



International
Labour
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► Cambodia's labour migration governance framework

A comparative analysis with international labour standards for recruitment, work in fishing and forced labour



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► **Cambodia's labour migration governance framework**

A comparative analysis with international labour standards for recruitment, work in fishing and forced labour

By Jane Hodge and Benjamin Harkins

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► Foreword

Labour migration represents a significant livelihood strategy in Cambodia, providing jobs to over 1.1 million of its people. The primary destination country for Cambodian migrant workers is Thailand, with most employed in the fishing, agriculture, livestock, construction, manufacturing, domestic work and service sectors. The majority of these workers do not use regular channels to migrate because of their high costs, lengthy wait times and considerable complexity, instead relying on social networks and brokers to cross the border and seek employment.

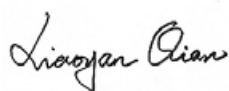
The migration pathways for work in Thailand's fishing sector are even more limited, as recruitment through regular channels is prohibited by Cambodia. Although the Cambodian Government has not put a formal ban on migration of Cambodians for fishing work, the Ministry of Labour and Vocational Training (MLVT) issued an announcement in 2007 indicating that recruitment agencies in Cambodia should not send migrant workers into the industry. The policy was originally developed out of concern for the safety of Cambodian migrant fishers due to widespread reports of exploitation and abuse in Thailand's fishing sector.

Noting the improvements made to better protect the labour rights of migrant fishers in Thailand in recent years, the Cambodian Government has indicated that it is ready to consider removing the restriction on migration into the fishing industry and develop a legal framework. This change in policy position was outlined in the Labour Migration Policy for Cambodia 2019–2023, which calls for the development of a sector-specific bilateral agreement to ensure adequate labour and social protection for Cambodian fishers in Thailand rather than prohibiting recruitment.

This new policy perspective is a recognition of the substantive reforms made by Thailand to its legislation and enforcement, including amendment of the Ministerial Regulation on Labour Protection in Sea Fisheries (2022), the establishment of Port-in/Port-out Centres to conduct multi-disciplinary inspections of fishing vessels and crews, the ratification of the Work in Fishing Convention, 2007 (No. 188) and the Protocol of 2014 to the Forced Labour Convention, 1930, and ongoing technical cooperation with the ILO Ship to Shore Rights South East Asia programme.

The ILO collaborated with the MLVT to conduct a comparative analysis to assist the Cambodian Government in further developing the legal framework for labour migration, particularly in the fishing and seafood processing sectors. The objective of the analysis is to support Cambodia in aligning its policies and laws with the international labour standards provided by the Protocol of 2014 to the Forced Labour Convention, 1930; the Work in Fishing Convention, 2007 (No. 188); and the Private Employment Agencies Convention, 1997 (No. 181).

With the ILO's support, the MLVT organized a tripartite consultation workshop in October 2022 to validate the findings of the analysis and to develop plans for strengthening the legal framework. Following a positive response to the recommendations, the ILO has been working closely with its partners in Cambodia and Thailand to take them forward. The ILO remains strongly committed to supporting key stakeholders in both countries to fully realize decent work for Cambodian migrant workers in Thailand's blue economy.



Xiaoyan Qian

Director

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

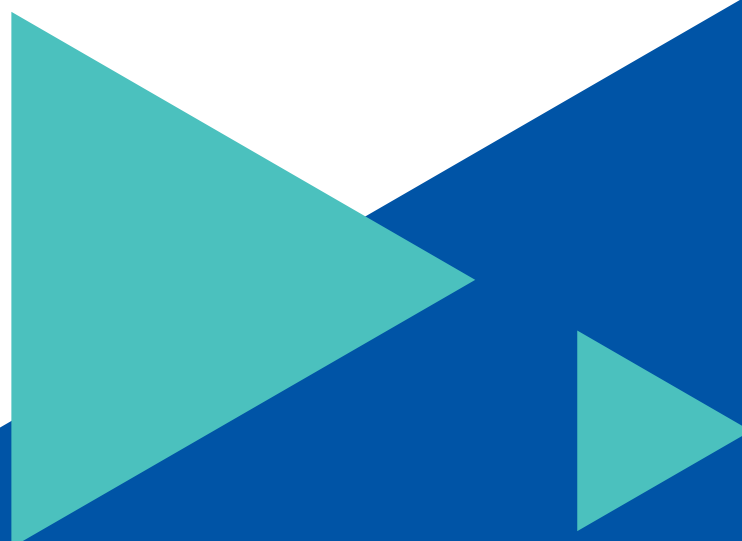
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► Abbreviations and acronyms

CEACR	Committee of Experts on the Application of Conventions and Recommendations
CSO	civil society organization
EU	European Union
ILO	International Labour Organization
IOM	International Organization for Migration
KNOMAD	Global Knowledge Partnership on Migration and Development
MLTV	Ministry of Labour and Vocational Training (Cambodia)
MOI	Ministry of Interior (Cambodia)
MOJ	Ministry of Justice (Cambodia)
MOL	Ministry of Labour (Thailand)
MOSAVY	Ministry of Social Affairs, Veterans, and Youth Rehabilitation (Cambodia)
MOU	memorandum of understanding
MSDHS	Ministry of Social Development and Human Security (Thailand)
NCCT	National Committee for Counter-Trafficking in Persons (Thailand)
UNDESA	United Nations Department of Economic and Social Affairs
PDLVT	Provincial Department of Labour and Vocational Training (Cambodia)
PIPO	Port-in/Port-out
PRA	private recruitment agency



Executive summary

Introduction

Cambodia is a major country of origin for migrants, with over 1,100,000 Cambodians living abroad in 2020 (54 per cent of whom are women) (UNDESA 2020). The majority of Cambodian migrants go abroad in search of work due to insufficient employment opportunities available in the domestic labour market and significantly higher wages offered for work abroad. The largest destination country for Cambodian migrant workers is Thailand because of its close proximity, high demand for labour, cultural similarities and relatively liberal labour migration governance regime.

Cambodian migrant workers represent about 25 per cent (55,367) of the 223,448 migrants registered for work in Thailand's fishing and seafood processing sectors,¹ and thousands more are known to be employed in an irregular legal status (International Labor Rights Forum 2020). Although the Cambodian Government has not formally banned Cambodian migrants from working on fishing vessels, the Ministry of Labour and Vocational Training (MLVT) issued an announcement to private recruitment agencies (PRAs) in 2007 prohibiting recruitment of workers in the fishing sector. The policy renders migrant fishers unable to benefit from coverage by Cambodia's labour migration regulatory framework, including Sub-Decree No. 190 on the Management of the Sending of Cambodian Workers Abroad through Private Recruitment Agencies (hereafter "Sub-Decree 190") and the eight supplementing *prakas* (subordinate laws).²

1 Source: Thailand's Department of Employment and Department of Fisheries (as of December 2021). As the data is not harmonized between the two departments, there is the possibility of some duplication.

2 As this legislation only covers workers who are recruited, or are being recruited by, a licensed private recruitment agency (Sub-Decree 190, art. 4).

While this decision by the Cambodian Government was intended to protect migrant workers from exploitation and abuse, the policy has not succeeded in achieving its intended outcomes. Cambodian workers still go to work abroad in Thailand's fishing sector in an irregular legal status or are deceived by unscrupulous actors into working in the sector. Although many regularize their status later on through Thailand's periodic amnesties, the lack of legal status enhances their vulnerability during the recruitment process, exacerbating the power imbalance with their employers.

Although the prohibition has not been an effective policy response, it is clear that significant decent work deficits persist for Cambodian migrant fishers in Thailand (ILO 2020b). Due to its continuing concerns about their working conditions, the Cambodian Government has expressed interest in further developing the bilateral recruitment process in order to provide increased protection for the labour rights of migrant fishers. This represents an acknowledgement by the Government that the current prohibition on recruitment into the fishing sector has not prevented Cambodian workers from migrating into the fishing sector irregularly, and that their lack of legal status may make them more vulnerable to exploitative and abusive working conditions. It also recognizes the heightened vulnerabilities faced by migrant fishers and the need to address their labour protection needs directly.

Cambodia has been a Member of the ILO since 1969 and has ratified 13 ILO Conventions, including eight of the eleven fundamental instruments.³ In 2024, Cambodia is scheduled to submit regular and out-of-cycle reports and receive comments from the ILO Committee of Experts on the Application of Conventions and Recommendations in relation to the implementation of eight conventions it has ratified. To date, however, there has been no legal analysis conducted on the labour migration governance framework for the fishing and seafood processing sectors in Cambodia. This comparative legal analysis seeks to inform Cambodia's efforts to strengthen the related policies and laws by increasing their alignment with the international labour standards outlined in the Private Employment Agencies Convention, 1997 (No. 181), the Protocol of 2014 to the Forced Labour Convention, 1930 (hereafter "Protocol No. 29") and the Work in Fishing Convention, 2007 (No. 188). Ratification of these international labour standards by Cambodia would help to address the specific vulnerabilities of migrant workers in the fishing and seafood processing sectors through ensuring adequate legal protections are in place.

This report also seeks to assist the Cambodian and Thai Governments in preparing for negotiation of a bilateral agreement on migration for work in the fishing sector. The analysis is particularly timely, as MLVT has begun the process of updating the Labour Migration Policy for Cambodia 2019–2023 and drafting of the country's first-ever national Labour Migration Law. The report findings are intended to support social dialogue among the ILO's partners, including Government, worker, employer and civil society organization representatives, through identifying the current strengths and weaknesses of the Cambodian labour migration governance framework and providing recommendations for improvement.

Research findings

The findings of the analysis indicate that Cambodia has in place a number of positive measures that are in line with the articles of Convention No. 181, Protocol No. 29 and Convention No. 188 within its policy and legislative framework. However, while these policy and legal instruments can be seen to align with international labour standards in some respects, significant challenges remain with regard to gaps in labour protection for migrant fishers and irregular workers; the application of sanctions for violations by recruitment agencies; the provision of remedies and compensation for abuses; and the enforcement of some of the legal articles. These gaps are explained in more detail in the section below.

3 Cambodia has not yet ratified the Protocol of 2014 to the Forced Labour Convention, 1930, the Occupational Safety and Health Convention, 1981 (No. 155), and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), all three of which are now classified as ILO fundamental instruments.

Lack of legal protection for fishers and seafood processing workers

Due to the 2007 MLVT announcement, migrant fishers are not able to benefit from the labour protections offered by Sub-Decree 190 or the eight supplementing prakas, as they only apply to workers recruited by a licensed PRA.⁴ While this decision by the Government was intended to protect workers from entering employment in a sector where there is a high prevalence of abuse, the stakeholders interviewed acknowledged that this policy has not achieved its intended outcomes. Prohibiting recruitment into the fishing sector has not prevented migrants from going abroad to work in fishing, nor has it prevented unscrupulous actors from deceiving them to work in the sector. Contrary to its intention, the ban on deployment of Cambodian migrant fishers has instead pushed these workers into irregularity, making them more vulnerable to exploitation and eroding their ability to pursue redress for abuses, such as through the MLVT complaint mechanism established under Prakas 249.⁵

The stakeholders interviewed were in agreement that denying migrant fishers the possibility of regular legal status and access to complaint mechanisms as a result of the MLVT announcement is a far riskier approach than expanding protection for them under the policy and legislative framework.⁶ Even so, some recruitment actors expressed reluctance to resume sending migrants to work in a sector they consider dangerous. A number of measures would need to be put into place before they felt confident that workers migrating into the fishing sector would be protected.

There was also consensus among stakeholders that an urgent response is required to address the protection needs of Cambodian migrant fishers. This includes enactment of a labour migration governance framework that provides inclusive coverage of all migrant workers regardless of gender, sector or legal status, as well as the development of a sector-specific bilateral agreement between Cambodia and Thailand for migration into the fishing sector. Maintaining the status quo of prohibiting recruitment until working conditions improve was not considered an acceptable position.

The impact of the MLVT announcement has extended beyond its intended scope, as the understanding of some stakeholders who facilitate the complaint mechanism under Prakas 249 is that the prohibition on migration into the fishing sector also applies to seafood processing work. In practice, this has rendered some seafood processing workers unable to avail themselves of the MLVT complaint process to resolve their grievances. The lack of clarity among key stakeholders is the result of the informal nature of the policy, and is concerning, as it may mean that workers with legitimate complaints may be denied access to justice.

This creep of protectionist views was also found among the recruitment actors interviewed, as most stated that they no longer send migrant workers into seafood processing jobs abroad. While they were aware that demand for workers in the seafood processing sector is high, it was reported that only if conditions in the seafood processing sector improve would they consider sending workers so that they could be assured of their safety. The result is that regular migration into one of the major sectors of employment for women migrant workers in Thailand has been restricted, further reducing their employment options in an already highly gender-segregated labour market.

No prohibitions against charging recruitment fees and related costs to migrant workers

The recruitment fees and related costs to be charged to workers are stipulated in Prakas 253 on Promulgation of Minimum Standards of Job Placement Services Abroad Contract, as well as within the Agreement on the Employment of Workers between Cambodia and Thailand (2015). Other fees and costs of recruitment – such

4 Sub-Decree 190, art. 4.

5 Sub-Decree 190, art. 4.

6 Previous ILO research has found similar negative policy impacts in relation to the prohibition on Cambodian women migrating into domestic work in Malaysia enacted in 2011 (Napier-Moore 2017).

as PRA service fees, costs of required training, and travel costs from Cambodia to the destination country – are largely unregulated in Cambodian legislation, both in terms of the actor responsible for paying them and the ceiling on what amount can be charged. In accordance with Convention No. 181, migrant workers should not be responsible for paying these recruitment fees and related costs.

Recruitment fees and related costs can make workers more vulnerable to abuse, particularly if they require migrant workers to take on excessive debt or the costs are to be paid back through wage deductions. The size of these fees may result in workers being unable to leave their employment, as they would experience financial difficulties if they lost their source of income. Recruitment fees and related costs borne by workers also reduce the development impact of migration for workers, their families, and their communities, as it may require many months of earnings to pay them off.

In line with Convention No. 181⁷ and Convention No. 188⁸, recruitment fees and related costs borne by migrant workers should be eliminated. In several key destination countries for Cambodian migrants, such as Thailand and Japan, measures have already been enacted to prohibit charging recruitment fees to migrant workers. There have also been initial discussions on developing a *prakas* to better regulate recruitment fees and related costs in Cambodia, which provides an excellent opportunity to move in a progressive policy direction.

To support incremental progress towards the elimination of recruitment fees borne by migrant workers, the Government and social partners should start specifying categories of fees and costs that are not permitted to be charged to migrant workers and hold social dialogue to determine any exceptions. This approach will help to ensure that workers can determine when the fees and costs they are charged are illegal and enable them to lodge complaints. It will also enable the authorities to more easily identify and prosecute violations of labour and human trafficking laws, allowing for appropriate sanctions to be enforced against offenders. Though further legislative action should ultimately be taken to completely prohibit worker-paid fees, specifying the prohibited fees and clearly outlining any exceptions after due consultation would still reduce the costs involved and help enable acts of exploitation and abuse to be more easily identified, prosecuted and remedied.

Legislative gaps concerning the application of sanctions and remedies for violations by private recruitment agencies

Sub-Decree 190 and the eight supplementing *prakas* are not considered to be national laws but rather subordinate legislation – constraining the powers of the MLVT to effectively regulate labour migration. Under the MLVT's jurisdiction, there are no penal sanctions that can be applied for violations. The Ministry can issue administrative penalties – such as written warnings and temporary suspension or revocation of PRA licenses⁹ – or seize guarantee deposits to compensate migrant workers for damages caused to them by PRAs in a limited set of circumstances.¹⁰ Moreover, the MLVT has no powers to make binding decisions when an agreement cannot be reached through conciliation, which then requires migrants to take their complaints through a lengthy court process (ILO 2022a).

Currently, there is no process outlined in Sub-Decree 190 and the eight supplementing *prakas* for how the MLVT should apply the penalties or provide the remedies that have been detailed. It is not stipulated how a decision is to be made to impose a sanction, what offenses may result in a more severe form of sanction, and whether repeated violations of the Sub-Decree should lead to progressively more severe sanctions – nor even whether the history of violations by individual PRAs should be tracked over time. The lack of a defined process and a clear schedule of sanctions and remedies for violations under the legislative framework poses a significant challenge for the enforcement of these provisions. Moreover, the absence of penal sanctions within the subordinate laws for more severe or repeat abuses committed by PRAs limits their regulatory effectiveness.

7 Convention No. 181, Art. 7(1).

8 Convention No. 188, Art. 22(3)(a).

9 Sub-Decree No. 190, art. 39.

10 Sub-Decree No. 190, art. 10.

Insufficient enforcement of sanctions and provision of compensation to act as a deterrent

In addition to the lack of clarity in the legislation, there are substantial gaps in practical enforcement of sanctions and availability of remedies for law violations committed by PRAs. The stakeholders interviewed observed that migrant workers continue to experience significant challenges in accessing the complaint mechanism outlined in Prakas 249, which is the main process through which cases of non-compliance would emerge. Moreover, when violations are identified, it is rare for sanctions to be imposed or guarantee deposits to be seized, and when compensation is awarded, the amounts ordered are relatively low.

Without enforcement of sufficient penalties and remediation, the same recruitment actors do not appear to be deterred and are responsible for repeated violations of migrant workers' rights. In cases where the amount ordered for restitution is low and still allows the PRA to make a profit from committing a violation, there is no incentive to comply with the law or respect the labour rights of migrant workers. For migrant workers themselves, many are not restored to the financial position they were in prior to the violations, let alone compensated for the harm suffered to their livelihoods. Previous studies have found that the only remedy provided to resolve many recruitment-related complaints in Cambodia is simply the provision of passports and deployment to destination countries in spite of months or even years of delay. As the recruitment agencies involved had failed to send them abroad for long periods of time despite receiving upfront payments to do so, the impact on the earnings of migrant workers in these cases were often severe (Harkins and Åhlberg 2017).

In developing the new Labour Migration Law, further powers should be granted to the competent authorities to order compensation and damages to migrant workers on top of restitution in order to financially restore workers to their situation before the violation and deter repeat offenses by PRAs. To further dissuade unscrupulous actors, the severity of penal sanctions should be increased and include progressively more severe sanctions for repeat violations, with clear instructions for which cases are prosecutable. In line with international standards and good practices, the law should include guidance on the application of stringent sanctions for PRAs engaging in unethical and fraudulent business practices, including through revocation of licenses and prohibitions on new license applications.¹¹ In particular, the Philippines has been widely recognized for having developed an extensive list of possible violations by PRAs, with clear guidelines on the imposition of administrative sanctions and strict enforcement (ILO 2022e).

Lack of a definition of forced labour as a stand-alone offense against migrant workers

Under Cambodian law, forced labour is not defined as a stand-alone punishable offense in any piece of legislation that covers migrant workers. In line with the Forced Labour Convention, 1930 (No. 29) – ratified by Cambodia in 1969 – and Protocol No. 29, “forced or compulsory labour shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”.¹² Section 5 of the Labour Code defines forced labour in line with the ILO definition but does not outline any penal sanctions and does not apply to Cambodian migrant workers.

The current legislative framework contains provisions allowing for the prosecution of persons guilty of “trafficking another for any form of exploitation including forced labour”.¹³ However, not having forced labour as a stand-alone offense poses significant challenges to the identification, investigation and prosecution of cases of severe labour exploitation that are not determined to be a consequence of human trafficking, or cases in which the trafficking element is not clearly evident. Taking into consideration that forced labour – as

11 Convention No. 181, Art. 8(1); Private Employment Agencies Recommendation, 1997 (No. 188), Para. 4.

12 Convention No. 29, Art. 2(1); Protocol No. 29, Art. 1(3).

13 Law on the Suppression of Human Trafficking and Sexual Exploitation 2008, art. 10.

defined in Convention No. 29 and Protocol No. 29 – is a broader concept than trafficking in persons, the lack of specific provisions sanctioning forms of forced labour involving migrant workers hinders the effective identification and protection of a substantial group of survivors, impedes their access to appropriate and effective remedies, and prevents adequate punishment of forced labour practices, as required by Convention No. 29 and Protocol No. 29.

In addition, the Cambodian legislative framework currently addresses human trafficking and labour abuses through a siloed approach that focuses either on criminal justice or labour protection responses – with the latter marginalized in the event of severe abuses. To better integrate a labour protection approach, a legislative definition for forced labour is required that covers migrant workers; is not linked to trafficking; is in line with the Convention No. 29 and Protocol No. 29 definition; and includes penal sanctions, remedies and processes for responding to forced labour against migrant workers. Bringing to bear the specialized expertise of the MLVT and other labour sector actors on forced labour cases is critically important to more effectively address the complex labour relations issues involved.

Need for clarification of the roles and responsibilities of government agencies

Enforcement action against human trafficking for forced labour under the Law on the Suppression of Human Trafficking and Sexual Exploitation (2008) and related labour rights violations against migrant workers often requires the involvement of a large number of different government agencies. Stakeholders interviewed reported that there were both gaps and overlapping responsibilities between the different agencies that require clarification.

In particular, complaint cases involving irregular migrant workers are currently being referred by the MLVT to anti-trafficking actors, which renders migrant workers unable to seek redress for labour abuses if they are not specifically identified as victims of trafficking. Further clarification of the roles and responsibilities of the MLVT and anti-trafficking officials in addressing complaints brought by migrant workers with irregular legal status is required to fill the gap in access to justice, including establishing a clear mandate for the MLVT to conciliate labour-related complaints regardless of the legal status of the migrant worker. Likewise, the MLVT should ensure that the recruitment actors involved are appropriately penalized for violations occurring within the scope of their mandate, even if prosecuted as human trafficking cases.

Conclusion and recommendations

The Cambodian Government has recognized that labour migration is an important contributor to inclusive and sustainable economic growth and development in Cambodia. In response, the Government has taken a number of important steps forward in recent years in developing its labour migration governance framework. However, addressing the specific vulnerabilities of migrant workers in the fishing and seafood processing sectors requires that further legislative progress be made towards the adoption of international labour standards, including the Work in Fishing Convention, 2007 (No. 188), the Protocol of 2014 to the Forced Labour Convention, 1930, and the Private Employment Agencies Convention, 1997 (No. 181). The following recommendations are provided to achieve greater alignment with these standards and move towards ratification. As most of the recommendations relate to forthcoming policy and legislative development processes, there are timely opportunities emerging for their application.

1. Develop a national Labour Migration Law to expand labour and social protection for migrant workers.

Although Sub-Decree 190 and the eight supplementing *prakas* already incorporate many of the articles of the relevant international labour standards, there are some significant gaps in the legislation and its enforcement – largely due to the constraints of subordinate legislation. Moving ahead with the Government's plans to develop a national Labour Migration Law will enable expanded labour and social protections to be provided to Cambodian migrant workers, including steps towards the elimination of worker borne recruitment fees and related costs. A national Labour Migration Law will support a whole-of-government approach for effective migration governance, including engagement with social partners and civil society organizations (CSOs).

2. Lift the ban on deployment of fishers and develop sector-specific training and informational materials.

A policy shift is needed to establish robust legal protections for migrant fishers in national legislation rather than attempting to prevent them from migrating. As soon as possible, migrant fishers should be afforded the same legal protection provided to migrants in other sectors by lifting the 2007 MLVT announcement banning recruitment into the fishing sector and by making it clear that the restriction was never meant to apply to seafood processing workers. The announcement should also specify that migrant fishers and seafood processing workers are covered by: (i) Sub-Decree 190 and the eight supplementing *prakas*; (ii) the Memorandum of Understanding (MOU) between Cambodia and Thailand on Labour Cooperation; and (iii) the Agreement on the Employment of Workers between Cambodia and Thailand, so they can immediately benefit from increased protection.

3. Negotiate a bilateral agreement between Cambodia and Thailand for labour migration into the fishing sector.

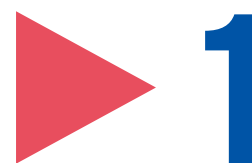
Concurrent to including migrant fishers in coverage by national policy and legislation, the Governments of Cambodia and Thailand should develop a bilateral agreement to ensure that fishers' rights are better protected, supported by social dialogue with employers organizations, workers organizations and CSOs. All stakeholders interviewed identified the development of a bilateral agreement between Cambodia and Thailand for migration into the fishing sector as a necessary mechanism for improving protection of Cambodian migrant fishers, including the requirement of a standard employment contract as outlined in Convention No. 188.

4. Elevate the Policy on Labour Migration for Cambodia from a ministerial policy to a national policy during 2024–28.

The current Policy on Labour Migration for Cambodia 2019–2023 is now being reviewed for extension until 2028. This provides an excellent opportunity to elevate responsibility for Cambodia's labour migration governance framework from a ministerial policy to a national policy, as already planned by the MLVT. A key benefit of this change in policy status is that the implementation of the related action plans, which has been largely dormant over the past three iterations of the Policy, can be supported by interministerial working groups, mandated by the Prime Minister, who will meet regularly and track implementation against the action plan. It is also important to ensuring that the next Policy on Labour Migration for Cambodia is planned with a corresponding Government budget allocation, as few activities in previous action plans have progressed except those funded by international organizations, social partners and CSOs.

5. Ratify the Private Employment Agencies Convention, 1997 (No. 181); the Protocol of 2014 to the Forced Labour Convention, 1930; and the Work in Fishing Convention, 2007 (No. 188).

The Cambodian legal framework already incorporates many of the labour standards set forth in Convention No. 181, Protocol No. 29 and Convention No. 188. The Government should consider ratifying these international labour standards in order to take the next step forward in improving protection of Cambodian migrant workers. This would help with addressing the specific concerns with exploitation of migrants in the Thai fishing and seafood processing sectors, and assist in responding to the protection needs of all Cambodian migrant workers, regardless of their gender, sector of employment or legal status.



Introduction

1.1. Situation analysis

Cambodia is a major country of origin for migrants, with over 1,100,000 Cambodians living abroad in 2020 (54 per cent of whom are women) (UNDESA 2020). The majority of Cambodian migrants go abroad in search of work due to insufficient employment opportunities available in the domestic labour market and significantly higher wages offered for work abroad. The largest destination country for Cambodian migrant workers is Thailand because of its close proximity, high demand for labour, cultural similarities and relatively relaxed labour migration governance regime. Cambodian workers migrating to Thailand commonly work in the fishing, agriculture, livestock, construction, manufacturing, and service sectors, including domestic work (ILO 2022b).

The majority of Cambodian workers migrate to Thailand through irregular channels (Harkins, Lindgren, and Suravoranon 2017), which continued during the COVID-19 pandemic despite increased militarization of the border (ILO 2020a). This is largely because irregular migration is faster, cheaper and less complex than the regular channels available. An ILO and International Organization for Migration (IOM) study found that Cambodian workers who migrated using irregular channels were able to migrate within 18 days, in comparison to an average of 136 days for those using regular channels. Similarly, the average migration cost for workers using irregular channels was US\$123, in comparison to US\$548 for those using regular channels (Harkins, Lindgren, and Suravoranon 2017). For many Cambodian migrants seeking work in Thailand, they typically must utilize the limited migration options that are available to them, even if they potentially entail greater risks due to lack of legal status.

Cambodian migrant workers represent about 25 per cent (55,367) of the 223,448 migrants registered for work in Thailand's fishing and seafood processing sectors,¹⁴ and thousands more are known to be employed in an irregular legal status (International Labor Rights Forum 2020). Although the Cambodian Government has not formally banned Cambodian migrants from working on fishing vessels, the Ministry of Labour and Vocational Training (MLVT) issued an announcement to private recruitment agencies (PRAs) in 2007 prohibiting recruitment of workers in the fishing sector. The policy renders migrant fishers unable to benefit from coverage by Cambodia's labour migration regulatory framework, including Sub-Decree No. 190 on the Management of the Sending of Cambodian Workers Abroad through Private Recruitment Agencies (hereafter "Sub-Decree 190") and the eight supplementing *prakas* (subordinate laws).¹⁵

Although the 2007 MLVT announcement is acknowledged to be an informal agreement with PRAs that does not carry the weight of law, it has largely been adhered to in relation to formal recruitment of migrant fishers under the Memorandum of Understanding (MOU) between Cambodia and Thailand on Labour Cooperation. This has led to tension between the Thai and Cambodian Governments, as the Thai Government's understanding is that the MOU agreement is inclusive of migration into the fishing sector – a sector that faces significant labour shortages. The use of a de facto policy measure to restrict this migration to Thailand has thus resulted in confusion between the parties involved, as well as creating a gap in access to regular migration channels for Cambodian fishers.

Although the prohibition has not been an effective policy response, the concern for the working conditions of migrant fishers in Thailand is justified. Significant decent work deficits remain for Cambodian migrant workers employed in Thailand's fishing and seafood processing sectors. Research conducted by the ILO in Thailand has demonstrated some improvements in working conditions for migrant fishers and seafood processing workers, including lower recruitment fees, more formalized employment contracts, and higher and more regular pay. However, severe labour rights abuses were also found to persist, such as contract substitution, retention of identification documents, debt bondage, excessive working hours, wage theft, violence and harassment, and forced labour. In addition, serious injuries remain a commonplace occurrence, and provisions for a safe working and living environment on-board vessels are inadequate. Finally, freedom of association to form their own trade unions and bargain collectively is still denied to Cambodian migrant workers under Thai labour law (ILO 2020b).

Work on-board fishing vessels includes a number of sectoral specificities that increase the vulnerability of Cambodian migrant workers to labour abuses. These include the isolated nature of their workplaces, the frequently long and unpredictable work hours, traditional payment systems that provide advance wages or a share of the catch, and the precarious legal status of the migrant workers employed within its workforce. In addition, Cambodian fishers are often excluded from key labour rights protections due to the informality of their employment. While substantial improvements have been made to Thailand's legislative framework to better regulate the fishing sector in recent years, enforcement of these laws remains insufficient to comprehensively protect the rights of migrant workers.

Women comprise the majority of Cambodian migrant workers in seafood processing work, largely because employers believe they are better suited for this type of work. Women are assumed to have "nimble fingers", making them effective as workers in detailed manual labour jobs. In addition, some employers consider women migrants to be more obedient and easier to control than men in factory settings (Oishi 2005). However, the application of gendered stereotypes holds negative consequences for the working conditions of women migrant workers within the industry, including a lack of formalization, unequal pay, violence and harassment, and gaps in maternity protection. Discriminatory employment practices in seafood processing factories based

14 Source: Thailand's Department of Employment and Department of Fisheries (as of December 2021). As the data is not harmonized between the two departments, there is the possibility of some duplication.

15 As this legislation only covers workers who are recruited, or are being recruited by, a licensed private recruitment agency (Sub-Decree 190, art. 4).

upon gender intersect with and further compound the unequal treatment that Cambodian migrant women experience as foreign workers in destination countries.

Due to its continuing concerns about the working conditions of Cambodian migrant fishers in Thailand, the Cambodian Government has expressed interest in further developing the bilateral recruitment process in order to provide increased protection for their labour rights. This represents an acknowledgement by the Government that the current prohibition on recruitment into the fishing sector has not prevented Cambodian workers from migrating into the fishing sector irregularly, and that their lack of legal status may make them more vulnerable to exploitative and abusive working conditions. It also recognizes the heightened vulnerabilities faced by migrant fishers and the need to address their labour protection needs directly.

1.2. Research rationale

To date, there has been no legal analysis conducted on the labour migration governance framework for the fishing and seafood processing sectors in Cambodia. This comparative legal analysis seeks to inform Cambodia's efforts to strengthen the related policies and laws by increasing their alignment with the international labour standards outlined in the Private Employment Agencies Convention, 1997 (No. 181); the Protocol of 2014 to the Forced Labour Convention, 1930 (hereafter "Protocol No. 29"); and the Work in Fishing Convention, 2007 (No. 188). Ratification of these international labour standards by Cambodia would help to address the specific vulnerabilities of migrant workers in the fishing and seafood processing sectors through ensuring adequate legal protections are in place.

This paper also seeks to assist the Cambodian and Thai Governments in preparing for negotiation of a bilateral agreement on migration for work in the fishing sector. The analysis is particularly timely, as the MLVT has begun the process of updating the Labour Migration Policy for Cambodia 2019–2023 and drafting the country's first-ever national Labour Migration Law. It is also intended to support social dialogue among the ILO's partners, including the Government, worker, employer and civil society organization (CSO) representatives, by identifying the current strengths and weaknesses of the Cambodian labour migration governance framework to be addressed.

1.3. Research objectives

The objectives for the analysis include the following:

1. Reviewing the laws, subordinate legislation and MOUs relevant to labour migration governance and anti-trafficking, particularly in the fishing and seafood processing sectors;
2. Identifying the gaps in adherence with key provisions of Convention No. 181, Protocol No. 29 and Convention No. 188 in the existing labour migration governance and anti-trafficking frameworks in Cambodia; and
3. Providing recommendations on changes to be made to enhance compliance with the standards set forth in Convention No. 181, Protocol No. 29 and Convention No. 188, and move towards ratification of these instruments.

1.4. Research methodology

The gap analysis was conducted during July–October 2022, starting with a desk review of the relevant laws, subordinate legislation and MOUs to determine the extent to which they meet key articles of Convention No. 181, Protocol No. 29 and Convention No. 188. This review was used to produce the three matrices annexed to this report (Annexes I, II, and III), which provide a detailed analysis of the changes needed in the legislative framework to increase alignment with these international standards.

Interviews were then conducted with 19 tripartite plus stakeholders in September 2022. These discussions were used to validate the findings of the desk review and provide further insights into the practical implementation of the relevant policies and legislation in Cambodia.

In October 2022, the ILO and the MLVT organized a policy consultation workshop with 54 tripartite plus stakeholders to obtain further inputs for the gap analysis and to discuss plans for the way forward in advancing Cambodia's labour migration governance framework for the fishing and seafood processing sectors. The majority of the recommendations made in the analysis were accepted by stakeholders, and the feedback was used to make the final revisions to this report.

1.5. Policy and legislative instruments reviewed

Cambodia has been a Member of the ILO since 1969 and has ratified 13 ILO Conventions, including eight of the eleven fundamental instruments.¹⁶ Its policy framework has generally focused on ensuring that adequate labour protection for Cambodian migrant workers is in place, recognizing that labour migration significantly contributes to inclusive and sustainable economic growth, as well as poverty alleviation and improved livelihoods. An overview of the key policy and legislative instruments that form the basis of Cambodia's labour migration governance framework are briefly outlined in this section.

The over-arching policy instrument for labour migration governance is the Policy on Labour Migration for Cambodia 2019–2023, the country's third since 2010. The policy was developed by the MLVT with ILO technical support, in close cooperation with social partners and CSOs. It is unique within South-East Asia in applying a holistic and whole-of-government approach. The three main pillars are: (1) strengthening the labour migration governance framework; (2) protection and promotion of the rights of migrant workers; and (3) harnessing labour migration to maximize social and economic development.

The Government adopted Sub-Decree 190 on the Management of the Sending of Cambodian Workers Abroad through Private Recruitment Agencies in 2011. In order to support the practical implementation of Sub-Decree 190, the MLVT later issued eight supporting *prakas* in 2013. Sub-Decree 190 and the eight supplementing *prakas* form the core legislative framework regulating labour migration in Cambodia, and are considered a major advancement in its governance efforts. Importantly, this included the establishment of a functional complaint mechanism for migrant workers, managed by the MLVT and its provincial departments.

The process for regular migration to Thailand for “low-skilled migrants” is established by an MOU on labour cooperation developed in 2015 – the second bilateral agreement signed between the Cambodian and Thai Governments on this subject. Because of a heavy focus on security-related concerns, the MOU process continues to give priority to admissions procedures, prevention of irregular migration, and repatriation of migrant workers rather than labour market efficiency or the protection of migrant workers' labour rights. The gaps in protection for Cambodian migrants in the fishing sector in particular have been a source of diplomatic tension between the two countries (Grimwade and Neumann 2019).

The Law on the Suppression of Human Trafficking and Sexual Exploitation (2008) outlines the offenses and penalties related to “trafficking for the purposes of exploitation including forced labour”¹⁷ and applies to both Cambodian migrant workers and perpetrators outside and within the territory of Cambodia.¹⁸ The Criminal Code outlines penal sanctions and penalties for perpetrators subjecting workers “to conditions incompatible with human dignity”,¹⁹ including the criminal responsibility of legal entities.²⁰

16 Cambodia has not yet ratified the Protocol of 2014 to the Forced Labour Convention, 1930, the Occupational Safety and Health Convention, 1981 (No. 155), and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), all of which are now classified as fundamental instruments.

17 Law on the Suppression of Human Trafficking and Sexual Exploitation 2008, art. 10.

18 Law on the Suppression of Human Trafficking and Sexual Exploitation 2008, art. 3.

19 Criminal Code 2009, art. 274.

20 Criminal Code 2009, art. 273.

Section 5 of the Labour Code (1997) defines forced labour in line with the definition in the Forced Labour Convention, 1930 (No. 29).²¹ It also prohibits the “hiring of people for work to pay off debts”,²² but does not apply to Cambodian migrant workers.²³ Likewise, the Law on Fisheries (2007) and Prakas 305 on Work in Sea Fishing are applicable to fishers employed domestically but not to migrant fishers.

► **Table 1. Laws and policies reviewed**

Instrument	Mandated agency
Sub-Decree No. 190 on the Management of the Sending of Cambodian Workers Abroad through Private Recruitment Agencies (2011)	MLVT
Prakas No. 045/13 Annex on the Use of Key Terms	MLVT
Prakas No. 046/13 Recruitment Process and Pre-Departure Orientation Training	MLVT
Prakas No. 047/13 on Private Recruitment Agency	MLVT
Prakas No. 249 Complaint Receiving Mechanism for Migrant Workers	MLVT
Prakas No. 250 Inspection on Private Recruitment Agency	MLVT
Prakas No. 251 Penalty and Reward to the Private Recruitment Agency	MLVT
Prakas No. 252 On-site Service of the Private Recruitment Agency and Repatriation	MLVT
Prakas No. 253 Promulgation of Minimum Standards of Job Placement Services Abroad Contract and Annex	MLVT
Policy on Labour Migration for Cambodia 2019–2023	MLVT
Memorandum of Understanding between the Government of the Kingdom of Cambodia and the Government of the Kingdom of Thailand on Labour Cooperation (2015)	MLVT and Thai Ministry of Labour (MOL)
Agreement on the Employment of Workers between the Government of the Kingdom of Cambodia and the Government of the Kingdom of Thailand (2015)	MLVT and Thai MOL
Memorandum of Understanding between the Government of the Kingdom of Cambodia and the Government of the Kingdom of Thailand on Bilateral Cooperation for Eliminating Trafficking in Persons and Protecting Victims of Trafficking (2014)	MLVT and Thai Ministry of Social Development and Human Security (MSDHS)
Law on the Suppression of Human Trafficking and Sexual Exploitation (2008)	Ministry of Justice (MOJ)
Labour Code (1997)	MLVT
Criminal Code (2009)	MOJ

21 Labour Code 1997, art. 15: “Forced or compulsory labour is absolutely forbidden in conformity with the International Convention No. 29 on the forced or compulsory labour, adopted on June 28, 1930 by the International Labor Organization and ratified by the Kingdom of Cambodia on February 24, 1969. This article applies to everyone, including domestics or household servants and all workers in agricultural enterprises or businesses.”

22 Labour Code 1997, art. 16.

23 Labour Code 1997, art. 1: “This law governs relations between employers and workers resulting from employment contracts to be performed within the territory of the Kingdom of Cambodia, regardless of where the contract was made and what the nationality and residences of the contracted parties are.”

1.6. Research limitations

It is important to note that for the analysis of the articles of Convention No. 188, the legislation has been reviewed specifically in relation to Cambodia's legal jurisdiction over the licensing and regulation of the PRAs involved, and not in relation to the conditions on-board foreign flagged vessels. Convention No. 188 primarily seeks to regulate the conduct of fishing vessel owners, skippers and fishers. As such, much of Cambodia's policy and legislation is not directly relevant to Convention No. 188, as it primarily applies to the actions of a different set of stakeholders.

A comprehensive assessment of the laws and regulations governing the working and living conditions of Cambodian migrant fishers on foreign-flagged vessels should include a review of the national laws and regulations in the relevant flag State. However, this undertaking falls outside of the scope of this gap analysis. Instead, only selected Cambodian legislation and policy were considered in relation to Convention No. 188, particularly the Fisher's Work Agreement and Recruitment and Placement sections of the Convention, which are the most relevant to Cambodia's legal jurisdiction and have a significant impact on the working and living conditions of migrant fishers on foreign flagged vessels.

The ILO stresses that countries should put in place the means to effectively implement and enforce the requirements of ratified Conventions. An analysis of administrative capacity for implementation of the provisions of Conventions should therefore be included in a comparative assessment. Concerns related to effective implementation were taken into account in this analysis, particularly in relation to the existing legal framework provided by Sub-Decree 190 and the related *prakas* regulating recruitment of migrant workers. Nevertheless, more research is necessary to support a clearer understanding of the Government's capacity to implement the legislative changes necessary for ratification.

 **2**

Comparative analysis of Cambodian laws and regulations in relation to the Private Employment Agencies Convention, 1997 (No. 181)

2.1. No prohibitions against charging recruitment fees and related costs to migrant workers

Under Article 7(1) of Convention No. 181, it is stipulated that PRAs should “not charge directly or indirectly, in whole or in part, any fees or costs to workers”. In the ILOs General Principles and Operational Guidelines for Fair Recruitment and Definition of Recruitment Fees and Related Costs, “recruitment fees” include:

- ▶ payments for recruitment services offered by public or private labour recruiters;
- ▶ payments made in the case of recruitment of workers with a view to employing them to perform work for a third party;
- ▶ payments made in the case of direct recruitment by employers; or
- ▶ payments required to recover recruitment fees from workers (ILO 2019, Part 2, para. 9).

"Related costs" include:

- Administrative costs required for fulfilling the recruitment process, including fees for ID documents, passports, visas, background checks, security and exit clearances, banking services, work and residence permits, and services for workers' employment contracts;
- Medical costs for examinations, tests or vaccinations;
- Insurance costs to insure the lives, health and safety of workers, including migrant welfare funds;
- Costs for skills and qualification tests to verify workers' language proficiency and level of skills and qualifications, as well as location-specific credentialing, certification or licensing;
- Costs for required training and orientation, including on-site job orientation and pre-departure or post-arrival orientation of newly recruited workers;
- Equipment costs for tools, uniforms, safety gear, and other equipment needed to perform assigned work safely and effectively; and
- Travel and lodging costs incurred within or across national borders in the recruitment process, including for training, interviews, consular appointments, relocation, and return or repatriation (ILO 2019, Part 2, para. 11).

In Cambodia, the current legal framework stipulates that several categories of recruitment fees and related costs are to be paid by migrant workers. Article 5 of Prakas 253 outlines that workers should pay for their own documentation, with this expense not including the PRAs' service fees. Articles 5, 6 and 9 of Prakas 253 outline that workers are responsible for the costs of documents, flight tickets or other repatriation expenses if they finish the employment contract prematurely due to personal reasons. They are also responsible for paying compensation if they "create a liability for damages to the PRA". Article 5 of Prakas 253 and article 4(3–4) of the Agreement on the Employment of Workers between Cambodia and Thailand (2015) stipulate that workers need to contribute to funds,²⁴ and pay "fees and other relevant dues as required by the laws and regulations of both countries". In accordance with Convention No. 181, migrant workers should not pay for recruitment fees and related costs.

Recruitment fees and related costs can make workers more vulnerable to abuse, particularly if they require migrant workers to take on excessive debt or if the costs are to be paid back through wage deductions. The size of these fees may result in workers being unable to leave their employment, as they would experience financial difficulties if they lost their source of income. Recruitment fees and related costs borne by workers also reduce the development impact of migration for workers, their families and their communities, as it may require many months of earnings to pay them off.

While migrant workers in all sectors are made more vulnerable to labour exploitation and abuse as a result of the financial strain caused by paying high fees and costs for recruitment, fishers are particularly exposed, as there is often insufficient transparency and regulatory oversight over the deductions made from their wages to cover these expenses. It must also be noted that the charging of fees and costs to migrant workers disproportionately restricts the opportunities for women to seek employment in seafood processing (and other sectors), as they have comparatively less access to financial resources than men migrant workers, reducing equality of opportunity.²⁵

It is also important to note that within the context of migration to Thailand, many of the most expensive costs are currently the responsibility of migrant workers. The ILO conducted a detailed survey on worker-paid recruitment costs and fees in 2018 based on the ILO–World Bank KNOMAD methodology. The survey interviewed 1,200 regular and irregular migrant workers from Cambodia, Lao People's Democratic Republic

24 Agreement on the Employment of Workers between Cambodia and Thailand, art. 4(3): "The workers shall contribute to the funds, if any, in pursuant to the laws and regulations of both countries."

25 Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) General Recommendation No. 26.

and Myanmar. As most migrants paid a lump sum amount to an agency or broker, they did not know how much was spent on each individual cost item. However, for those migrants who paid their own costs directly, the items that contributed the largest amounts were documentation fees for the passport, visa and work permit, which together made up 60 per cent of the total (ILO 2020c). It is therefore critical for employers to help pay for the documentation fees of Cambodian migrant workers in order to reduce the expenses they bear.

Other recruitment fees and related costs – such as PRA service fees, the costs of training necessary to secure overseas employment, and travel costs from Cambodia to the destination – are largely unregulated in Cambodian legislation, both in terms of the actor responsible for paying these costs and the ceiling of these costs that can be charged to migrant workers.

Under the Policy on Labour Migration for Cambodia 2019–2023, the Government plans to “facilitate and foster PRAs to set sending fees in a transparent manner, and publicly disseminate the information in line with existing practices in the region”. While Article 7(1) of Convention No. 181 stipulates that no recruitment fees or related costs should be charged to migrant workers, Article 7(2) allows for the competent authority to have some flexibility to determine exceptions, so long as they are consistent with relevant international labour standards and determined after consulting the most representative organizations of workers and employers. Such exceptions should be considered subject to – but not limited to – the following conditions:

- that they are in the interest of workers;
- that they are limited to specified types of services or certain categories of workers; and
- that corresponding related costs are disclosed to workers before the job is accepted (ILO 2019, Part 2, para. 11).

To support incremental progress towards the elimination of recruitment fees borne by migrant workers, the Government and social partners should start specifying categories of fees and costs that are not permitted to be charged to migrant workers and hold social dialogue to determine any exceptions as outlined above. This approach will help to ensure that workers can determine when the fees and costs they are charged are illegal and enable them to lodge complaints. There have been initial discussions on developing a *prakas* to better regulate recruitment fees and related costs, which provides an excellent opportunity to begin to move in this policy direction. Though further legislative action should ultimately be taken to completely prohibit worker-paid fees, specifying the prohibited fees and clearly outlining any exceptions after due consultation would still reduce the costs involved and help enable acts of exploitation and abuse to be more easily identified, prosecuted and remedied.

2.2. Legislative gaps concerning the application of sanctions and remedies for violations by private recruitment agencies

Article 14(3) of Convention No. 181 calls for adequate remedies to be provided, including penalties where appropriate, for violations of law.²⁶ Sub-Decree 190 and the eight supplementing *prakas* are not considered to be national laws but rather subordinate legislation – constraining the powers of the MLVT to effectively regulate labour migration. Under the MLVT's jurisdiction, there are no penal sanctions that can be applied for violations. The Ministry can issue administrative penalties – such as written warnings and temporary suspension or revocation of PRA licenses²⁷ – or seize guarantee deposits to compensate migrant workers for damages caused to them by PRAs in a limited set of circumstances.²⁸ Moreover, the MLVT has no powers to make binding decisions when an agreement cannot be reached through conciliation, which then requires migrants to take their complaints through a lengthy court process (ILO 2022a).

²⁶ Convention No. 181, Art. 14(1).

²⁷ Sub-Decree No. 190, art. 39.

²⁸ Sub-Decree No. 190, art. 10.

Currently, there is no process outlined in Sub-Decree 190 and the eight supplementing *prakas* for how the MLVT should apply the penalties or provide the remedies that have been detailed. It is not stipulated how a decision is to be made to impose a sanction, what offenses may result in a more severe form of sanction, and whether repeated violations of the Sub-Decree should lead to progressively more severe sanctions – nor even whether the history of violations should be tracked over time. Similarly, in Prakas 253, what constitutes “a liability of damages” on the PRAs behalf or “compensation to the worker” is not articulated.²⁹ Prakas 249 outlines the complaint receiving mechanism for migrant workers but does not outline a schedule of remedies or penalties to respond to offenses. The lack of a defined process and a clear schedule of sanctions and remedies for violations under the legislative framework poses a significant challenge for the enforcement of these provisions. Moreover, the absence of penal sanctions within the subordinate laws for more severe or repeat abuses committed by PRAs limits their regulatory effectiveness.

Under the Law on the Suppression of Human Trafficking and Sexual Exploitation, which covers the offense of “unlawful removal for the purpose exploitation including forced labour”,³⁰ both penalties and restitution are required. Article 46 of the Law outlines that a perpetrator is liable for restitution of the whole “unjust enrichment” along with accrued interest, and the victim may claim for damages in addition to the restitution of such “unjust enrichment”. The Criminal Code has provision for criminal responsibility of a legal entity for “submitting a person to working under conditions incompatible with human dignity”, and outlines penal sanctions and penalties.

While it is a positive that these laws exist to facilitate financial remedies for exploited migrants – including restitution, interest and damages – they are only available for acts linked to human trafficking. Moreover, a criminal case must be prosecuted in the courts, which can be a lengthy and difficult process for migrant workers to navigate – taking multiple years to resolve. Migrants seeking to make a criminal complaint may require the assistance of a legal practitioner and face substantial challenges in accessing any compensation that the court awards.

For offenses contained in the Law on the Suppression of Human Trafficking and Sexual Exploitation, any restitution that may be ordered by the courts is only paid to workers following the completion of the convicted trafficker’s jail sentence (ILO 2022a). Even if a migrant worker’s criminal complaint is successfully prosecuted, the receipt of compensation may therefore be delayed for a significant time. As it stands, financial compensation is the last step in the legal process, even though it is often the first priority for migrant workers.

Developing a Labour Migration Law would allow the MLVT to outline labour law offenses for migrant workers in line with a schedule of processes, responsive remedies, and enforceable penal sanctions, including provisions for compensation and damages on top of restitution in line with international labour standards.

2.3. Insufficient enforcement of sanctions and compensation provided to act as a deterrent

In addition to the lack of clarity in the legislation, there are substantial gaps in the practical enforcement of sanctions and the availability of remedies for law violations committed by PRAs. The stakeholders interviewed observed that migrant workers continue to experience significant challenges in accessing the complaint mechanism outlined in Prakas 249, which is the main process through which cases of non-compliance would emerge. Moreover, when violations are identified, it is rare for sanctions to be imposed or guarantee deposits to be seized, and the compensation amounts ordered are relatively low.

29 Prakas No. 253 on Promulgation of Minimum Standards of Job Placement Services Abroad Contract, Annex, article 7: “If a private recruitment agency does not respect the contract and creates a liability for damages to the worker, the private recruitment agency will be responsible for compensation to the worker.”

30 Law on the Suppression of Human Trafficking and Sexual Exploitation, art. 10.

Without enforcement of sufficient penalties and remediation, the same recruitment actors do not appear to be deterred and are responsible for repeated violations of migrant workers' rights. In cases where the amount ordered for restitution is low and still allows the PRA to make a profit from committing a violation, there is no incentive to comply with the law and respect the labour rights of migrant workers. Concerning the migrant workers themselves, many are not restored to the financial position they were in prior to the violations, let alone compensated for the harm suffered to their livelihoods. Previous studies have found that the only remedy provided to resolve many recruitment-related complaints in Cambodia is simply the provision of passports and deployment to destination countries in spite of months or even years of delay. As the recruitment agencies involved had failed to send them abroad for long periods of time despite receiving upfront payments to do so, the impact on the earnings of migrant workers were often severe (Harkins and Åhlberg 2017).

Key informants interviewed for this report stated that under the Prakas 249 complaint mechanism, migrant workers generally do not receive a full refund of the costs they have paid to PRAs. In some cases, PRAs claimed that they had used the funds to pay for the required administrative procedures prior to deployment – such as obtaining passports or conducting training – and as a result could not afford to provide full restitution to workers. PRAs are generally allowed not to refund this money, even if the overall services were not rendered. Thus, the judgments often appear to preference PRA interests over aggrieved workers, with PRAs suffering no monetary loss – and in some cases actually making a profit – in spite of the violation identified during the complaints process.

A recent ILO study examining the resolutions reached for 12 migrant complaint cases in Cambodia found that complainants only received about 60 per cent of the money they had requested for repayment of recruitment costs and fees (Harkins and Åhlberg 2017). None of the awards provided additional compensation to cover interest on the costs and fees paid, loss of income caused by delayed deployment, or other payment of damages to the workers. Likewise, a 2016 ILO study on the implementation of Prakas 249 noted that the amount of money received by workers at that time included only the return of a portion of the amounts paid or owed to them – with no additional compensation received for harm suffered (ILO 2016). The limited compensation payments are not sufficient to achieve the broader policy objectives that should be addressed by remediating labour rights abuses, including preventing future violations of worker's rights by discouraging unscrupulous actors (IOM 2021).

Cambodian stakeholders also observed that sanctions are rarely imposed on PRAs by the MLVT. This conclusion is further supported by the findings of an ILO study conducted in 2017, which examined the resolutions reached in 490 complaint cases lodged by Cambodian migrant workers during a four-year period – primarily through the Prakas 249 complaint mechanism (Harkins and Åhlberg 2017). The research found that sanctions were applied in only 5 per cent of the cases resolved, among which 4 per cent were simply issued with a warning and 1 per cent with a monetary fine. Notably, no severe penalties were reported in any of the cases (such as cancelling PRA licensure), even though some were related to serious labour rights abuses against migrant workers.

Given the low amounts of compensation paid by respondents and the lack of sanctions imposed, it appears that the formal administrative complaints mechanism detailed in subordinate legislation currently provides neither adequate penalties or remedies for violations – as required by Convention No. 181.³¹ In developing the new Labour Migration Law, further powers should be granted to the competent authorities to order compensation and damages to migrant workers on top of restitution in order to restore workers to their financial situation before the violation and to deter repeat offenses by PRAs.

31 Convention No. 181, Art. 14.

To further dissuade unscrupulous actors, the severity of penal sanctions should be increased and include progressively more severe sanctions for repeat violations, with clear instructions for which cases are prosecutable. In line with international standards and good practices, the law should include guidance on the application of stringent sanctions for PRAs engaging in unethical and fraudulent business practices, such as through revocation of licenses and prohibitions on new license applications.³² In particular, the Philippines has been widely recognized for having developed an extensive list of possible violations by PRAs, with clear guidelines on the imposition of administrative sanctions and strict enforcement (ILO 2022e).

2.4. Added value of ratifying the Private Employment Agencies Convention, 1997 (No. 181)

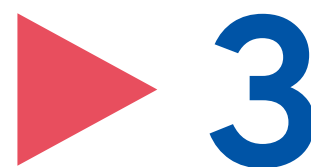
The over-arching reason to move towards ratification of Convention No. 181 is that it would support additional progress towards the goal of achieving full, productive and freely chosen employment and decent work for Cambodian workers. Ratifying Convention No. 181 helps ensure a fairer and more transparent labour market that affords workers opportunities to realize their full potential – while helping employers to find workers with the skills and talent they need to grow, succeed and remain competitive. It also protects the fundamental labour rights of workers during the recruitment process, including freedom of association, collective bargaining, and non-discrimination – as well as helping to prevent forced and child labour (ILO 2022c).

Due to significant legislative development work by the MLVT, social partners and CSOs, there is already a sound labour protection framework in place in Cambodia, covering the responsibilities of PRAs towards migrant workers during their recruitment, employment and return. Key stakeholders deserve recognition for their achievements in developing a strong labour migration governance framework through social dialogue. Ratification of Convention No. 181 would enable the Government to make further improvements to its laws, policies and practices, utilizing technical support from the ILO supervisory mechanisms and development cooperation projects.

A summary of the legislative changes recommended to ensure compatibility with Convention No. 181 and to move towards ratification include the following (see Annex I for a comprehensive gap analysis):

- Eliminate recruitment fees and related costs charged to migrant workers, in line with Article 7(1) of Convention No. 181.
- Provide for and apply adequate remedies and penalties for violations of the laws regulating PRAs, in line with Articles 14(3) and 14(1).
- Prohibit PRAs from engaging in unethical and fraudulent practices and from committing abuses through revocation of licenses and prohibitions on new license applications, in line with Article 8(1).
- Adopt legislative measures to ensure that workers recruited by PRAs are not denied the right to freedom of association and collective bargaining, in line with Articles 4, 11(a-b) and 12(a).
- Enact a legislative provision specifically prohibiting child labour (not only outlining the minimum age for workers), in line with Article 9.
- Adopt a legislative provision that covers the training courses and skills testing required before going abroad for employment (not just pre-departure orientation training), in line with Article 11(f).
- Take measures to provide compensation in case of occupational accidents, diseases, insolvency and protection of workers claims, in line with Article 11(h-i).
- Ensure that maternity protection and benefits (including preventing discrimination on the basis of pregnancy during recruitment), and parental protection and benefits are provided, in line with Article 11(j).

32 Convention No. 181, Art. 8(1) and the Private Employment Agencies Recommendation, 1997 (No. 188), Para. 4.



Comparative analysis of Cambodian laws and regulations in relation to the Protocol of 2014 to the Forced Labour Convention, 1930

3.1. Definition of forced labour

Article 2(1) of the Forced Labour Convention, 1930 (No. 29), which was ratified by Cambodia in 1969, defines forced or compulsory labour as “all work or service that is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”. This definition is reaffirmed in Article 1(3) of Protocol No. 29.

Forced labour refers to situations in which workers are coerced to work against their will through the use of a variety of different means; this includes direct forms of violence or intimidation, as well as more subtle means such as accumulated debt, retention of identity documents or withholding of wages. Forced labour should be understood as falling within the spectrum of working conditions in the labour market but is more than simply poor conditions as there must also be an element of involuntariness. The practice often emerges on the fringes of the labour market, where regulation is insufficient, law enforcement is weak, and workers have little or no opportunity to organize or to find effective protection against violations of their rights (ILO, n.d.).

Under Convention No. 29, ratifying States make a commitment to suppress forced labour in all its forms.³³ The Convention also stipulates that the use of forced labour “shall be punishable as a penal offense”, and the penalties imposed by law shall be “adequate and strictly enforced”.³⁴ In this regard, the ILO supervisory bodies have recommended that States ensure their legislation is sufficiently comprehensive and appropriate for penalizing those who engage in forced labour in order to bring such practices to an end (ILO 2007, para. 136). In doing so, countries should take into consideration their national contexts and legal systems with a view to covering all forced labour practices existing in the country and making such practices punishable under the relevant legislation (ILO 2007).

According to the Committee of Experts on the Application of Conventions and Recommendations (CEACR), a wide range of provisions can be used in practice, especially where these are interpreted together with other provisions concerning related abuses (such as, labour law violations, trafficking in persons, or the use of threats or violence). The objective is to ensure that the nature and extent of the problems in each country are taken into account, and that legislation explicitly targets these problems through the imposition of adequate penal sanctions and other measures (ILO 2007, para. 138). With regards to the link between trafficking in persons and forced labour in particular, the CEACR has observed that forced labour, as established by Convention No. 29, “is a broader concept than trafficking in persons”. It is therefore important “for national jurisdictions to have precise provisions, taking into account the principle of the strict interpretation of penal law”.³⁵

3.2. Lack of a definition of forced labour as a stand-alone offense against migrant workers

Under Cambodian law, forced labour is not defined as a stand-alone, punishable offense in any piece of legislation that covers migrant workers. In line with the Convention No. 29 and Protocol No. 29, “forced or compulsory labour shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”.³⁶

Section 5 of the Labour Code defines forced labour in line with the ILO definition but does not outline any penal sanctions and does not apply to Cambodian migrant workers. The Criminal Code prohibits “the acts of subjecting a person, by abusing their vulnerability or situation of dependence, to working conditions incompatible with human dignity” and defines this as a criminal offense punishable by penal sanctions but does not clearly define what these conditions “incompatible with human dignity” include to support practical enforcement.

The current legislative framework does contain provisions allowing for the prosecution of forced labour against migrant workers where it also involves human trafficking, as persons can be found guilty of “trafficking another for any form of exploitation including forced labour”.³⁷ The Law on the Suppression of Human Trafficking and Sexual Exploitation criminalizes “unlawful removal for the purpose of exploitation”, which is defined as “forced labour or services, slavery or practices similar to slavery, debt bondage, involuntary servitude, or child labour”. Similarly, the definition for trafficking under the MOU between Cambodia and Thailand on Bilateral Cooperation for Eliminating Trafficking in Persons and Protecting Victims of Trafficking links forced labour to trafficking for exploitation.

Not having forced labour as a stand-alone offense poses significant challenges to the identification, investigation and prosecution of cases of severe labour exploitation that are determined not to be a consequence of human trafficking, or cases in which the trafficking element is not clearly evident. Taking into consideration that forced labour is a broader concept than trafficking in persons, the lack of specific provisions sanctioning forms of

33 Protocol No. 29, Art. 1(1).

34 Protocol No. 29, Art. 25.

35 See, for example, CEACR, [Observation – Forced Labour Convention, 1930 \(No. 29\) – Peru](#), 2010.

36 Convention No. 29, Art. 2(1), and Protocol No. 29, Art. 1(3).

37 Law on the Suppression of Human Trafficking and Sexual Exploitation 2008, art. 10.

forced labour involving migrant workers hinders the effective identification and protection of a substantial group of survivors, impedes their access to appropriate and effective remedies, and prevents adequate punishment of forced labour practices, as required by Convention No. 29 and Protocol No. 29.

The Cambodian legislative framework currently addresses human trafficking and labour abuses through a siloed approach that focuses either on criminal justice or labour protection responses – with the latter heavily marginalized in the event of severe abuses. To better integrate a labour protection approach, a legislative definition of forced labour is needed which covers migrant workers; is not linked to trafficking; is in line with the Convention No. 29 and Protocol No. 29 definition; and includes penal sanctions, remedies and processes for responding to forced labour against migrant workers. This would help to ensure that Cambodian legislation is in line with the requirements of Convention No. 29 and Protocol No. 29 in relation to both the definition of the abuse³⁸ and the application of adequate and strictly enforced penalties.³⁹ Bringing to bear the specialized expertise of the MLVT and other labour sector actors on forced labour cases is critically important to more effectively address the complex labour relations issues involved.

3.3. Lack of protection for irregular workers under labour migration sub-laws

Article 2(c) of Protocol No. 29 requires that the coverage and enforcement of relevant legislation for the prevention of forced or compulsory labour apply to all workers and all sectors of the economy. However, Sub-Decree 190 in Cambodia restrictively defines a “migrant worker candidate” and a “worker” as those who are recruited, or are being recruited, by a licensed PRA.⁴⁰

These definitions have been interpreted by stakeholders to mean that migrant workers who make use of irregular channels are excluded from coverage by the Sub-Decree and supplementing eight *prakas* – even for those migrants who subsequently regularize their legal status in the destination country. In effect, this excludes the majority of Cambodian migrant workers from protection because of high rates of irregular migration, particularly in Thailand, which is Cambodia's largest destination country (ILO 2022a).

The legislation forming Cambodia's labour migration governance framework – particularly Prakas 249 on the complaints process – is actually more restrictive of the rights of irregular migrants than the labour laws that apply to them as migrant workers in Thailand. Laudably, the Ministry of Labour in Thailand has explicitly made clear that the Labour Protection Act applies to all workers in the Thai labour market, regardless of nationality or legal status – though in practice, it is often more difficult for irregular migrants to make complaints (Tunon and Harkins 2017).

The limitations in labour protection coverage for irregular migrant workers under Cambodia's labour migration sub-laws are also notably contradicted by several other related policy instruments, detracting from policy coherence. The Law on the Suppression of Human Trafficking and Sexual Exploitation is applicable to all people of Cambodian nationality, be they victim or perpetrator, within or outside the territory of Cambodia.⁴¹ The MOU between Cambodia and Thailand on Bilateral Cooperation for Eliminating Trafficking in Persons and Protecting Victims of Trafficking also applies to irregular workers,⁴² meaning if a Cambodian migrant fisher has

38 Convention No. 29, Art. 2(1): “For the purposes of this Convention the term forced or compulsory labour shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”

39 Convention No. 29, art. 25 “The illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and it shall be an obligation on any Member ratifying this Convention to ensure that the penalties imposed by law are really adequate and are strictly enforced.”

40 Sub-Decree 190, art. 4.

41 Law on the Suppression of Human Trafficking and Sexual Exploitation, arts. 2 and 3.

42 As per article 6(a).

been trafficked they can qualify for repatriation under article 15 of the MOU. The policy vision articulated in the Policy on Labour Migration Policy for Cambodia is “to develop a labour migration governance framework that protects, safeguards, and empowers all migrant workers ... regardless of ... legal status, or sector of work”.⁴³

Several of the interviewed stakeholders observed that workers with irregular legal status are typically deemed by the MLVT and Provincial Departments of Labour and Vocational Training (PDLVTs) to have complaints that fall outside their mandate and must instead be referred to anti-trafficking authorities or other criminal investigation bodies. Referrals are made even when the circumstances surrounding the migrant worker's case clearly suggest that they have not been trafficked but only migrated irregularly. This results in a dead-end to the complaint process for many irregular migrant workers, as their complaints are not accepted by labour authorities because of their legal status, and after referral to anti-trafficking authorities, the case cannot be prosecuted because the abuse does not fit the definition of human trafficking.

Moreover, ILO studies have found that making a criminal complaint can actually frustrate a migrant worker's attempt to obtain compensation for the harm caused to them, with financial compensation the last step in the legal process even though it is often the first priority for migrant workers (ILO 2022a; Harkins and Åhlberg 2017). A criminal case must be prosecuted in the courts, which can be both lengthy – taking multiple years to resolve – and difficult to navigate. Migrant workers who seek to make a criminal complaint may require the assistance of legal practitioners and may also have trouble accessing any compensation that the court awards. For crimes contained in the Law on the Suppression of Human Trafficking and Sexual Exploitation, any restitution that may be ordered by the courts is only paid to workers following the completion of the convicted trafficker's jail sentence. Even if a migrant worker's criminal complaint is successfully prosecuted, the receipt of compensation may therefore be delayed for a significant time (ILO 2022a).

To ensure compliance with the articles of Protocol No. 29, it is important to ensure the right of all migrant workers to pursue financial remedies through the MLVT complaint mechanisms, regardless of their legal status. In many countries, inclusion of these types of remedies as a knock-on to criminal prosecutions of human trafficking cases has not proven very successful, as it is not a function that criminal justice systems are typically well-equipped to handle (Harkins 2020).

3.4. Need for clarification of the roles and responsibilities of government agencies

The Law on the Suppression of Human Trafficking and Sexual Exploitation provides the legal framework for a criminal justice response to “trafficking for the purposes of exploitation including forced labour”. Enforcement action in these cases requires the involvement of a large number of government agencies and CSOs, including but not limited to:

- Ministry of Interior (MOI) anti-trafficking officials and police for investigation and arrest of suspects;
- courts to issue orders for arrest and provide judicial hearings of cases;
- Ministry of Justice and Prosecution Department to support prosecution of cases;
- Ministry of Social Affairs, Veterans, and Youth Rehabilitation (MOSAVY) for case management, and protection and reintegration of survivors;
- Cambodian diplomatic missions and victim support agencies in destination countries for screening and protection services to survivors abroad;
- Ministry of Foreign Affairs and International Cooperation for facilitating repatriation of survivors;
- MLVT to refer cases for screening; and
- CSOs and trade unions to provide legal assistance, protection and reintegration services to survivors.

⁴³ Policy on Labour Migration Policy for Cambodia 2019–2023, 1–2.

Stakeholders interviewed reported that there were both gaps and overlapping responsibilities between the different agencies involved which require further clarification. In particular, complaint cases involving irregular migrant workers are currently being referred by the MLVT to anti-trafficking actors. If the complainants are not formally identified as victims of trafficking, they are often unable to obtain redress because they are unable to make complaints through other channels.

In addition, the role of the MLVT in the process is currently limited to referring suspected cases of trafficking for forced labour for screening. This relatively restricted MLVT mandate could be broadened to make better use of their particular expertise in responding to cases of trafficking for forced labour. The Ministry is well-positioned to understand the complexities of these cases, which often are the result of indirect forms of coercion that require a more extensive technical background in labour relations to properly untangle.

Likewise, in terms of bilateral cooperation, there are multiple government actors involved and insufficient clarity of responsibilities, which can lead to duplication of work and inefficiencies. The bilateral mechanisms between Cambodia and Thailand relating to cooperation on human trafficking have been signed between several different line Ministries:

- The MOU between Cambodia and Thailand on Bilateral Cooperation for Eliminating Trafficking in Persons and Protecting Victims of Trafficking is between the MLVT and the Thai Ministry of Social Development and Human Security (MSDHS).
- The Standard Operating Procedures for Case Management of Repatriation and Reintegration of Victims of Trafficking in Persons 2019 is between MOSAVY and MSDHS.
- The new standard operating procedures for countering human trafficking is being signed by the National Committee for Counter-Trafficking in Persons (NCCT) in Cambodia and Thailand's MSDHS.

As there are different guidelines and procedures being utilized by the various government agencies involved, the support provided to trafficking victims can sometimes be inconsistent. Some stakeholders interviewed had been involved in cases where workers were repatriated by MOSAVY and identified as victims, only to have the screening process later overturned by anti-human trafficking officials from the MOI who did not identify them as such. This creates challenges in ensuring consistently high-quality services are provided to victims and can reduce trust in the government response to human trafficking.

Greater clarity is needed on the roles and responsibilities of the competent authorities in respect to handling complaint cases from irregular migrant workers rather than referring them all to anti-trafficking police or other bodies for criminal investigation. Issuing further guidance would support the MLVT and criminal justice authorities to determine when a matter involving irregular migrant workers does not relate to a criminal offense and may be conciliated, as well as when they may be able to participate in the complaint process under Prakas 249 while the criminal case related to trafficking is being prosecuted.

The outcomes of trafficking cases involving migrant workers should also be closely monitored by the MLVT to ensure that the actors involved are required to pay appropriate compensation for recruitment-related abuses. Stakeholders suggested that the orders issued by the MLVT and anti-trafficking authorities should be sufficient to both restore migrant workers to the financial position they were in prior to the violation of their rights and discourage the operation of unscrupulous brokers and recruitment agencies. In this respect, the lack of a comprehensive and coordinated approach currently presents a challenge to the provision of responsive remedies for all forms of forced labour perpetrated against Cambodian migrant workers.

Further clarification of the roles and responsibilities of government agencies in a revised Policy on Labour Migration for Cambodia – elevated from ministerial to national policy and approved by the Prime Minister – would assist with improving collaboration, including through establishing inter-ministerial working groups and measuring implementation against a concrete action plan.

3.5. Added value of ratifying the Protocol to the Forced Labour Convention, 1930

The Cambodian Government has developed a strong legal framework to address human trafficking, which engages the MLVT, MOJ, MOSAVY, MOI and NCCT. This whole-of-government response can be considered a good practice, as can the substantive cooperation with CSOs and trade unions to provide legal assistance, protection services and reintegration support to survivors.

However, the role of the MLVT in this framework remains somewhat ancillary, which is partially due to the heavy emphasis placed on a criminal justice response and the lack of legislation relating to migrant workers that define forced labour as a stand-alone offense. Taking into consideration that forced labour – as defined in Convention No. 29 and Protocol No. 29 – is a broader concept than trafficking in persons, and that the MLVT brings specialized expertise on this subject, an expanded mandate would assist with more effectively addressing the labour dimensions of exploitation of migrant workers. Currently, these forced labour cases often fall through the gaps in the legal framework, with victims not identified or provided with effective remedies, and perpetrators not receiving sanctions adequate enough to prevent recurring abuses.

Incorporating a definition of forced labour as an offense in the Labour Migration Law and the Labour Migration Policy for Cambodia 2024–2028; building capacity for improved enforcement; and strengthening coordination among the relevant government agencies would enable further progress towards ratification of Protocol No. 29. The ILO supervisory mechanisms and development cooperation projects in Cambodia are ready and willing to provide technical support in this process.

A summary of the legislative changes recommended to ensure compatibility with Protocol No. 29 and to move towards ratification include the following (see Annex II for a comprehensive gap analysis):

- Develop measures in national law in consultation with tripartite plus stakeholders to prevent and respond to forced labour as a stand-alone offense; provide protection to survivors; enable access to appropriate and effective remedies (such as financial compensation); and enforce sanctions against perpetrators of forced labour, in line with Article 1(1) and Article 6 of Protocol No. 29.
- Adopt legislative provisions that clarify coverage of irregular migrant workers (including access to complaint mechanisms) and ensure that competent authorities do not prosecute or impose penalties on victims of forced labour for their involvement in unlawful activities that they have been compelled to commit as a direct consequence of being subjected to forced labour, in line with Article 4(1–2).
- Develop a national policy or plan of action for effective and sustained suppression of forced labour in consultation with tripartite plus stakeholders, including provision of education and information for potential victims of forced labour; due diligence by both the public and private sectors to prevent and respond to risks of forced labour, addressing the root causes and factors that heighten vulnerability; and effective measures for the identification, protection, recovery and rehabilitation of all victims of forced labour, as well as the provision of other forms of assistance and support in line with Articles 3, 1(2), 2(a), and 2(e–f).
- Ensure that the scope of coverage and enforcement of relevant legislation for the prevention of forced or compulsory labour, including labour law as appropriate, applies to all workers and all sectors of the economy, in line with Article 2(c)(i).



▶ 4

Comparative analysis of Cambodian laws and regulations with the Work in Fishing Convention, 2007 (No. 188)

4.1. Inability of migrant fishers to access labour protection

The prohibition on the recruitment of Cambodian migrant workers into the Thai fishing sector stemming from the MLVT's 2007 announcement renders migrant fishers unable to access the labour protections under Sub-Decree 190 and the eight supplementing *prakas*. As the legislation only covers workers who are recruited, or who are in the process of being recruited, by a licensed PRA, migrant fishers are currently de facto excluded.⁴⁴

Moreover, Cambodian fishers are not able to benefit from the protections provided to other migrant workers under the MOU between Cambodia and Thailand on Labour Cooperation and the Agreement on the Employment of Workers between Cambodia and Thailand. The bilateral MOU process these agreements establish can only be accessed through obtaining contractual employment via a licensed PRA.⁴⁵

⁴⁴ Sub-Decree 190, art. 4.

⁴⁵ MOU between Cambodia and Thailand on Labour Cooperation, art. 6, and Agreement on the Employment of Workers between Cambodia and Thailand, arts. 1 and 2(f).

In practical terms, the MLVT announcement means that Cambodian migrant fishers have to register under the periodic amnesties that the Thai Government has enacted through cabinet resolutions in order to obtain legal status. However, the registration schemes are typically shorter in length (2 years only), more restrictive on freedom of movement (limited to the registration province), more limited in terms of social protection benefits (health insurance only), and can be more expensive because of broker involvement.

While this decision by the Cambodian Government was intended to protect workers from entering employment in a sector where there is a high prevalence of abuse, the stakeholders interviewed acknowledged that this policy has not achieved its intended outcomes. Migrant worker registration data from Thailand suggests that prohibiting recruitment into the fishing sector has not prevented migrants from going abroad to work in fishing, nor has it prevented unscrupulous actors from deceiving them to work in the sector. Contrary to its intention, the ban on deploying Cambodian migrant fishers has instead pushed more of these workers into irregularity, making them more vulnerable to exploitation and eroding their ability to pursue redress for abuses, such as through the MLVT complaint mechanism established under Prakas 249.

The stakeholders interviewed were in agreement that denying migrant fishers the possibility of regular legal status and access to complaint mechanisms through the MLVT announcement is a far riskier approach than expanding protection for them under the policy and legislative framework. Even so, some recruitment actors expressed reluctance to resume sending migrants to work in a sector they consider dangerous. A number of measures would need to be put into place before they felt confident that workers migrating into the fishing sector would be protected.

There was also consensus among stakeholders that an urgent response is required to address the protection needs of Cambodian migrant fishers. This includes enactment of a labour migration governance framework that provides inclusive coverage of all migrant workers regardless of gender, sector of employment or legal status, as well as development of a sector-specific bilateral agreement between Cambodia and Thailand for migration into the fishing sector. Maintaining the status quo of prohibiting recruitment until working conditions in Thailand improve was not considered an acceptable position.

In the short-term, legal protection can be enhanced by the MLVT lifting the ban on sending Cambodian fishers abroad through recruitment agencies. Given the relatively comprehensive provisions on protection of Cambodian migrant workers during recruitment and placement in subordinate legislation, removing the ban would enable fishers to immediately benefit from several of the relevant protections set forth by Convention No. 188. For example, if Cambodian fishers could migrate regularly, the provisions of Sub-Decree 190 and the eight supplementing *prakas* would partially meet the requirements for the Fisher's Work Agreement found in Convention No. 188, including administrative information,⁴⁶ the capacity in which the fisher is to be employed,⁴⁷ the provisions to be supplied to the fisher,⁴⁸ the health and social security coverage and benefits to be provided to the fisher,⁴⁹ and the fisher's entitlement to repatriation.⁵⁰

In the longer-term, measures should be enacted to allow fishers to go abroad through effective and rights-based regular channels for migration, expand provision of information to address their sector-specific vulnerabilities, and support them to access complaint mechanisms to denounce abuses and access remedies when needed. Moreover, reforms to the legal framework should ensure that all Cambodian migrant workers are afforded labour protection, regardless of their legal status. This will help to ensure that all Cambodian migrant workers recruited for work abroad are adequately covered by the relevant legal protections, including migrant fishers, who represent a particularly vulnerable segment of the workforce.

46 Convention No. 188, Annex II (a), (b), (d).

47 Convention No. 188, Annex II (f) and (h).

48 Convention No. 188, Annex II (h).

49 Convention No. 188, Annex II (m).

50 Convention No. 188, Annex II (n).

4.2. Lack of clarity on the legality of migration for work in the seafood processing sector

It was discovered during interviews that the impact of the MLVT announcement prohibiting migration for work in fishing has extended beyond its originally intended scope. The understanding of some officials who facilitate the complaint process under Prakas 249 is that the prohibition on migration into the fishing sector also applies to seafood processing work. In practice, this may prevent some seafood processing workers from accessing the MLVT complaint mechanism to resolve their grievances. The lack of clarity among authorities is the result of the informal nature of the policy and is concerning, as it means that workers who should be able to lodge complaints could be denied access to justice.

This creep of protectionist views was also found among the recruitment actors interviewed, as most stated that they no longer send migrant workers into seafood processing jobs abroad. They described the working conditions in the seafood processing sector as challenging due to the cold temperatures in refrigerated workplaces, long work hours and considerable likelihood of workplace injuries. They also raised concerns that the difficult conditions in the sector lead many Cambodian migrant workers to leave their employment prior to the end of their contracts.

While the recruitment agencies interviewed were aware that demand for workers in the seafood processing sector is high, they reported that only if conditions in the seafood processing sector improve would they consider deploying workers so that they could be assured of their safety. The result is that regular migration into one of the major sectors of employment for women migrant workers in Thailand has been de facto restricted. This is particularly concerning as it further reduces the employment options for Cambodian migrant women in an already highly gender-segregated labour market.

Previous ILO research has demonstrated that migration restrictions can have a particularly negative impact on women's social and economic position at home (Napier-Moore 2017). The Cambodian women prevented from taking up migration into the seafood processing sector typically already have more limited livelihood options than men. While the problems with working conditions in Thailand's seafood processing industry have been documented in a number of research studies (ILO 2020b; Praxis Labs 2019), removing the opportunity for Cambodian women to migrate into a key sector of employment rather than advocating for improvements in protection likely has the effect of reinforcing discriminatory gender norms.

4.3. Sector-specific measures required to improve working conditions and occupational safety and health for migrant fishers

All stakeholders interviewed acknowledged the difficult and dangerous working conditions experienced by Cambodian migrant fishers abroad. Some of the key sector-specific challenges reported for Cambodian fishers included the following:

- isolated nature of the workplace on-board fishing vessels;
- unclear terms of employment in contracts;
- frequently long and unpredictable work hours;
- retention of identification documents for "safe keeping" during periods at sea;
- traditional payment systems that provide advance wages or a share of the catch;
- unclear jurisdiction of authorities over sea-based work; and
- hazardous conditions at sea that require special attention to occupational safety and health.

To ensure the relevance of the information provided to migrant fishers, stakeholders suggested developing tailored pre-departure trainings and informational materials, including the essential provisions of Convention No. 188 that apply. It was noted that especially for migrant fishers, there is often a lack of awareness of the sector-specific labour rights and support services available in destination countries. Information for "general

workers” was not considered to be sufficient to address these gaps in awareness. The quality and specificity of pre-departure orientation for migrant workers should be improved through the development of rights-based training modules and informational materials, as well as the inclusion of returned migrant fishers as resource persons during training. In addition, the provision of information and training should be inclusive of migrants’ families, as they are a key part of their support networks.

Stakeholders also raised the need to provide appropriate services for the culture of masculinity in the fishing sector, which may render fishers unwilling to view themselves as victims because of social pressure to be breadwinners. Therefore, fishers may be reluctant to access support services or lodge complaints despite being faced with severe labour abuses. ILO research has found that men migrants may be unwilling to risk the loss of wages used to support their families in countries of origin, even if it means enduring protracted periods of abusive treatment. Because societal definitions of male success heavily emphasize their ability to provide for their families, many migrant fishers have reported feeling unable to leave exploitative situations if it means returning home empty-handed and being viewed as a failure in their community (ILO 2022d).

The lack of sufficiently detailed and transparent standard employment contracts for migrant fishers was highlighted as another area where alignment with the articles of Convention No. 188 can be improved. The Convention includes the requirements for a fisher’s work agreement in Annex II, which should outline specific details about the rest hours, annual leave periods, wages, the way that wages will be remitted and the frequency, health and social protection benefits, entitlement to repatriation, information about the vessel where they will work, mechanisms for resolving disputes, and other important details. Notably, Convention No. 188 requires that fishers be provided with a work agreement that is comprehensible to them, and that a copy of the agreement is kept on board their vessel and is accessible.

It was also noted during interviews that the specific challenges related to enforcement of labour laws in the fishing sector require more cooperation between stakeholders. The considerable efforts made by the Thai Government to ensure compliance with labour and fisheries governance through establishing 30 multidisciplinary Port-in/Port-out (PIPO) inspection centres along the coast of Thailand to inspect vessels was recognized during the interviews. The interagency model for inspection at the PIPO Centres brings together the Department of Labour Protection and Welfare, Department of Employment, Department of Fisheries, Marine Department, Navy and interpreters, and can be considered a good practice. Nevertheless, few labour law violations are currently identified during PIPO inspections in Thailand, and the prevalence of injuries and accidents on-board vessels remains high. Greater inclusion of trade unions and CSOs as observers could potentially lead to improvements in the effectiveness of PIPO inspections, as well as a greater focus on occupational safety and health concerns.

4.4. Need for a bilateral agreement between Cambodia and Thailand on recruitment of migrant fishers

The Labour Migration Policy for Cambodia 2019–2023 outlines the MLVT’s intention to work with the Thai Government to strengthen the relevant legal framework and regulations for recruitment of Cambodian migrant workers into the fishing sector,⁵¹ and to collaborate on developing a standard employment contract for migrant workers in the fishing sector.⁵² All stakeholders interviewed identified the development of a bilateral agreement between Cambodia and Thailand for migration into the fishing sector as a necessary mechanism for improving protection of Cambodian migrant fishers, including the requirement of a standard employment contract as outlined in Convention No. 188.

As stated in Article 5 of the MOU on Labour Cooperation that Cambodia and Thailand signed in 2015, the

⁵¹ Labour Migration Policy for Cambodia 2019–2023, Objective 1.2, Measure 7.

⁵² Labour Migration Policy for Cambodia 2019–2023, Objective 1.2, Measure 8.

parties “may agree to conclude separate agreements on any specific areas” as an annex to the MOU.⁵³ The research conducted for this analysis suggests that negotiation of such a bilateral agreement on labour migration for work in fishing is in the interest of both Cambodia and Thailand. Building on the bilateral cooperation between Cambodia and Thailand under the MOU on Labour Cooperation, the development of a sector-specific agreement would allow for Cambodian migrant workers to seek employment in Thailand's fishing industry through regular channels. In Thailand, it would provide a means for recruitment of workers to fill the significant labour market needs that have been identified by key stakeholders in the fishing sector.

Diplomatic misunderstanding between the Thai and Cambodian Governments has persisted because while the former Government views the MOU on Labour Cooperation as sufficient in addressing migration of fishers, the latter does not. As the 2007 MLVT announcement was not a formal policy change, but has rather become the de facto Cambodian Government position, its application may not be clear to external parties. The Cambodian Government's perspective is that article 6 of the MOU between Cambodia and Thailand on Labour Cooperation and articles 1 and 2 of the Agreement on the Employment of Workers between Cambodia and Thailand only apply to regular migrant workers under contractual employment. Therefore, migrant fishers are not covered under these agreements because of the prohibition enforced through the 2007 MLVT announcement.

There is a notable policy precedent, as a bilateral agreement between Thailand and Myanmar on recruitment of migrant fishers was reportedly concluded in 2018 (although the content has never been made public). Importantly, this bilateral cooperation facilitated the establishment of a “one-stop” office in Thailand's Ranong province to facilitate the recruitment of Cambodian migrant workers by Thai fishing companies and to facilitate assistance to Myanmar workers. Similarly, setting up a Cambodian diplomatic mission in provinces of Thailand employing large numbers of Cambodian fishers would be beneficial.

However, most of the support provided to Cambodian migrant fishers who have experienced abuses, injuries or other problems related to employment in the Thai fishing sector to date has been delivered by trade unions and CSOs. In many cases, these types of services have been delivered via cross-border cooperation between organizations in Cambodia and Thailand. As such, the stakeholders interviewed recommended that the vital role of these non-state actors in supporting migrant fishers should be explicitly included in the bilateral agreement to be negotiated.

4.5. Added value of ratifying the Work in Fishing Convention, 2007 (No. 188)

Moving towards ratification of Convention No. 188 would facilitate a dialogue between the Cambodian Government and the ILO supervisory bodies on the measures to be taken for application in national law and practice. Having access to this technical assistance would be particularly timely, as the MLVT is drafting the Labour Migration Law, updating the Policy on Labour Migration for Cambodia, and seeking negotiations for a bilateral agreement between Cambodia and Thailand on migration for work in the fishing sector.

Assistance from the ILO supervisory mechanisms could include additional technical advice for legislative drafting and reform, capacity-building training, and the sharing of good practices from other countries who have already ratified Convention No. 188. In particular, it would be beneficial to learn how other ratifying States have applied the relevant provisions on recruitment and job placement services and the contents of the fisher's work agreement, so that they can be incorporated into a bilateral agreement between Cambodia and Thailand. Ratifying Convention No. 188 would considerably strengthen Cambodia's credibility as a champion of the rights of migrant fishers as it works to negotiate an agreement with Thailand.

A summary of the legislative changes recommended to ensure compatibility with Convention No. 188 and to

⁵³ MOU between the Government of the Kingdom of Cambodia and the Government of the Kingdom of Thailand on Labour Cooperation (2015).

move towards ratification include the following (see Annex III for a comprehensive gap analysis):

- Definitions of maritime sector-relevant language, in line with Article 1 of Convention No. 188.
- Legislative measures to ensure that PRAs cannot use means, mechanisms or lists intended to prevent or deter fishers from engaging, in work in line with Article 22(3)(a).
- A legislative requirement that no fees or other charges for recruitment or placement of fishers be borne directly or indirectly, in whole or in part, by the fisher, in line with Article 22(3)(a).
- Legislative measures to ensure that no responsibilities or obligations to PRAs or fishing vessel owners will preclude the fisher from asserting a right to a lien arising against the fishing vessel, in line with Article 22(4).
- A joint and several liability provision between the PRA and the fishing vessel owner in the event that the PRA defaults on its obligations to a fisher, in line with Article 22(5).
- Legislative provisions that provide that fishers are ensured monthly or other regular payments, in line with Article 23, and that all fishers working on board fishing vessels are given a means to transmit all or part of their payments, including advances, to their families at no cost, in line with Article 24.
- An example of a fisher's work agreement in line with Annex II of the Convention, paying particular attention to the following elements (indicated here by the letter of the specific clause in Annex II):
 - i. the amount of wages, or the amount of the share of the catch and the method of calculating wages, and any agreed minimum wage;
 - ii. the termination conditions of the agreement;
 - iii. the protection that will cover fishers in the event of sickness, injury or death;
 - iv. the health and social security coverage and benefits to be provided to the fisher by the employer, fishing vessel owner, or other party or parties to the fisher's work agreement, as applicable; and
 - v. the minimum periods of rest, in accordance with national laws, regulations or other measures.



▶ 5

Conclusion and recommendations

The Cambodian Government has recognized that labour migration significantly contributes to inclusive and sustainable economic growth and development. In response, the Government has taken a number of important steps forward in recent years in developing its labour migration governance framework, including drafting a series of *prakas* to support the implementation of Sub-Decree 190 on the Management of Sending Cambodian Workers Abroad through Private Recruitment Agencies. Importantly, this legislation included the establishment of a complaint mechanism managed by the MLVT and its provincial departments, which has provided an accessible and efficient administrative means for migrant workers to lodge and resolve their grievances.

Cambodia has also implemented its third Labour Migration Policy and Action Plan (2019–2023), which outlines the Government's commitment to leveraging the benefits of labour migration for the country's long-term development. The policy is unique within South-East Asia in applying a holistic and whole-of-government approach to labour migration governance. The Government has already begun the process of developing an updated labour migration policy for 2024–2028, and is seeking to elevate responsibility for implementation of the policy from the ministerial to the national level.

Nevertheless, addressing the specific vulnerabilities of migrant workers in the fishing and seafood processing sectors requires that further legislative progress be made towards the adoption of international labour standards, including the Work in Fishing Convention, 2007 (No. 188); the Protocol of 2014 to the Forced Labour Convention, 1930; and the Private Employment Agencies Convention, 1997 (No. 181). Significant gaps remain in providing labour protection for migrant fishers, responding to forced labour as a stand-alone offense against migrant workers, eliminating worker-borne recruitment fees, applying stringent sanctions for violations by recruitment agencies, awarding of responsive remedies for abuses and other legislative and enforcement concerns.

The following recommendations are provided for achieving greater alignment between Cambodia's labour migration governance framework and Convention No. 181, Protocol No. 29 and Convention No. 188 and to move towards ratification. As most of the recommendations relate to forthcoming policy and legislative development processes, there are timely opportunities emerging for their application.

5.1. Develop a national Labour Migration Law to expand labour and social protection for migrant workers

Although Sub-Decree 190 and the eight supplementing *prakas* already incorporate many of the articles of the relevant international labour standards, there are some significant gaps in the legislation and its enforcement – largely due to the constraints of subordinate legislation. Moving ahead with the Government's plans to develop a national Labour Migration Law will enable expanded labour and social protections to be provided to Cambodian migrant workers. A national Labour Migration Law will enable a whole-of-government approach for effective migration governance, including engagement of social partners and CSOs. In line with international labour standards, the new law should include the following additional provisions:

- Legal coverage of all migrant workers regardless of sector of employment or legal status, including irregular migrants, fishers and seafood processing workers, as well as definitions of maritime sector-relevant language.⁵⁴
- Elimination of recruitment fees or related costs charged directly or indirectly to migrant workers, with these fees instead charged to employers.⁵⁵
- A stand-alone definition of forced labour that covers migrant workers, is not linked to trafficking, is in line with the definition in Convention No. 29⁵⁶ and Protocol No. 29⁵⁷, and carries with it sufficiently severe penalties.
- Legislative measures that ensure competent authorities do not prosecute or impose penalties on forced labour victims for involvement in unlawful activities compelled as a direct consequence of being subjected to forced labour.⁵⁸
- Clearly articulated roles and responsibilities for the relevant ministries and mechanisms to enable cooperation in responding to cases involving forced labour and other labour rights abuses during the migration process.
- A legislative provision specifically prohibiting PRAs from recruiting for child labour abroad.⁵⁹

54 In line with Convention No. 188, Art. 1.

55 Convention No. 181, Art. 7(1). If, after consultation of the most representative organizations of employers and workers, the competent authority determines that certain minimal fees should be charged to certain categories of workers or specified types of services provided by private employment agencies, these fees should be outlined transparently in the Labour Migration Law (as per Convention No. 181, Art. 7(2), and Convention No. 188, Art. 22(3)(b)).

56 Convention No. 29, Art. 2(1).

57 Convention No. 29, Art. 1(3).

58 Protocol No. 29, Art. 4(2).

59 Convention No. 181, Art. 9. (Sub-Decree 190 and Prakas 253 define Cambodian workers as being aged 18 or over, but do not specifically prohibit recruitment for child labour).

- ▶ A schedule for labour law offenses committed against migrant workers, including sufficient and enforceable penal sanctions. The severity of penal sanctions should be increased and include progressively more severe sanctions for repeat violations, with clear directives for prosecution.
- ▶ Clear processes for applying administrative sanctions against recruitment agencies engaging in unethical practices and committing law violations against migrant workers, including license revocation and prohibition on new license applications.⁶⁰
- ▶ The procedures for workers to access sufficient remedies and restitution for labour rights violations. There should be provisions for compensation and damages on top of restitution, in line with international labour standards.⁶¹
- ▶ A mandate for the MLVT to enforce conciliation agreements and/or utilize recruitment agency guarantee deposit (if relevant) after the resolution of the complaint process.
- ▶ Joint and several liability provisions to hold PRAs accountable for specific violations of national legislation at any stage of the recruitment and employment of Cambodian workers, with the limitations on responsibility clearly stipulated. This provision will overcome jurisdictional difficulties in holding to account employers, overseas worker-receiving parties, and recruitment agencies who operate outside of Cambodia.
- ▶ The rights of migrant workers to freedom of association and collective bargaining.⁶²
- ▶ Compensation amounts owed to workers in cases of occupational accidents or in case of business insolvency.⁶³
- ▶ Maternity protection to prevent discrimination on the basis of pregnancy during recruitment.⁶⁴
- ▶ A legislative provision that covers the training courses and skills testing required before going abroad for employment, not limited to pre-departure orientation training.⁶⁵

5.2. Lift the ban on deployment of fishers and develop sector-specific training and informational materials

A policy shift is urgently needed to establish robust legal protections for migrant fishers in national legislation rather than attempting to prevent them from migrating. As soon as possible, migrant fishers should be afforded the same legal protection provided to migrants in other sectors by lifting the 2007 MLVT announcement banning recruitment into the fishing sector and by making clear that the restriction was never meant to apply to seafood processing workers. The announcement should also specify that migrant fishers and seafood processing workers are covered by Sub-Decree 190 and the eight supplementing *prakas*, the MOU between Cambodia and Thailand on Labour Cooperation, and the Agreement on the Employment of Workers between Cambodia and Thailand, so they can immediately benefit from increased protection.

With the lifting of the ban, sector-specific training and informational materials for fishers and seafood processing workers should be developed and implemented in partnership with key stakeholders in both Cambodia and Thailand – including the direct involvement of CSOs and workers' organizations in their delivery. The materials for pre-departure training should focus on the labour rights and sources of assistance available to migrants in these sectors, and return migrants should be engaged to share first-hand experiences where possible. The information and training provided should be inclusive of migrants' families, as they represent a key part of their support networks.

60 Convention No. 181, Art. 8(1); Recommendation No. 188, Para. 4.

61 Protocol No. 29, Arts 1(1) and 4(1).

62 Convention No. 181, Art. 11(a–b).

63 Convention No. 181, Art. 11(h–i).

64 Convention No. 181, Art. 11(j).

65 Convention No. 181, Art. 11(f).

In the longer-term, the legal protections for migrant fishers and seafood processing workers need to be strengthened, including through adopting the relevant fisher-specific protections outlined within Convention No. 188 and addressing the problems with informality, unequal pay, violence and harassment, and gaps in maternity protection experienced by women migrants in the seafood industry.

5.3. Negotiate a bilateral agreement between Cambodia and Thailand for labour migration into the fishing sector

Concurrent to including migrant fishers in coverage by national policy and legislation, the Governments of Cambodia and Thailand should develop a bilateral agreement to ensure that fishers' rights are better protected, supported by social dialogue with employers organizations, workers organizations and CSOs. In line with Convention No. 188 and the recommendations of key stakeholders, the bilateral agreement should include the following improvements to the current MOU process:

- Definitions of maritime sector-relevant language.⁶⁶
- A standard fisher's work agreement,⁶⁷ provided in both the Thai and Khmer languages.
- Medical check requirements (that abide by the principle of non-discrimination).⁶⁸
- Prohibitions requiring that no fees or other charges for recruitment or placement of fishers are borne directly or indirectly, in whole or in part, by fishers.⁶⁹
- Recognition of the right of migrant fishers to freedom of association and collective bargaining.⁷⁰
- Provisions on occupational safety and health (OSH), including guidance on the application of OSH legal requirements on-board fishing vessels; provisions for training of fishers and employers on OSH; procedures for investigation and corrective actions in response to accidents; clear definitions of "adequate food and water"; and procedures for assessing OSH during labour inspection.⁷¹
- Requirements for the provision of appropriate medical care and financial compensation in case of injuries or death resulting from occupational injuries accidents or diseases.⁷²
- Allowance for a set number of changes of employment by migrant fishers without requiring employer permission.
- Establishment of multi-stakeholder teams in Thailand to inspect the working and living conditions on-board fishing vessels, including representatives of government, recruitment agencies, trade unions and CSOs. The inspection teams should include adequately trained interpreters who can speak Khmer, so that migrant workers can be interviewed in their native language.
- Accessible and responsive complaint mechanisms available in both Cambodia and Thailand that can be accessed by migrant workers in the fishing sector, regardless of legal status – including strong protections for retaliation against workers.
- Provisions to ensure that both recruitment agencies and fishing vessel owners can be held financially liable in the event that the contractual obligations to a migrant fisher are not met.⁷³
- A Standard Operating Procedure to support implementation that includes provisions for adequate training of Government officials, recruitment agencies, partner agencies, employers, fishing vessel owners, and migrant workers in both Thailand and Cambodia.

66 Convention No. 188, Art. 1.

67 In line with Convention No. 188, Annex II.

68 Convention No. 188, Arts 10–12.

69 Convention No. 188, Art. 22(3)(a).

70 Convention No. 188, Preamble.

71 In line with the Work in Fishing Recommendation, 2007 (No. 199), Para. 46(2)(1)(b).

72 Convention No. 188, Art. 38(1–3).

73 In line with Convention No. 188, Art. 22(4–5).

- A joint tripartite plus working group that meets regularly to monitor progress and develop work plans on the implementation of the bilateral agreement.

5.4. Elevate the Policy on Labour Migration for Cambodia from a ministerial policy to a national policy during 2024–28

The current Policy on Labour Migration for Cambodia 2019–2023 is now being reviewed for extension until 2028. This provides an excellent opportunity to elevate responsibility for Cambodia's labour migration governance framework from a ministerial policy to a national policy, as already planned by the MLVT. A key benefit of this change in policy status is that the implementation of the related action plans, which has been largely dormant over the past three iterations of the Policy, can be supported by inter-ministerial working groups, mandated by the Prime Minister, who will meet regularly and track implementation against the action plan. It is also important to ensuring that the next Policy on Labour Migration for Cambodia is planned with a corresponding Government budget allocation, as several stakeholders interviewed reported that few activities in previous action plans have progressed, except those funded by international organizations, social partners and CSOs.

Some of the key issues that should be included in the revised Labour Migration Policy should be:

- addressing forced labour against migrants as a stand-alone offense;
- developing gender-responsive migration governance policies;
- strengthening the provision of remedies and the application of sanctions for law violations against migrant workers;
- improving the implementation of bilateral agreements between Cambodia and Thailand;
- establishing labour protections for migrant fishers and irregular migrant workers; and
- taking steps towards eliminating worker-borne recruitment fees and related costs.

Increased inter-ministerial cooperation on these issues would assist with establishing greater ownership by the government agencies involved, as well as provide opportunities to build stronger linkages with social partners and CSOs on implementation.

5.5. Ratify the Private Employment Agencies Convention, 1997 (No. 181); the Protocol of 2014 to the Forced Labour Convention, 1930; and the Work in Fishing Convention, 2007 (No. 188)

The Cambodian legal framework for the recruitment and placement of migrant workers, the elimination of forced labour, and work in fishing incorporates many of the labour standards set forth in Convention No. 181, Protocol No. 29 and Convention No. 188. The Government should consider ratifying these international labour standards in order to take the next step forward in improving the protection of Cambodian workers. This would help with addressing the specific concerns about exploitation of migrant workers in the Thai fishing and seafood processing sectors, and respond to the protection needs of all Cambodian migrant workers regardless of gender, sector or legal status. The benefits of ratification for stakeholders are clear and far outweigh the additional reporting requirements involved.

Ratification would reaffirm and further strengthen the Government's commitment to the protection of a migrant workers, who make a critical contribution to the economic and social development of Cambodia. It would also expand international visibility of the major efforts made by the Government to improve its laws, policies and practices, which deserve recognition for the achievements made in developing a strong labour migration governance framework through social dialogue with tripartite and civil society stakeholders.

In addition, ratification of these international labour standards would facilitate engagement with the ILO supervisory bodies to ensure their effective application in the context of Cambodia. These mechanisms support will ongoing constructive feedback and social dialogue between governments and social partners, with a view to overcoming country-specific challenges and resolving the problems encountered.

ILO assistance to support the ratification process could include technical comments to facilitate the necessary legislative amendments, sharing of lessons learned and good practices from countries who have already ratified the instruments, and capacity-building training to improve policy development and implementation. All of these forms of support would be particularly timely given the Government's ambitious upcoming policy and legislative agenda, which includes drafting of the Labour Migration Law, revising the Policy on Labour Migration for Cambodia, and negotiating a bilateral agreement between Cambodia and Thailand on migration for work in the fishing sector.

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► Annex I. Gap analysis for Private Employment Agencies Convention, 1997 (No. 181)

In the below analysis, a “traffic lights” system has been used to indicate levels of conformity between the relevant Cambodian laws and subordinate legislation (see table 1) and Convention No. 181: green denotes substantial conformity; orange denotes ambiguities or partial conformity; and red denotes substantial non-conformity.

International instrument	Existing implementing measures in legislation	Gaps identified
Article 1. Definitions of PRA, workers and processing of personal data of workers.	Sub-Decree 190, art. 4 – Keys terms: migrant worker candidate, worker, job placement service, recruitment agency. Prakas No. 045/13 on Use of Key Terms, Annex: (1) applicant migrant worker, (2) migrant worker, (5) PRA, (6) recruitment agent. Sub-Decree 190, art. 25 – “Every time when the workers are sent and placed at work, the recruitment agencies shall properly record all information and data pertaining to each individual worker in the record book as determined. The record book shall be issued by the MLVT for the recruitment agencies to record all information and data pertaining to the workers from various official documents.” Prakas No. 047/13 on Private Recruitment Agency, art. 10 – “The information and personal documents of workers shall be kept confidential, unless a request from a competent authority.”	No definition in Cambodian legislation for processing of personal data of workers, but legislation does specify that information and personal documents of workers shall be kept confidential and that data should be collected as per the record book issued by the MLVT.
Article 2. (1) Convention applies to all PRAs. (2) Applies to all categories of workers and all branches of economic activity. It does not apply to the recruitment and placement of seafarers. (3) One purpose of Convention is to allow the operation of PRAs, as well as the protection of the workers using their services, within the framework of its provisions. (4) After consulting tripartite stakeholders, a Member may: (a) prohibit PRAs from operating in respect of certain categories of workers or branches of economic activity; (b) exclude workers in certain branches of economic activity from the scope of the Convention or from certain of its provisions, provided that adequate protection is otherwise assured for the workers concerned.	Sub-Decree 190 Art. 3 – “This Sub-Decree covers all migrant worker candidates, Cambodian workers and recruitment agencies in the Kingdom of Cambodia.” Art. 4 – Key terms: migrant worker candidate, worker, job placement service, recruitment agency. Prakas No. 045/13 on Use of Key Terms, Annex: (1) applicant migrant worker, (2) migrant worker, (5) PRA, (6) recruitment agent.	Sub-Decree 190 and the supplementing eight <i>prakas</i> do not specify coverage or exclusion of any branches of economic activity, but a 2007 MLVT announcement prohibits the sending of Cambodian workers to work in the fishing sector.

International instrument	Existing implementing measures in legislation	Gaps identified
Article 3. (1) Legal status of PRA shall be determined in national law and practice, and after consulting the most representative organizations of employers and workers. (2) A Member shall determine the conditions governing the operation of PRAs in accordance with a system of licensing or certification, except where they are otherwise regulated or determined by appropriate national law and practice.	Sub-Decree 190, arts 6–8 – steps for PRAs to obtain MLVT authorization to operate. Prakas No. 047/13 on Private Recruitment Agency Arts 1–4 – steps for MLVT authorization of PRAs, Art. 12 – “annually, MLVT shall review the processes and results of each PRA for evaluation for: ▶ commending, guiding or issuing a warning on a case-by-case basis; ▶ continuing or ending the <i>prakas</i> on the permission to run the PRA.”	Sub-Decree 190 and <i>prakas</i> developed in tripartite plus stakeholder consultations.
Article 4. Measures shall be taken to ensure that the workers recruited by PRAs are not denied the right to freedom of association and the right to bargain collectively.	Memorandum of Understanding between the Government of the Kingdom of Cambodia and the Government of the Kingdom of Thailand on Labour Cooperation (2015), art. 3: “The parties shall work towards the encouragement of technical cooperation between the two countries in the field of labour, as follows: (a) exchange of systems, programs, studies, expertise, research, studies and information on areas including (but not limited to) comparative labour and employment law and administration (e.g. collective bargaining, compliance and enforcement, resolution of labour disputes, social security and labour protection, rehabilitation, freedom of association, occupational safety and health, maritime work, unemployment insurance and management of foreign workers) and enhancing labour productivity”.	No mention of freedom of association or collective bargaining in examined legislation, but provision for exchange of information on these topics in the MOU with Thailand on Labour Cooperation. It is noted that freedom of association or collective bargaining are prohibited for Cambodian workers in Thailand.

International instrument	Existing implementing measures in legislation	Gaps identified
Article 5. (1) Ensure PRAs treat workers without discrimination on the basis of race, colour, sex, religion, political opinion, national extraction, social origin, or any other form of discrimination covered by national law and practice, such as age or disability, (2) Paragraph 1 shall not be implemented in such a way as to prevent PRAs from providing special services or targeted programmes designed to assist the most disadvantaged workers in their jobseeking activities.	Agreement on the Employment of Workers between the Government of the Kingdom of Cambodia and the Government of the Kingdom of Thailand (2015), art. 5(1) – “Workers entering the territory of the receiving country for employment under this Agreement shall be entitled to the same fair treatment as enjoyed by local workers based on the basic principles of non-discrimination and equality, regardless of gender, ethnic and religious differences.” Criminal Code (2009) Chapter 5, Section 2 – Discrimination Art. 265. Acts of Refusing to Supply Goods or Service – The act of refusing to supply goods or service to a person is punishable by an imprisonment of between 1 (one) month and 1 (one) year and a fine of between 100,000 (ten thousand) riels and 2,000,000 (two million) riels when the refusal is based on one of the following motives: 1. a person's belonging to or not belonging to a specified ethnicity, a nation or a race; 2. a person's belonging to or not belonging to a specified religion; 3. a person's political tendencies; 4. a person's trade-union activities; 5. a person's family situation; 6. a person's sex; 7. a person's state of health ; 8. a person's disability. Art. 267. Acts of Refusing to Hire a Person Art. 268. Acts of Refusing Employment of a Person Art. 269. Penalties Applicable for Dismissal or Discharge based on Discrimination Art. 270. Discrimination and Denial of Rights by Civil Servants Art. 272. Additional Penalties: Categories and Duration Art. 273. Criminal Responsibilities of Legal Entities	There are no discrimination provisions in Sub-Decree 190 or supplementing eight <i>prakas</i>, but there are provisions in the Criminal Code that could be used against PRAs in cases of discrimination. Discrimination provisions should be included in a Labour Migration Law.
Article 6. Processing of personal data by PRAs shall be: (a) done in a manner that protects this data and ensures respect for workers privacy in accordance with national law and practice; (b) limited to matters related to the qualifications and professional experience of the workers concerned and any other directly relevant information.	Sub-Decree 190, art. 25 – “Every time when the workers are sent and placed at work, the recruitment agencies shall properly record all information and data pertaining to each individual worker in the record book as determined. The record book shall be issued by the MLVT for the recruitment agencies to record all information and data pertaining to the workers from various official documents.” Prakas No. 047/13 on Private Recruitment Agency, art. 10 – “The information and personal documents of workers shall be kept confidential, unless a request from a competent authority.”	Cambodian legislation specifies that information and personal documents of workers shall be kept confidential and data should be collected as per the record book issued by the MLVT, but does not specify limited to directly relevant information.

International instrument	Existing implementing measures in legislation	Gaps identified
Article 7. (1) "Private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers." (2) After consulting representative organizations of employers and workers, the competent authority may authorize exceptions to the provisions of paragraph 1 in respect of certain categories of workers and specified types of services provided by PRAs.	Prakas No. 253 on Promulgation of Minimum Standards of Job Placement Services Abroad Contract, Annex, arts 5–6, and 9. Agreement on the Employment of Workers between the Government of the Kingdom of Cambodia and the Government of the Kingdom of Thailand (2015) Art. 4(3) – Workers need to contribute to funds, if any, in pursuant to the laws and regulations of both countries. Art. 4(4) – Workers shall pay taxes, fees, and other relevant dues as required by laws and regulations of both countries. Art. 11(1) – Worker repatriation costs should be paid by employers. Art. 11(2) – If premature contract termination is deemed worker's fault, then worker will have to pay their own repatriation costs. Cambodian Policy on Labour Migration 2019–2023 Objective 1.3. Strengthen the management of Private Recruitment Agencies – Measures 7. "Facilitate and foster PRAs to set sending fees in a transparent manner, and publicly disseminate the information in line with existing practices in the region."	Recruitment fees and related costs are stipulated for workers in prakas. There are no provisions prohibiting fees and costs to be charged to workers or concerning allowable ceilings for recruitment fees and related costs in the recruitment and placement process that have been determined after consultation with representative organizations of employers and workers, but this is an objective in the Cambodian Labour Migration Policy.
Article 8(1). Members shall adopt all measures, both within jurisdiction and in collaboration with other Members, to provide protection and prevent abuses of migrant workers recruited or placed in its territory by PRAs. These shall include laws or regulations which provide for penalties, including prohibition of those PRAs which engage in fraudulent practices and abuses.	Sub-Decree 190 Art. 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. Art. 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." Prakas No. 252 on On-site service of the PRA and Repatriation, arts 1–3 – Defines obligation in providing on-site service of the PRA and repatriation. Prakas No. 251 on Penalty and Reward to the PRA, arts 2–5 – Outlines rating system of tripartite mechanism to implement the procedure for appraising each PRA once every two years, and procedure to penalize in line with Sub-Decree 190, article 39. Prakas No. 250 on Inspection on PRA, art. 6 – "Non-compliance with laws and regulations, the Inspection Officer to instruct, to warn or to revoke the license of the PRA and in order to take action based on the legal procedure for each case."	Sub-Decree 190 and eight supplementing <i>prakas</i> include provisions to provide protection and prevent abuses of migrant workers recruited in Cambodia. Sub-Decree 190, article 39, outlines penalties for suspension and revocation of authorization of PRAs. However, processes for how the MLVT is able to apply the penalties outlined in Sub-Decree 190 and the eight supplementing <i>prakas</i> are not outlined. It is unclear how a decision is made to impose a sanction, what offences may result in a more severe sanction than others, and whether repeated violations of the Sub-Decree might lead to progressively more severe sanctions. The lack of a schedule of processes, remedies,

International instrument	Existing implementing measures in legislation	Gaps identified
	Prakas No. 046/13 on Recruitment Process and Pre-Departure Orientation Training, art. 16 – PRA to perform pre-departure orientation training or be subject to penalties in line with Sub-Decree 190, article 39. Criminal Code 2009, Chapter 4, Criminal responsibilities of a legal entity Art. 42. Criminal Responsibility of a Legal Entity Criminal Code 2009, Chapter V, Section 3, Working conditions versus human dignity: Art. 274. Subjecting to Working Conditions Incompatible with Human Dignity Art. 275. Attempt (to subject to working conditions incompatible with human dignity) Art. 276. Additional Penalties: Categories and Duration – For crimes mentioned in the present Chapter, the following additional penalties may be pronounced...” Art. 277. Criminal Responsibilities of Legal Entities – “Legal entities may be pronounced to be criminally responsible according to conditions of article 42 (Criminal Responsibilities of Legal Entities) for offences provided in Article 274 (Subjecting to Working Conditions Incompatible with Human Dignity). Legal entities are punished to monetary fine from 1,000,000 (one million) riels to 10,000,000 (ten million) riels and one or more additional penalties as followed...” Agreement on the Employment of Workers between the Government of the Kingdom of Cambodia and the Government of the Kingdom of Thailand (2015) Art. 5(1-5) – Legal protection of workers. Art. 6(1) – PRA to have transparent and efficient system to register workers. Art. 7(5) – PRA must provide workers with copy of employment contract. Art. 9(2) – PRA has to provide pre-departure orientation training.	and enforceable penal sanctions under subordinate legislation poses significant challenges for the enforcement of these provisions. The Criminal Code (2009) outlines the penal sanctions that can be applied to PRAs for “subjecting a person to working conditions incompatible with the human dignity”. The Agreement on the Employment of Workers between Cambodia and Thailand outlined provisions for PRAs, but not penalties.
Article 8(2). Where workers are recruited in one country for work in another, Members concerned shall consider concluding bilateral agreements to prevent abuses and fraudulent practices in recruitment, placement and employment.	Memorandum of Understanding between the Government of the Kingdom of Cambodia and the Government of the Kingdom of Thailand on Labour Cooperation (2015), arts 3-8 Agreement on the Employment of Workers between the Government of the Kingdom of Cambodia and the Government of the Kingdom of Thailand (2015), arts 1-13	For the purposes of this study, the MLVT has an MOU on labour cooperation and a corresponding bilateral agreement on the employment of workers with Thailand. The MLVT also has MOUs with other destination countries to send workers abroad.

International instrument	Existing implementing measures in legislation	Gaps identified
Article 9. Measures to ensure that child labour is not used by PRAs.	Sub-Decree 190, art. 4 – Key terms used in this Sub-Decree shall mean as follows: ► “Migrant worker candidate” refers to Cambodian workers of both sexes aged 18 or over, who have applied for overseas employment and are in the process of completing official forms and paperwork through recruitment agencies in accordance with the guidelines of competence institutions such as the MLVT, Ministry of Foreign Affairs and International Cooperation, and Ministry of Interior.” Prakas No. 253 on Promulgation of Minimum Standards of Job Placement Services Abroad Contract, Annex, art. 5 – The “Worker” must be 18 years-old or over according to their official personal documents provided to the “Private Recruitment Agency” in order to arrange the legal documents and other regulations of the authorities of Kingdom of Cambodia and the destination country.	No provisions specifically prohibiting child labour by PRAs, but Cambodian workers are defined as being aged 18 or over. Explicit prohibition of child labour provisions should be included in a Labour Migration Law.
Article 10. Adequate machinery exists for the investigation of complaints, alleged abuses and fraudulent practices concerning the activities of PRAs.	Sub-Decree 190, arts 29–30 – 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 Cambodia to the receiving country shall participate in the resolution process. In cases which require the participation of expert officials from the MLVT or hiring of a lawyer, all costs shall be borne by the recruitment agencies. (See also art. 39) Prakas No. 253 on Promulgation of Minimum Standards of Job Placement Services Abroad Contract, Annex, arts 4 and 8. Prakas No. 252 on On-site Service of the PRA and Repatriation, arts 4–5. Prakas No. 249 on Complaint Receiving Mechanism for Migrant Workers, arts 1–10. Prakas No. 047/13 on Private Recruitment Agency, arts 6–7. Agreement on the Employment of Workers between the Government of the Kingdom of Cambodia and the Government of the Kingdom of Thailand (2015), art. 5(4) – “Workers have full rights and access to due process in cases of labour violations.”	Prakas 249 outlines the administrative Complaint Receiving Mechanism for Migrant Workers which can be facilitated by trade unions, NGOs, PDLVTs, and MLVT, but does not outline a schedule of remedies or penalties in line with offenses, and does not include penal sanctions. These should be included in a Labour Migration Law.
Articles 11–12. Members shall implement measures to ensure adequate protection for workers employed by PRAs in relation to: (a) freedom of association; (b) collective bargaining;		No measures in examined legislation to ensure workers have freedom of association or collective bargaining.

International instrument	Existing implementing measures in legislation	Gaps identified
Articles 11–12. Members shall implement measures to ensure adequate protection for workers employed by PRAs in relation to: € minimum wages;	Sub-Decree 190, arts 21, 35–36. Prakas No. 253 on Promulgation of Minimum Standards of Job Placement Services Abroad Contract, Annex, art. 1 – Job Placement Service Abroad is a service in which the PRA is responsible to guarantee that the “Worker” who uses the services will be offered DECENT WORK such as better working conditions, at (destination country) in accordance with the regulations and laws of Kingdom of Cambodia a €..... (destination country). The work that will be done by the “Worker” in.....with the amount of.....(Number and letter currency of destination country) per month. This basic wage shall not less than minimum wage of the destination country. (See also art. 4.)	The model contract for the Job Placement Services Abroad Contract found in the Annex to Prakas 253 states that the PRA must specify the amount of wage per month, and that this wage should not be less than the minimum wage of the destination country.
Articles 11–12. Members shall implement measures to ensure adequate protection for workers employed by PRAs in relation to: (d) working time and other working conditions;	Sub-Decree 190, art. 21 – “Recruitment agencies shall be responsible for the working conditions...before recruiting workers for overseas work such as types of work, workplace, working hours, skills, salary, benefits, health insurance, accommodation, transport, security and safety within the working and accommodation areas.” Prakas No. 253 on Promulgation of Minimum Standards of Job Placement Services Abroad Contract, Annex, art. 4 – “PRAs shall observe the working conditions, vocational communication, living conditions and other issues which may occur for the ‘Worker’ during the period of the Employment Contract, paying special attention to ‘Workers’ who are working in isolated conditions. In the case where the ‘Worker’ has problems, such as a work accident, serious illness, disappearance or dispute, the agency must seek the intervention from the authorities or expert institutions in destination countries in order to resolve the issue on time and effectively.” Prakas No. 252 on On-site Service of the PRA and Repatriation Art. 2 – Each PRA shall appoint a Cambodian permanent representative to each receiving country. Art. 3 – PRA services to workers who are placed to work abroad.	

International instrument	Existing implementing measures in legislation	Gaps identified
Articles 11–12. Members shall implement measures to ensure adequate protection for workers employed by PRAs in relation to: (e) statutory social security benefits;	Sub-Decree 190 Art. 21 – “Recruitment agencies shall be responsible for the ... benefits, health insurance within the working and accommodation areas.” Art. 33 – “Recruitment agencies shall be responsible for making arrangements to ensure that workers who are sent abroad will receive appropriate social security regime in accordance with the applicable laws and regulations of the receiving country.” Art. 34 – “MLVT shall monitor the performance of recruitment agencies in securing social security regimes for the workers as well as in cooperating with the receiving country.” Prakas No. 047/13 on Private Recruitment Agency, art. 7 – “PRAs must coordinate with relevant authorities in the receiving countries to ensure migrant workers receive social insurance in accordance with the regulations of receiving country.” Cambodian Policy on Labour Migration 2019–2023 Objective 1.3: Strengthen the management of Private Recruitment Agencies Measure 8. “Foster PRAs individually or collectively to appoint a permanent representative in countries of destination and assist migrant workers in registration for social security scheme in their respective countries of destination.”	Examined legislation doesn't outline what is included in the statutory social security benefits, referring only to “social security/insurance”.
Articles 11–12. Members shall implement measures to ensure adequate protection for workers employed by PRAs in relation to: (f) access to training;	Sub-Decree 190, art. 23 – “In conducting all pre-departure training and orientation courses, recruitment agencies shall cooperate with the MLVT and other relevant institutions. The MLVT shall confer certificates on the workers who have successfully completed the courses.” Prakas No. 253 on Promulgation of Minimum Standards of Job Placement Services Abroad Contract, Annex, art. 4 – “The PRA shall provide pre-departure orientation training to the ‘Worker’ fully and clearly, including languages, traditions, work conditions, skills, the Employment Contract and Labour Laws and other laws related to health and work safety, health and the protection and prevention of communicable diseases, such as HIV, in accordance with the guideline of the MLVT. All pre-departure training must be gender-responsive.” Prakas No. 046/13 on Recruitment Process and Pre-Departure Orientation Training, arts 8–12 – Specifications for pre-departure orientation training centres. Agreement on the Employment of Workers between the Government of the Kingdom of Cambodia and the Government of the Kingdom of Thailand (2015), art. 9	Cambodian legislation examined covers pre-departure orientation training but not any other type of training.

International instrument	Existing implementing measures in legislation	Gaps identified
Articles 11–12. Members shall implement measures to ensure adequate protection for workers employed by PRAs in relation to: (g) occupational safety and health;	Prakas No. 253 on Promulgation of Minimum Standards of Job Placement Services Abroad Contract, Annex, art. 4 – “In the case where the ‘Worker’ has problems, such as a work accident, serious illness, disappearance or dispute, the PRA must seek the intervention from the authorities or expert institutions in destination countries in order to resolve the issue on time and effectively.” Prakas No. 252 on On-site Service of the PRA and Repatriation, art. 3 – PRA shall provide services to workers who are placed to work abroad.	Prakas outline PRAs’ responsibility to seek intervention from destination country authorities or institutions, inspect workplaces and submit a report, and provide counselling and consultation services on working conditions, including possible risks concerning occupational safety and health.
Articles 11–12. Members shall implement measures to ensure adequate protection for workers employed by PRAs in relation to: (h) compensation in case of occupational accidents or diseases;		No provision for compensation in case of occupational accidents or diseases in examined legislation.
Articles 11–12. Members shall implement measures to ensure adequate protection for workers employed by PRAs in relation to: (i) compensation in case of insolvency and protection of workers claims;		No provision for compensation in case of insolvency and protection of workers’ claims in examined legislation.
Articles 11–12. Members shall implement measures to ensure adequate protection for workers employed by PRAs in relation to: (j) maternity protection and benefits, and parental protection and benefits.		No provision for maternity protection and benefits, or parental protection and benefits in examined legislation.

International instrument	Existing implementing measures in legislation	Gaps identified
Article 13. (1) A Member shall establish and periodically review conditions to promote cooperation between the public employment service and PRAs. (2) The conditions referred to in paragraph 1 shall be based on the principle that the public authorities retain final authority for: (a) formulating labour market policy; (b) utilizing or controlling the use of public funds earmarked for the implementation of that policy. (3) PRAs shall, at intervals to be determined by the competent authority, provide to that authority information required with due regard to the confidential nature of such information: (a) to allow the competent authority to be aware of the structure and activities of private employment agencies in accordance with national conditions and practices; (b) for statistical purposes. (4) The competent authority shall compile and, at regular intervals, make this information publicly available.		No provision for cooperation between public employment services and PRAs in the examined legislation.
Article 14(1). The provisions of this Convention shall be applied by means of laws or regulations or by any other means consistent with national practice, such as court decisions, arbitration awards or collective agreements.		Most but not all provisions of this Convention applied in examined legislation. A Labour Migration Law would enable a schedule of labour law offences perpetrated against migrant workers, sanctions, penalties, remedies and compensation.

International instrument	Existing implementing measures in legislation	Gaps identified
Article 14(2). Supervision of the implementation of provisions ensured by the labour inspection service or other competent public authorities.	Sub-Decree 190 Art. 5 – “The MLVT will be the competent ministry to manage the sending of Cambodian workers abroad in cooperation with the Ministry of Foreign Affairs and International Cooperation and Ministry of Interior.” Art. 9 – “The MLVT shall conduct ordinary inspections and special inspections of the recruitment agencies.” Prakas No. 250 on Inspection on PRA, arts 1–6 – Procedures for the MLVT to conduct inspection of PRAs and their pre-departure orientation training centres in order to ensure the effectiveness of the application of laws and regulations relevant to the management of sending Cambodian workers to work abroad. Cambodian Policy on Labour Migration 2019–2023 Objective 1.3. Strengthen the management of Private Recruitment Agencies – “In order to improve the management of PRAs, the Royal Government of Cambodia will review and revise checklist inspection procedures and strengthen the capacity of labour inspector for fair assessment of the practices of PRAs.” Measure 5 – “Continue to strengthen labour inspection and update the checklist of PRAs and continue to take action to warn, suspend or revoke the license of PRAs in the case of finding multiple actual illegal acts/mistakes that cannot be corrected.”	
Article 14(3). Adequate remedies, including penalties where appropriate, provided for and applied in cases of violations.	Sub-Decree 190, arts 39– 40. Prakas No. 253 on Promulgation of Minimum Standards of Job Placement Services Abroad Contract, Annex, art. 7. Criminal Code (2009) Extraterritorial application – arts 19–20 Chapter 4, Criminal responsibilities of a legal entity Art. 42 – Criminal Responsibility of a Legal Entity Criminal Code 2009, Chapter V, Section 3, Working conditions versus human dignity: Art. 274. Subjecting to Working Conditions Incompatible with Human Dignity – Acts of subjecting a person, by abusing his/her vulnerability, or his/her situation of dependence, to working conditions incompatible with the human dignity, is punishable by an imprisonment of between 1 (one) month and 1 (one) year and a fine of between 100,000 (one hundred thousand) riels and 2,000,000 (two million) riels. Art. 275. Attempt (to subject to working conditions incompatible with human dignity)Art. 276. Additional Penalties: Categories and Duration – For crimes mentioned in the present Chapter, the following additional penalties may be pronounced...”	Under Sub-Decree 190, article 39 outlines penalties for PRAs violating any provision of the Sub-Decree. However, processes for how the MLVT is able to apply the penalties outlined in Sub-Decree 190 and the eight supplementing <i>prakas</i> is not outlined. It is unclear how a decision is made to impose a sanction, what offences may result in a more severe sanction than others, and whether repeated violations of the Sub-Decree might lead to progressively more severe sanctions. The lack of a schedule of processes, remedies, and enforceable penal sanctions under subordinate legislation poses significant challenges for the enforcement of these provisions.

International instrument	Existing implementing measures in legislation	Gaps identified
	Art. 277. Criminal Responsibilities of Legal Entities – Legal entities may be pronounced to be criminally responsible according to conditions of article 42 (Criminal Responsibilities of Legal Entities) for offences provided in article 274 (Subjecting to Working Conditions Incompatible with Human Dignity). Legal entities are punished to monetary fine from 1,000,000 (one million) riels to 10,000,000 (ten million) riels and one or more additional penalties as followed...” Law on the Suppression of Human Trafficking and Sexual Exploitation 2008 Extraterritorial application Chapter 2. The Act of Selling/Buying or Exchanging a Person – Art. 8. Definition of unlawful removal; art. 9 – Unlawful removal of minor. Art. 10. Unlawful Removal with Purpose – “A person who unlawfully removes another for the purpose of profit making, sexual aggression, production of pornography, marriage against will of the victim, adoption or any form of exploitation shall be punished with imprisonment from 7 years to 15 years. The offence stipulated in this article shall be punished with imprisonment from 15 to 20 years when: ▶ the victim is a minor, ▶ the offence is committed by a public official who abuses his/her authority over the victim, ▶ the offence is committed by an organized group. The term “any form of exploitation” in this article and articles 12, 15, 17, and 19 of this law shall include the exploitation of ... forced labour or services, slavery or practices similar to slavery, debt bondage, involuntary servitude, child labour or the removal of organs.” Chapter 7. Civil remedy Art. 46. Restitution of Unjust Enrichment – A person who obtains enrichment without a legal cause knowing that the enrichment has been obtained from the act of selling/buying or exchanging a person or sexual exploitation shall be liable for restitution of the whole unjust enrichment along with accrued interests. An aggrieved person (a person being exploited) may claim for damages in addition to the restitution of such unjust enrichment. A person who has made a contract of loan or any other provision to another person for the purpose of committing the act of selling/buying or exchanging of a person or sexual exploitation may not claim for restitution of the provision. Art. 47. Preference to Confiscated Property – Victims shall have preference over property confiscated by the State for their compensation and restitution. Chapter 8. Supplemental Provisions Art. 48. Additional Penalties – “For the offenses stipulated in this law, the following additional penalties may be imposed...”	Similarly, in Prakas 253, article 7, what constitutes “damages” and “compensation” is not articulated. Prakas 249 outlines the complaints receiving mechanism for migrant workers, but does not outline any remedies or penalties. Under the Law on the Suppression of Human Trafficking and Sexual Exploitation – which covers the offence of unlawful removal for the purpose exploitation, including forced labour – both penalties and restitution are required. Art. 46 outlines that a perpetrator is liable for restitution of the whole unjust enrichment, along with accrued interest, and the victim may claim for damages in addition to the restitution of such unjust enrichment. But this is only in cases with a trafficking element. The Criminal Code has provision for criminal responsibility of a legal entity for subjecting a person to working under conditions incompatible with human dignity, and outlines penal sanctions and penalties. But this is only when a criminal complaint can be brought against a PRA. Under the MLVT's jurisdiction, no remedies exist that include both restitution and interest and damages on top of the restitution, this is only available for offences linked with human trafficking. A Labour Migration Law would allow the MLVT to outline labour law offences for migrant workers in line with a schedule of processes, remedies, and enforceable penal sanctions, including provisions for compensation and damages on top of restitution in line with international labour standards.

► Annex II. Gap analysis for Protocol of 2014 to the Forced Labour Convention, 1930

In the below analysis, a “traffic light” system has been used to indicate levels of conformity between relevant Cambodian laws and subordinate legislation (see table 1) and Protocol No. 29: green denotes substantial conformity; orange denotes ambiguities or partial conformity; and red denotes substantial non-conformity.

Protocol of 2014 to the Forced Labour Convention, 1930	Existing implementing measures	Gaps identified
Article 1(1). Each Member shall take effective measures to prevent and eliminate forced or compulsory labour, to provide to victims protection and access to appropriate and effective remedies, such as compensation, and to sanction the perpetrators of forced or compulsory labour.	Sub-Decree 190 Art. 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. Art. 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.” Prakas No. 249 on Complaint Receiving Mechanism for Migrant Workers, arts 1–10 – Process to lodge administrative complaints with the MLVT and PDLVTs. Prakas No. 046/13 on Recruitment Process and Pre-Departure Orientation Training, art. 15 – “Recruiting workers to work abroad in the form of employment to cut the debt is prohibited.” Law on the Suppression of Human Trafficking and Sexual Exploitation 2008 Extraterritorial application Art. 10. Unlawful Removal with Purpose – “A person who unlawfully removes another for the purpose of profit making, sexual aggression, production of pornography, marriage against will of the victim, adoption or any form of exploitation shall be punished with imprisonment from 7 years to 15 years. The offence stipulated in this article shall be punished with imprisonment from 15 to 20 years when: ► the victim is a minor; ► the offence is committed by a public official who abuses his/her authority over the victim, ► the offence is committed by an organized group. The terms “any form of exploitation” in article 10 and articles 12, 15, 17, and 19 of this law “shall include the exploitation of ... forced labour or services, slavery or practices similar to slavery, debt bondage, involuntary servitude, child labour or the removal of organs.”	Under Sub-Decree 190, article 39 outlines penalties for PRAs violating any provision of the Sub-Decree. However, processes for how the MLVT is able to apply the penalties outlined in Sub-Decree 190 and the eight supplementing <i>prakas</i> are not outlined. It is unclear how a decision is made to impose a sanction, what offences may result in a more severe sanction than others, and whether repeated violations of the Sub-Decree might lead to progressively more severe sanctions. The issue here is that the lack of a schedule of processes, remedies, and enforceable penal sanctions under subordinate legislation poses significant challenges for the enforcement of these provisions. Prakas 249 is an administrative, and not a criminal process. Prakas 46, article 15, states, “Recruiting workers to work abroad in the form of employment to cut the debt is prohibited.” The Sub-Decree, Prakas 249, and Prakas 046 do not provide provisions for compensation. Under the Law on the Suppression of Human Trafficking and Sexual Exploitation, which covers the offence of unlawful removal for the purpose exploitation including forced labour, both penalties and restitution are required. Article 46 of the Law outlines that a perpetrator is liable for restitution of the whole “unjust enrichment” along with accrued interest, and the victim may claim for damages in addition to the restitution of such “unjust enrichment”. But this is only in cases with a trafficking element.

Protocol of 2014 to the Forced Labour Convention, 1930	Existing implementing measures	Gaps identified
	Chapter 7. Civil remedy Art. 46. Restitution of Unjust Enrichment – A person who obtains enrichment without a legal cause knowing that the enrichment has been obtained from the act of selling/buying or exchanging a person or sexual exploitation shall be liable for restitution of the whole unjust enrichment along with accrued interests. An aggrieved person (a person being exploited) may claim for damages in addition to the restitution of such unjust enrichment. A person who has made a contract of loan or any other provision to another person for the purpose of committing the act of selling/buying or exchanging of a person or sexual exploitation may not claim for restitution of the provision. Art. 47. Preference to Confiscated Property – Victims shall have preference over property confiscated by the State for their compensation and restitution. Chapter 8. Supplemental Provisions Art. 48. Additional Penalties – “For the offenses stipulated in this law, the following additional penalties may be imposed...” Memorandum of Understanding between the Government of the Kingdom of Cambodia and the Government of the Kingdom of Thailand on Bilateral Cooperation for Eliminating Trafficking in Persons and Protecting Victims of Trafficking (2014), art. 2(a) – “‘Trafficking in persons’ shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat, use of force, or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.” Art. 4. Preventative measures – “The Parties shall undertake educational and vocational training programs tailored for children, women and men to increase the opportunity for employment and hence reduce vulnerability to trafficking.”	Under the Law on the Suppression of Human Trafficking and Sexual Exploitation, which covers the offence of unlawful removal for the purpose exploitation including forced labour, both penalties and restitution are required. Article 46 of the Law outlines that a perpetrator is liable for restitution of the whole “unjust enrichment” along with accrued interest, and the victim may claim for damages in addition to the restitution of such “unjust enrichment”. But this is only in cases with a trafficking element. For crimes contained in the Law on the Suppression of Human Trafficking and Sexual Exploitation, any restitution that may be ordered by the courts is only paid to workers following the completion of the convicted trafficker’s jail sentence. Even if a migrant worker’s criminal complaint is successfully prosecuted, the receipt of compensation may therefore be delayed for a significant time. Financial compensation is the last step in the process even though it is often the first priority for migrant workers. The MOU on Eliminating Trafficking in Persons and Protecting Victims of Trafficking, which covers trafficking for forced labour, outlines prevention measures to prevent and eliminate forced or compulsory labour and to provide access to appropriate and effective remedies, such as restitution and compensation for victims.

Protocol of 2014 to the Forced Labour Convention, 1930	Existing implementing measures	Gaps identified
	Art. 5. Preventative measures – “Both Parties shall make best efforts to prevent trafficking in persons through the following preventative measures: (a) Increase of social services and protection such as assistance in job searching and income generating and provision of medical care to persons vulnerable to trafficking; (b) Reform of educational and vocational training programs to improve their linkage with education and job opportunities; and (c) Enhancement of public awareness and understanding on the issue of safe migration and trafficking in persons, especially children and women including: (i) Disseminate information to the public on risk factors of migration and the danger of negative impacts of trafficking in persons; (ii) Support the development of community protection and surveillance networks, especially in high-risk areas; Strengthen cooperation between the Parties and the private sectors to expand their role in the fight against trafficking in persons. Art. 7. Protection of trafficked persons: The parties shall undertake appropriate measures, which may include legal reform and legal aid, to ensure the effective legal remedies to victims of trafficking as follows: (a) victims may claim restitution of any undisputed personal proerties and belongings that have been confiscated or obtained by relevent authorities at any stage of the legal process; (b) proceeds of crime of trafficking shall be liable for confiscation and managed according to the laws of the relevent country; (c) victims may claim compensation and restitution from the offender of any damages caused by trafficking in persons; (d) victims may claim payment for unpaid services from the offender; (e) victims shall have access to the due process of law to claim for criminal justice, recovery of damages, and any other judicial remedies; and (f) victims shall be provided information and interpretive services from the intake process until reintgeration.	

Protocol of 2014 to the Forced Labour Convention, 1930	Existing implementing measures	Gaps identified
Article 1(2). Each Member shall develop a national policy and plan of action for the effective and sustained suppression of forced or compulsory labour in consultation with employers' and workers' organizations, which shall involve systematic action by the competent authorities and, as appropriate, in coordination with employers' and workers' organizations, as well as with other groups concerned.		None of the examined pieces of legislation include laws, policies or plans of action specifically for forced or compulsory labour. While not examined for this analysis, the National Committee for Counter Trafficking in Persons (NCCT) National Plan of Action 2019–2023 may go some way to covering these provisions in regard to trafficking for the purpose of exploitation, including forced labour.
Article 1(3). Definition of forced labour contained in the Convention reaffirmed, and measures referred to include specific action against trafficking in persons for the purposes of forced labour.	Law on the Suppression of Human Trafficking and Sexual Exploitation (2008) Chapter 2: The Act of Selling/Buying or Exchanging a Person Art. 8. – Definition of unlawful removal. Art. 10. Unlawful Removal with Purpose – “A person who unlawfully removes another for the purpose of profit making, sexual aggression, production of pornography, marriage against will of the victim, adoption or any form of exploitation shall be punished with imprisonment from 7 years to 15 years. The offence stipulated in this article shall be punished with imprisonment from 15 to 20 years when: ► the victim is a minor, ► the offence is committed by a public official who abuses his/her authority over the victim, ► the offence is committed by an organized group. The terms “any form of exploitation” in article 10 and articles 12, 15, 17, and 19 of this law “shall include the exploitation of ... forced labour or services, slavery or practices similar to slavery, debt bondage, involuntary servitude, child labour or the removal of organs.”	Convention No. 29, Art. 2(1) states, “For the purposes of this Convention the term forced or compulsory labour shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.” Under Cambodian law, forced labour is not defined as a stand-alone punishable offence in any piece of legislation that covers migrant workers, and hence legislation is not in line with Article 1(3) of Protocol No. 29. The Labour Code defines forced labour in line with the ILO definition⁷⁴ and forbids the “hiring of people for work to pay off debts”,⁷⁵ but the law does not outline any penal sanctions against forced labour and does not apply to Cambodian migrant workers.⁷⁶

⁷⁴ Labour Code 1997, art. 15: “Forced or compulsory labour is absolutely forbidden in conformity with the International Convention No. 29 on the forced or compulsory labour, adopted on June 28, 1930 by the International Labor Organization and ratified by the Kingdom of Cambodia on February 24, 1969.”

⁷⁵ Labour Code 1997, art. 16.

⁷⁶ Labour Code 1997, art. 1: “This law governs relations between employers and workers resulting from employment contracts to be performed within the territory of the Kingdom of Cambodia, regardless of where the contract was made and what the nationality and residences of the contracted parties are.”

Protocol of 2014 to the Forced Labour Convention, 1930	Existing implementing measures	Gaps identified
	Chapter 7. Civil remedy Art. 46. Restitution of Unjust Enrichment – A person who obtains enrichment without a legal cause knowing that the enrichment has been obtained from the act of selling/buying or exchanging a person or sexual exploitation shall be liable for restitution of the whole unjust enrichment along with accrued interests. An aggrieved person (a person being exploited) may claim for damages in addition to the restitution of such unjust enrichment. A person who has made a contract of loan or any other provision to another person for the purpose of committing the act of selling/buying or exchanging of a person or sexual exploitation may not claim for restitution of the provision. Art. 47. Preference to Confiscated Property – Victims shall have preference over property confiscated by the State for their compensation and restitution. Chapter 8. Supplemental Provisions Art. 48. Additional Penalties – “For the offenses stipulated in this law, the following additional penalties may be imposed...” Memorandum of Understanding between the Government of the Kingdom of Cambodia and the Government of the Kingdom of Thailand on Bilateral Cooperation for Eliminating Trafficking in Persons and Protecting Victims of Trafficking (2014), art. 2(a) – Trafficking in persons definition includes trafficking for the purposes of forced labour.	The Law on the Suppression of Human Trafficking and Sexual Exploitation criminalizes “unlawful removal” for the purpose of exploitation, defined as, “forced labour or services, slavery or practices similar to slavery, debt bondage, involuntary servitude, or child labour.” Similarly, the definition of trafficking under the MOU between Cambodia and Thailand on Bilateral Cooperation for Eliminating Trafficking in Persons and Protecting Victims of Trafficking uses the Palermo Protocol definition of trafficking.
Article 2. Measures to prevent forced or compulsory labour shall include: (a) education and information for potential victims of forced or compulsory labour;	Cambodian Policy for Labour Migration 2019–2023 Objective 2.3 – “Document, produce, publish and widely disseminate safe migration materials. Relevant documents and information on safe labour migration and the rights at works are documented, produced, published, and disseminated in order to raise awareness of migrant workers and local citizens, especially rural communities.” Objective 1.6 – “Establish Migrant Resource Centres (MRC) under the management of General Department of Labour of the Ministry of Labour and Vocational Training. Migrant Resource Centre (MRC) will be officially established in order to strengthen the effectiveness of information dissemination in regards to safe labour migration and prevention of irregular and unsafe migration.” Memorandum of Understanding between the Government of the Kingdom of Cambodia and the Government of the Kingdom of Thailand on Bilateral Cooperation for Eliminating Trafficking in Persons and Protecting Victims of Trafficking (2014)	The <i>Cambodian Labour Migration Policy</i> includes safe migration materials not specifically “education and information for potential victims of forced or compulsory labour”. The <i>MOU between Cambodia and Thailand on Eliminating Trafficking in Persons and Protecting Victims of Trafficking</i> includes educational and vocational training programs to increase the opportunity for employment and education to reduce vulnerability to trafficking and safe migration materials, but not specifically “education and information for potential victims of forced or compulsory labour”.

Protocol of 2014 to the Forced Labour Convention, 1930	Existing implementing measures	Gaps identified
	Preventative Measures Art. 4. Preventative measures – “The Parties shall undertake educational and vocational training programs tailored for children, women and men to increase the opportunity for employment and hence reduce vulnerability to trafficking.” Art. 5. Preventative measures – “Both Parties shall make best efforts to prevent trafficking in persons through the following preventative measures: (d) Increase of social services and protection such as assistance in job searching and income generating and provision of medical care to persons vulnerable to trafficking; (e) Reform of educational and vocational training programs to improve their linkage with education and job opportunities; and (f) Enhancement of public awareness and understanding on the issue of safe migration and trafficking in persons, especially children and women including: (iii) Disseminate information to the public on risk factors of migration and the danger of negative impacts of trafficking in persons; (iv) Support the development of community protection and surveillance networks, especially in high-risk areas.	
Article 2. Measures to prevent forced or compulsory labour shall include: (b) education and information for employers;		There is no requirement around education and information for employers to prevent forced or compulsory labour included in the legislation examined.

Protocol of 2014 to the Forced Labour Convention, 1930	Existing implementing measures	Gaps identified
Article 2. Measures to prevent forced or compulsory labour shall include: (c) efforts to ensure that: (i) the coverage and enforcement of relevant legislation for the prevention of forced or compulsory labour, including labour law as appropriate, apply to all workers and all sectors of the economy;	Law on the Suppression of Human Trafficking and Sexual Exploitation (2008) Extraterritorial application for perpetrators and victims, arts 2–3. Chapter 2. The Act of Selling/Buying or Exchanging a Person Art. 10. Unlawful Removal with Purpose – “A person who unlawfully removes another for the purpose of profit making, sexual aggression, production of pornography, marriage against will of the victim, adoption or any form of exploitation shall be punished with imprisonment from 7 years to 15 years...The terms ‘any form of exploitation’ in this Article and Articles 12, 15, 17, and 19 of this law shall include the exploitation of ... forced labour or services, slavery or practices similar to slavery, debt bondage, involuntary servitude, child labour or the removal of organs.” (See also articles 11–20). Criminal Code (2009) Extraterritorial application for perpetrators and victims, arts 19–20 Chapter 4, Criminal responsibilities of a legal entity Art. 42 – Criminal Responsibility of a Legal Entity Criminal Code 2009, Chapter V, Section 3, Working conditions versus human dignity: Art. 277. Criminal Responsibilities of Legal Entities – Legal entities may be pronounced to be criminally responsible according to conditions of article 42 (Criminal Responsibilities of Legal Entities) for offences provided in article 274 (Subjecting to Working Conditions Incompatible with Human Dignity). Legal entities are punished to monetary fine from 1,000,000 (one million) riels to 10,000,000 (ten million) riels and one or more additional penalties as followed...” Memorandum of Understanding between the Government of the Kingdom of Cambodia and the Government of the Kingdom of Thailand on Bilateral Cooperation for Eliminating Trafficking in Persons and Protecting Victims of Trafficking (2014), art. 6 – Protection: “Trafficked persons shall be considered victims, not violators or offenders of immigration law. Therefore, (a) trafficked persons shall not be prosecuted for illegal entry to the country;”	The Labour Code, which includes the Convention No. 29 definition of forced labour, is not applicable to migrant workers. Sub-Decree 190 and the eight supplementing <i>prakas</i> are not applicable to irregular workers, and a 2007 MLVT announcement prohibits recruitment of Cambodian workers to work abroad in the fishing sector. The Criminal Code and the Law on the Suppression of Human Trafficking and Sexual Exploitation have extraterritorial application and apply to either victims or perpetrators either within or outside Cambodia as long as they are Cambodian citizens. However, the Law on the Suppression of Human Trafficking and Sexual Exploitation only covers “unlawful removal for the purpose of exploitation”, and so it does not cover forced or compulsory labour as a stand-alone offence, and the Criminal Code does not define what “working conditions incompatible with the human dignity” means.

Protocol of 2014 to the Forced Labour Convention, 1930	Existing implementing measures	Gaps identified
Article 2. Measures to prevent forced or compulsory labour shall include: (c) efforts to ensure that: (ii) labour inspection services and other services responsible for the implementation of this legislation are strengthened;	Sub-Decree 190, art. 9 – “The MLVT shall conduct ordinary inspections and special inspections of the recruitment agencies.” Prakas No. 250 on Inspection on PRA, arts 1–6 – Provisions for inspection of PRAs. Cambodian Policy on Labour Migration 2019–2023 Objective 1.3. Strengthen the management of PRAs – “In order to improve the management of PRAs, the Royal Government of Cambodia will review and revise checklist inspection procedures and strengthen the capacity of labour inspector for fair assessment of the practices of PRAs.” Measure 5. “Continue to strengthen labour inspection and update the checklist of PRAs and continue to take action to warn, suspend or revoke the license of PRAs in the case of finding multiple actual illegal acts/mistakes that cannot be corrected.”	Sub-Decree 190 and Prakas 250 have provisions for inspection of PRAs by labour inspectors; however, they do not have provisions for strengthening these services. The Cambodian Labour Migration Policy has an objective to strengthen the management of PRAs and strengthen the capacity of labour inspectors for fair assessment of the practices of PRAs.
Article 2. Measures to prevent forced or compulsory labour shall include: (d) protecting persons, particularly migrant workers, from possible abusive and fraudulent practices during the recruitment and placement process;	Sub-Decree 190 outlines the responsibilities of PRAs to migrant workers in the recruitment and placement process. Prakas No. 046/13 on Recruitment Process and Pre-Departure Orientation Training, arts 1–16 – Outlines protection measures for migrant workers by PRAs to prevent abuse and exploitation during recruitment and pre-departure orientation training. Prakas No. 047/13 on Private Recruitment Agency, art. 7 – “All PRAs must take responsibility for any problem or event happening during the training time of the pre-departure orientation training, while the migrant worker is travelling abroad and repatriation.” Prakas No. 252 on On-site Service of the PRA and Repatriation, art. 3 – The responsibility of the PRA to provide services to avoid abuse and fraudulent practices in recruitment and pre-departure orientation training. Prakas No. 251 on Penalty and Reward to the PRA, arts 2–5 – Outlines the MLVT's tripartite mechanism for appraising each PRA once every two years. Agreement on the Employment of Workers between the Government of the Kingdom of Cambodia and the Government of the Kingdom of Thailand (2015), arts 6(1–5) – Outlines the sending and receiving responsibilities of PRAs and competent authorities.	Sub-Decree 190 and <i>prakas</i> outline PRAs responsibilities to migrant workers to protect them from abusive and fraudulent practices during the recruitment and placement process.
Article 2. Measures to prevent forced or compulsory labour shall include: (e) supporting due diligence by both the public and private sectors to prevent and respond to risks of forced or compulsory labour;		There is no due diligence by both the public and private sectors to prevent and respond to risks of forced or compulsory labour included in the legislation examined.

Protocol of 2014 to the Forced Labour Convention, 1930	Existing implementing measures	Gaps identified
Article 2. Measures to prevent forced or compulsory labour shall include: (f) addressing the root causes and factors that heighten the risks of forced or compulsory labour.	Cambodian Policy on Labour Migration 2019–2023 5. Vision – “The vision of this policy is to effectively strengthen the mechanisms of management, protection and promotion of the rights and benefits of migrant workers aiming at ensuring access to decent work opportunities, development of skills, knowledge, experience, resources and social protection benefits for workers, their family members and communities in contributing to the national economic and social development.” Memorandum of Understanding between the Government of the Kingdom of Cambodia and the Government of the Kingdom of Thailand on Labour Cooperation (2015), art. 4 – “The parties shall cooperate on skill development, knowledge and technical sharing in order to upgrade skill of manpower, and enhance labour productivity.	No legislation examined has provisions to address the root causes and factors that heighten the risks of forced or compulsory labour. The Cambodian Labour Migration Policy and MOU between Cambodia and Thailand on Labour Cooperation outline objectives for development of skills, knowledge, experience, resources and social protection benefits to upgrade skill of manpower, and enhance labour productivity.
Article 3. Each Member shall take effective measures for the identification, release, protection, recovery and rehabilitation of all victims of forced or compulsory labour, as well as the provision of other forms of assistance and support.	Memorandum of Understanding between the Government of the Kingdom of Cambodia and the Government of the Kingdom of Thailand on Bilateral Cooperation for Eliminating Trafficking in Persons and Protecting Victims of Trafficking (2014) Art. 2(a) – Definition of trafficking in persons in line with the Palermo Protocol. Art. 6. Protection – “Trafficked persons shall be considered victims, not violators or offenders of immigration law. Therefore, (a) trafficked persons shall not be prosecuted for illegal entry to the country; (b) trafficked persons shall not be detained in an immigration detention center during the times awaiting the official repatriation process, but shall be put under the care of MOSAVY (Cambodia) or Department of Social Development and Welfare (Thailand) and shelter and protection shall be provided to the victims according to the policy of each state; (c) the relevant authorities shall ensure the security of trafficked persons and their families; (d) victims shall be treated humanely and provided with opportunity to communicate with their immediate families where it is safe to do so throughout the process of protection and repatriation and the judicial proceedings; (e) victims, especially children, shall be provided rights-based, age- and gender-sensitive services during the interim care, repatriation, reintegration and judicial processes; and children accompanying victims shall be entitled to the protection in accordance with the national laws of each Party.”	None of the legislation examined for this analysis outlines the identification, release, protection, recovery and rehabilitation of all victims of forced or compulsory labour, as well as the provision of other forms of assistance and support. The Law on Suppression of Human Trafficking and Sexual Exploitation outlines offences and penalties for human trafficking for the purposes of exploitation, including forced labour. While not examined for this analysis, the following documents, among others, should be examined to see that they outline the identification, release, protection, recovery and rehabilitation of and provision of other forms of assistance and support to victims of human trafficking for forced or compulsory labour. ► The National Committee for Counter Trafficking in Persons (NCCT) Guidelines on Forms and Procedures for Identification of Victims of Human Trafficking for Appropriate Service Provision outlines measures for identification and referral of victims.

Protocol of 2014 to the Forced Labour Convention, 1930	Existing implementing measures	Gaps identified
	Art. 17. Rehabilitation / repatriation: (a) The parties shall make all possible efforts towards the safe and effective integration of victims of trafficking into their families and communities, where appropriate, in order to restore dignity and well-being, (b) for this purpose, the Parties shall take the appropriate gender sensitive measures with the best interest of the victims to attain the following objectives – (i) victims of trafficking shall not suffer any further victimization, stigmatization or dramatization in the judicial procedure, (ii) continuous social, medical, psychological and other necessary support shall be provided to persons who are victims of trafficking and their families, particularly to pregnant women, people with disabilities, and those who are infected with sexually transmitted diseases and/or HIV/AIDs, (iii) persons shall not be discriminated against or stigmatized socially; and (iv) child victims of school age shall be ensure appropriate educational opportunities.	► Policy and minimum standards on the protection of the rights of trafficked victims in MOSAVY Prakas No. 852 (2009) and MOSAVY Prakas No. 857 (2009) define the term “victim” and the process of management of victims is emphasized in detail in accordance with the main 11 rights of victim identification and referral (and on to case closure). ► Guidelines on the enforcement of the Law on the Suppression of Human Trafficking and Sexual Exploitation 2008 determine measures to: (i) rescue victims of human trafficking; and (ii) refer victims to their residences or the Department of Social Affairs, Veterans and Youth Rehabilitation, which works with NGOs. ► The Directive on the Implementation of the Principles of the National and the International Laws in Force in Relation to the Protection of Victims of a Crime (2005), issued by the Ministry of Justice, also provides a general definition to the term “victim” and determines the general and specific principles for the protection of victims of crime, starting from the victim interview stage and running up until the completion of the processes of the Judicial Police, prosecutor, investigating judge and trial judge. ► The Agreement on Guidelines and Cooperation between the Relevant Government Institutions and Supporting Victim Agencies in the Proceedings in Relation to Human Trafficking (2007) outlines urgent measures to be taken by the agent that first meets the victims, the referral of victims to protection services, and the determination of evidence and testimony of witnesses.

Protocol of 2014 to the Forced Labour Convention, 1930	Existing implementing measures	Gaps identified
		► Standard operating procedures for the units specializing in suppression of human trafficking are the training material for the identification of victims of human trafficking to be used by law enforcement officials concerning the methodology for evaluation, interview and decision-making, as well as for special procedures for the identification of child victims of human trafficking. ► The Standard Operating Procedures on the Support of Reintegration of Men Who Are Victims of Human Trafficking (2012) determines the common principles and procedures for identification, repatriation and reintegration support of men trafficked abroad. The procedures include, but are not limited to, searching for family members and assessment of family situation in Cambodia, repatriation and receipt, provision of urgently needed assistance when arriving, the estimation of needs and skills, the estimation of situation, the integration plan and referral to a service, and monitoring of the process of integrating male victims. ► Regarding transnational human trafficking, Cambodia has ratified international Conventions and entered into a number of subregional and bilateral agreements, such as the UN Convention against Transnational Organized Crime and Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention against Transnational Organized Crime in 2000 (via Royal Kram No. NS/RK/1105/038, dated 14 November 2005) and Royal Kram No. NS/RK/0106/004, dated 18 January 2006); as well as the Memorandum of Understanding on Cooperation against Trafficking in Persons in the Greater Mekong Subregion (signed on 29 October 2004).

Protocol of 2014 to the Forced Labour Convention, 1930	Existing implementing measures	Gaps identified
Article 4(1). Each Member shall ensure that all victims of forced or compulsory labour, irrespective of their presence or legal status in the national territory, have access to appropriate and effective remedies, such as compensation.	Law on the Suppression of Human Trafficking and Sexual Exploitation 2008 Extraterritorial application, arts 2-3 – With the only eligibility criteria of either victims or perpetrators being that are of Cambodian nationality. Art. 4. Remit of criminal responsibility. Art. 5. Pronouncement of principle penalties. Art. 6. Concurrence of offences. Chapter 2: Art. 10. Unlawful Removal with Purpose – “A person who unlawfully removes another for the purpose of profit making, sexual aggression, production of pornography, marriage against will of the victim, adoption or any form of exploitation shall be punished with imprisonment from 7 years to 15 years...The terms “any form of exploitation” in this Article and Articles 12, 15, 17, and 19 of this law shall include the exploitation of ... forced labour or services, slavery or practices similar to slavery, debt bondage, involuntary servitude, child labour or the removal of organs.” Chapter 7. Civil remedy Art. 46. Restitution of Unjust Enrichment – A person who obtains enrichment without a legal cause knowing that the enrichment has been obtained from the act of selling/buying or exchanging a person or sexual exploitation shall be liable for restitution of the whole unjust enrichment along with accrued interests. An aggrieved person (a person being exploited) may claim for damages in addition to the restitution of such unjust enrichment. A person who has made a contract of loan or any other provision to another person for the purpose of committing the act of selling/buying or exchanging of a person or sexual exploitation may not claim for restitution of the provision. Art. 47. Preference to Confiscated Property – Victims shall have preference over property confiscated by the State for their compensation and restitution. Chapter 8. Supplemental Provisions Art. 48. Additional Penalties – “For the offenses stipulated in this law, the following additional penalties may be imposed: 1. The confiscation of any equipment, materials or objects which have served, or been intended to serve, to commit the offense; 2. The confiscation of any materials which are constituent objects of the offenses; 3. The confiscation of the proceeds or the properties earned by or which resulted from the offense; 4. The closure of a business that has served to commit the offense; 5. The restriction of civil rights; and 6. The ban on stay.	The Labour Code, which includes the Convention No. 29 definition of forced labour, is not applicable to migrant workers. Sub-Decree 190 and the eight supplementing <i>prakas</i> are not applicable to irregular workers and do not outline a process for compensation, and a 2007 MLVT announcement prohibits recruitment of Cambodian workers to work abroad in the fishing sector. The Criminal Code and the Law on the Suppression of Human Trafficking and Sexual Exploitation applies to either victims or perpetrators either within or outside Cambodia so long as they are a Cambodian citizen, and gives victims access to appropriate and effective penal remedies and compensation. However, offences under the Law on the Suppression of Human Trafficking and Sexual Exploitation are for “unlawful removal” for the purposes of exploitation, and there is no stand-alone forced labour offence. In addition, the Criminal Code prohibits “the acts of subjecting a person to working in conditions incompatible with human dignity”, but does not define what “incompatible with human dignity” means. The MOU between Cambodia and Thailand on Eliminating Trafficking in Persons and Protecting Victims of Trafficking covers irregular workers and outlines compensation and restitution for victims of forced labour, but only when linked to cross-border trafficking.

Protocol of 2014 to the Forced Labour Convention, 1930	Existing implementing measures	Gaps identified
	Criminal Code (2009) Extraterritorial application – arts 19–20 Chapter 4, Criminal responsibilities of a legal entity Art. 42 – Criminal Responsibility of a Legal Entity Criminal Code 2009, Chapter V, Section 3, Working conditions versus human dignity: Art. 274. Subjecting to Working Conditions Incompatible with Human Dignity – Acts of subjecting a person, by abusing his/her vulnerability, or his/her situation of dependence, to working conditions incompatible with the human dignity, is punishable by an imprisonment of between 1 (one) month and 1 (one) year and a fine of between 100,000 (one hundred thousand) riels and 2,000,000 (two million) riels. Art. 275. Attempt (to subject to working conditions incompatible with human dignity) Art. 276. Additional Penalties: Categories and Duration – For crimes mentioned in the present Chapter, the following additional penalties may be pronounced...” Art. 277. Criminal Responsibilities of Legal Entities – Legal entities may be pronounced to be criminally responsible according to conditions of article 42 (Criminal Responsibilities of Legal Entities) for offences provided in article 274 (Subjecting to Working Conditions Incompatible with Human Dignity). Legal entities are punished to monetary fine from 1,000,000 (one million) riels to 10,000,000 (ten million) riels and one or more additional penalties as followed...” Memorandum of Understanding between the Government of the Kingdom of Cambodia and the Government of the Kingdom of Thailand on Bilateral Cooperation for Eliminating Trafficking in Persons and Protecting Victims of Trafficking (2014) Art. 6. Protection of trafficked persons – “Trafficked persons shall be considered victims not violators or offenders of the immigration law. Therefore, (a) trafficked persons shall not be prosecuted for illegal entry to the country”	

Protocol of 2014 to the Forced Labour Convention, 1930	Existing implementing measures	Gaps identified
	Art. 7. Protection of trafficked persons: The parties shall undertake appropriate measures, which may include legal reform and legal aid, to ensure the effective legal remedies to victims of trafficking as follows: (a) victims may claim restitution of any undisputed personal properties and belongings that have been confiscated or obtained by relevant authorities at any stage of the legal process; (b) proceeds of crime of trafficking shall be liable for confiscation and managed according to the laws of the relevant country; (c) victims may claim compensation and restitution from the offender of any damages caused by trafficking in persons; (d) victims may claim payment for unpaid services from the offender; (e) victims shall have access to the due process of law to claim for criminal justice, recovery of damages, and any other judicial remedies; and (f) victims shall be provided information and interpretive services from the intake process until reintegration.	
Article 4(2). Each Member shall, in accordance with the basic principles of its legal system, take the necessary measures to ensure that competent authorities are entitled not to prosecute or impose penalties on victims of forced or compulsory labour for their involvement in unlawful activities which they have been compelled to commit as a direct consequence of being subjected to forced or compulsory labour.	Memorandum of Understanding between the Government of the Kingdom of Cambodia and the Government of the Kingdom of Thailand on Bilateral Cooperation for Eliminating Trafficking in Persons and Protecting Victims of Trafficking (2014), Art. 6 – Protection: “Trafficked persons shall be considered victims, not violators or offenders of immigration law. Therefore, (a) trafficked persons shall not be prosecuted for illegal entry to the country; (b) trafficked persons shall not be detained in an immigration detention center during the times awaiting the official repatriation process, but shall be put under the care of MOSAVY (Cambodia) or Department of Social Development and Welfare (Thailand) and shelter and protection shall be provided to the victims according to the policy of each state; (c) the relevant authorities shall ensure the security of trafficked persons and their families; (d) victims shall be treated humanely and provided with opportunity to communicate with their immediate families where it is safe to do so throughout the process of protection and repatriation and the judicial proceedings; (e) victims, especially children, shall be provided rights-based, age- and gender-sensitive services during the interim care, repatriation, reintegration and judicial processes; and children accompanying victims shall be entitled to the protection in accordance with the national laws of each Party.”	Of the examined legislation, only the MOU between Cambodia and Thailand on Bilateral Cooperation for Eliminating Trafficking in Persons and Protecting Victims of Trafficking outlines that trafficked persons shall be considered victims, not violators or offenders of immigration law. However, this is only applicable for violations involving trafficking for the purpose of exploitation, including forced labour. Other Cambodian legislation not examined for this gap analysis may include these provisions.

Protocol of 2014 to the Forced Labour Convention, 1930	Existing implementing measures	Gaps identified
Article 5. Members shall cooperate with each other to ensure the prevention and elimination of all forms of forced or compulsory labour.	Memorandum of Understanding between the Government of the Kingdom of Cambodia and the Government of the Kingdom of Thailand on Bilateral Cooperation for Eliminating Trafficking in Persons and Protecting Victims of Trafficking (2014) Arts 3–5 – Preventative measures. Arts 6–8 – Protection measures for trafficked people. Arts 9–14 – Cooperation between Cambodia and Thailand to cooperate to suppress and combat crimes of trafficking in persons. Art. 15 – Repatriation. Art. 16 – Formation of a working group for repatriation between Cambodia and Thailand. Art. 17 – Reintegration. Art. 18 – Training for effective reintegration for survivors and service providers. Art. 19 – Joint Task Force responsibilities, including development of an action plan and review of implementation every three years. Memorandum of Understanding between the Government of the Kingdom of Cambodia and the Government of the Kingdom of Thailand on Labour Cooperation (2015), art. 3 – Preventative measures. Agreement on the Employment of Workers between the Government of the Kingdom of Cambodia and the Government of the Kingdom of Thailand (2015), art. 13 – Cooperation on implementation.	Cambodia and Thailand have joint MOUs on Eliminating Trafficking in Persons and Protecting Victims of Trafficking, and Labour Cooperation / Employment of Workers, which outline prevention measures to eliminate trafficking for forced labour; however, not all forms of forced or compulsory labour are addressed (i.e. those not related to human trafficking).
Article 6. The measures taken to apply the provisions of this Protocol and of the Convention shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned.		Of the legislation examined for the gap analysis, there are no national laws or policies specifically for forced or compulsory labour against migrant workers. Some provisions on forced labour have been incorporated into the Law on the Suppression of Human Trafficking and Sexual Exploitation, which can apply to migrant workers.

► Annex III. Gap analysis for Work in Fishing Convention, 2007 (No. 188)

As noted in the comparative analysis, Cambodia's jurisdiction is limited to the licensing and regulation of PRAs, and not in relation to the conditions on-board foreign flagged vessels. As such, the following legal gaps analysis is limited to the sections of Convention No. 188 relevant to Cambodia's jurisdiction. As migrant fishers have specific vulnerabilities, it is important to compare existing Cambodian legislation with relevant sections of Convention No. 188 to get a full picture of what would be required of the Government should Convention No. 188 be ratified. The different colours in the first two columns of this table are designed to show what protections would be afforded to fishers if the 2007 MLVT announcement prohibiting the recruitment of Cambodians to work in the fishing sector were to be lifted, with the "Gaps identified" column illustrating protections as they currently exist.

In the below analysis, a "traffic light" system has been used to indicate levels of conformity between relevant Cambodian laws and subordinate legislation (see table 1) and Convention No. 188: green denotes substantial conformity; orange denotes ambiguities or partial conformity; and red denotes substantial non-conformity.

Work in Fishing Convention, 2007 (No. 188)	Existing implementing measures if 2007 MLVT ban lifted	Gaps identified
Part I. Definitions and scope		
Article 1. Definitions and scope Definitions: (a) competent authority means the minister, government department or other authority having power to issue and enforce regulations, orders or other instructions having the force of law in respect of the subject matter of the provision concerned; (b) recruitment and placement service means any person, company, institution, agency or other organization, in the public or the private sector, which is engaged in recruiting fishers on behalf of, or placing fishers with, fishing vessel owners;	Sub-Decree 190 Art. 4. Key terms used in this Sub-Decree shall mean as follows: ► Recruitment agency refers to any private legal entity duly established under applicable laws and regulations of the Kingdom of Cambodia and officially licensed by the MLVT to be responsible for providing full job placement service abroad. Art. 5. "The MLVT shall be the competence ministry to manage the sending of Cambodian workers abroad in cooperation with Ministry of Foreign Affairs and International Cooperation and the Ministry of Interior." Prakas No. 045/13 on Use of Key Terms , Annex 1 – PRA and Recruitment Agent definitions.	A 2007 MLVT announcement prohibits the recruitment of Cambodian workers to work abroad in the fishing sector. As such, any Cambodian workers who work in the fishing sector are not covered by Sub-Decree 190 or the eight supplementing <i>prakas</i> , as they are deemed irregular. No definition of commercial fishing, consultation, fishing vessel owner, fisher, fisher's work agreement, fishing vessel or vessel, gross tonnage, length, length overall or skipper exist in the legislation examined. Although the PRA definition is broadly consistent with Convention No. 188, it does not contain references to fishers or fishing vessel owners. Article 6 of the MOU between Cambodia and Thailand on Labour Cooperation and articles 1–2 of the Agreement on the Employment of Workers between Cambodia and Thailand clarify that these agreements only apply to regular workers under contractual employment, and thus migrant Cambodian fishers do not qualify for protection under these agreements in line with the 2007 MLVT announcement.

Work in Fishing Convention, 2007 (No. 188)	Existing implementing measures if 2007 MLVT ban lifted	Gaps identified
Part III. Minimum requirements for work on board fishing vessels		
Article 9. Minimum age (1) The minimum age for work on board a fishing vessel shall be 16 years. However, the competent authority may authorize a minimum age of 15 for persons who are no longer subject to compulsory schooling as provided by national legislation, and who are engaged in vocational training in fishing. (2) The competent authority, in accordance with national laws and practice, may authorize persons of the age of 15 to perform light work during school holidays. In such cases, it shall determine, after consultation, the kinds of work permitted and shall prescribe the conditions in which such work shall be undertaken and the periods of rest required. (3) The minimum age for assignment to activities on board fishing vessels, which by their nature or the circumstances in which they are carried out are likely to jeopardize the health, safety or morals of young persons, shall not be less than 18 years.	Sub-Decree 190, art. 4 – Key terms used in this Sub-Decree shall mean as follows: ► Migrant worker candidate refers to Cambodian workers of both sexes aged 18 or over, who have applied for overseas employment and are in the process of completing official forms and paperwork through recruitment agencies in accordance with the guidelines of competence institutions such as the MLVT, Ministry of Foreign Affairs and International Cooperation, and Ministry of Interior. Prakas No. 253 on Promulgation of Minimum Standards of Job Placement Services Abroad Contract, Annex, art. 5 – “The ‘Worker’ must be 18 years-old or over according to their official personal documents provided to the ‘Private Recruitment Agency’ in order to arrange the legal documents and other regulations of the authorities of Kingdom of Cambodia and the destination country.”	Minimum age requirement is 18 years or over. Does not specifically refer to work on fishing vessels or specify conditions under which fishers could work at age 15 or 16.
Article 10. Medical certificates (1) No fishers shall work on board a fishing vessel without a valid medical certificate attesting to fitness to perform their duties. Article 11. Each Member shall adopt laws, regulations or other measures providing for: (a) the nature of medical examinations; (b) the form and content of medical certificates; (c) the issue of a medical certificate by a duly qualified medical practitioner or, in the case of a certificate solely concerning eyesight, by a person recognized by the competent authority as qualified to issue such a certificate; these persons shall enjoy full independence in exercising their professional judgement; (d) the frequency of medical examinations and the period of validity of medical certificates;	Prakas No. 253 on Promulgation of Minimum Standards of Job Placement Services Abroad Contract, Annex, art. 4 – PRAs “shall organize for the ‘Worker’ a medical check in accordance with the provisions of the MLVT and the authorities of the destination country. Any findings of the health check should be treated with confidentiality.” Prakas No. 046/13 on Recruitment Process and Pre-Departure Orientation Training, art. 6 – “PRAs shall assist every applicant worker to access to receive the medical check-up (physical and mental) in any designated hospital to ensure that workers sent abroad are good health (physical and mental) in accordance with tasks for each employment contract of each worker.”	Prakas require a physical and mental medical check, and for findings to be treated with confidentiality. There are no specifications concerning detailed requirements for fishers in the examined legislation.

Work in Fishing Convention, 2007 (No. 188)	Existing implementing measures if 2007 MLVT ban lifted	Gaps identified
(e) the right to a further examination by a second independent medical practitioner in the event that a person has been refused a certificate or has had limitations imposed on the work he or she may perform; and (f) other relevant requirements. Article 12. In addition to the requirements set out in Article 10 and Article 11, on a fishing vessel of 24 metres in length and over, or on a vessel which normally remains at sea for more than three days: (1) The medical certificate of a fisher shall state, at a minimum, that: (a) the hearing and sight of the fisher concerned are satisfactory for the fisher's duties on the vessel; and (b) the fisher is not suffering from any medical condition likely to be aggravated by service at sea or to render the fisher unfit for such service or to endanger the safety or health of other persons on board. (2) The medical certificate shall be valid for a maximum period of two years unless the fisher is under the age of 18, in which case the maximum period of validity shall be one year. (3) If the period of validity of a certificate expires in the course of a voyage, the certificate shall remain in force until the end of that voyage.		

Work in Fishing Convention, 2007 (No. 188)	Existing implementing measures if 2007 MLVT ban lifted	Gaps identified
Part IV. Conditions of service		
Article 16. Each Member shall adopt laws, regulations or other measures: (a) requiring that fishers working on vessels flying its flag have the protection of a fisher's work agreement that is comprehensible to them and is consistent with the provisions of this Convention; and (b) specifying the minimum particulars to be included in fishers' work agreements in accordance with the provisions contained in Annex II.	Sub-Decree 190 Chapter 6. Contract Articles 15–18 – Provisions for: contract between the MLVT and PRAs; contracts between PRAS and workers (Job Placement Service Contracts); and contracts between foreign employers and Cambodian workers (employment contracts). Prakas No. 253 on Promulgation of Minimum Standards of Job Placement Services Abroad Contract Annex, art. 3 – “At the time that the Job Placement Services Abroad Contract is signed, the ‘Worker’ has clearly understood and agreed to all of the conditions of the Employment Contract that will apply during the period of employment in the destination country. This contract will be available in Khmer and language of the destination country with exactly the same contents.” Annex, art. 4 – “Due consideration should be given by the recruitment agency to ensure that the documents are understood by the ‘Worker’ during pre-departure orientation.” Annex, art. 5 – “Workers shall understand clearly the meaning of the Job Placement Service Contract and Employment Contract, such as living conditions, working conditions, working situation, kind of work, benefits and address for communication before agreeing to and signing those contracts. The ‘Worker’ has the right to choose a competent person to verify the Job Placement Service Contract and Employment Contract.” Annex, art. 13 – This contract is made in Khmer and 03 copies will be made to be kept with the “PRA” (01 copy), the “Worker” (01 copy), andMLVT (01 copy).	No provision requiring fishers' work agreements. In line with the 2007 MLVT announcement, migrant fishers are not covered by Sub-Decree 190 or eight supplementing <i>prakas</i>, as these only cover regular workers. But there are provisions for the contract between PRA and worker (job placement service contract) and the employment contract between worker and employer to be comprehensible to the worker. Some, but not all, minimum particulars are in line with provisions in Annex II in examined legislation.

Work in Fishing Convention, 2007 (No. 188)	Existing implementing measures if 2007 MLVT ban lifted	Gaps identified
Article 17. Each Member shall adopt laws, regulations or other measures regarding: (a) procedures for ensuring that a fisher has an opportunity to review and seek advice on the terms of the fisher's work agreement before it is concluded; (b) where applicable, the maintenance of records concerning the fisher's work under such an agreement; and (c) the means of settling disputes in connection with a fisher's work agreement.	Sub-Decree 190, arts 24–25 – PRAs responsible for submitting a report to the embassy or representative mission of Cambodia to the receiving country and the MLVT, and for recording data pertaining to each worker in the MLVT record book. Prakas No. 253 on Promulgation of Minimum Standards of Job Placement Services Abroad Contract Annex, art. 3 – “At the time that the Job Placement Services Abroad Contract is signed, the ‘Worker’ has clearly understood and agreed to all of the conditions of the Employment Contract that will apply during the period of employment in the destination country. This contract will be available in Khmer and language of the destination country with exactly the same contents.” Annex, art. 4 – “Due consideration should be given by the recruitment agency to ensure that the documents are understood by the ‘Worker’ during pre-departure orientation.” Annex, art. 5 – “Workers shall understand clearly the meaning of the Job Placement Service Contract and Employment Contract, such as living conditions, working conditions, working situation, kind of work, benefits and address for communication before agreeing to and signing those contracts. The ‘Worker’ has the right to choose a competent person to verify the Job Placement Service Contract and Employment Contract.” Prakas No. 249 on Complaint Receiving Mechanism for Migrant Workers, arts 1–10 – Procedures for the administrative complaints process.	No provision requiring fishers' work agreements in any examined legislation. In line with the 2007 MLVT announcement, migrant fishers are not covered by Sub-Decree 190 or eight supplementing <i>prakas</i>, as these only cover regular workers. But there are provisions regarding: ► workers to be able to review and choose a competent person to verify job placement service contract; ► PRAs to record workers information in the MLVT issued record book and have contact with relevant authorities at specified points during the contract; and ► an administrative complaints process under Prakas 249 should the worker encounter issues, not specifically with contracts.
Article 18. The fisher's work agreement, a copy of which shall be provided to the fisher, shall be carried on board and be available to the fisher and, in accordance with national law and practice, to other concerned parties on request.	Sub-Decree 190 Chapter 6. Contract Art. 16 – “The contract between the MLVT and the PRAs and the job placement service contract shall be written in Khmer in accordance with the applicable laws and regulations of the Kingdom of Cambodia.” Art. 17 – “The employment contract shall be written in Khmer, English and in the language of the receiving country in compliance with the applicable laws and regulations of the receiving country. These contracts shall be forwarded to the Cambodian embassy or representative mission to the receiving country through the Ministry of Foreign Affairs and International Cooperation.” Prakas No. 253 on Promulgation of Minimum Standards of Job Placement Services Abroad Contract, Annex, art. 13 – This contract is made in Khmer and 03 copies will be made to be kept with the “PRA” (01 copy), the “Worker” (01 copy), and MLVT (01 copy).	No provision requiring fishers' work agreements to be carried on board in any examined legislation. In line with the 2007 MLVT announcement, migrant fishers are not covered by Sub-Decree 190 or eight supplementing <i>prakas</i>, as these only cover regular workers. But there are provisions for job placement service contract copies to be kept with the PRA, worker and MLVT in accordance with applicable national laws and practices, and for the employment contract to be forwarded to the Cambodian embassy or representative mission in the destination country through the Ministry of Foreign Affairs and International Cooperation in English, Khmer, and the language of the country of destination.

Work in Fishing Convention, 2007 (No. 188)	Existing implementing measures if 2007 MLVT ban lifted	Gaps identified
Article 20. Responsibility of the fishing vessel owner to ensure that each fisher has a written fisher's work agreement signed by both the fisher and the fishing vessel owner or by an authorized representative of the fishing vessel owner (or, where fishers are not employed or engaged by the fishing vessel owner, the fishing vessel owner shall have evidence of contractual or similar arrangements) providing decent work and living conditions on board the vessel as required by this Convention.	Sub-Decree 190, art. 15 – “The employment contract shall clearly specify, inter alia, working conditions, job status, and types of work, benefits and key addresses that can be contacted.” Prakas No. 253 on Promulgation of Minimum Standards of Job Placement Services Abroad Contract Annex, art. 13- “This contract is made in Khmer and 03 copies will be made to be kept with the “PRA” (01 copy), the “Worker” (01 copy), and.....MLVT (01 copy).” Art. 1 – “Job Placement Service Abroad is a service in which the ‘PRA’ is responsible to guarantee that the ‘Worker’ who uses the services will be offered DECENT WORK such as better working conditions, at.....(destination country) in accordance with the regulations and laws of Kingdom of Cambodia and..... (destination country).” Art. 4 – “PRAs shall observe the working conditions, vocational communication, living conditions and other issues which may occur for the ‘Worker’ during the period of the Employment Contract, paying special attention to ‘Workers’ who are working in isolated conditions. In the case where the ‘Worker’ has problems, such as a work accident, serious illness, disappearance or dispute, the agency must seek the intervention from the authorities or expert institutions in destination countries in order to resolve the issue on time and effectively.” Prakas No. 252 on On-site Service of the PRA and Repatriation, art. 1 – “Defines obligation in providing on-site service of the PRA and repatriation in order to effectively strengthen monitoring, coordination and problem solving pertaining to living and working conditions, health conditions, violation, tracking and notifying the disappearance cases of workers who were placed to work abroad and preparing the repatriation of workers.”	No provision in examined legislation requiring responsibility of the fishing vessel owner to ensure that each fisher has a written fisher's work agreement signed by both the fisher and the fishing vessel owner or by an authorized representative of the fishing vessel owner. But there are provisions to ensure the working conditions outlined in the employment contract, and for PRAs to ensure that in the job placement service contract the worker is offered decent working conditions in accordance with laws of Cambodia and the country of destination, and outlines that PRAs are responsible for solving issues related to workers' living and working conditions, particularly in relation to workers in isolated conditions.

Work in Fishing Convention, 2007 (No. 188)	Existing implementing measures if 2007 MLVT ban lifted	Gaps identified
Article 21. Repatriation (1) Members shall ensure that fishers on a fishing vessel that flies their flag and that enters a foreign port are entitled to repatriation in the event that the fisher's work agreement has expired or has been terminated for justified reasons by the fisher or by the fishing vessel owner, or the fisher is no longer able to carry out the duties required under the work agreement or cannot be expected to carry them out in the specific circumstances. This also applies to fishers from that vessel who are transferred for the same reasons from the vessel to the foreign port. (2) The cost of the repatriation referred to in paragraph 1 of this Article shall be borne by the fishing vessel owner, except where the fisher has been found, in accordance with national laws, regulations or other measures, to be in serious default of his or her work agreement obligations. (3) Members shall prescribe, by means of laws, regulations or other measures, the precise circumstances entitling a fisher covered by paragraph 1 of this Article to repatriation, the maximum duration of service periods on board following which a fisher is entitled to repatriation, and the destinations to which fishers may be repatriated. (4) If a fishing vessel owner fails to provide for the repatriation referred to in this Article, the Member whose flag the vessel flies shall arrange for the repatriation of the fisher concerned and shall be entitled to recover the cost from the fishing vessel owner. (5) National laws and regulations shall not prejudice any right of the fishing vessel owner to recover the cost of repatriation under third party contractual agreements.	Prakas No. 253 on Promulgation of Minimum Standards of Job Placement Services Abroad Contract Art. 4 – “PRA shall make proper arrangements for the safe repatriation of ‘Workers’ and access to rights and benefits in accordance with all law and regulation.” Art. 5 – “Workers shall be responsible for the costs of the documents, flight ticket or repatriation fee if the ‘Worker’ finishes the Employment Contract prematurely due to personal reasons.” Agreement on the Employment of Workers between the Government of the Kingdom of Cambodia and the Government of the Kingdom of Thailand (2015) Art. 11(1) – Worker repatriation costs should be paid by employers. Art. 11(2) – If premature contract termination is deemed worker's fault, then worker will have to pay their own repatriation costs. Prakas No. 252 on On-site Service of the PRA and Repatriation, art. 1 Prakas No. 047/13 on Private Recruitment Agency, art. 7 – “All PRAs must take responsibility for any problem or event happening during the training time of the pre-departure orientation course, while the migrant worker is travelling abroad and repatriation.” Memorandum of Understanding between the Government of the Kingdom of Cambodia and the Government of the Kingdom of Thailand on Bilateral Cooperation for Eliminating Trafficking in Persons and Protecting Victims of Trafficking (2014) Art. 15 – Repatriation. Art. 16 – Formation of a working group for repatriation between Cambodia and Thailand.	Cambodian legislation does not currently cover fishers. Legislation does not outline the maximum duration of service periods on board following which a fisher is entitled to repatriation, or the destinations to which fishers may be repatriated, or that the Member whose flag the vessel flies shall arrange repatriation of fishers or whether the fisher entitled to recover the cost from the fishing vessel owner. But there are provisions for PRAs to “take responsibility” for workers repatriation, and for employers to pay for workers repatriation, unless the worker is in default of work agreement obligations, in which case they pay their own repatriation costs. The MOU between Cambodia and Thailand on Bilateral Cooperation for Eliminating Trafficking in Persons and Protecting Victims of Trafficking applies to irregular workers (article 6(a)), so if a fisher has been trafficked, they can qualify for repatriation under article 15 of the MOU.
Recruitment and placement		
Article 22(1). Each Member that operates a public service providing recruitment and placement for fishers shall ensure that the service forms part of, or is coordinated with, a public employment service for all workers and employers.		No public service providing recruitment and placement for fishers.

Work in Fishing Convention, 2007 (No. 188)	Existing implementing measures if 2007 MLVT ban lifted	Gaps identified
Article 22(2). Any private service providing recruitment and placement for fishers which operates in the territory of a Member shall do so in conformity with a standardized system of licensing or certification or other form of regulation, which shall be established, maintained or modified only after consultation.	Sub-Decree 190, arts 6–8 – Steps for PRAs to obtain MLVT authorization to operate. Prakas No. 047/13 on Private Recruitment Agency Arts 1–4 – Steps for MLVT authorization of PRAs Art. 12 – “annually, the MLVT shall review the processes and results of each PRA for evaluation for: ► Commending, guiding or issuing a warning on a case-by-case basis ► Continuing or ending the <i>prakas</i> on the permission to run the PRA.”	Cambodian PRAs cannot recruit and place fishers in line with a 2007 MLVT announcement. But all PRAs must be licensed in conformity with a standardized system of licensing.
Article 22(3). Each Member will by laws, regulations or other measures: (a) prohibit recruitment and placement services from using means, mechanisms or lists intended to prevent or deter fishers from engaging for work;		No provision to prohibit PRAs from using means, mechanisms or lists to prevent or deter fishers from engaging for work.
Article 22(3). Each Member will by laws, regulations or other measures: (b) require that no fees or other charges for recruitment or placement of fishers be borne directly or indirectly, in whole or in part, by the fisher;	Prakas No. 253 on Promulgation of Minimum Standards of Job Placement Services Abroad Contract, Annex, Arts 5–6 and Art. 9. Agreement on the Employment of Workers between the Government of the Kingdom of Cambodia and the Government of the Kingdom of Thailand (2015) Art. 4(3) – Workers need to contribute to funds, if any, in pursuant to the laws and regulations of both countries. Art. 4(4) – Workers shall pay taxes, fees, and other relevant dues as required by laws and regulations of both countries. Art. 11(1) – Worker repatriation costs should be paid by employers. Art. 11(2) – If premature contract termination is deemed worker’s fault, then worker will have to pay their own repatriation costs. Cambodian Policy on Labour Migration 2019–2023 Objective 1.3. Strengthen the management of Private Recruitment Agencies Measure 7. – “Facilitate and foster PRAs to set sending fees in a transparent manner, and publicly disseminate the information in line with existing practices in the region.”	Recruitment fees and related costs are stipulated for workers in <i>prakas</i>. There are no provisions for prohibiting fees and costs to be charged to workers or on allowable ceilings for recruitment fees and related costs in the recruitment and placement process that have been determined after consultation with representative organizations of employers and workers, but this is an objective in the Cambodian Labour Migration Policy.

Work in Fishing Convention, 2007 (No. 188)	Existing implementing measures if 2007 MLVT ban lifted	Gaps identified
Article 22(3). Each Member will by laws, regulations or other measures: (c) determine the conditions under which any license or authorization of a PRA may be suspended or withdrawn in case of violation of relevant laws or regulations; and specify the conditions under which PRAs can operate	Sub-Decree 190 Art. 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. Art. 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.” Prakas No. 252 on On-site Service of the PRA and Repatriation, arts 1-3 – Outlines PRAs obligations to workers. Prakas No. 251 on Penalty and Reward to the PRA, arts 2-5 – Outlines the tripartite mechanism to appraising each PRA once every two years. Prakas No. 250 on Inspection on PRA, art. 6 – “In a case of non-compliance with laws and regulations, the Inspection Officer shall clearly check and provide comments to the Senior Officers of the MLVT in order to instruct, to warn or to revoke the license of the PRA and in order to take action based on the legal procedure for each case. When found that any PRA has failed to comply with the existing laws and regulations, the Labour Inspector shall cooperate with the Institution or the relevant Competent Authority to prepare an implementation procedure in accordance with law.” Prakas No. 046/13 on Recruitment Process and Pre-Departure Orientation Training, art. 16 – “Each PRA, 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.”	A 2007 MLVT announcement prohibits overseas migration into the fishing sector. The <i>prakas</i> specify the conditions under which PRAs can operate. The conditions in law to suspend or withdraw PRAs license in case of violation of relevant laws or regulations are outlined in article 39 of Sub-Decree 190, but how the MLVT is able to apply article 39 is ambiguous. It is unclear how a decision is made to impose a sanction, what offences may result in a more severe sanction than others, and whether repeated violations of the Sub-Decree might lead to progressively more severe sanctions. The issue here is that the lack of a schedule of processes, remedies, and enforceable penal sanctions under subordinate legislation, which poses significant challenges for the enforcement of these provisions.

Work in Fishing Convention, 2007 (No. 188)	Existing implementing measures if 2007 MLVT ban lifted	Gaps identified
Article 22(3). Each Member will by laws, regulations or other measures: (4) A member which has ratified Convention No. 181 may allocate certain Convention No. 188 responsibilities to PRAs.⁷⁷ The respective responsibilities of PRAs and fishing vessel owners are determined by Article 12 of Convention No. 181 [see Annex I – Gap Analysis for Convention No. 181 above]. A Member will adopt laws or other measures to ensure that no responsibilities or obligations to the PRAs providing the service and to the fishing vessel owners will preclude the fisher from asserting a right to a lien arising against the fishing vessel.		See Annex I – Gap Analysis for Convention No. 181, Article 12. There is nothing in examined legislation to ensure that no responsibilities or obligations to the PRAs providing the service and to the fishing vessel owners will preclude the fisher from claiming legal right against assets as collateral to satisfy a debt.
Article 22(3). Each Member will by laws, regulations or other measures: (5) Notwithstanding the provisions of paragraph 4, the fishing vessel owner shall be liable in the event that the PRA defaults on its obligations to a fisher for whom, in the context of Convention No. 181, the fishing vessel owner is the “user enterprise”.		No joint and several liability provision.
Article 22(3). Each Member will by laws, regulations or other measures: (4) Nothing in this Convention shall be deemed to impose on a Member the obligation to allow the operation in its fishing sector of PRAs.		A 2007 MLVT announcement prohibits PRAs from recruiting and sending workers to work in the fishing sector abroad.
Article 23. Each Member, after consultation, shall adopt laws, regulations or other measures providing that fishers who are paid a wage are ensured a monthly or other regular payment.	Prakas No. 253 on Promulgation of Minimum Standards of Job Placement Services Abroad Contract, Annex, art. 1 – “The work that will be done by the ‘Worker’ is.....with the amount of.....(Number and letter currency of destination country) per month. This basic wage shall not less than minimum wage of the destination country.”	A 2007 MLVT announcement prohibits overseas recruitment into the fishing sector. But the wage per month and minimum wage should be outlined in workers’ Job Placement Services Abroad Contract.

⁷⁷ That provide services referred to in paragraph 1(b) of Article 1 (“services consisting of employing workers with a view to making them available to a third party (user enterprise) which assigns their tasks and supervises the execution of these tasks”).

Work in Fishing Convention, 2007 (No. 188)	Existing implementing measures if 2007 MLVT ban lifted	Gaps identified
Article 24. Each Member shall require that all fishers working on board fishing vessels shall be given a means to transmit all or part of their payments received, including advances, to their families at no cost.	Prakas No. 253 on Promulgation of Minimum Standards of Job Placement Services Abroad Contract, Annex, art. 4 – PRAs “Shall arrange for the ‘Worker’ to receive their wage and other payments regularly as stated in the Employment Contract and provisions of the laws and regulations of the receiving country by arranging for saving and transferring system.”	A 2007 MLVT announcement prohibits overseas recruitment into the fishing sector. But provisions do exist for PRAs to arrange for workers to receive their wage and other payments regularly as stated in the Employment Contract and the provisions of the laws and regulations of the destination country by arranging for saving and transferring system. Doesn't specify at no cost to the worker.
Annex II. Fisher's work agreement particulars		
The fisher's work agreement shall contain the following particulars, except in so far as the inclusion of one or more of them is rendered unnecessary by the fact that the matter is regulated in another manner by national laws or regulations, or a collective bargaining agreement where applicable: (a) the fisher's family name and other names, date of birth or age, and birthplace;	Prakas No. 253 on Promulgation of Minimum Standards of Job Placement Services Abroad Contract, Annex – Name, age, identity documents, address.	No provision for fishers' work agreements. But provisions for name, age, identity documents, and address in the Job Placement Services Abroad Contract.
(b) the place at which and date on which the agreement was concluded;	Prakas No. 253 on Promulgation of Minimum Standards of Job Placement Services Abroad Contract, Annex “In witness to the contract, both parties have checked and read all of the articles of the Job Placement Service Contract and the Employment Contract and agree to sign or affix their fingerprint without force onEach party has one witness who has also signed or affixed their fingerprint. Signature and Seal; Fingerprint; Private Recruitment Agency ‘Worker’ Witness; Witness of Private Recruitment Agency of ‘Worker’”.	No provision for fishers' work agreements or place at which agreement concluded. But provisions for signature or fingerprint of worker and worker's witness without force, as well as signature or fingerprint of the PRA and the PRA's witness on the Job Placement Services Aboard Contract.
(c) the name of the fishing vessel or vessels and the registration number of the vessel or vessels on board which the fisher undertakes to work;		No provision for fishers' work agreements including fishing vessel information.
(d) the name of the employer, or fishing vessel owner, or other party to the agreement with the fisher;	Prakas No. 253 on Promulgation of Minimum Standards of Job Placement Services Abroad Contract, Annex, art. 4 – “PRAs shall be responsible for sending the ‘Worker’ to the employer whom the ‘Worker’ has signed a contract with at the destination country according to the destination country's labour contract and laws and the terms of the Employment Contract.” Sub-Decree 190, art. 24 – “PRAs shall be responsible for sending the workers to the workplace in the receiving country according to the contract. Every time when sending the workers, the recruitment agencies shall prepare and submit a clear report to the embassy or representative mission of the Kingdom of Cambodia to the receiving country and to the MLVT.”	No provision for fishers' work agreements or name of fishing vessel owner. But provisions are found in the Job Placement Services Aboard Contract for PRAs to be responsible to send the worker to the employer specified in the employment contract in the country of destination in line with country of destination laws. These are provisions for the contract between the PRA and the worker, not the worker and the employer.
(e) the voyage or voyages to be undertaken, if this can be determined at the time of making the agreement;		No provision for fishers' work agreements including voyages.

Work in Fishing Convention, 2007 (No. 188)	Existing implementing measures if 2007 MLVT ban lifted	Gaps identified
(f) the capacity in which the fisher is to be employed or engaged;	Prakas No. 253 on Promulgation of Minimum Standards of Job Placement Services Abroad Contract, Annex, art. 1 - "Job Placement Service Abroad is a service in which the "Private Recruitment Agency" is responsible to guarantee that the 'Worker' who uses the services will be offered DECENT WORK such as better working conditions, at.....(destination country) in accordance with the regulations and laws of Kingdom of Cambodia and..... (destination country). The work that will be done by the 'Worker' is..... with the amount of.....(Number and letter currency of destination country) per month. This basic wage shall not be less than the minimum wage of the destination country."	No provision for fishers' work agreements. But provisions in the Job Placement Services Aboard Contract to outline the capacity in which the worker is to be engaged.
(g) if possible, the place at which and date on which the fisher is required to report on board for service;	Prakas No. 253 on Promulgation of Minimum Standards of Job Placement Services Abroad Contract, Annex, art. 4 - "PRAs shall be responsible for sending the 'Worker' to the employer whom the 'Worker' has signed a contract with at the destination country according to the destination country's labour contract and laws and the terms of the Employment Contract. PRAs shall be responsible for the expenses and care, especially for women, of the "Worker" while they are waiting to reach the working place in the destination country, which is not more than 5 working days. After 5 working days the "Worker" must receive a wage from the "PRA" in addition to expenses. Such wages and expenses should not be later deducted from the "Worker"	No provision for fishers' work agreements or on place and date on which the fisher is required to report on board for service. But provisions for PRAs to send workers to employers and incur costs if it takes more than five days.
(h) the provisions to be supplied to the fisher, unless some alternative system is provided for by national law or regulation;	Prakas No. 253 on Promulgation of Minimum Standards of Job Placement Services Abroad Contract, Annex, art. 4 - PRAs: ► Shall provide correctly and fully any information related to the working conditions and living conditions of the 'Worker' abroad including positive elements and challenges. ► Shall arrange and organize communication with the family, accommodation, food and uniform (as defined by individual companies) as well as protect the 'Worker's' health, safety and basic human rights, which are internationally recognized, especially for women, during pre-departure orientation training. ► Shall observe the working conditions, vocational communication, living conditions and other issues which may occur for the "Worker" during the period of the Employment Contract, paying special attention to "Workers" who are working in isolated conditions . In the case where the "Worker" has problems, such as a work accident, serious illness, disappearance or dispute, the agency must seek the intervention from the authorities or expert institutions in destination countries in order to resolve the issue on time and effectively." Prakas No. 252 on On-site Service of the PRA and Repatriation, art. 1 - Defines obligation in providing on-site service of the PRAs and repatriation in order to effectively strengthen monitoring, coordination and problem solving pertaining to living and working conditions, health conditions, violation, tracking and notifying the disappearance cases of workers who were placed to work abroad and preparing the repatriation of workers.	No provision for fishers' work agreements. But provisions do exist for PRAs to: ► organize working and living conditions, including communication with family, accommodation, food and uniforms; ► protect workers' health, safety and basic human rights, especially for women, during pre-departure orientation training; ► intervene in the case of work accidents, serious illness, disappearance or dispute; and ► engage in problem solving in regards to living and working conditions, health conditions, violations, disappearance cases of workers and repatriation.

Work in Fishing Convention, 2007 (No. 188)	Existing implementing measures if 2007 MLVT ban lifted	Gaps identified
(i) the amount of wages, or the amount of the share and the method of calculating such share if remuneration is to be on a share basis, or the amount of the wage and share and the method of calculating the latter if remuneration is to be on a combined basis, and any agreed minimum wage;	Prakas No. 253 on Promulgation of Minimum Standards of Job Placement Services Abroad Contract Annex, art. 1 – "...The work that will be done by the 'Worker' is.....with the amount of.....(Number and letter currency of destination country) per month. This basic wage shall not less than minimum wage of the destination country." Annex, art. 4 – PRA: ► "Shall arrange for the 'Worker' to receive their wage and other payments regularly as stated in the Employment Contract and provisions of the laws and regulations of the receiving country by arranging for saving and transferring system. ► Shall be responsible for the expenses and care, especially for women, of the 'Worker' while they are waiting to reach the working place in the destination country, which is not more than 5 working days. After 5 working days the 'Worker' must receive a wage from the "Private Recruitment Agency" in addition to expenses. Such wages and expenses should not be later deducted from the 'Worker'".	No provision for fishers' work agreements or for method of calculating such share if remuneration is to be on a share basis, or the amount of the wage and share and the method of calculating the latter if remuneration is to be on a combined basis. But provisions do exist in the Job Placement Services Abroad Contract for wage per month, which stipulate that basic wage shall not be less than minimum wage of the country of destination and that the wage should be provided if traveling to the workplace takes more than five days
(j) the termination of the agreement and the conditions thereof, namely: (i) if the agreement has been made for a definite period, the date fixed for its expiry; (ii) if the agreement has been made for a voyage, the port of destination and the time which has to expire after arrival before the fisher shall be discharged; (iii) if the agreement has been made for an indefinite period, the conditions which shall entitle either party to rescind it, as well as the required period of notice for rescission, provided that such period shall not be less for the employer, or fishing vessel owner or other party to the agreement with the fisher;	Prakas No. 253 on Promulgation of Minimum Standards of Job Placement Services Abroad Contract Annex, art. 6 – If the "Worker" does not respect the contract and creates a liability for damages to the PRA, the "Worker" will be responsible for compensation to the PRA. Annex, art. 7 – If the PRA does not respect the contract and creates a liability for damages to the "Worker", the "PRA" will be responsible for compensation to the "Worker". Annex, art. 8 – In case there is a dispute relating to the Job Placement Contract, all parties should resolve the dispute by reconciliation first in compliance with the procedure on dispute resolution. However, if the reconciliation does not resolve the dispute, each party can complain to the authorities or court. Annex, art. 9 – In case either party wants to withdraw from this contract, the party must inform the other party and compensate for the damage from their contract's withdrawal. Annex, art. 11 – If the parties cannot adhere to the contract in case of natural disaster, the contract shall be nullified and the parties shall not have any duties. Annex, art. 12 – In case the parties have a serious problem and cannot continue the contract or renew or change the contract, the parties shall inform each other in order to discuss changing or renewing officially and on time.	No provision for fishers' work agreements or if the agreement has been made for a voyage, the port of destination and the time which has to expire after arrival before the fisher shall be discharged. But provisions do exist in the Job Placement Services Abroad Contract for when workers or PRAs are liable for damages. Prakas 253 does not outline, however, what "compensation" or "damage" means to either party in terms of monetary value or the process and terms of payment.

Work in Fishing Convention, 2007 (No. 188)	Existing implementing measures if 2007 MLVT ban lifted	Gaps identified
(k) the protection that will cover the fisher in the event of sickness, injury or death in connection with service;	Prakas No. 253 on Promulgation of Minimum Standards of Job Placement Services Abroad Contract, Annex, art. 4 – “PRAs shall observe the working conditions, vocational communication, living conditions and other issues which may occur for the ‘Worker’ during the period of the Employment Contract, paying special attention to ‘Workers’ who are working in isolated conditions. In the case where the ‘Worker’ has problems, such as a work accident, serious illness, disappearance or dispute, the agency must seek the intervention from the authorities or expert institutions in destination countries in order to resolve the issue on time and effectively.” Prakas No. 250 on Inspection on PRA, art. 3 – “After receiving a report or complaint pertaining to a labour dispute, working conditions, illness, work related accidents, labour rights of workers, or any misconduct in violating laws and regulations, the MLVT shall conduct a special inspection case by case on PRA and its pre-departure orientation trainings. In a necessary case, the MLVT is able to request cooperation from the Institution or relevant competent authority. In a case where the PRA has been found guilty of a criminal offense, the MLVT shall send the case to the Institution or relevant Competent Authority to take action in complying with legal procedures.”	No provision for fishers’ work agreements or specific protection in the event of sickness, injury or death in connection with service. But provisions do outline PRAs’ responsibilities to seek the intervention from the authorities or expert institutions in destination countries to resolve the issue, as well as the MLVT’s responsibility to conduct a special inspection on a PRA and its pre-departure orientation trainings. If necessary, the MLVT is able to request cooperation from the “Institution or relevant Competent Authority”. In a case where the PRA has been found guilty of a criminal offense, the MLVT will send the case to the “Institution or relevant Competent Authority” to take action in complying with legal procedures. Provisions are in place for PRAs to organize social security and insurance for workers, intervention with countries of destination, or special inspection of PRAs if illness or worker-related accidents are reported – see also the row below for Annex II, clause (m).
(l) the amount of paid annual leave or the formula used for calculating leave, where applicable;		No provision for fishers’ work agreements or the amount of annual leave.
(m) the health and social security coverage and benefits to be provided to the fisher by the employer, fishing vessel owner, or other party or parties to the fisher’s work agreement, as applicable;	Sub-Decree 190 Art. 21 – “Recruitment agencies shall be responsible for the...benefits, health insurance within the working and accommodation areas.” Art. 33 – “Recruitment agencies shall be responsible for making arrangements to ensure that workers who are sent abroad will receive appropriate social security regime in accordance with the applicable laws and regulations of the receiving country.” Art. 34 – “The MLVT shall monitor the performance of recruitment agencies in securing social security regimes for the workers as well as in cooperating with the receiving country.” Prakas No. 047/13 on Private Recruitment Agency, art. 7 – “PRAs must coordinate with relevant authorities in the receiving countries to ensure migrant workers receive social insurance in accordance with the regulations of receiving country.” Cambodian Policy on Labour Migration 2019–2023 Objective 1.3. Strengthen the management of Private Recruitment Agencies Measure 8 – “Foster PRAs individually or collectively to appoint a permanent representative in countries of destination and assist migrant workers in registration for social security scheme in their respective countries of destination.”	No provision for fishers’ work agreements. But provisions are in place for PRAs to organize social security and insurance for workers in accordance with the applicable laws and regulations of the destination country.

Work in Fishing Convention, 2007 (No. 188)	Existing implementing measures if 2007 MLVT ban lifted	Gaps identified
(n) the fisher's entitlement to repatriation;	Prakas No. 253 on Promulgation of Minimum Standards of Job Placement Services Abroad Contract Art. 4 – “PRA shall make proper arrangements for the safe repatriation of ‘Workers’ and access to rights and benefits in accordance with all law and regulation.” Art. 5 – “Workers shall be responsible for the costs of the documents, flight ticket or repatriation fee if the ‘Worker’ finishes the Employment Contract prematurely due to personal reasons.” Agreement on the Employment of Workers between the Government of the Kingdom of Cambodia and the Government of the Kingdom of Thailand (2015) Art. 11(1) – Worker repatriation costs should be paid by employers. Art. 11(2) – If premature contract termination is deemed worker's fault, then worker will have to pay their own repatriation costs. Prakas No. 252 on On-site Service of the PRA and Repatriation, art. 1 – Defines obligation of PRAs to provide on-site service and repatriation in order to effectively strengthen monitoring, coordination and problem solving pertaining to living and working conditions, health conditions, violation, tracking and notifying the disappearance cases of workers who were placed to work abroad and preparing the repatriation of workers. Prakas No. 047/13 on Private Recruitment Agency, art. 7 – “All PRAs must take responsibility for any problem or event happening during the training time of the pre-departure orientation course, while the migrant worker is travelling abroad and repatriation.” Memorandum of Understanding between the Government of the Kingdom of Cambodia and the Government of the Kingdom of Thailand on Bilateral Cooperation for Eliminating Trafficking in Persons and Protecting Victims of Trafficking (2014) Art. 15 – Repatriation. Art. 16 – Formation of a working group for repatriation between Cambodia and Thailand.	No provision for fishers' work agreements. But provisions are in place for workers' entitlement to repatriation. The MOU between Cambodia and Thailand on Bilateral Cooperation for Eliminating Trafficking in Persons and Protecting Victims of Trafficking applies to irregular workers (article 6(a)), so if a fisher has been trafficked they can qualify for repatriation under article 15 of the MOU.
(o) a reference to the collective bargaining agreement, where applicable;		No reference to collective bargaining agreement in examined legislation.
(p) the minimum periods of rest, in accordance with national laws, regulations or other measures; and		No minimum periods of rest outlined in the examined legislation.
(q) any other particulars which national law or regulation may require		

Cambodia's labour migration governance framework: A comparative analysis with international labour standards for recruitment, work in fishing and forced labour

The Cambodian Government has recognized that labour migration significantly contributes to inclusive and sustainable economic growth and development. As a result, the Government has taken a number of important steps forward in recent years in developing its labour migration governance framework, including drafting a series of *prakas* to support the implementation of Sub-Decree 190 on the Management of Sending Cambodian Workers Abroad through Private Recruitment Agencies. Cambodia has also implemented its third Labour Migration Policy and Action Plan (2019–2023), which outlines the Government's commitment to leveraging the benefits of labour migration for the country's long-term development.

Nevertheless, addressing the specific vulnerabilities of migrant workers in the fishing and seafood processing sectors requires that further legislative progress is made towards the adoption of international labour standards. Significant gaps remain in providing labour protections for migrant fishers; responding to forced labour as a stand-alone offense against migrant workers; eliminating worker-borne recruitment fees; applying stringent sanctions for violations by recruitment agencies; awarding of responsive remedies for abuses; and other legislative and enforcement concerns.

To date, there has been no legal analysis conducted on the labour migration governance framework for the fishing and seafood processing sectors in Cambodia. This comparative legal analysis seeks to inform Cambodia's efforts to strengthen the related policies and laws by increasing their alignment with the international labour standards outlined in the Private Employment Agencies Convention, 1997 (No. 181); the Protocol of 2014 to the Forced Labour Convention, 1930; and the Work in Fishing Convention, 2007 (No. 188). Ratification of these international labour standards by Cambodia would help to address the specific vulnerabilities of migrant workers in the fishing and seafood processing sectors through ensuring that adequate legal protections are in place.

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