

Brokerage in labour migration

Cambodia

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1. Introduction to labour migration in Cambodia

There are approximately 300,000 young Cambodians who enter the labour market each year. The youth unemployment rate in Cambodia is around 3.8 per cent. The Cambodian government faces a great challenge in providing decent jobs opportunities to the young population. Local employment does not match the demand for jobs, hence many young Cambodians are forced to look for job opportunities abroad.

Attracted by stories of successful migration, Cambodians living in rural areas move abroad in the hope of finding good jobs that will allow them to support their families back home. However, high illiteracy rates among migrants affect their ability to understand the different steps and processes of migration, increasing their level of risk and vulnerability. In this context, labour brokering becomes an opportunity to make profits—both for agencies and individuals. Recruitment agencies help with the complexities of the hiring process and the different steps that migrants would struggle to fulfil on their own. But labour brokering often turns into a fraudulent business, where abusive practices are common and the protections and adequate assistance to clients (migrants) are not always guaranteed. These practices are very often linked to people trafficking, smuggling migrants, and other forms of modern slavery.

The involvement of the Government in the management, creation and enforcement of all legislation related to migration and recruitment practices is usually key to ensuring the protection of migrants. Unethical recruitment practices and high fees can lead to complicated situations sometimes not contemplated by law and clearly abusive for the migrant worker. These legislation gaps allow recruiters to continue implementing unethical practices under weak and not very comprehensive legislation. In recent years, Cambodia has seen an increase in formal and informal brokers. According to available data, there are around one million undocumented workers in Thailand, and between 700,000 and 900,000 who are documented or are in the process of obtaining their documents¹. Migration experts state that without a proper migration management system in place, regular migrant workers may find themselves vulnerable to abuse and exploitation by their labour agents and employers, as they have migrated without employment contracts (Battistella & Skeldon, 1999).

The Royal Government of Cambodia has been very active in its fight against people trafficking. It has produced a number of policies and an extended legal framework for labour migration. Besides Cambodia's Trafficking in Persons Law on the Suppression of Human Trafficking and Commercial Sexual Exploitation (2008) and its Labour Migration Policy 2015–2018 (with specific sub-decree 190 on the management of sending Cambodian workers abroad through private recruitment agencies), Cambodia is part of the Coordinated Mekong Initiative Against Trafficking (COMMIT) and the ASEAN Forum of Migration Labour (AFML). The Ministry of Social Affairs, Veterans and Youth Rehabilitation (MoSVY) and the National Committee for Counter Trafficking (NCCT) recently launched standard "victim identification guidelines".

A lack of comprehensive and sustainable regulations, and limited surveillance of recruitment practices and management of labour migrants is perpetuating a system where recruiters profit from workers who are vulnerable to being exploited and trafficked. A detailed legislative framework is needed which focuses on national as well as multilateral challenges in monitoring and enforcing regulations on recruitment agencies.

¹ They have registered through the National Verification, MoU, or One Stop Service Centre processes.

2. Migration laws in Cambodia

This research focuses on labour migration and brokerage practices between Cambodia and Thailand, as Thailand is where most Cambodian labour migrants go.

There are several laws and regulations intended to deal with the outflow of migrant workers from Cambodia. The first and most important is **sub-decree No. 57** on sending migrants to work abroad (1995). This sub-decree would later be replaced by **sub-decree No. 190** (August 2011) on the management of sending Cambodian workers abroad through private recruitment agencies. The sub-decree establishes the Ministry of Labour and Vocational Training (MoLVT) as the authority to grant licenses to Cambodian recruitment agencies to send workers abroad.

In 2003, Thailand and Cambodia signed a memorandum of understanding (MoU) on Cooperation in the Employment of Workers. This agreement was implemented to provide:

- Proper procedures for the employment of workers
- Effective repatriation of workers who have completed terms and conditions of employment or are deported by relevant authorities of the other party before completion of the terms and conditions of their employment to their permanent address
- Due protection of workers to ensure that there is no loss of the rights and protections of workers and that they receive the rights that they are entitled to
- Protection of, and effective action against, illegal border crossings, trafficking of illegal workers and illegal employment of workers.

In December 2013, MoLVT implemented eight Prakas aiming to strengthen the protection mechanisms for migrant workers, set standards for the recruitment process and private recruitment agencies, and provide a process by which migrant workers could lodge complaints.

- Prakas 45/13 on the use of terms in sub-decree 190 on the management of sending Cambodian workers abroad through private recruitment agencies
- Prakas 46/13 on the recruitment process and pre-departure orientation training
- Prakas 47/13 on private recruitment agencies
- Prakas 249 on complaint receiving mechanism for migrant workers
- Prakas 250 on inspection of private recruitment agencies
- Prakas 251 on penalties and rewards to the private recruitment agency
- Prakas 252 on site services of the private recruitment agency and repatriation
- Prakas 253 on the promulgation of minimum standards of job placement services abroad contract (plus annex containing final placement services contract)

In 2014 the Cambodian Government introduced various new Prakas to govern labour migration after 250,000 Cambodians returned after hearing rumours about an imminent crackdown on undocumented workers by the Thai military junta (ruling the country under martial law at that time). They were:

- Prakas 205 on the provision of ordinary passports to Khmer workers and students
- Prakas 2574 on format and procedures for issuance of normal passports for Khmer workers to work abroad legally
- Prakas 196 on employment of foreign labour
- Prakas 218 on reform of organization and functioning of the Department of Employment and Manpower

In 2015 Thailand and Cambodia signed a new MoU for the coming five years. The agreed points were very similar those established in 2003, for example once again enhancing transparency and reassuring that workers under the MoU had rights subject to the national laws of the receiving country.

2.1 Current patterns and migration pathways

In Cambodia, the formal channels of migration are usually very expensive and complicated, and most of the population cannot afford or understand them. The majority of migrant workers have low levels of literacy and education, with few or no vocational skills and a limited knowledge of urban life or the world outside Cambodia (Chen Lee, 2007). This indirectly forces a huge number of migrants to migrate undocumented, usually relying on informal brokers who can leave them completely unprotected during the migration process, and especially when arriving in the destination country. Migrating through formal channels does not however guarantee successful migration, as it is a very complicated process where a lot of actors intervene. These actors usually hold a privileged position over migrants, leaving them vulnerable and unprotected.

Cambodian migrant workers in Thailand can be grouped under the following categories:

- Undocumented workers (1 million estimated)
- Documented workers/under the process (600,000 – 700,000 estimated)
- Registered migrants – Pink Card holders (380,000)
- Migrants already under the National Verification Process (NVP) (100,000)
- MoU migrant workers (140,000)
- Border pass holders / seasonal workers (6,500)²

Undocumented migration to Thailand

The main method for undocumented Cambodian workers' to become documented is to acquire a Pink Card, which allows them to start the process to become legal workers. According to the Thai Government, Pink Card holders cannot travel outside their province of registration for more than seven days and employers must sign off on any travel. Yet, in order to become completely legal they have to complete the National Verification process. Migrants who have experienced a variety of legal statuses as migrant workers are very sceptical of the benefits of documented migration. Migrants with irregular status are able to save more money, as irregular migration is comparatively cheaper, faster and easier. Payroll deductions for social security, housing and recruitment expenses can result in a state of pecuniary captivity, and some organizations suggest that legal migration puts the migrant in contact with officials, increasing the chances of bribery and intimidation (ILO, 2015).

Documented migration to Thailand

There are currently two existing official processes to legally migrate to Thailand for work:

1. Via a MoU between Cambodia and Thailand, which is always done through a recruitment agency, commonly referred to as a broker.
2. Via a border pass, which can be issued along the Cambodia-Thailand border.

Each of these regular paths for migrant workers have different steps to be followed and require distinctive documents that allow Cambodians to migrate and work legally in Thailand.

² Information provided by Cambodian officers and Legal Support for Children and Women (LSCW).

3. Formal and informal brokers in Cambodia

When comparing formal and informal channels, previous studies show that the cost of migrating through formal channels is seven times higher than traveling through informal channels (Sophal, 2009). In terms of time, studies have found that migrants using informal channels only have to wait a few days, compared to at least three months for migrants using formal channels.

	Time	Expenses
Formal	At least 2 months waiting for documents	US\$700
Informal	A few days	US\$100

It is not surprising that the majority of migrants chose to use informal channels due to recruitment expenses, even if this means being exposed to greater risks such as arrest, deportation and exploitation.

The Royal Government of Cambodia strongly encourages migrants to follow the MoU process. This means migrants need to use a recruitment agency to facilitate the complicated process. Recruitment agencies usually play a legitimate and essential role in supply and demand for labour markets. They are sought in sectors where there is a seasonal demand for workers, when workers and employers do not speak the same language, or where aspiring workers have to travel long distances. They usually facilitate the movement of workers looking for job opportunities, yet abusive and fraudulent recruitment practices seem to flourish in all parts of the world (UNODC, 2015).

3.1 Informal brokers

Informal recruiters are usually recruitment agencies not licenced by the Government, meaning they are operating illegally. But they can also be individuals who work independently—people who understand the process and documentation, have contacts in the destination country and would complete the process of looking for a job once the labour migrant arrives in the destination country.

Finding these informal bookers is very easy. They usually go directly to rural areas looking for clients, and then rely on their client’s social network to engage with more people. It is common for different members of the same family to use the same informal brokers to migrate.

3.2 Formal brokers: understanding the role of recruitment agencies

A recruitment agency is an agency authorized by the Government to assist the potential migrant in the necessary steps to work legally in Thailand

Formal recruitment happens when recruitment agencies licensed by the Government of Cambodia conduct recruitment under a bilateral agreement (usually a MoU between the country of origin and the country of destination).

In 2007 recruitment agencies created the Association of Cambodian Recruitment Agencies (ACRA) in an attempt to strengthen the coordination between agencies. ACRA’s main objective is to build and harmonize Cambodian migration and contribute to the development of the social economy of Cambodia. They are also committed to ensuring safe migration for all Cambodian migrant workers, promoting the use of legal channels for overseas employment. ACRA developed a code of conduct in 2009 that provides certain minimum requirements for recruitment agencies. However, this code is not a formal method of regulation and is instead a list of requirements set by ACRA. It is self-regulated.

The main responsibilities of recruitment agencies in Cambodia are:

1. Match offers of employment with applicants
2. Assist migrants in the application process (help prepare necessary documentation)
3. Provide pre-departure orientation
4. Monitor the situation of the migrant in Thailand
5. Assist the migrant in his/her return to Cambodia.

The average cost of hiring a recruitment agency is US\$645 (ILO, 2008). As of November 2017, there were 85 licensed recruitment agencies (around 40 for Thailand) registered under MoLVT to assist Cambodian migrant workers.

In Cambodia, labour brokering is a potentially lucrative business. The Government has adopted a market economy approach to the recruitment and sending of Khmer workers, leaving it largely in the hands of private, profit-driven recruitment agencies (Chen, 2007). Migration experts agree that the lack of monitoring mechanisms at the national level allows recruitment companies to take advantage of migrant workers.

As mentioned earlier, sub-decree 57 on sending Cambodian migrants to work abroad was the main regulatory instrument governing the process. Essentially, the sub-decree was a guideline on the procedural measures between MoLVT, termed the “providing party” and recruitment agencies, termed the “receiving party”. According to the sub-decree, any company wishing to recruit and send Cambodians overseas to work had to first register with the Ministry of Commerce (MoC) and subsequently obtain a license from MoLVT. The licensed company is obligated to adhere to the terms and conditions in the sub-decree (Chen, 2007). However, the sub-decree adopted in 1995 was identified by migration experts as out-dated and lacking comprehensive coverage, highlighting its weakness and inefficacy.

In 2011, sub-decree 190 on the management of sending Cambodian workers abroad through private recruitment agencies was enacted. It aimed to change the legal requirements for private recruitment agencies, with the aim of improving the protection of migrant workers and encouraging the official and legal export of labour, as well as reducing exploitation, forced labour and human trafficking. Sub-decree 190 is the new regulation that replaces the previous sub-decree 57 on sending Khmer migrants abroad (1995). Together with the eight ministerial Prakas announced in 2013, it composes the main regulatory framework on the management of sending Cambodian workers abroad.

However, human rights organizations, the migration support network and migration experts claim that the actual regulation is still insufficient. Migrants remain unprotected and vulnerable, and suffer exploitation and abuse. According to these experts, the current legislation fails to address some key issues that have remained problematic since the first sub-decree (57). Some of these issues are listed in the next section.

3.3 Key issues in Cambodian legislation towards brokerage

3.3.1 Licenses, registration of recruitment agencies and inspections

Article 9 of the sub-decree mentions the importance of conducting both “ordinary” and “special” inspections, but again fails to specify how often or how these inspections would be done (LICADHO, 2011).

Article 9: The Ministry of Labour and Vocational Training shall conduct ordinary inspections and special inspections of the recruitment agencies.

Prakas 250 on the inspection of private recruitment agencies states that MoLVT shall conduct inspections to ensure the application of laws and regulations, although no time frame is mentioned.

Licensing for recruitment agencies is extremely important to establishing transparency in the recruitment of workers. The most basic requirements from MoLVT are:

- Having a well-equipped office with sufficient capable staff
- Signing a contract with MoLVT
- Deposit of US\$100,000 with MoLVT.

Once approved, a license is valid for five years. It can be renewed for another five years if the agency has complied with the obligations of the sub-decree. MoLVT alone is entitled to cancel a recruitment agency's licence if the agency fails to comply with the sub-decree or commits a "serious mistake". However, MoLVT does not specify what constitutes a serious mistake. MoLVT inspectors have the authority to conduct an inspection after a complaint has been received. They can ask to see any important documents and, if they think the regulation has been violated, they would raise the issue with senior officers in the ministry. Article 39 of sub-decree 190 states that any recruitment agencies violating any provisions of the sub-decree shall be subject to the following penalties: written warning; temporary suspension of authorization; revocation of authorization. Authorities rarely invoke a suspension or revocation unless they are required to do so by law. Based on past experience, it is clear that recruitment agencies are simply punished by multiple written warnings, even if their abuses are systematic (LICADHO, 2011).

One very dangerous issue regarding licensing of recruitment agencies is the "borrowing" of licences. As many recruitment agencies lack the necessary amount of money to register legally, they tend to borrow a licence from an already existing agency and set up as a branch of the licensed agency. Branches operate under different names, and the relationship with the parent company is not always clear. This practice has become increasingly problematic, as it makes it more difficult to intervene in cases of abuse against workers, and to identify serial abusers.

While there is a legal requirement for recruitment agencies to be licenced, the reality is that often the recruitment agency is the one going to look for employees in rural areas. Usually recruitment agencies collaborate with individual brokers who, for example, operate in villages and lure people by offering well-paid jobs. These brokers receive a set amount for each recruited worker, and usually lack a formal written agreement with the recruitment agency. If the broker does not comply with the legislation during the recruitment process, the recruitment agency cannot be held accountable for the broker's actions. In such cases, recruitment agencies' abusive practices are hidden under the surface and agencies may claim that they are not responsible.

3.3.2 Recruitment of workers and pre-departure orientation

Recruitment agencies are responsible for a worker's wellbeing from recruitment to commencement of employment. As the recruitment agencies try to make as much profit as possible during the process, they try to minimize expenditure on training, accommodation, food and transportation of migrants, directly affecting conditions of migrants.

According to Legal Support for Children and Women (LSCW), the new sub-decree 190 regresses from the old one in terms of content on pre-departure training. Sub-decree 57 specified that pre-departure training would cover "work systems, customs and traditions and the basic laws of the country of the receiver party". The new sub-decree does not outline any required curriculum, but it does state that the recruitment agency must have an appropriate training centre and language teachers "for pre-departure training in accordance with the guideline". Article 23 of sub-decree 190 states that MoLVT will issue certificates to workers who successfully complete the pre-departure

training course. Prakas No. 46/13 provides a number of requirements for the training centres to meet. Again, MoLVT is responsible for inspecting all training centres to ensure that requirements are met. The amount of legal recruitment agencies (85) makes it challenging for MoLVT to conduct regular inspections at all training centres. In 2010, MoLVT developed a standard training package with support from the International Organization for Migration (IOM). This was updated with the International Labour Organization (ILO) Triangle Project. Although the use of the materials is compulsory, it remains difficult to evaluate the degree to which recruitment agencies comply with these regulations (IOM, 2014). Very often the training content and qualifications of trainers are far below what is needed. Recruitment agencies experience considerable conflict of interest when providing training, as they may be tempted to emphasize the demands of employers rather than the rights of workers.

3.3.3 Recruitment agency fees

Another controversial issue in regard to recruitment is debt bondage. Migrant workers often incur debt with recruitment agencies during the recruitment process. The United Nations Office on Drugs and Crime (UNODC) research in different countries has proved that recruitment agencies charge workers fees that far exceed legal limits, or that might even be prohibited. The indebtedness that often follows and the need to repay the debt often drives workers to accept difficult or exploitative working conditions, making them vulnerable to trafficking.

There are no specific fees associated with the recruitment and placement of migrant workers (except for an MoU with the Republic of Korea). Recruitment agencies in Cambodia pay administrative and travel expenses to Thailand and are reimbursed by the Thai employer when the worker reaches the workplace. Sub-decree 57 prohibited recruitment agencies from charging migrants directly, but at the request of recruitment agencies the Government allowed them to charge an advance of US\$200 (IOM, 2014) in many of the cases (this advance fee is a loan from the agencies). Besides this amount, there are other “costs” related to the use of legal channels (passport, visa, work permit). The total cost has been estimated to be US\$700 (Chann[DS1], 2009), which the worker pays back out of his/her salary (decided by the employee) every month.

According to Article 7 of the ILO Private Employment Agencies Convention (No. 181) of 1997, international standards stipulate that “fees charged by private employment agencies are not deducted from the remuneration of domestic workers. Private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or cost to workers”. However, in Cambodia sub-decree 190 does not prohibit salary deductions for recruitment fees or enticement loans. Labour agencies commonly provide cash advances for recruitment fees of \$100 to \$200 to the family or domestic worker after she/he registers and agrees to stay in the training centre. The family or worker is promised another payment of \$150 to \$200 after the worker departs. Additionally, labour agents provide mobile phones, bags of rice, or a cow at the time of registration as incentives (The Asia Foundation, 2011).

In theory, pre-departure training is supposed to be a free service provided by the recruitment agency. However, this is not always the case in practice. Some companies have charged exorbitant rates for lodging, food and water provided during pre-departure training. The accumulated total is a large sum of money, which most workers cannot afford, therefore the common practice is for agencies to provide an advance to workers for all recruitment and placement-related fees (Chen[DS2], 2007). If for example a worker wishes to discontinue training and return home, she/he is liable to pay back her/his outstanding debt to the recruitment agency, which is often an inflated amount that they cannot afford. “There are no policies standardizing or regulating recruitment agency charges and fees” (LSCW, 2013), resulting in a situation of debt bondage for workers and very often their families. Human rights NGOs and associations such as LICADHO highlight that sub-decree 190 fails to address the rampant practice of placing new recruits in a position of debt bondage.

This issue has been described as perhaps the most significant omission and failure of the new sub-decree, and is doubly shocking considering that the practice was highlighted as a problem in a non-legally binding set of guidelines issued by the Ministry of Labour in mid-2010.

3.3.4 Contract issues

Sub-decree 190 is again, under this section, seen as regressing from the previous sub-decree 57 in failing to regulate the set limit of the employment contract. In sub-decree 57, it is stipulated that an employment contract could not last more than two years, while allowing for an extension of the contract if both parties agree. This legal protection has disappeared under the new sub-decree. The former sub-decree also stipulated that workers must receive at least 1.5 days of paid holidays for each month worked, allowing for 18 days of holidays per year. Sub-decree 190 eliminates this benefit.

Under sub-decree 190, “The employment contract shall clearly specify inter alia, working conditions, job status, and types of work, benefits and key addresses that can be contacted”. Article 15 determines the minimum information required in employment contracts, but fails to explicitly include details such as salary, the portion of the salary which shall be sent to the worker’s family, provisions for the repatriation of workers prior to the normal termination date, transport expenses and insurance premiums, while Article 9 of sub-decree 57 required all this information to be noted in the contract (LICHADO, 2011).

The new sub-decree does mention that contracts must be forwarded to the Cambodian embassy, but does not state that a copy should be provided to the migrant. Samples of contracts shall be determined by a Prakas from MoLVT, Prakas No. 253 on the promulgation of minimum standards of job placement services abroad contract. This again fails to specify a deadline for deployment or provide for refunds to workers who are not deployed. As a result, there is no clear mandate for agencies to use the samples and many agencies can decide not to do so.

The findings from research conducted by the United Nations Inter-Agency Project on Human Trafficking research in 2011 showed that the contracts analysed clearly outlined migrants’ obligations with little or no mention of migrants’ rights. Instead, the substantive terms of the contracts focus almost entirely on various aspects of the burden of debt incurred by the migrant worker.

3.3.5 Complaints mechanisms

All complaints relate to the excessive fees charged by agencies, the recruiting of under-age workers, lack of pre-training and poor conditions in training centres, and violations of contract conditions, among other allegations.

Before 2013 there was no mechanism in place for complaints by migrant workers. In 2012 MoLVT requested technical assistance from ILO to draft a number of Prakas to support the implementation of sub-decree 190. The ILO GMS TRIANGLE project supported MoLVT to form a working group of tripartite constituents to draft Prakas No. 249 on a complaints receiving mechanism for migrant workers. This Prakas outlines the complaints process and the rights and responsibilities of MoLVT, provincial DoLVTs, the complainant and the respondent.

However, the Prakas does not mention any time frame for action or dispute resolution. When a Thai employer dismisses a worker, that worker automatically loses his/her work permit, and therefore has seven days to leave the country. It is completely impossible to proceed with a complaint or to resolve one. Coupled with this, workers must file a complaint through a recruitment agency, but the agency would also be working for the employer who has been accused by the worker. The recruitment agency is then compromised, and agencies generally do not treat workers’ complaints in an impartial manner (IOM, 2014).

Other shortfalls were highlighted in an ILO assessment of the complaints mechanism conducted in 2016. They included gaps in compensation sought by migrant workers and compensation received, few sanctions imposed on private recruitment agencies that violate the law, lack of resources in embassies to adequately deal with migrant workers' complaints overseas, low capacity of provincial DoLVT to run dispute resolution, and difficulty in maintaining the complaints database. Additional barriers exist that impede migrant workers' ability to lodge complaints in the first place (ILO, 2016). However, the assessment indicated that the Prakas has given migrant workers and their families a clear avenue and process for lodging complaints and receiving compensation that did not exist before its introduction.

4. Analysis of a case study: Cambodian victims of people trafficking on fishing vessels

Giant Ocean International, a joint Taiwanese-Cambodian venture, was a recruitment agency directed by Lin Li-Chen, a Taiwanese national. The recruitment agency was registered with MoLVT on 12 July 2010 with the purpose of "recruiting and sending Cambodians to work in Malaysia, Thailand, Japan and Kuwait". However, none of the workers would reach the mentioned countries, and most would end up in South Africa, Senegal, Fiji and Mauritius.

In 2013, the the Department of Anti-Human Trafficking and Juvenile Protection, in cooperation with the Office of Anti-Human Trafficking and Juvenile Protection in Siem Reap arrested Ms. Lin Li-Chen, who was hiding in Siem Reap under a different name. The arrest warrant was issued by the Phnom Penh municipal court under charges of unlawful removal with purpose under Article 10 of the Law on Suppression of Human Trafficking and Sexual Exploitation. Six convicted people were sentenced to 10 years of imprisonment and the victims were to receive compensation.

The Counter Trafficking in Persons program of Winrock International and USAID developed a booklet with 10 case studies of people trafficked by Giant Ocean International. The booklet reveals different malpractices during recruitment and deployment of workers that can easily turn into trafficking in persons, even though the broker is a legal agency registered with the Government.

All cases have the following characteristics in common:

Recruitment agency

Workers were approached by a local broker in their village who would promise them good salaries for "easy-to-do" jobs in Japan. Others heard the job announcement on the radio and went to register at the agency's office.

Before leaving Cambodia, the agency did not explain the working conditions to the future workers, nor inform the workers to which country they were going to be sent. The workers received some loaned money with no official agreement, conditions or terms of how that money should be repaid. They signed a contract in a language they did not understand (Chinese) and no copy of the contract was provided to the workers. Sometimes there was not even a contract signed, only an oral agreement. In some cases, they contacted Giant Ocean but ended up involved with another non-registered agency (Phoenix International Co., Ltd).

Working conditions

Once they arrived at their destination, fishermen had to work an average of 20 months in the middle of the sea. Approximately 30 to 40 people crewed boats that were small for the number of people working on them. They were forced to work between 15 and 20 hours per day and sometimes for 48 hours straight without breaks. Food was scarce and they only had one set of clothes during their

time on the boat. They were not allowed to acquire medicines when needed. The captains of the different vessels used to beat the workers and confiscate the workers' passports so they were not able to leave. Workers' families were told they would receive monthly deposits from their family member's salary in to bank accounts opened by recruitment agencies. But they saw little of the money. Others reported that the promised accounts were never opened for them, so they received no money from the worker's salary at all.

In all cases, at some point workers were able to escape. In some cases, authorities were involved in their release, while in others the captain would (after refusing several times) agree to release them. They normally had to pay for their own return ticket by deducting it from their salary. On other occasions Giant Ocean International conducted the repatriation. LSCW was often involved in the repatriation process, contacting authorities and liaising with the Ministry of Foreign Affairs.

5. Recommendations

In 2012, the 5th ASEAN Forum on Labour Migration was celebrated in Siem Reap. The theme was, "The protection and promotion of the rights of migrant workers: Towards effective recruitment practices and regulations".

At this forum, information sharing and increased awareness were highlighted as being very important for Cambodia. The lack of information dissemination about proper migration procedures, recruitment and employment options, as well as migration costs, prevent migrants from making an informed choice. In a system dominated by the brokerage industry the migrant has limited agency, and thus the consequences of an uninformed decision can lead to unwanted and negative outcomes. MoLVT and other stakeholders should ensure the availability of information to the public on recruitment and emigration procedures and costs (such as fees, visa, passport, work permit, health examination and pre-departure and post-arrival trainings/orientation), as well as the costs that should be shouldered by migrant workers and recruitment agencies. Awareness should be raised among potential migrant workers and communities—especially those in rural areas and women.

Recruitment fees must be stipulated and published in order to avoid abuse by recruitment agencies. Loans provided by recruitment agencies must be controlled by the Government and written into contracts. Contracts must be signed by both parties (employer and employee) and in both languages, so migrants are aware of what they are signing. In case the migrant is illiterate, the recruitment agencies should explain the contract in a manner that the migrant will completely understand, including rights and obligations. A possible solution would be to have standard employment contracts and always make sure that migrants are provided with a copy (making another copy for the family would also help).

The costs related to formal migration (through recruitment agencies and under MoU processes) are another important issue to address. The approximately US\$700 that migrants have to pay to migrate with guarantees are a huge barrier for many labour migrants, leaving them with only the option of migrating through informal channels, without rights and protections of any kind. IOM Cambodia suggests a reduction in the amount, so the total cost is not higher than \$475, split between expenses paid in Cambodia (\$100 for the recruitment fee and \$150 for passport and visa to Thailand) and Thailand. On the Thai side, the reduction could be achieved by reducing the annual cost of working permits from \$60 to \$17. The long time that recruitment and deployment takes is also a non-motivating factor for migrants. Time needs to be reduced (and also specified in the contract) so migrants can start working as soon as possible, without causing economic constraints.

Pre-departure orientation for migrants is already regulated and standardized by the Government with a standard curriculum, but the delivery of the orientation rests with the recruitment agencies. IOM recommends that other agencies or institutes, independent from recruitment agencies, should provide

the required training. New methods of instruction, such as videos, role playing or group discussions, have had a positive effect, especially for people with low literacy. These could be used to improve the system.

There have been notable improvements in complaint mechanisms since the creation of Prakas No. 249. However, more arrangements need to be in place to fulfil existing gaps. Using migration resource centres is one of the options to improve knowledge and access better assistance for migrants and families filing complaints.

As the 5th ASEAN Forum on Labour Migration recommended: Migration policies, strategies and practices should be made gender responsive and cater to the specific needs of female migrant workers, especially in vulnerable sectors of labour. Under MoU processes between Thailand and Cambodia, domestic workers have not been considered as formally deployed. However, many Cambodian women are employed as such, lacking the recognition and protection of the Government. Domestic workers need to be included to ensure protection of their rights.

6. References

- Battistella, Graziano and Skeldon (1999) "Overview of the current situation of irregular or undocumented migration in the East and Southeast Asian Region: The need for a policy response framework." Paper drafted for IOM at the International Symposium on Migration "Toward Regional Cooperation on Irregular/Undocumented Migration", Bangkok, 21-23 April 1999.
- Cambodian League for the Promotion and Defence of Human Rights (LICHADE) (2011) Comments on the sub-decree on, "The management of the sending of Cambodian workers abroad through private recruitment agencies".
- International Labour Organization (ILO) (2015) "Review of the effectiveness of MoUs in managing labour migration between Thailand and neighbouring countries." ILO Regional Office for Asia and the Pacific. Bangkok: ILO, 2015.
- International Labour Organization (ILO) (2016) TRIANGLE II quarterly briefing note.
- International Labour Organization (ILO) (2016) "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 sub-region (GMS TRIANGLE project). Phnom Penh: ILO, 2016.
- International Labour Organization (ILO) (2017) Progress of the implementation of recommendations adopted at the 3rd-8th ASEAN forum on Migrant Labour. ILO office for Asia and the Pacific. Bangkok: ILO, 2017.
- International Organization for Migration (IOM) (2014) "An assessment of regular channels for the recruitment of migrants workers in Cambodia and Myanmar for employment in Thailand." Country Mission in Myanmar.
- Legal Support Children Woman (LSCW) (2013) "Domestic workers and sub-decree 190: Time to protect Cambodia's migrants."
- Sophal, C. (2009) "Review of labour migration management, policies and legal framework in Cambodia." ILO/Japan project on managing cross-border movement of labour in Southeast Asia; ILO Regional Office for Asia and the Pacific. Bangkok: ILO, 2009.
- The Asia Foundation (2011) "Cambodia's labour migration: Analysis of the legal framework."
- United Nations Office on Drugs and Crime (UNODC) (2015) "The role of recruitment fees and abusive and fraudulent recruitment practices of recruitment agencies in trafficking in persons."
- Winrock International (2014) "Where is the horizon? Trafficked on fishing vessels." CTIP II, Winrock International, USAID, 2014.