of MoLVT;
- Referring to the sub-decree No. 190, dated 17 August, 2011 on sending Khmer workers abroad through private recruitment agency, and
- With the need of MoLVT.

Decided

Article 1:

The section to receive and resolve complaints concerning migrant workers is established in the Department of Employment and Manpower of the Ministry of Labour and Vocational Training and Provincial Departments of Labour and Vocational Training.

The Department of Employment and Manpower and Provincial Departments of Labour and Vocational Training can invite concerned parties to cooperate and advise, to resolve, conciliate or send complaints to the Institution which has responsibility in accordance with each case.

Article 2:

In the Kingdom of Cambodia, all complaints relating to migrant workers are to be submitted to the Department of Employment and Manpower of the Ministry of Labour and Vocational Training, located in Building #3, Boulevard of Russian Federation, Sangkat Teuk Laak I, Khan Tuol Kouk, Phnom Penh or to the Provincial Department of Labour and Vocational Training in each province.

Article 3:

Complaints relating to migrant workers can be filed by verbal means or in a written letter in accordance with the existing law, regulation and procedures. The content of any complaint shall cover the following:

- Subject of complaint;
 - Name and address of complainant;
 - Name and address of respondent;
 - Cause and background of complaint;
 - Date and place of case;
 - Amount of money claimed for compensation (if any) and
- Every complaint should provide supporting documents and other certificates (if any).

Article 4:

After receiving a written complaint, within a period not exceeding 10 working days, the Department of Employment and Manpower or the Provincial Department of Labour and Vocational Training in each province shall take action to handle the case in accordance with the procedure, through preparing an invitation letter to invite each disputing party to provide information and evidence needed to resolve the dispute appropriately.

All non-written complaints shall be immediately resolved by the Department of Employment and Manpower or the Provincial Department of Labour and Vocational Training following the procedure.

Article 5:

In a case where the complainant or his/her representative has received an invitation letter and he/she does not come to provide additional information to the Department of Employment and Manpower or Provincial Department of Labour and Vocational Training by the deadline 2 times without providing information on the appropriate reasons, the complaint shall be nullified.

Duration of each warning letter shall not exceed 3 days, from the day of receipt of the warning letter.

In a case where the respondent or his/her representative has received an invitation letter and he/she does not show up to the deadline 2 times without providing information on the appropriate reasons, the case shall be determined as unable to be resolved determining that the respondent shall be responsible for violations alleged.

The dispute resolution officials shall immediately notify each party on the nullified complaint or party shall be responsible for violations alleged.

The complainant as well as respondent shall be entitled to provide his/her last statement to the Department of Employment and Manpower or Provincial Department of Labour and Vocational Training not exceeding 3 days, from the day of receiving the warning letter, and the Ministry of Labour and Vocational Training shall take action in accordance with procedure.

Article 6:

Upon request for help by both parties, a third party can either accompany or represent any disputing party. The third party shall be an adult who has the right to make decision.

Article 7:

Every dispute resolution shall have a clear conciliation minute outlining the proceedings of the conciliation. The conciliation minute shall be signed by the official who has resolved the dispute between the two parties. A copy of this conciliation minute shall be distributed to all parties.

Article 8:

All agreements, made in front of the dispute resolution officials of the Department of Employment and Manpower or the Provincial Departments of Labour and Vocational Training, are binding ones. All resolved or unresolved agreements shall be made in front of the dispute resolution officials.

Article 9:

In a case where the dispute is not resolved by the dispute resolution officials of the Provincial Departments of Labour and Vocational Training within 20 working days, the case shall be referred to the Department of Employment and Manpower to handle and resolve in accordance with procedures.

As long as the case is still unresolved in the Department of Employment and Manpower, within 30 working days, the Department's dispute resolution officials shall announce to all parties that the case was not able to be resolved and this announcement shall be included in the official conciliation minute signed by the dispute resolution officials and the disputing parties. The dispute resolution officials shall inform each party on their rights and existing legal procedures.

In a case where the dispute occurred outside the country, duration for resolution shall be prolonged in accordance with the law of the receiving country.

Article 10:

Outside the Kingdom of Cambodia, all complaints shall be submitted to the permanent office of the Private Recruitment Agency's representative, Consulate or Embassy of the Kingdom of Cambodia in receiving country or to the Competent Authority of the receiving country.

A representative of Cambodian Private Recruitment Agency based in the receiving country shall coordinate and assist the worker to lodge a complaint properly and on time to the Consulate or Embassy of the Kingdom of Cambodia in the receiving country and to the receiving country's Competent Authority.

Article 11:

The Cabinet, the Department General of Administrative and Finance, the Department General of Labour, Department General of Technical Vocational Education and Training, General Inspector of Department General of Inspection and the Units under Ministry of Labour and Vocational Training and the Private Recruitment Agencies shall implement effectively this Prakas from the date of signature.

Minister

Vong Sauth

Recipients:

- Prime Minister's cabinet;
- Deputy Prime Minister's cabinet;
- Council of Ministers;
- Ministry of Foreign Affairs and International Cooperation;
- Ministry of Interior;
- Ministry of Economy and Finance;
- All municipal and provincial offices
"For information;"
- In accordance with article 17
"For implementation."
- Document-timelines

Assessment of the complaints mechanism for Cambodian migrant workers

Until 2013 there was no specific complaints channel for Cambodian migrant workers who suffered abuse, exploitation or other poor treatment by recruitment agencies, brokers or employers. Using the authority derived from Prakas Number 249, in December 2013 the Ministry of Labour and Vocational Training established a complaint-receiving mechanism for migrant workers. Since then the Ministry of Labour and Vocational Training and the Provincial Departments of Labour and Vocational Training in Kampong Cham, Prey Veng and Battambang have been receiving complaints and resolving disputes. The *Assessment of the complaints mechanism for Cambodian migrant workers* considers the legislation and policies governing migrant worker complaints and the experiences of migrant workers and authorities in navigating the complaints system. It provides important information on the challenges that arise during the complaints process, and offers recommendations to strengthen the system and increase access to justice for migrant workers.

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ISBN 9789221304296