



**REPORT OF THE PARLIAMENTARY FORUM ON THE PROMOTION AND
PROTECTION OF THE RIGHTS OF MIGRANT WORKERS**

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UNIAP
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PROJECT ON HUMAN TRAFFICKING



**International
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CTIPII PROGRAM

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Acronyms

ACMW ASEAN Committee on the Implementation of the Declaration on the Protection and Promotion of the Rights of Migrant Workers

ACRA the Association of Cambodian Recruitment Agencies

ACWC ASEAN Commission on the Promotion and Protection of the Rights of Women and Children

AIPA the ASEAN Inter-Parliamentary Assembly

ASEAN Association of Southeast Asian Nations

CAPPD the Cambodia Association of Parliamentarians on Population and Development

CAT Convention against Torture

CEDAW Convention on the Elimination of All Forms of Discrimination against Women

CEDAW GR26 Convention on the Elimination of All Forms of Discrimination against Women General Convention Recommendation No.26 on Women Migrant Workers

COMMIT The Coordinated Mekong Ministerial Initiative against Trafficking

CRC Convention on the Rights of the Child

CRPD Convention on the Rights of Persons with Disabilities

ICCPR International Covenant on Civil and Political Rights

ICESCR International Covenant on Economic, Social and Cultural Rights

ICERD International Convention on the Elimination of All Forms of Racial Discrimination

ICRMW International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families

ILO International Labour Organization

IOM International Organization for Migration

LSCW Legal Support for Women and Children

MoI Ministry of Interior

MoJ Ministry of Justice

MoSVY Ministry of Social Affairs, Veterans and Youth Rehabilitation

MoT Ministry of Tourism

MoEYS Ministry of Education, Youth and Sport

MoFA Ministry of Foreign Affairs and International Cooperation

MoInfo Ministry of Information

MoLVT Ministry of Labour and Vocational Training

MoU Memorandum of Understanding

MOWA Ministry of Women's Affairs

NGO Non-Governmental organisation

OHCHR Office of the High Commissioner for Human Rights

UDHR Universal Declaration of Human Rights

UN United Nations

UNDESA United Nations Department of Economic and Social Affairs

UNIAP United Nations Inter-Agency Project on Human Trafficking

UNODC United Nations Office on Drugs and Crime

UN Women The United Nations Entity for Gender Equality and the Empowerment of Women

VRS-MSRC Voluntary Reporting System on Migrant Smuggling and Related Conduct

Executive Summary

There are an estimated 215 million international migrants worldwide, representing 3.1% of the world's population.¹ Important steps are now being taken, by independent states and bi-laterally by countries across Asia, to improve the rights of migrant workers. At the 12th ASEAN Summit in 2007, ASEAN Leaders affirmed their strong commitment to accelerate the establishment of an ASEAN Community by 2015 and signed the Cebu Declaration on the Acceleration of the Establishment of an ASEAN Community. In particular, the Leaders agreed to hasten the establishment of the ASEAN Economic Community and to transform ASEAN into a region with free movement of goods, services, investment, skilled labour, and freer flow of capital. The ASEAN Inter-Parliamentary Assembly (AIPA) works to promote policies, strategies and concrete actions to address health and social problems emerging from migration and to provide legal support to promote regulation of regular labour migration through certifying national identification and medical checkup in origin or destination country and providing health insurance for migrant workers and their families.

Migration is one of the issues that the Royal Government of Cambodia is making efforts to address both at a country and regional level. The Government has now set up a policy platform related to the labour migration sector and is now promoting formalised, legal export of labour. Cambodia hosted the AIPA in 2011, during which the Resolution on the Role of Parliamentarians on the Promotion and Protection of the Rights of Migrant Workers in ASEAN was signed. In the Resolution, AIPA made a strong commitment to promote and protect the rights of migrant workers in the region. In order to effectively implement this Resolution, the National Assembly want to promote cooperation between the legislative and executive bodies, inter-governmental organizations and NGOs on issues of promotion and protection of migrant workers rights at the country level, focusing on human trafficking and labour exploitation. This forum provided the opportunity to reflect on progress made, to analyse remaining challenges, and to promote greater cooperation between all those who work in the labour migration sector. It also allowed for the legislative and executive bodies, inter-governmental organizations and NGOs to develop ways to better support each other in order to protect the rights of migrant workers.

According to the World Bank, there were 350,000 Cambodian migrants working abroad in 2010, and 335,000 immigrants based in Cambodia.² There are three components to the Government's response to migration: good governance, protection for workers, and national development. Cambodians migrate for many different reasons using many different methods. Some migrant workers seek employment by using lawful means yet still find themselves trafficked with exploitative contracts and employment conditions. Many other Cambodians choose to migrate through unregulated methods, this may often be cheaper and quicker, but the risk of exploitation and trafficking is much higher and wages and conditions in the receiving countries will generally be poor and unregulated. Border controls and law enforcement alone cannot solve the problem of migrant smuggling. Such efforts have to be embedded in a wider migration and development policy framework.

Cambodian labor migration has increasingly become an area of focus in the past few years, especially in relation to Cambodian women. Despite their economic and social contribution to source and destination countries, many migrant workers, especially women migrant workers, are subject to exploitative and discriminatory practices, human rights violations and labor rights violations at almost every stage of migration. In terms of access to justice, women migrant workers face unique and personal challenges such as the the denial of rights and deterrence against reporting rights violations cases because of complicated bureaucratic legal procedures and inaccessible justice mechanisms. There is a development

¹ Migration and Remittances Factbook. World Bank. 2011

² Migration and Remittances Factbook. World Bank. 2011

mantra that now accompanies the debate about women migrant workers and domestic workers in that their remittances add to economic development of their country. There is also the economic and social empowerment of women – as individuals they are becoming empowered within their families and their communities. Labour migration is the right of citizens and should not be considered a negative process. Stakeholders need to continue to foster regional and inter-regional approaches, and better cooperation between the countries of destination, transit and source.

The Parliament of the Kingdom of Cambodia, with technical and financial support from UN Women, UNIAP, Winrock International, ILO and UNODC, organized the Parliamentary Forum on the Promotion and Protection of the Rights of Migrant Workers in Cambodia to reflect Global and Regional Framework on protection and promotion of Cambodian migrant workers for Challenges and Response to promotion and Protection of the rights of Migrant Workers. Samdech Akka Moha Ponhea Chakrei Heng Samrin, President of the National Assembly opened the event, with other speakers in the Forum including Her Excellency Chou Bun Eng, Secretary of State, Ministry of Interior, Her Excellency Ms San Arun, Secretary of State, Ministry of Women's Affairs, and Mr. Douglas Broderick, UN Resident Coordinator. The forum brought together 250 participants from legislative and executive bodies of the Royal Government of Cambodia and from non-government stakeholders including representatives of the diplomatic communities, development partners, UN agencies, NGOs, trade unions, recruitment agencies and women migrant workers.

This Parliamentary Forum resulted in comprehensive discussion and debate between all delegates on the Recommendations for the Promotion and Protection of the Rights of Migrant Workers. The Recommendations agreed upon during the event and outlined in this document represent the collective will of a diverse, multi-stakeholder, multi-faceted group of senior Government officials, UN Agencies, NGOs, Recruitment Agencies, and migrant workers themselves. These relate to the national, regional and international legal and policy frameworks and include recommendations to revise laws, strengthen implementation mechanisms, developing public services and holding duty bearers to account.

Introduction

The Parliament of the Kingdom of Cambodia, with technical and financial support from UN Women, the United Nations Inter-Agency Project on Human Trafficking (UNIAP), Winrock International, the International Labour Organisation (ILO) and the United Nations Office on Drugs and Crime (UNODC), organized the Parliamentary Forum on the Promotion and Protection of the Rights of Migrant Workers (the Parliamentary Forum) to reflect on the global and regional framework on the protection of migrant workers and to assess the challenges of and responses to human trafficking, labour exploitation and the protection of Cambodians migrating to work abroad.

This Report on the Parliamentary Forum outlines discussions held on the context of migration in Cambodia and across the region including current challenges in protecting Cambodians working abroad; human rights instruments and international labour standards; implementation of applicable laws and policies at the country level; and ways forward. A number of recommendations were formulated and agreed upon with the objective of encouraging stakeholder cooperation in working towards increasing the promotion and protection of the rights of Cambodian migrant workers.

The Parliamentary Forum brought together 200 participants from legislative and executive bodies of the Royal Government of Cambodia (the Government) and from non-Government stakeholders including

representatives of the diplomatic communities, development partners, UN agencies, NGOs, trade unions, recruitment agencies and women migrant workers.

The United Nations Department of Economic and Social Affairs (UNDESA) estimates that Asia was home to more than 32.5 million migrants in 2010, 49% of whom were female.³ There are currently 6.45 million international female migrants who originated from South Asia alone, most of whom are engaged in low skilled jobs.⁴ Approximately 90% of domestic workers are female and domestic work is now the most common occupation for women in the region - employment in private households accounts for about one-third of all female employment in Asia.⁵ In the Resolution on the Role of Parliamentarians on the Promotion and Protection of the Rights of Migrant Workers in ASEAN, the AIPA made a strong commitment to promote and protect the rights of migrant workers in the region. In order to effectively implement this Resolution, the National Assembly of Cambodia want to promote cooperation between the legislative and executive bodies, inter-Governmental organizations and NGOs on issues of promotion and protection of migrant workers rights at the country level, focusing on human trafficking and labour exploitation. This Parliamentary Forum provided an opportunity to reflect on progress made, to analyse remaining challenges, and to promote greater cooperation between all those who work in the labour migration sector.

The Resolution on the Role of Parliamentarians on the Promotion and Protection of the Rights of Migrant Workers in ASEAN states that migrant workers are an essential and inevitable component of the economic and social life of ASEAN Member States, and that orderly and properly managed migrant workers could be beneficial for both individuals and societies. Furthermore, the problems emanating from the lack of ability to protect and to promote migrant workers rights among ASEAN Member States could amount to a larger scale of unresolved problems, which may affect the process of realization of the ASEAN Community by 2015.

Migration is one of the issues that the Government is making efforts to address at both a country and regional level. The Government has set up a policy platform related to the labour migration sector and is now promoting formalised, legal export of labour. The Government has itself been cooperating on the promotion and protection of migrant rights through the work that the ministries have been undertaking with the support of development partners and with the benefit of full consultation from the private sector, trade unions and civil society. The Ministry of Labour and Vocational Training (MoLVT) has been developing the legislative framework to increase regulation of the recruitment agencies, being mindful to ensure that legislation is gender responsive; the Ministry of Women's Affairs is working to ensure that gender and migration concerns are mainstreamed in the agendas of all ministries; and the Ministry of Interior, as chair of the National Committee to Lead the Suppression of Human Trafficking, Smuggling, Labour and Sexual Exploitation of Women and Children, works to ensure that the protection of migrant workers, especially women, is addressed through cooperation of all Government and non-governmental stakeholders in a multi disciplinary and multi sectoral way.

For a significant number of rural people in Cambodia, migration is now used to meet basic needs. Promotion and protection of migrant rights is necessary so as for them both to be able to work safely and make money to send back home, which can add to the economic growth of the country. In recent years, Cambodia has seen an increasing number of women in particular migrating internationally to work as

³ United Nations Department of Economic and Social Affairs (UN DESA), Trends in International Migrant Stock: The 2008 Revision, <http://esa.un.org/migration/index.asp?panel=1>

⁴ Migration of Women Workers from South Asia to the Gulf Report. UN Women and the V.V Giri Labour Institute. 4 June 2012

⁵ Ip Pui Yu, Asian Domestic Workers' Network, 'Asian Domestic Workers' Network' 2010, available from <http://en.domesticworkerrights.org/?q=node/3>

domestic or factory workers. In 2010 and 2011, 29,941 Cambodian women migrated for work through regular and formal channels, and many more migrated irregularly.⁶

This work to promote and protect migrant rights has two benefits. A protected migrant worker is an empowered migrant worker, and an empowered migrant worker is more likely to earn and remit more money than an exploited one. In addition to sending more money home, an empowered female migrant worker is more likely, to spend that money on healthcare, education and investment for the benefit of her family and community. As such, this issue is not just about rights, it is about rights being intrinsically linked to economic development.

The objective of the Parliamentary Workshop was to ensure that all relevant stakeholders, especially the legislative bodies, are kept well informed on progress concerning the protection and promotion of migrant workers' rights, and that cooperation is further strengthened between legislative and executive bodies and all other relevant stakeholders.

The Parliamentary Forum was formally opened by Samdech Akka Moha Ponhea Chakrei Heng Samrin, President of the National Assembly. Opening speeches were provided by Her Excellency Hou Naun, MP, Mr. Douglas Broderick, UN Resident Coordinator in Cambodia, and Ms Jenna Holiday, UN Women Cambodia.

The Parliamentary Forum focused on setting out some of the key global and regional instruments related to migrant workers including the Convention on Elimination of All Forms of Discrimination against Women (CEDAW), the CEDAW Committee's General Recommendation No. 26 on Women Migrant Workers, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), ILO's migrant workers and fundamental Conventions, as well as the role of AIPA in promoting and protecting migrant worker rights in the region.

The Parliamentary Forum also provided a forum to facilitate an exchange on gender issues in labour migration, smuggling of migrant workers at the regional level, challenges of labour migration in Cambodia and progress made in regulating it, and the opportunity to learn from the experiences of women migrant workers themselves. It is anticipated that the exchange will facilitate better cooperation between legislative and executive bodies and all other relevant stakeholders, and that stakeholders will continue to be kept well informed on progress concerning the protection and promotion of migrant workers' rights.

Session one of the Parliamentary Forum set the scene of migrant workers rights, especially the context in which violations occur and the role of bodies such as AIPA in formulating Resolutions aimed at tackling abuse. Session one was moderated by Mr. Bruno Maltoni, Chief of Mission at the International Organisation on Migration (IOM) in Cambodia. Ms Jenna Holiday, International Consultant for UN Women then introduced gender issues in labour migration at the global and regional level, before Mr. Max Tunon, Technical Program Officer for the ILO set out international and regional labour standards on the protection of migrant workers. Mr. Olivier Lernet, Country Manager of UNODC then provided insights on the smuggling of migrant workers at the regional level before James Heenan, Office of the High Commissioner for Human Rights (OHCHR) Cambodia Country Representative gave a presentation on the advantages of ratifying the ICRMW and on its main features. His Excellency Ouk Damry, Member of the Commission on Legislation and Judiciary of the National Assembly and Secretary General of the Cambodia Association of Parliamentarians on Population and Development (CAPPD), outlined the role of AIPA in the promotion and protection of migrant workers, before Mr. Ros Va, National Coordinator, UN

⁶ Mr Douglas Broderick, Cambodia UN Resident Coordinator. Speech to Regional Conference on Human Rights Instruments, International Labour Standards and Women Migrant Workers' Rights. Phnom Penh, Cambodia. 4 September 2012.

WOMEN, closed the first session by introducing CEDAW General Recommendation 26 on Women Migrant Workers.

As the Parliamentary Forum's longest session with the most speakers and presentations, Session two was seminal in providing a platform for proactive information-sharing, setting out the key challenges identified in promoting and protecting the rights of migrant workers and highlighting progress made by Ministries, inter-ministerial bodies and other stakeholders. Her Excellency Chou Bun Eng, Secretary of State, Ministry of Interior, moderated session two. Mr Hou Vudthy, Deputy Director General of Labour, MoLVT, first laid out the progress in regulating labour migration by the Ministry of Labour and Vocational Training, before Mr. Mom Sokchar, Program Manager at the NGO Legal Support for Children and Women (LSCW) introduced some of the current challenges of labour migration in Cambodia. Ms. Khem Srey Touch of the Cambodian Women Migrant Network, shared her personal experiences of migrant work. Her Excellency Ms San Arun, Secretary of State, Ministry of Women's Affairs, introduced the work of The Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT) and their successes in anti-human trafficking efforts in the Greater Mekong Sub-region.

The second part of the second session was moderated by His Excellency Mr Ouk Damry, Member of the Commission on Legislation and Judiciary of the National Assembly and Secretary General of Cambodia Association of Parliamentarians on Population and Development (CAPPD). Mr. Chum Phally, Labour Trafficking Technical advisor, Winrock, provided analysis and recommendations on developing national migration policy before Ms. Ung Seang Rithy, President of the Association of Cambodian Recruitment Agencies (ACRA), set out the role of recruitment agencies in protecting migrant workers rights. Her Excellency Chou Bun Eng, Secretary of State, Ministry of Interior closed the session by introduced the work of the Migration Working Group and other coordination mechanisms related to Labour Migration in Cambodia.

Session three was facilitated by His Excellency Dr. Pen Pannha, Chairperson of Commission on Legislation and Justice, NA and Vice-Permanent Chair of CAPPD and involved comprehensive discussion and debate between all delegates on the Recommendations for the Promotion and Protection of the Rights of Migrant Workers. A final draft of the Recommendations was agreed upon which brought the Parliamentary Workshop to a close.

After the event, His Excellency Dr. Pen Pannha chaired a press conference which was attended by His Excellency Mr. Ouk Damry (NA), Her Excellency Ms. Chou Bun Eng (Mol), Mr. Hou Vudthy (MoLVT), Ms. Jenna Holliday (UN Women), Ms. Sara Piazzano (Winrock) and representatives from a number of national media organisations.

The Recommendations agreed upon during the event and outlined in this document represent the collective will of a diverse, multi-stakeholder, multi-faceted group of senior Government officials, UN Agencies, NGOs, Recruitment Agencies, and migrant workers themselves. These relate to the national, regional and international legal and policy frameworks and include recommendations to revise laws, strengthen implementation mechanisms, developing public services and holding duty bearers to account.

Sessions 1: Global and Regional Framework on Protection and Promotion of Migrant Workers

There are an estimated 215 million international migrants worldwide, representing 3.1% of the world's population.⁷ Half of these migrants are engaged in economic activity. Half of the world's migrants are also women.⁸ The feminization of migration, both globally and regionally, can be attributed to an increase in demand for domestic workers and care workers, and the greater mobility of women due to education and changing societal factors which has meant that more women are migrating independently in search of jobs, rather than as family dependants. An increasing amount of attention is now placed on policy-makers to focus on the significance of female migration and the role of gender in shaping migratory processes and of women as remittance senders.

In general, migration is positive for both countries of origin and destination. The great majority of people who migrate improve their situation and their families. Migrants sent home \$317 billion in 2009 which represented three times the world's total foreign aid.⁹ In at least seven different countries, remittances account for more than a quarter of the gross domestic product. Remittances to developing countries are estimated to have reached \$325 billion in 2011.¹⁰

Efforts to promote and protect migrant rights have two clear goals. A protected migrant worker is an empowered migrant worker, and an empowered migrant worker is more likely to earn and remit more money than an exploited one. In addition to sending more money home, an empowered female migrant worker is more likely, to spend that money on healthcare, education and investment for the benefit of her family and community. As such, this issue is not just about rights, it is about rights being intrinsically linked to economic development.

International labour standards are primarily tools for Governments that are seeking to draft and implement labour law and social policy in conformity with internationally accepted standards. There are two types of international labour standards – conventions, which are legally binding international treaties that may be ratified by States, and recommendations, which serve as non-binding instruments. In many cases, conventions will lay down the basic principles to be implemented by a ratifying country, where as accompanying recommendations will supplement a convention by providing guidelines relating to how these standards apply. By ratifying conventions, member States formally undertake to make the provisions of these conventions effective both in law and practice. These countries also voluntarily undertake to apply the provisions adapting their national law and practice to their requirement and accepting international supervision.

These international labour standards, both conventions and recommendations, are relevant on the basis of the extensive discussions held with Governments, workers organisations, employer's organisations and experts from around the world. The process of consultation and the agreements that flow from them reflect consensus on a global level on how to address particular labour issues. In a globalised world, international labour standards are more relevant than ever. These standards lay down the basic minimum social standards that are agreed upon by all players in the global economy; that is not just Governments, but workers and employers as well. This international legal framework provides clear rules in order to ensure a level playing field in the context of a global economy by providing standards for all. International labour standards allow Governments to ensure that national legislation is in line with such internationally

⁷ Migration and Remittances Factbook. World Bank. 2011

⁸ Migration and Remittances Factbook. World Bank. 2011

⁹ Migration and Remittances Factbook. World Bank. 2011

¹⁰ Migration and Remittances Factbook. World Bank. 2011

accepted standards. They can also serve as reference points for regional agreements or bi-lateral MoU's between countries of origin and countries of destination.

Since the ILO was founded in 1919, 189 conventions and 201 recommendations have been formulated. All of these conventions apply equally to migrant workers and to nationals unless specified. The ILO has identified a set of core conventions that outline the fundamental principles and rights at work. Cambodia has ratified all 8 of the core conventions (listed below), which can be grouped into four broad categories; the elimination of forced labour; the elimination of child labour; freedom of association and the right to collective bargaining; and non-discrimination.

- Forced Labour Convention, 1930 (No. 29)
- Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
- Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
- Equal Remuneration Convention, 1951 (No. 100)
- Abolition of Forced Labour Convention, 1957 (No. 105)
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
- Minimum Age Convention, 1973 (No. 138)
- Worst Forms of Child Labour Convention, 1999 (No. 182)

These conventions are particularly relevant to migrant workers, since they are more vulnerable to forced labour and child labour conditions, discrimination at work, and are more likely to be denied the freedom of association.

In addition, there are specific ILO conventions and recommendations relating to migration. Why do migrants need specific protection? Migrants, particularly low or unskilled migrants, are at risk at each stage of the migration cycle: during the recruitment process, when they undertake potentially hazardous journeys to their destination, and when they are in the country of destination. Migrants are frequently employed in low-skilled sectors that are not fully regulated under national labour laws such as domestic work, fishing and agriculture. Women migrant workers are subject to discrimination at various levels, and migrant workers are particularly vulnerable if in an irregular situation because they do not have the legal right to work in that country.

The first convention on migration, the Migration for Employment Convention (Convention 97) was adopted in 1949, in a post war setting to facilitate the movement of surplus labour and to protect migrant workers from discrimination and exploitation. It applies to legal migrants and their families. The central element to Convention 97 is equal treatment. It provides for equality of treatment and non-discrimination of regular migrants and nationals in four areas: living and working conditions, social security (e.g. requiring seven years of residence before a migrant worker can enjoy access to any public health-care services), employment taxes and access to justice and legal proceedings. The provisions provide for, among other things, equal remuneration, trade union membership and enjoyment of the benefits of collective bargaining.

The second convention relating to migrant workers is the Convention concerning Migration in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (Convention 143), adopted in 1975. In the aftermath of the oil crisis of the 1970's, there was increased irregular migration, particularly to Western European countries, and a rise in exploitation and abuse of migrant workers. This convention set out to facilitate and regulate labour migration flows – it contains a model bilateral labour migration agreement to suppress activities of organizers of clandestine movements of migrant workers, and provides for minimum protections to all migrant workers regardless of their status. It calls for States to respect the basic human rights of *all* migrant workers, regardless of their status. These include the fundamental principles and rights at work, as well as the UN human rights treaties.

Convention 143 is a flexible instrument and is split in to two parts. Part I deals with migrants in abusive conditions and constitutes the first attempt by the international community to deal with irregular migration and to do it from a rights-based perspective. It introduced measures to suppress irregular migration. Rather than sanctioning irregular migrants however, it looks to sanction employers, brokers and traffickers. A migrant worker who has performed work, even in an irregular situation, has the right to be paid his or her salary and other benefits, as would a migrant in a legal, regular situation. It states that the loss of employment should not result in the termination of their work permit. The second part of Convention 143 focuses on equality of opportunity and treatment. It applies only to migrants with regular status. This was with the aim of eliminating discrimination in social security and trade union rights.

“Labour migration is cross border issue which requires national, regional and international attention. Today’s Forum will reflect on progress made by the Government and then look at the challenges that remain. This Forum presents an opportunity to exchange ideas and to find ways to better protect the rights of migrant workers and to create more opportunities for documented migrant workers.”

Her Excellency Hou Naun, MP

There are a number of other international labour standards that apply and are very relevant to the situation of migrant workers today. These include the Private Employment Agencies Convention, 1997 (No.181); the Domestic Workers Convention, 2011 (No. 189); the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19); and the Employment Relationship Recommendation, 2006 (No.198). The Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19) has been ratified by Thailand and Malaysia, but is not being adequately implemented according to ILO experts. This impacts upon Cambodian migrants working in these countries.

In 1997, the ILO adopted Convention No. 181 on Private Employment Agencies (Convention 181). This convention applies to recruitment agencies that base workers in the country where the agency is based but also those agencies that send workers abroad. While the migration conventions outlined

above are mostly applicable to the obligations of receiving states, this Convention places obligations on sending states. The need for a Convention on employment agencies arose from the liberalization of economies, the flexibility of labour markets, as well as the influence of globalization and growth in labour migration.

Convention 181 calls on Governments to adopt a system of licensing or certification for recruitment agencies. The purpose of a licensing system is that it allows for a pre-screening of the applicants or

recruitment actors – and only people capable of placing workers are entitled to do so. Before adopting any licensing regulations and provisions, it is appropriate that the Government consult representative employers’ and workers’ organizations. The Convention also calls on states to establish adequate complaint mechanisms for the investigation of complaints and abuses.

Article 7 of Convention 181 states that employers, rather than workers themselves, should bear the costs of recruitment. This has resulted in a low rate of ratification, particularly amongst Asian countries. Convention 181 states that private employment agencies should not collect any fees from workers, directly or indirectly. There is some flexibility however, such as in well defined cases and for specific services or for certain categories of workers. Migrants are willing to pay to migrate – but these fees should be in the interest of the workers – not for the purpose of making extensive profits at workers’ expense. And the level and application of fees should be discussed with workers’ and employers’ organizations.

“A protected migrant worker is an empowered migrant worker, and an empowered migrant worker is more likely to earn and remit more money than an exploited one”.

Jenna Holliday. UN Women
International Consultant

Convention 181 also outlines certain measures to provide protection for workers based abroad. These include the right to freedom of association and the right to bargain collectively, adequate protection in relation to minimum wages, working time, social security benefits and adequate protection for and prevention of abuses of migrant workers. Recommendation 188 which accompanies this Convention provides a more guidelines in this regard.

Recommendation 188 aims to provide guidance on how to implement Convention 181. For example, what does it mean to ensure that workers are adequately protected? Recommendation 188 states that action should be taken to prohibit misleading job advertisements; workers should not be recruited into jobs that involve unacceptable risks; adequate protection should be written into the employment contracts that are signed in the country of origin; and ratifying states can put protection measures in place through bilateral agreements with destination countries to prevent abuses and fraudulent practices.

Last year, a major breakthrough was achieved in efforts to recognise domestic work as work and to extend greater protection to domestic workers at the 100th Session of the ILO, where Convention 189 was adopted. Measures in Convention 189 are aimed at ensuring equal treatment of domestic workers and workers generally with respect to normal hours of work, overtime compensation, periods of daily and weekly rest, and annual paid leave. Convention 189 extends protections to all domestic workers, and includes specific measures to protect migrant domestic workers. These include a written contract that is enforceable in the country of employment, or a written job offer, prior to travelling to the country of employment, clear conditions under which domestic workers are entitled to repatriation at the end of their employment, protection of domestic workers from abusive practices by private employment agencies and cooperation among sending and receiving countries to ensure the effective application of the provisions of the Convention.

Recommendation 201, which accompanies Convention 189, contains additional measures specific to migrant domestic workers. It recommends for the establishment of complaint mechanisms and access to legal civil and criminal remedies, public outreach services, national hotlines with interpretation services, a system of pre-placement visits to households in which migrant domestic workers are to be employed, a

network of emergency housing, raising employers' awareness of their obligations, pre-departure orientation and consular services.

In addition to the international labour standards set out above, there is also another international instrument that the ILO has developed on labour migration. This is the ILO Multilateral Framework on Labour Migration, developed in 2005 in much the same way that international conventions are drafted with extensive consultation with workers, employers and government representatives. The Framework is a set of non-binding principles and guidelines for a rights-based approach to labour migration. It is intended to be a guide in the development, strengthening, implementation and evaluation of national, regional and international labour migration policies and practices for improving the governance, promotion and protection of migrant rights and promoting linkages between migration and development. At the same time, it recognizes the sovereign rights of all nations to determine their own policies on migration. This multilateral framework is useful in inspiring the revision of labour migration policies including in Cambodia.

Ratification rates for these conventions have been relatively low, particularly in Southeast Asia.

- Migration for Employment Convention (No.97) - 49 ratifications
- Migrant Workers Convention (No.143) - 23 ratifications
- Private Employment Agencies Convention (No.181) - 25 ratifications
- Domestic Workers Convention (No.189) - 3 ratifications
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990 - 46 ratifications

The provisions that present most difficulties to countries considering ratification are the articles on equal treatment, particularly as it refers to social security (Art.6,C97; Art.10,C143); protection including in the event of loss of employment (Art.8,C143), and the right of migrant workers to geographical and occupational mobility (Art.14(a),C143).

Even though these Conventions are not widely ratified, they provide a normative framework that recognises that human beings as workers and family members as being at the heart of international labour migration. They provide a set of minimum standards agreed at an international level that can be the basis of and guide formulation of equitable labour migration policies at the national level. When ratified, the monitoring of application of such standards is essential to State compliance and to advance policy improvements. Convention 97 and 143 do not affect the sovereign right of States to determine admission into their territory of foreign nationals for employment. But taken together, C97 and C143 determine that all migrant workers, including those in an irregular situation, have basic human and labour rights. Once admitted to employment, regular migrant workers should enjoy equal treatment with nationals.

States should consider ratification because of the importance of the rule of law in governance of labour migration, for which all countries have obligations. The conventions also help prevent the abuse of migrant workers, reduce irregular migration by eliminating incentives for labour exploitation, strengthen social cohesion and provide clear guidance for bilateral / multilateral cooperation for lawful, humane, and equitable labour migration. International guidance on implementation of these legal norms through reporting obligations and periodic review by independent expert bodies (ILO CEACR and UN CMW) can advance the implementation of these standards through the national framework.¹¹

¹¹ International Steering Committee for Ratification of Migrants' Rights Convention, Guide on Ratification (2008)

The ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (the Declaration) was adopted in 2007 by ASEAN Head of States. It clearly outlines the obligations of countries of origin and destination within the region. The ASEAN Committee on the Implementation of the Declaration, created in 2007, has formed a drafting committee which is developing an ASEAN agreement that would operationalise and give effect to the obligations within the Declaration. This agreement is still in the drafting process; the aim is to ensure that the agreement is established by 2016. In addition, the ASEAN Committee on the Implementation of the Declaration also oversees an annual ASEAN forum on migrant labour, held this year in Siem Reap, Cambodia. This provides a platform through which Government partners, social partners and NGO's can participate in policy dialogue and put forward recommendations on how to advance obligations in the ASEAN Declaration.

Approximately 50% of today's 215 million migrant workers are female.¹² The United Nations Department of Economic and Social Affairs (UNDESA) estimates that Asia was home to more than 32.5 million migrants in 2010, 49% of whom were female migrants.¹³ Most women are engaging in low or semi-skilled jobs. There is an increasing rise in the number of women migrant workers going into domestic work.¹⁴ This is partly due to the development of neighbouring Asian and Middle Eastern countries and the rise in demand for domestic workers in households in those countries. Women migrant workers contribute, amongst other things, remittances. There is a development mantra that now accompanies the debate about women migrant workers and domestic workers in that their remittances add to economic development of their country. There is also the economic and social empowerment of women – as individuals they are becoming empowered within their families and their communities. There is the brain gain effects, this may not be necessarily from the work they are carrying out but rather from the experience of another cultural, the learning of another language and the experience of going to another country and working. There is also the autonomy of migration and the independence that women gain from such experiences, so when you talk about justice for women migrant workers, more than half of the worlds working women are in the informal economy. These jobs are unregulated and unprotected by labour legislation. This includes domestic work which is rarely considered to be the same as standardized labour and is often left outside the definition of normal work. Therefore, women that carry out such work are often not protected.

Important steps are now being taken, by independent states and bi-laterally across Asia, to improve the rights of migrant workers. In terms of access to justice, women migrant workers face unique and personal challenges such as the the denial of rights and deterrence against reporting rights violations cases because of complicated bureaucratic legal procedures and inaccessible justice mechanisms. This applies equally in sending and receiving countries. Women cannot bring claims in court for violations and therefore many claims do not get heard. There is also the reality for many female migrant workers that employment is linked to their visa. Women risk losing their documented status if they are dismissed from their job - where their visa is tied to their employer - or because they overstay their work permit to make claims in legal systems in countries of destination. That means it is very difficult for a migrant to bring a claim under the receiving country's laws, because they are often in the process of or have already been deported. The loss of income and resources for women migrant workers and their families due to time, resources and effort spent in making claims for redress is also a major issue. If the 'push' factors for women migrant workers in Cambodia are considered, many women leave purely for economic reasons. It

¹² Migration and Remittances Factbook. World Bank. 2011

¹³ United Nations Department of Economic and Social Affairs (UN DESA), Trends in International Migrant Stock: The 2008 Revision, <http://esa.un.org/migration/index.asp?panel=1>

¹⁴ Ip Pui Yu, Asian Domestic Workers' Network, 'Asian Domestic Workers' Network' 2010, available from <http://en.domesticworkerrights.org/?q=node/3>

is a livelihood and poverty response, and therefore there is usually too little time and insufficient resources for these women to seek justice when there is a rights violations.

At the country level across the ASEAN region, there is a tendency to find inefficient, gender-neutral legal and justice systems which are costly, tedious and unnecessarily time-intensive. Gender neutral laws may not respond to the specific scenarios of women migrant workers and their vulnerabilities and they may not respond to being able to support the women migrant worker through the process of accessing justice. There is often a culture of silence, especially in 'low and unskilled' sectors. Such workers fall outside the scope of the law but also the conversation and awareness of civil society members who might otherwise be able to help. There is also a wide failure to uphold international and regional human rights and labour law commitments and a loss of development potential of women migrant workers including financial and social remittances.

Women migrant workers face several types of violations. In their personal life, they may face physical and mental abuse, sexual harassment and rape, threats, various health problems with no treatment, denied access to family, prohibited from conducting religious observances. There is a high risk of women suffering from sexual abuse, particularly for domestic workers who are often working on their own in personal houses where they are unable to file complaints against their abusers. In their work places, violations include non-payment of wages, wrongful deductions, no proper food provided, long working hours, no rest day, confinement and work in more than one place. Trafficking is not only sexual exploitation, but also about different forms of labour exploitation such as forced labour. Modern forms of slavery also include victims of trafficking.



Samdech Akka Moha Ponhea Chakrei Heng Samrin, President of the National Assembly opening the Parliamentary Forum.

There are a particular set of vulnerabilities that women, particularly those being trained for domestic work, face. Due to the fact that the training for domestic workers is much longer than that of other unskilled migrants, there is a vulnerability to forced labour and debt bondage, as well as the criminal act of confinement within training centres. Those vulnerabilities are often faced only by women because of the length

of their training for domestic service. Some of the responses that have been made through the laws in the region in response to gender inequality in the law are set out below.

In the Philippines, Republic Act No. 8042 stresses the importance of equal rights among male and female migrant workers. The act promotes the role of NGOs as key protectors of women migrant workers rights.

In Indonesia, there is the drafting of a local law on the protection of women migrant workers in the province of Blitar. In Thailand, compensation is now paid from Thai recruiters who exaggerated employment prospects abroad, the training of judicial staff and in camera court hearings are now being carried out. In Bangladesh, training to potential migrant women workers is now offered by the Bureau of Manpower, Employment and Training. In Sri Lanka, under the National Labour Migration Policy, legal services and training programmes are provided by the Sri Lanka Bureau of Foreign Employment. In Nepal, there is an upscaling of the reintegration programme for women being carried out by the Government of Nepal, and a Foreign Employment Act 2007 and Regulation 2008 have been passed that are gender responsive.

In Cambodia, there have been various efforts over the past 18 months to bring in the laws needed to protect both women and men who are migrating across the region. In addition to Sub-Decree 192, other Prakas' are being developed by the Ministry of Labour to support Sub-Decree 192; an MoU is being developed with Malaysia specifically on the issue of migrant domestic workers; and there will soon be standard contracts for domestic workers travelling to Malaysia. A comprehensive pre-departure training curriculum is also being devised. Each of these is being developed with full consultation and so should represent and respond to the particular gender needs of the women who are migrating across the region.

Men and women have different migratory experiences, not radically different, but significant enough for there to be a need for different responses within laws and policies, domestically, bilaterally, regionally and internationally. As such, UN Women has recommended that all new legislative and regulatory instruments and pre-departure trainings are gender responsive. UN Women also recommends advocating for domestic workers to be included in the labour laws of receiving countries.

UNODC's mandate in Cambodia is to assist States in fighting transnational organized crimes. UNODC activities cover five core thematic areas. Under the pillar of "Health and Development", UNODC's activities focus on HIV/AIDS and drug demand reduction. Under the "Rule of Law" pillar, UNODC tackles Illicit trafficking, governance issues and criminal justice.

Whilst migration is not a crime, migrating abroad can make oneself vulnerable to criminals. In particular, irregular migrant workers' vulnerability makes it very easy for them to enter, willingly or unwillingly, into criminal channels. Migrants require methods to cross borders; either to go back to their country of origin or to go abroad hoping for a better life. Ill-intentioned people understand the profitable crime of smuggling migrants. They are aware of the fragile status of migrants and take advantage of it. Thus, the first step to protect migrant workers is to keep them away from criminal circles.

Migrants from countries in South-East Asia are mainly smuggled within the same region to countries which are economically more advanced. The fees for smuggling services are comparatively cheap. They range from a couple to several hundred dollars. In general, it can be said that the fees paid are cheaper than using regular channels of labour migration.

The smuggling networks in Asia, which are specialized in long-distance destinations, operate very professionally. They are capable of organising complex travel through various countries and continents. Migrants are usually smuggled through a combination of air and land routes. Corruption and the use of fraudulent documents are common methods for achieving this. The use of look-alike documents and document swapping in transit airports is common practice. Obtaining genuine documents on fraudulent grounds is another important method associated with smuggling by air, which often goes hand in hand with thorough coaching. The smugglers provide the migrants with detailed cover stories and train them on how to react in certain situations.

Migrant smuggling is a high-profit-low-risk crime – in particular for those who organize. This attracts criminals and contributes to fuelling irregular migration. Long-distance migrant smuggling within and out of Asia is driven by highly flexible networks. The smuggling operations are coordinated by a chain of smugglers. These smuggling coordinators are based in the countries of origin and transit. Interaction between the smuggling coordinators is mostly one on one. The coordinators are not part of one criminal organization. They form changing coalitions according to business opportunities. This is one of the reasons why it's so difficult to dismantle migrant smuggling organizations: there is no head to be decapitated. There is no single mastermind who fully controls the process.

Nowadays, within and out of Asia, smugglers largely facilitate irregular migration. Able to demand higher fees and materialize higher profits, migrant smugglers now offer a wide range of services ranging from simple to highly sophisticated, and from cheap to expensive. Yet, the fees paid are not necessarily an indicator for safe services. As a general principle, migrant smugglers, in particular the organizers, endeavor to minimize risks of being detected. They do so at the expense of the safety of their clients.

UNODC has witnessed the establishment of a high-risk-segment within the migrant smuggling market. In this high-risk-segment, smugglers knowingly offer services that can seriously endanger the lives of their clients. In December 2010, more than 50 migrants lost their lives when their vessel crashed into the cliffs of the Christmas Islands for example.¹⁵ This helps illustrate that migrant smuggling is not a victimless crime. It is not just an illicit service industry - it is a deadly business.

It should be acknowledged that border controls and law enforcement alone cannot solve the problem of migrant smuggling. Such efforts have to be embedded in a wider migration and development policy framework. In this respect, there is a need for consistent policies providing a credible framework for law enforcement action against migrant smuggling. Where not combined with a holistic approach, law enforcement measures may simply result in diverting smuggling routes elsewhere, and in increasing the demand for risky services. There are important push and pull factors which influence a person to become a smuggled migrant. All of them must be addressed in a comprehensive way.

“Labour migration contributes significantly to social economic growth if labour migration is well managed.... in line with the Rectangular Strategy, the Government encourages official and legal labour exports to improve welfare, boost skills, reduce unemployment and increase income for people.”

Samdech Akka Moha Ponhea Chakrei
Heng Samrin Heng Samrin, President
of the National Assembly

¹⁵ See Indonesia rescue bid for Australia-bound migrant boat. BBC. December 18 2011. Available at <http://www.bbc.co.uk/news/world-asia-16234549> for more information.

Stakeholders need to foster regional and inter-regional approaches, and better cooperation between the countries of destination, transit and origin. In Asia and in other regions around the globe, the reality of migrant smuggling has taught us that successful bilateral responses to smuggling only resulted in a displacement of routes. That is why we need to strengthen regional and inter-regional cooperation at the political level, but also at the operational levels. There is also a need to better complement border control efforts by increasing the focus on investigating migrant smugglers.

While the profits are high, the criminals – in particular the organizers - face little risks of detection and punishment. This needs to change. The challenge is to bring perpetrators to justice and to seize their profits, making migrant smuggling unprofitable. Therefore, investigative capacities need to be developed.

Finally, stakeholders need to improve evidence-based knowledge on migrant smuggling in order to develop more effective counter-migrant smuggling policies. Migrant smuggling can take many different forms. Therefore, differentiated solutions are needed.

UNODC has made a number of responses to counter migrant smuggling. In early 2004, the Protocol against the Smuggling of Migrants by Land, Sea and Air entered into force. This Protocol supplements the United Nations Convention against Transnational Organized Crime. The role of UNODC is to promote global adherence to the Convention and this Protocol, and to assist states in implementing them. In the field of migrant smuggling, UNODC focuses on strengthening their criminal justice response to migrant smuggling. The following represents three examples of UNODC responses to migrant smuggling.

- i) The Coordination and Analysis Unit – CAU Project. In support of the Bali Process, UNODC has developed a Voluntary Reporting System on Migrant Smuggling and Related Conduct (VRS-MSRC) in order to facilitate the collection, sharing and analysis of data that is required to better understand and respond to migrant smuggling. The VRRS-MSRC is currently under its pilot phase and will officially be launched early next year.

The CAU project also targets front line officers. To raise their awareness on smuggling of migrants, a leaflet conceptualized by 5 police officers from 5 different departments will be distributed in police stations. Recently, UNODC has finalized the Basic Training Manual that will be used by police officers to enhance their skills in tackling smuggling of migrants' activities.

- ii) The Port Intelligence Unit – PIU project. Also developed in Indonesia and Thailand, the PIU project aims at establishing mobile operational capacity, tactically situated to respond effectively to maritime migrant smuggling. One of the most effective ways of dealing with this smuggling of migrants by sea is through interdiction of vessels prior to departure. This can only be achieved through the development and sharing of reliable criminal intelligence followed by targeted operational activity coordinated locally, regionally, and internationally. The unit staff will be trained in the disciplines of intelligence gathering, analysis and exchange with a strong focus on international cooperation.

- iii) The Partnership Against Transnational-crime through Regional Organized Law-enforcement – PATROL project. UNODC works with states in the region to strengthen direct channels of cross-border communication between border control authorities. Borders Liaison Offices are established at each side of the border to expand cross-border cooperation in the fight against Transnational Organised Crimes and specifically in the thematic area of Smuggling of Migrants.

Migrant smuggling is a highly flexible, opportunistic crime. To counter it, governments and other stakeholders need comprehensive policies. Law enforcement alone cannot solve the problem however. Law enforcement must better complement border control efforts by focusing more on investigating migrant smuggling to bring perpetrators to justice. Stakeholders need to cooperate and to collect, analyze and share more information in order to stem the deadly business of migrant smuggling.

Migration is not a new issue. However, the particular challenges identified towards the end of the 20th century resulted in the drafting of a new human rights treaty dealing with migrant workers and their families. It is very much a human rights issue, as migrants are often in the territory of a country but are not citizens, and often fall outside of the protections of countries given to citizens. Human rights apply to people in a territory and not just citizens. For many years, those who weren't citizens fell outside the protections of the law, and this included migrant workers. Next year is the 10th anniversary of the ICRMW, and the 20th anniversary of OHCHR's presence in Cambodia. There are currently 46 State parties to the ICRMW so far, including the Philippines (1995), Sri Lanka (1996), Bangladesh (2011) and Indonesia (2012). Indonesia is the latest state to ratify and an extremely important signatory due to the size of the country and the number of migrant workers that Indonesia sends and receives.

Like all human rights conventions, the ICRMW has a supervisory committee. The Committee on Migrant Workers is composed of 18 independent experts who are elected by States parties, one of which visited Cambodia this year to explain the benefits of the convention. Again, like all other human rights treaties, the ICRMW builds on previous instruments. Human rights treaties include general treaties like the Covenant on Civil and Political Rights (ICCPR), and also treaties that look at individual groups. The ICRMW is centred on one particular group -migrant workers.

The ICRMW is unusual because it focuses on human rights protection in more than one country. Normally, conventions such as the Convention against Torture, which Cambodia has ratified, would look at Cambodia's record on torture, whereas this convention involves other countries. The ICRMW defines the rights of migrant workers before departure, in transit and in the country of employment. It covers all phases of migration and established obligations for countries of origin, transit and employment. It also covers not just individual migrant workers, but their families also, many of whom face the same kind of risks as the 'bread-winning' migrant worker. The convention is about the shared responsibility of states to protect migrant workers.

The Convention provides a definition of who is a migrant worker in Article 2: "a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national". This does not mean that if you stop paying a worker they would fall outside the scope of the convention. It is a broad definition that covers people like students who live and work abroad. The convention covers migrant workers whether they are documented or not. In so far as they are undocumented, they should enjoy all their human rights covered by the convention. The convention provides additional rights to those migrant workers that have been documented.

The rights which cover all migrant workers, documented or otherwise, include the prohibition of torture or cruel, inhuman or degrading treatment (Art. 10), the right to life (Art. 9), and the prohibition on slavery (Art. 11) which is very relevant here. These individuals also enjoy certain freedoms such as freedom of thought, conscience & religion (Art. 12), freedom of opinion & expression (Art. 13) and the right to liberty and security of the person (Art. 16). They cannot be arbitrarily detained.

Certain rights under the ICRMW apply only to those who are documented and who are in more regular situations. These include protection from the destruction of identity documents and other documents (Art. 21) which happens to many migrant workers whose passports are destroyed, the prohibition of collective expulsion (Art. 22), the right to participate in trade unions (Art. 26) and the right to receive free, urgent medical care (Art. 28). It also provides conditions on work and for social security, which in effect, brings them in line with national workers. They should receive the same treatment as nationals in respect of remuneration and other conditions of work (Art. 25) and the same treatment as nationals in respect of

social security in so far as they fulfill the requirements provided for by the applicable legislation of the State concerned (Art. 27). There are certain rights that migrant workers will not receive such as the right to vote. However, other than certain specific rights reserved for nationals, the core idea is that conditions for work and rights are the same for documented migrant workers and nationals.

The ICRMW also covers specific rights for migrant workers families including the right of the child to a name, to registration of birth, to a nationality (Art. 29) and the right of access to education (Art. 30). The OHCHR Cambodia office has been advocating for a minimum of access to free primary school education.

Ultimately, the convention aims to be a practical instrument. It is the longest human rights convention there is at present, with 93 articles. It provides detailed guidance on sending migrant workers abroad.

Obligations of the State of origin include right to have recourse to the protection and assistance of consular or diplomatic authorities (art 23) and the right to be informed of all conditions applicable to their admission, their stay and the remunerated activities in which they may engage as well as the requirements they must satisfy in the State of employment (Art 37). Cambodian migrant workers would therefore have the right to receive assistance from Cambodian embassies based abroad for example, and would have the right to receive information on their travel and stay in other countries.

This is where Cambodia can play an important role, in that ratifying this convention would not just impose obligations on other countries, but also look at what Cambodia should be doing before Cambodian migrant workers leave for situations in which they can become vulnerable to human rights violations.

Cambodia signed the convention in 2004, indicating a will to ratify, although this does not make it a legally binding instrument. In a March 2012 press conference, the Minister of Foreign Affairs stated that Cambodia was actively considered ratifying the convention.¹⁶ Ratifying a human rights convention is a sovereign decision that can only be taken by a state. The OHCHR is not in a position to instruct or pressure a country to ratify. The OHCHR, as per its mandate, encourages ratification of all human rights treaties by all States and works to assist ratification where possible.

There are a number of advantages to ratifying the ICRMW. It would demonstrate the strongest possible commitment Cambodia could make to respecting the rights of migrant workers, both Cambodians abroad and migrant workers in Cambodia. By ratifying the



Mr. Bruno Maltoni, Ms Jenna Holiday, Mr. Max Tunon, Mr. Olivier Lermet, and His Excellency Ouk Damry.

¹⁶ Annual report of the UN OHCHR and the Secretary-General. Human Rights Council. Twenty-first session. The role and achievements of the Office of the United Nations High Commissioner for Human Rights in assisting the Government and people of Cambodia in the promotion and protection of human rights. 20 September 2012. Available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A.HRC.21.35_en.pdf

convention, the Government would translate Cambodia's commitment to the rights of migrant workers into an international legal commitment. Cambodia would be signing up to a framework of rights which has been agreed upon by other countries. The Government could use the convention as an advocacy tool when dealing with countries of destination, and could use the benchmarks contained in the ICRMW to improve the treatment of Cambodian domestic workers. A protected migrant worker is an empowered migrant worker. Protecting migrant workers abroad means that they can become more productive, and this can translate in increased remittances which boosts the economy. The ASEAN Chairmanship is coming to a close for Cambodia; however Cambodia can still play a positive role in ASEAN by ratifying the convention and addressing one of the key issues in the region by addressing migrant workers rights.

At the 12th ASEAN Summit in January 2007, ASEAN Leaders affirmed their strong commitment to accelerate the establishment of an ASEAN Community by 2015 as envisioned in the ASEAN Vision 2020 and the ASEAN Concord II, and signed the Cebu Declaration on the Acceleration of the Establishment of an ASEAN Community by 2015. In particular, the Leaders agreed to hasten the establishment of the ASEAN Economic Community by 2015 and to transform ASEAN into a region with free movement of goods, services, investment, skilled labour, and freer flow of capital.¹⁷ The ASEAN Charter went into effect on Dec 14, 2008 as the legal framework to realize the ASEAN Community 2015. The realization of an integrated ASEAN Community in 2015 requires the successful implementation of strategic plans as outlined in the CHA-AM HUA HIN Declaration on Roadmap for an ASEAN Community (2009-2015). The ASEAN Security Community and the ASEAN Socio-Cultural Community are two of the integral pillars of the envisaged ASEAN Community. The Social-Cultural Community means building human resources, protection and welfare, rights and social justice, environmental sustainability, building ASEAN identity and reduction of development gaps.¹⁸

Point C2 of the Roadmap for an ASEAN Community (2009-2015) on Protection and Promotion of the Rights of Migrant Workers has a strategic goal to ensure comprehensive migration policies, which provide fairness and effective protection to every migrant worker in accordance with laws of ASEAN members and the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers.

The ASEAN Inter-Parliamentary Assembly (AIPA) was established in 1970 with the objective to strengthen cooperation among legislative bodies and parliamentarians of ASEAN countries to contribute to achieving key original goals of ASEAN for economic, social and cultural development. AIPA works to promote policies, strategies and concrete actions to address health and social problems emerging from migration and to provide legal support to promote regulation of regular labour migration through certifying national identification and medical checkup in origin or destination country and providing health insurance for migrant workers and their families. AIPA also works with ASEAN and AIPA's dialogue partners as well as international organizations and international parliamentary networks to build capacity for parliamentary officials who oversee and monitor law enforcement.

Every year, AIPA issues resolutions which reflect the common context of ASEAN to submit to ASEAN countries' Governments for implementation. AIPA also established a Fact-Finding Committee on migration to comprehensively address the issue of migration in ASEAN. The Resolution on Health and Social Problems Emerging from Migration was adopted at the 30th AIPA meeting (2 - 8 August 2009) in Thailand and stated that AIPA would provide legislative and parliamentary support to:

¹⁷ ASEAN Economic Community Blueprint. ASEAN Secretariat. 2008.

¹⁸ Roadmap for an ASEAN Community 2009-2015. ASEAN Secretariat 2009.

- i) Promote fair and appropriate employment protection payment of wages, adequate access to decent working and living conditions for migrant workers and provide migrant workers, who may be victims of discrimination, abuse, exploitation or violence with adequate access to the legal and judicial system of receiving states;
- ii) Strengthen policies and procedures in the sending state to facilitate aspects of migration workers, including recruitment, preparation for deployment overseas and protection of the migrant workers when abroad as well as registration and reintegration of the countries of origin; and
- iii) Establish and promote legal practice of the sending state to regulate recruitment of migrant workers and adopt mechanisms to eliminate recruitment malpractices through legal and valid contracts, regulation and accreditation or recruitment agencies and employers, and blacklisting and prosecuting negligent/unlawful agencies.

The Resolution on Parliamentary Roles in Protecting and Promoting the Rights of Migrant Workers, which was adopted in the 32nd AIPA (18-24 Sep 2011) in Phnom Penh, Kingdom of Cambodia, declared that AIPA would:

- i) Encourage respective Governments of ASEAN Member States to place adequate policies that promote safe migration and ensure migrant workers are being protected against all forms of exploitation;
- ii) Commit to work closely with Governments and all relevant stakeholders to curb illegal recruitment and illegal placement of migrant workers, particularly through the passage of tougher measures to halt illegal acts by fraudulent recruitment agencies;
- iii) Commit further to enhance law enforcement that promote and protect the rights of migrant workers, and to improve the capacity of the authorities and legal agencies;
- iv) Call for the establishment of an AIPA Expert Working Group as an Ad-hoc committee that deals with the protection and promotion of the rights of migrant workers, which shall consist of parliamentarians. This Committee is authorized to seek for support and collaboration from international organizations, agencies, academics, catering to migrant worker issues and the representatives of migrant workers;
- v) Entrust the AIPA Secretariat to establish the information centre on migrant workers which will function as the sources of information on legal situation or policies on migrant workers of each country in the region and to enhance collaboration with the ASEAN Secretariat in the purpose of providing better understanding and knowledge on the aforementioned issues; and
- vi) Encourage to speed up the establishment of ASEAN legal framework during the ASEAN Committee on Migrant Workers (ACMW) meeting that will be held in Jakarta 11- 12 April 2011 on Protection and Promotion of the Rights of Migrant Workers as mandated by the Cebu Declaration on the Protection and Promotion of the Rights of Migrant Workers.

Migration is trans-boundary issue, which requires solutions at national, regional and international levels. All relevant agencies promote the enforcement of laws, policies, strategies, international conventions, agreements and MOUs as well as look at the possibility to ratify international conventions and agreements necessary to assist the protection and promotion of the rights of migrant workers

The ASEAN community jointly agreed to move towards building an ASEAN community by 2015 to enable countries in region to develop in harmony. To achieve this, ASEAN Member States have to build a community from the perspectives of security and politics to reach harmonization. ASEAN Member States aim to promote prosperity and progress in areas of economy, and for societies in region to harmonize.

CEDAW is one of the 10 core human rights treaties and is considered as a set of global normative standards on women's human rights. 187 UN member countries have now ratified the convention. Cambodia ratified CEDAW on 15 October 1992. Ratification obliges the Government to implement all the provisions stipulated in the Convention and to report on its implementation to the Secretary-General of the United Nations (UN). The initial, second and third Reports on the implementation of CEDAW were submitted in October 2003. The fourth and fifth Reports on implementation of CEDAW were submitted in May 2010.

General Recommendation 26 (GR26) was adopted in 2008. The recommendation is pursuant to Article 21 of CEDAW regarding certain categories of women migrant workers who may be at the risk of abuse and discrimination. GR 26 intends to contribute to the fulfillment of the obligations of State Parties to respect, protect and fulfill the human rights of women migrant workers.

The IRCMW protects individuals, including migrant women, on the basis of their migration status. CEDAW protects all women, including migrant women, against sex and gender-based discrimination. While migration presents new opportunities for women and may be a means for their economic empowerment through wider participation, their human rights and security may also be at risk. GR 26 aims to elaborate the circumstances which contribute to the specific vulnerability of many women migrant workers and their experiences of sex and gender-based discrimination as a cause and consequence of the violations of their human rights.¹⁹

States are entitled to control their borders and regulate migration in compliance with their obligations as parties to the human rights treaties they have ratified or acceded to, including the promotion of safe migration procedures and migration cycles. Women migrants may be classified into various categories including:

- Women migrant workers, who migrate independently;
- Women migrant workers who join their spouses or other members of their families who are also workers; and
- Undocumented women migrant workers who may fall into any of the above categories

All categories of women migrants fall within the scope of the obligations of States Parties to CEDAW and must be protected against all forms of discrimination by the convention.

Female migrants are in a different position as compared to men in terms of legal migration channels, the sectors they work in and the forms of abuse they suffer. As such, female migration needs to be studied from the perspectives of gender inequality, traditional female roles, a gendered labour market, the universal prevalence of gender based violence and the development of policies to counter discrimination, exploitation and abuse.

¹⁹ CEDAW General Recommendation No. 26 on Women Migrant Workers. 2008

Factors influencing women's migration include globalization, new job opportunities, poverty, gendered cultural practices, gender based violence and natural disasters. This has resulted in a significant increase in the number of women migrating alone as primary wage earners.

Violations women migrant worker's rights occur in countries of origin, countries of transit and countries of destination. GR 26 addresses all three situations in order to facilitate the use of CEDAW and to further the rights of women migrant workers and advance substantive equality of women and men in all spheres of their lives. It also requires cooperation among states at multilateral, bilateral and regional levels.

In countries of origin, prior to departure, women face challenges with a multitude of different issues including bans on outward migration based on sex, age marital status, the detention of women for training or just prior to departure by some recruiting agents where women are subject to physical, sexual and psychological abuse, lack of access to education, training and provision of reliable information on migration which may lead to increased vulnerability in relation to employers and exploitative fees charged by employment agents, who generally have fewer assets than men, to suffer great financial hardship and move them into greater dependency when needing to borrow from family, friends, or money lenders at usurious rates.

"The key questions to address are why is migration increasing, particularly amongst women in Cambodia, what is the impact of this increase, and how do we strengthen and promote their rights?"

Her Excellency Chou Bun Eng,
Secretary of State, Ministry of
Interior

The primary issues that women face in destination countries include contract types, working conditions, working long hours without payment, discrimination on race and religion, lower wages compared to men, non-payment or delayed payment, no weekly or national holidays, sexual harassment, financial problems, transfer of wages into accounts that are inaccessible to them, transmit savings safely through regular channels due to isolation, oppressive jobs, language barriers, high transition costs, debt with recruiting agencies, health services, hygiene, work safety issues, HIV/AIDS testing, poor health and lack of access to health information and care, restriction on freedom of movement, living conditions, lack of food, poor accommodation, materiality leave and benefits, violence carried out by employers, access to justice, forced labour and other types of exploitation and abuse.

Countries of origin and destination should pursue a comprehensive gender sensitive and rights based policy. State parties should use CEDAW and the GR 26 to formulate gender sensitive rights based policy on the basis of equality and non-discrimination to regulate and administer all aspects and stages of migration, to facilitate access for women migrant workers to work opportunities abroad, promoting safe migration and ensure the protection of the rights of women migrant workers. They should facilitate active involvement of women migrant workers and relevant NGOs. States Parties should seek the active involvement of women migrant workers and relevant NGOs in such policy formulation, implementation and monitoring and evaluation. Finally, countries of origin should carry out research, data collection and analysis. State Parties should conduct and support quantitative and qualitative research, data collection and analysis to identify the problems and needs faced by women migrant workers in every phases of the migration process in order to promote the rights of women migrant workers and to formulate relevant policies.

Countries of origin must respect, protect and fulfill the human rights of their female national who migrate for the purpose of work. There are various responsibilities specific to countries of origin which include the lifting of discriminatory bans or restrictions on migration for example. This means that State Parties should repeal sex-specific bans and discrimination and discriminatory restriction on women's migration on the basis of age, marital status, pregnancy, maternity status etc. Countries of origin should lift restrictions that require women to get permission from their spouses or male guardians in order to obtain passports or to travel. They must provide education, awareness-raising and training with standardized contents.

Secondly, State Parties should develop an appropriate education and awareness raising programme in close consultation with concerned NGOs, gender and migration specialists, women workers with migration experience and reliable recruiting agencies. Countries of origin should deliver or facilitate free or affordable gender and rights-based pre-departure information and training programmes, and provide a list of authentic, reliable recruitment agencies and create unified information system on job abroad that are available. They must also provide information on methods and procedures for migrating to work if women workers wish to migrate independently of recruitment agencies and require recruitment agencies to participate in awareness-raising and training programmes and sensitize them on the rights of women migrant workers and the form of sex and gender-based discrimination, exploitation women could experience and their responsibilities towards the women.

Thirdly, countries of origin should create community awareness-raising schemes highlighting the costs and benefits of all forms of migration for women and conduct cross-cultural awareness raising activities addressed to the general public, and encourage the media, information and communication sectors to contribute to awareness-raising on migration issues, including on the contribution of women migrant workers to the economy, women's vulnerability to exploitation and discrimination and the various sites which such exploitation occurs.

Fourthly, State Parties should ensure the provision of standardized and authentic health certificates if required by countries of destination and require prospective employers to purchase medical insurance for women migrant workers. All required pre-departures HIV/AIDS testing or pre-departure health examinations must be respectful of the human rights of women migrants. Special attention: voluntariness, free or affordable services and to the problems of stigmatization.

Countries of origin should facilitate the right to return by ensuring that women who wish to return to their countries of origin are able to do so free of coercion and abuse. They should design or oversee comprehensive socio-economic, psychological and legal services aimed at facilitating the reintegration of women who have returned. They should monitor service providers to ensure that they do not take advantage of the vulnerable position of women returning from the work abroad and should have complaints mechanism to protect women against reprisals by recruiters, employers, for former spouses of the women.

Finally, diplomatic and consular protection should be provided. States should properly train and supervise their diplomatic and consular staff including interpreters, medical care, counseling, legal aid and to ensure shelter is provided when needed, to ensure they fulfill their role in protecting the rights of women migrant workers abroad.

Responsibilities specific to countries of destination include lifting of discriminatory bans or restrictions on immigration, providing legal protection for the rights of women migrant workers and access to remedies. Countries of destination should promulgate and enforce laws and regulations that include adequate legal remedies and complaint mechanisms, and put in place accessible dispute resolution mechanisms, protecting both documented and undocumented women migrant workers from discrimination or sex-

based exploitation and abuse. They should also repeal or amend laws that prevent women migrant workers from using the courts and other systems for redress, ensure that women migrant workers have access to legal assistance and access to the courts so that labour and employment laws are enforced, including the provision of free legal aid and temporary shelters for women migrant workers who wish to leave abusive employers, husbands or other relatives as well as provide facilities for safe accommodation during trials.

States parties who are sending, receiving and transit countries should enter into bilateral or regional agreements or MoU's that protect the rights of women migrant workers. They should also exchange and employ best practices and sharing of information in order to promote the full protection of the rights of women migrant workers, and cooperate on providing information on perpetrators. State parties are highly encouraged to ratify all international instruments relevant to the protection of the human rights of migrant women workers, in particular the ICRMW.

Session 2: Challenges and Responses to the Promotion and Protection of the Rights of Migrant Workers

Sub-Decree 57 (1995) on Sending Workers Overseas contained major flaws. It did not cover the large number of illegal Cambodian workers travelling to Thailand and Malaysia. The goal in drafting the Sub-Decree was to send more workers overseas, however Cambodia had no formal agreements with States in the region other than bilateral letters of agreement. Cambodia had no clear vision of overseas work and no private companies to send workers abroad and bring them back. A year after the Sub-Decree was issued, two companies began operating in the sector, however they had no practice of sending women migrant workers overseas.

The MoLVT now has training schemes and actively tries to organise and recruit workers to send abroad with the aim of facilitating progress in national development. A lot of challenges remain. As of October 2012, there are 39 private recruitment agencies who send Cambodian migrant workers to Japan, Malaysia, Thailand and Vietnam. There are no recruiters operating who send Cambodian migrants for Korea. The average wage in Thailand and Malaysia for Cambodian migrant workers is approximately \$200 per month minimum, about half of which they spend on living costs. In Japan and Korea, workers receive approximately \$800 per month, however living costs are substantially higher.

Significant progress has been made in the management of sending migrant workers overseas. Cambodia had no policy on migrant workers prior to 1995. Since then, a number of laws and policies have been issued seeking to address this phenomenon. Sub-Decree's and procedures have been established which

set out pre-departure safety guidelines for example. Prior to departure, training is now provided on how to obtain legal documentation, what to expect in destination countries and how to apply for protection once there. There are three components to the Government's response to migration: good governance, protection for workers, and national development.

The MoLVT has devoted a considerable amount of time and resources on tackling human trafficking with the national police. There is also close inter-ministerial cooperation in order to protect migrant workers. Sub-Decree 57 has been replaced by Sub-Decree 190 providing new rules for recruitment agencies and better protection for migrant workers by focusing on recruitment, language skills, documentation, life overseas and the health of workers. It provides clear pre-departure guidelines - workers will now have been 'orientated' prior to departure. Many positive and negative accounts are still provided by returning migrant workers, and many challenges remain. Nevertheless, progress is being made.

A new Prakas is being developed to implement Sub-Decree 190. Ten priority issues were agreed upon with the ILO, however only six are covered in the Prakas, suggesting that another Prakas' are needed to properly implement the existing Sub-Decree. UN women is also assisting the development the Prakas.

Although there is bilateral cooperation with Malaysia on the issue of migrant workers, the planned MoU is still being drafted. The MoLVT, with support from international organisations and in collaboration with other ministries, are reviewing drafts of an MoU with Malaysia. Provisions in the draft include minimum pay and workers will have two contracts with local agencies and their Malaysian employer.

Thailand signed a MoU with Cambodia to regulate migrant work and senior Cambodian and Thai officials meet regularly to collaborate on implementation and enforcement. Cambodia is also working with Japan to accept new graduate students in Japan. The Cambodian Government also facilitates the sending of migrant workers to Korea in place of private recruitment agencies.

International migration is contributing to national development and poverty reduction. The Government's aim is to improve the income of families and to develop the human resources of the country. However some workers focus on income alone and are unaware of the risks they may face working abroad. The MoLVT understands that the management of sending workers overseas is a complicated process and will continue to work towards issuing more Prakas' and new Sub-Decrees to provide further guidance to stakeholders.

The 2008 National Census stated that 26.5% of approximately 14 million Cambodian nationals migrated internally for work.²⁰ There is also significant international labour migration from Cambodia. The largest destination country is Thailand, with 182,000 legally registered Cambodian migrant workers in 2005, two-thirds of whom are male, and probably a much larger number of undocumented workers.²¹

Cambodian migrants work predominantly in the fishing, construction, agriculture, and domestic work and in restaurants. Whilst there is a growing body of statistics regarding legal migrants, Cambodia does not have a good understanding of the numbers of illegal / irregular migrants working abroad.

Push factors in emigration from Cambodia include poverty, the lack of job opportunities, low income generation, traditional and cultural practices, demography pressures, low skill and education levels, gender imbalances and national disasters. Pull factors enticing migrants to work abroad include higher paid jobs, increased labour demands, better living conditions, and family links.

²⁰ Local Development Outlook Cambodia. UNCDF 2010. Available at:
http://www.uncdf.org/sites/default/files/Download/KHM_THEME_LD-OUTLOOK_0410_EN.pdf

²¹ Local Development Outlook Cambodia. UNCDF 2010. Available at:
http://www.uncdf.org/sites/default/files/Download/KHM_THEME_LD-OUTLOOK_0410_EN.pdf

Migrants face a variety of challenges prior to, during and upon return from work abroad. Pre-migration, workers have limited access to information, can be cheated by fraudulent local brokers or agents and

Ms. Khem Srey Touch, of the Cambodian Women Migrant Network, spoke about her personal experiences of migrating from Cambodia to work in Malaysia.

I am 44 years old and a widow with four children. One of my daughters migrated to Malaysia in 2005 through a licensed company in Cambodia. Before her departure, I did not have job in my village, so the income from my work was not enough to support my daily life. This difficulty inspired me to migrate myself to seek a job in Malaysia and because of an advertisement I saw posted by a recruitment agency, which said I could work in a factory in Malaysia. They told me I would need to pay \$300 before leaving. Despite this, I was not paid for the first 4 months work I carried out. The recruitment agency promised me by good pay and only 8 hours work a day with incentives, including a rest day. They said in one month I could earn more than \$200. When I arrived, everything was different. My passport and other documents were confiscated by my employer. They sent me to a place which was locked from the outside and forced me to work extremely hard. They did not pay my wages and forced me to work in the sugar sector without rest time and not enough food. This continued for 3 years. When I sought support I had no information on the opportunities there were to seek help. After I finished the 3 year contract, my employer was not willing to pay my wages. The recruitment agency who sent me did not arrange to return me home. I arrived home with a small amount of money. I was cheated by my employer. When I returned to my village in Cambodia, I felt ashamed and society looked at me in a negative way because I worked overseas and because I was unsuccessful. I would like to take this opportunity to call for the Government to strengthen the mechanisms for the protection of migrant workers, especially women who migrate; and to increase and create jobs in this country with a decent salary. They should provide training skills so that migrants have skills when they travel. They should punish private recruiters who violate and exploit migrant workers.

may face high recruitment costs and excessive fees. They often lack proper pre-departure orientation despite requirements otherwise and have no or limited language skills. They may suffer from false promises and be provided loans which creates debt bondage and/or illegal detention. Under age recruitment is also a major issue, with unscrupulous agents changing the age on workers documentation from 16 to 18 or 21. Some migrants sign contracts without understanding the provisions.

Cambodian migrant workers face a number of on-site challenges including excessive working hours of up to 20 hours a day, low pay, unpaid wages upon return, labour exploitation and trafficking, sexual assault by employers, confiscation of documents, limitations on communication, limited access to health care and information, and are vulnerable to be arrested as undocumented due to their irregular migration status.

Upon return, migrant workers may face further difficulties due to a lack of a proper return and repatriation system. They lack appropriate skills training and financial and medical support. Due to a lack of additional skills or capital to create jobs for returning migrants, many become migrants for life.

LSCW made the following recommendations to encourage the Government to implement adequate policies that promote safe migration and ensure migrant workers are being protected against all forms of exploitation;

- Encourage the National Assembly to oversee the proper implementation of applicable laws;
- Commit to working closely with Governments and all relevant stakeholders to curb illegal recruitment and illegal placement of migrant workers, particularly through the passage of tougher measures to halt illegal acts by fraudulent recruitment agencies;
- Commit to further enhance law enforcement so as to promote and protect the rights of migrant workers, and to improve the capacity of the authorities and legal agencies;
- Question the Government more regularly on implementation of MoU's and other bilateral agreements with regards to labour migration;
- Work with Trade Unions, civil society organisations and migrant groups in order to assess the situation of migration in Cambodia;
- Work with the destination country parliamentarians in order to establish mechanisms to protect migrant workers abroad; and
- Encourage the National Assembly to Ratify ILO Convention 189 concerning decent work for domestic workers.

The Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT) has fuelled major progress in anti-human trafficking efforts in the Greater Mekong Sub-region since its inception in 2004. In 2004, the six Governments of the Greater Mekong Sub-region (Cambodia, China, Lao PDR, Myanmar, Thailand, and Vietnam) signed a historic Memorandum of Understanding against Trafficking in Persons. This MoU, signed at the Ministerial level, committed the Governments to making a response to human trafficking that met international standards, highlighting the need for multi-lateral, bilateral, and Government-NGO cooperation to fight trafficking.²²

The COMMIT Process is governed by the 6 national COMMIT Taskforces, each comprised of Government officials from the ministries most relevant to the fight against human trafficking – including the police, justice officials, social welfare, and women's affairs. The COMMIT Taskforces make all the major decisions regarding anti-trafficking programming and policy in their countries, with COMMIT programming being reflected in annual COMMIT work-plans. Two representatives from all six COMMIT Taskforces convene at least twice a year to set priorities and hold discussions on urgent issues at a regional level.²³ COMMIT Cambodia is currently composed of 15 members from the following 11

²² COMMIT: The Coordinated Mekong Ministerial Initiative Against Trafficking. UNIAP. Available at <http://www.no-trafficking.org/commit.html>

²³ COMMIT: The Coordinated Mekong Ministerial Initiative Against Trafficking. UNIAP. Available at <http://www.no-trafficking.org/commit.html>

ministries: MoWA, MoJ, MoSVY, Mol, MoLVT, MoInfo, MoFAIC, MoDEF, MoT, MoEYS and the Council of Ministers.

The Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT) currently uses multi-sectoral approaches to combat human trafficking in 5 key areas: area 1 is policy and cooperation; area 2 is criminal justice; area 3 is victim protection, recovery and re-integration; area 4 prevention measures and vulnerability reduction; and area 5 relates to monitoring, evaluation and anti-human trafficking data systems.

One of MoWA's core aims in this sector is to provide protection to women who have become victims through the process of migration and to facilitate their safe return home. MoWA has done a lot of work with MoLVT to fight the abuse of migrant workers and to tackle trafficking. Trafficking cannot be disconnected from migration. There are various negative impacts of trafficking which can include physical injuries and other health conditions, trauma, family breakdown, discrimination by family/community members, the loss of human resources, and threats to peace, security and stability for the community, country and the region as a whole. Over the course of the previous few years, MoWA has worked on drafting MoU's with different countries in the region including Myanmar and Thailand, which was the first country in the region to actively fight trafficking and assist victims. MoWA also recently signed an agreement on cooperation with Vietnam. On November 22nd 2012, a meeting is scheduled in order to finalize an MoU with Malaysia. The focus is on a follow-up system for migrant workers. MoWA is trying to mobilise funds to disseminate this information and to establish a complaint mechanism. MoWA will adhere to joint COMMIT declarations but calls for more involvement from NGO's and civil society organisations in order to ensure that Cambodian people are provided the opportunity to migrate in a safe environment. As such, MoWA submits the following six recommendations to the attendees of the Parliamentary Forum:

- i)** Enhance the monitoring system for labour migrant workers;
- ii)** Strengthen the existing legal framework and implement policies to protect the rights of the migrant workers;
- iii)** Develop a proper complaint mechanism for migrant workers that can easily be accessed;
- iv)** Increase services for labour migrant workers, especially psychological services;
- v)** Recognize the skills gained by migrant workers; and
- vi)** Adhere to the principles of the 2nd COMMIT Joint Declaration against Human Trafficking.

The Labour Migration Policy of the Government currently in place focuses on three key components: governance of labour migration, the protection and empowerment of migrant workers and the harnessing of labour migration and development.

The Government has utilized key international tools which promote rights and benefits of migrant workers, including the 8 core ILO conventions, CEDAW and the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, and are actively considering ratification of the ICRMW. The Government has also entered into a number of MoU's with other countries in the region to curb human trafficking.

In terms of the national migration management policy, the Government issued Sub-Decree 190 on sending workers overseas (which replaced Sub-Decree 57) and Sub-decree No. 195, regulating the cost of passports. The MoLVT has played a central role in this progress. There are certain gaps to ensuring

coherence in protecting rights however, and the Government should consider drafting other Prakas' which set standard fees in the registration and migration process. In terms of the institutional framework, The Government has formed several special working groups to protect workers (i.e. the Department of Manpower and Employment, General Department of Labour, MoLVT, MTOSB, MWG-NCs, NGOs, ACRA).

The Government has established policies to empower and protect migrant workers, to provide skills, language and other pre-departure training. The Government has set in place a grievance mechanism and has instituted many of the standards set out in international conventions through national policy. In practice however, many migrant worker rights are still violated, and mechanisms to address violations are not yet in place.

Analyzing migration policy in terms of the protection and empowerment of migrant workers, the supervision of recruitment and placement procedures, the curriculum of pre-departure orientation, skills and languages training, and complaint mechanisms, much of the developments are still in the planning phase. There is an urgent need to implement standards for granting licenses to recruitment agencies, standards for service and employment contracts, skills and language accreditation. Support services including insurance schemes, labour attachés and shelters in destination countries are also important and urgently needed in order to support Cambodian workers migrating abroad.

The extent to which labour migration issues are being mainstreamed into national development agendas, national strategic plans, decent work policies, and other development programs is still in question. Likewise, work to facilitate the flow of migrant's remittances so that migrants can send money back without paying high fees, financial tools and financial training provided to migrant workers and saving groups for community development have not been completed or are not yet practiced. The system of recognition for skills gained from labour migration, the planned brochure on reintegration services, and post skill training and counseling services have not been fully implemented or established in order to properly harness labour migration for the development in Cambodia.

Sub-Decree 190, the main purpose of which is to govern the sending of Cambodian workers overseas, was adopted in 2011 and consists of 15 chapters and 43 articles. The key articles include a definition of workers, recruitment agencies, and relevant authorities and the recognition of the competencies and responsibilities of different actors in governing and sending workers abroad. It also sets out a complaint mechanism, monitoring and penalty system. A new Prakas is currently being prepared to implement Sub-Decree 190. Despite these positive developments in policy, the Sub-Decree does not determine which Ministry out of the MoLVT, Ministry of Interior and MoFAIC should take responsibility for the specific responsibilities. Furthermore, the provisions of the Sub-Decree are quite broad. They do not stipulate what the procedures are for recruitment agencies responding to abuses. Although it requires solutions to grievances, it does not stipulate what exact steps should be taken, i.e. who should take responsibility. It lacks details setting out at what level recruitment agencies, employers, or Ministries must offer redress to victims and instigate punishment for violations. Chapter 14, Article 39 sets out the different types of punishment - written warnings, temporary suspension of authorization and revocation of authorization – but does not define what types of abuses will result in such penalties being issued. The Sub-Decree does not elaborate on how to use funds to compensate victims or which of the MoI, MoLVT, and MoFAIC, are the competence authorities to engage in monitoring.

The MoLVT is currently in the process of developing a Prakas on key terminology such as migrant worker candidates, workers, job placement service contracts, employment contracts, and private recruitment agencies in accordance with Sub-decree 190, Article 3. It is developing a Prakas on Recruitment Processes and Pre-departure Orientation in accordance with Sub-decree 190, Article 23, and a Prakas on

Private Recruitment Agencies compliant with Sub-decree 190, Chapter 4, Art. 6. More consultations are needed for these Prakas' before they are finalised.

Migration policy should be reviewed to include seasonal migration work. The Government should increase understanding of migration policy in all Government programmes and establish information desks at a local level for dissemination of information on how to migrate safely. The MoLVT should increase the understanding of all MoLVT and DoLVT staff on existing regulations on labour migration, including finalizing pre-departure orientation and sensitizing DoLVT and other authorities, ACRA members and recruitment agencies. The MoLVT should improve the monitoring system database by establishing a migration information management system, and improve the dispute resolution mechanism by establishing a national complaint mechanism that all migrant workers can access and file complaints with, ensuring civil compensation is paid to workers whose rights and benefits were violated by recruitment agencies. This could be achieved through the use of a guaranty deposit for compensation. The MoLVT should improve training centres by developing Minimum Standards on Training. Lastly, the MoLVT and MWG-NC should establish monitoring mechanisms by developing monitoring tools.

Private recruitment agencies in Cambodia pursue their activities under the provisions of Sub-decree No. 190 on the Regulation of Sending Cambodian Workers overseas and the provisions of other applicable laws and regulations related to administrative management, citizen protection and provision of passports.

In recruiting and sending Cambodian workers overseas, private recruitment agencies work under oversight, monitoring and orientation from a number of competent agencies including the MoLVT, Mol, local authorities, the MoFAIC, and royal embassies of the Kingdom of Cambodia in receiving countries. Therefore, to be successful, private recruitment agencies need guidelines and the best possible cooperation from all the aforementioned authorities.

The term 'private recruitment agency' refers to a private legal entity established in accordance with the applicable laws of the Kingdom of Cambodia who receives official permission from the MoLVT to provide full services in placing Cambodian workers abroad. Private recruitment agencies are established through the Prakas of the MoLVT in accordance with Articles 6-9, Chapter 3 of Sub-decree 190.

Key requirements to be fulfilled by private recruitment agencies include:

- Private recruitment agencies shall have an office and appropriate orientation center with staff members and skills, language and orientation trainers;
- A signed contract with the MOLVT to accept responsibility for managing and protecting Cambodian workers recruited and sent to work overseas; and
- A deposit in Riel equivalent to USD 100,000.

According to the provisions of Sub-decree 190 and the contracts signed with the MOLVT as well as the provisions of other applicable laws and regulations, private recruitment agencies are held accountable by the MOLVT and the Government in protecting workers by providing services so that citizens can avoid making decisions that endanger them when migrating for employment overseas. Private recruitment agencies must train workers on language and skills, provide orientation on infectious disease prevention, demonstrate how to prevent occupational accidents, raise awareness on rights, demonstrate how to protect their rights when necessary, assist workers so that they can benefit properly from their work and help resolve problems faced by workers either before their departure or while they are working overseas.

To be able to provide services that help protect workers, private recruitment agencies must conduct proper recruitment drives which means that they must advertise positions accurately without exaggeration or misinformation, and employ staff to recruit and provide orientation to workers. They must prepare workers' documentation so that they do not become irregular workers, provide orientation, language training and information on how to live legally in each area of the country they are sent to work in, provide orientation on how to access assistance when they encounter problems abroad and sign placement contracts with the workers that are consistent with their original employment contracts.

To place Cambodian workers overseas, private recruitment agencies must have a representative in the receiving country to assist and protect workers, and they must check documentation and accompany workers to their workplace as prescribed in the signed contracts. They should also inform the Royal Embassies of Cambodia in the receiving countries of the workers placement.

Private recruitment agency representatives are tasked with regularly monitoring workers. When workers face problems, they should try to resolve the problems immediately in their capacity as the agency representative. Legal services are provided to resolve issues faced by migrant workers, and agencies should assist in setting up systems to cash wages in a timely manner.

Private recruitment agencies should remind workers when they need to return, i.e. when their contracts expire, and assist workers in preparing and resolving any remaining problems before their return. Upon return, agencies should help workers obtain a certification letter from the MOLVT and assist workers in travelling to their home town. On a voluntary basis, agencies can become a member of an employers organization, which usually work to protect, strengthen and provide orientation on all activities of its members.

The Association of Cambodian Recruitment Agencies (ACRA) carries out its functions based on the provisions of applicable laws and regulations and its code of conduct with support from relevant ministries and competent agencies as well national and international organizations. Currently, there is only one such professional organization in Cambodia which is ACRA.

ACRA currently has 25 members and is working to help its members strengthen capacity in order to successfully protect Cambodian workers sent overseas by working closely with the MoFA, the MoLVT and the Mol and competent authorities in Malaysia and Thailand.

The key questions to address here are why is migration increasing, particularly amongst women in Cambodia, what is the impact of this increase, and how do we strengthen and promote their rights? The increases occur through both regular and irregular migration channels. Approximately 10,000 irregular migrant workers are sent back from Thailand every month. Demand for cheap labour in Thailand and current Cambodian law encourages and allows workers to travel freely. In addition, the geographical location of Cambodia and Thailand as neighbours, with over 60 border checkpoints strung across the border, explains why the numbers of Cambodian migrant workers travelling to Thailand is so high.

In today's modern family, women are often seeking jobs but lack the opportunities in their communities. Husbands may separate from their wives forcing women to work and a lack of land titles can also increase the motivation to work abroad. The concern here is that young women who have little education and no experience of work are sent overseas. This is a dangerous trend which presents serious mental and physical risks to women's health.

The reality is that migrants working overseas often don't get to remit wages as planned. Many figures on remittances are supplied by banks that tend to multiply basic figures of remittances by the number of workers abroad. This does not necessarily present an accurate picture of remittances.

Ministries provide education, direct or indirectly and sometimes through NGO's, to prevent violations and to create understanding among the public. This does not fully mitigate the risks that migrants face however, as agencies trick people to work for low wages and in poor conditions. People trust their friends or community members more than they trust the authorities when it comes to taking advice about work. They are also desperate for jobs so take risks and will travel abroad if they believe that they can work with alongside friends.

More education must be provided to law enforcement officers, judges and prosecutors so that those who don't issue legal documents or change details on documents such as the age of workers are sufficiently punished. One response is to close companies who engage in unscrupulous practices, however, workers who have already been sent abroad by that company then have no one to manage them or to organize their return. Foreign companies don't take up that responsibility. Cambodian companies sometimes sell workers on to other companies in the country of destination.

Cambodia has signed MoU's, multilateral and bilateral agreements to combat human trafficking, however trafficking still occurs. There are an estimated 3 million migrants working in Thailand at present, 185,000 of whom are Cambodians working illegally. Thailand has tried to regularize and regulate them but faces major difficulties because of the scale of the problem. In 2012, a number of Cambodian workers have been shot dead illegally crossing the border into Thailand. Many more are allegedly hiding in forests along the border.

Sub-Decree 190 aims to regulate overseas workers to ensure their safety and to help them find safe jobs. The Government has a committee working on tackling trafficking, a working group on victim support plus a justice committee working on enforcement. The statements of AIPA also set out the role of each country and government regarding how to collaborate. Labour migration is the right of citizens and should not be considered a negative process. However, those facing risks become a burden for the Government.

The dissemination of important information relating to migration is not yet effective. No inter-ministerial common goals have been established. Enforcement is needed for the sake of the nation and its people which requires participation from MPs and the building of trust in the promotion of migrant rights.

Parliamentary Forum on the Promotion and Protection of the Rights of Migrant Workers Draft Recommendations

The National Assembly and parliamentarians, in conjunction with representatives of all other government and non-government stakeholders present at the Parliamentary Forum on the Promotion and Protection of the Rights of Migrant Workers in Cambodia, make the following recommendations, with the objective of encouraging cooperation to increase the promotion and protection of the rights of Cambodian migrant workers:

International and Regional Frameworks

1. Consider the ratification of the International Convention on the Protection of the Rights of All Migrants Workers' and Members of their Families, the ILO migration-specific Conventions, and ILO C No. 189 on Decent Work for Domestic Workers.
2. Make further efforts to strictly follow CEDAW General Recommendation 26 on Women Migrant Workers and fulfillment of Cambodia's CEDAW reporting obligations.
3. Promote the timely development of rights based Memorandum of Understandings (MoU) with all Cambodian migrant receiving countries.
4. Adhere to the principles of ASEAN Declaration on the Promotion and Protection of the Rights of Migrant Workers and the ASEAN Inter-Parliamentary Assembly Resolution on the Role of Parliamentarians on the Promotion and Protection of the Rights of Migrant Workers in ASEAN and the second COMMIT Joint Declaration against Human Trafficking.

Support the development of further regional/ASEAN mechanisms on the promotion and protection of migrant workers.

5. Implement the recommendations made at recent regional forums on the promotion and protection of the rights of migrant workers, including the Fifth ASEAN Forum on Migrant Labour and the Phnom Penh Conclusions and Recommendations adopted at the Regional Conference on Human Rights Instruments, International Labour Standards and Women Migrant Worker's Rights.

National Frameworks

6. Amend the Cambodian Labor Law to cover domestic workers.
7. Revise the policy framework to address the issue of seasonal migration.
8. Strengthen the implementation of existing legal framework and policy to ensure the better promotion and protection of the rights of migrant workers in a way that is gender-responsive.
9. Include migration on the agenda for the development of ministerial strategic plans post 2013, the national strategic development plan and budget allocations.
10. Continue to strengthen the capacity of local authorities to protect migrant workers, particularly irregular migrant workers and the brokers (can be removed).
11. Increase close monitoring and regulation of recruitment agencies.

12. Support the development of a migrant welfare fund for the benefit of all migrant workers.
13. Develop sub-national return and reintegration services.
14. Support public private partnerships to develop safe and low cost remittance systems.
15. Develop a sustainable system to record sex-disaggregated data on migration, destination and return.
16. Develop a complaint mechanism and increase access to justice for migrant workers.
17. Encourage all stakeholders' further commitment to working for better promotion and protection of the rights of migrant workers in a cooperative manner.
18. Support existing multi-stakeholder mechanisms, including the Migration Working Group, for the better promotion and protection of migrant workers' rights.
19. Recognize the link between migration and development, including the skills benefit that migrant workers bring back.
20. Implement the strategic plan 2012-2017 of the CAPPD.
21. Commit to holding an annual national forum on the promotion and protection of migrant workers rights in order that all stakeholders can monitor progress, challenges and responses.

**Concept Note
Parliamentary Forum On the
Promotion and Protection of the Rights of Migrant Workers**

Migration is one of the issues of human trafficking and labor exploitation that the Royal Government of Cambodia (RGC) is making efforts to address both at country and regional levels. In this regard, the RGC recently hosted the ASEAN Inter-Parliamentary Assembly (AIPA) and as a result, the Resolution on the Role of Parliamentarians on the Promotion and Protection of the Rights of Migrant Workers in ASEAN was released (see attached). In the resolution, the AIPA made very strong commitment to promote and protect the rights of migrant workers in the region.

In order to effectively implement this Resolution, the National Assembly want to promote cooperation between the legislative and executive bodies, inter-governmental organizations and NGOs on the issues of human and trafficking and labor exploitation relating to the promotion and protection of migrant workers rights at the country level. In this regard, a workshop is planned to reflect the progress and challenges of those who work in the labor migration sector, particularly the executive bodies, and to promote the cooperation.

The National Assembly is seeking the financial support to hold a one-day National Parliamentary Workshop on the Promotion and Protection the Rights of Migrant Workers in Cambodia.

Objectives

The overall objective of the workshop is to bring together all relevant stakeholders to update on the progress and challenges in the promotion and protection of migrant workers rights. In turn, this will provide an updated country level picture so that the legislative body can understand any gaps in the legislative framework and consider ratification of relevant international conventions, in particular the Convention on the Protection of the Rights of all Migrant Workers and Members of their Families.

The workshop will provide the opportunity for legislative, executive bodies, inter-governmental organization, NGOs to share information about the progress and concerns relating to migration in Cambodia as well as developing ways to support each other to protect the rights of migrant workers. Both legislative and executive bodies will mutually support each other in order to effectively monitor the migration in Cambodia.

Expected Outputs

- All relevant stakeholders, especially the legislative bodies, are kept informed of the progress and challenges concerning the protection and promotion of migrant workers' rights
- Strengthened cooperation between legislative and executive bodies and all relevant stakeholders for better protection and promotion of migrant worker's rights
- Key recommendations and action taken for better protection and promotion of migrant worker's rights, including consideration of the ratification of relevant international conventions, report of the workshop to be shared with all relevant stakeholders and used for reference at the next annual workshop in November 2013.

Invited Participants: 250 persons

- National assembly: 100
- Senate: 30
- Migration Working Group (inter-ministerial coordination working group on Migration: 30
- Relevant embassies:10
- UN Agencies: 10
- Development partners:10
- NGOs: 20
- Recruitment agencies:10
- Trade unions and migrant workers: 10
- Participants from bordering provinces: 10
- Media: 20

Estimated Actual participants: 200



Parliamentary Forum
On
The Promotion and Protection of the Rights of Migrant Workers
12 November 2012
Cambodiana Hotel, Phnom Penh, Cambodia

Time	Topic	Organizations
7:30-8:10	Registration	National Assembly (NA)
8:15	Arrival of Samdech Akka Moha Ponhea Chakrei Heng Samrin, President of the National Assembly	NA
8:20	National Anthem and Programme overview	NA
8:30	Remark by Ms. Jenna Holliday, UN Women representative	UN Women
8:40	Remark by Mr. Douglas Broderick UN Resident Coordinator	UN Country Team
8:50	Remark by H.E Hou Naun, MP	NA
9:00-9:20	Opening Remark by Samdech Akka Moha Ponhea Chakrei Heng Samrin Heng Samrin, President of National Assembly	NA
9:20	Joint Photo	NA
9:35	Break	
9:50- 11:45	<p>Session1: Global and Regional Framework on protection and promotion of migrant workers Moderator: Mr. Bruno Maltoni, a.i. Chief of Mission, IOM</p> <ol style="list-style-type: none"> 1) Gender issues in labor migration at the global, regional levels by UN Women (20 mn) 2) International and regional labor standard on protection of migrant workers by ILO (20 mn) 3) Smuggling of migrant workers at regional level by UNODC (20mn) 4) Presentation on the advantages of ratifying the CMW and on its main features(20 mn) by OHCHR 5) Role of AIPA on promotion and protection of Migrant workers (20 mn) 6) CEDAW GR 26 on Women Migrant Workers by UN WOMEN (15 mn) 	<ul style="list-style-type: none"> - Ms. Jenna Holliday, International Consultant, UN Women - Mr. Max Tunon, Technical program officer, ILO - Mr. Olivier Lernet, Country Manager, UNODC - James Heenan, OHCHR, Representative a.i., Catherine Phuong, Coordinator of the Rule of Law Unit, OHCHR - H.E. OUK Damry, Secretary General of CAPPD - Mr. Ros Va, National Coordinator, UN WOMEN

11:45-12:15	Q&A	
12:20-1:30	Lunch	
1:30-2:25	<p>Session2: Challenges and Response to promotion and Protection of the rights of Migrant Workers Moderator: H.E Chou Bun Eng, Secretary of State</p> <ol style="list-style-type: none"> 1) Progress of Labor Migration by Ministry of Labor and Vocational Training (15mn) 2) Challenges of Labor Migration in Cambodia by NGOs representative (15mn) 3) Sharing experience of Women Migrant Workers by a representative of Women Migrant Workers Network (10 min) 4) Impact of Labor migration and Trafficking by COMMIT(15mn) 	<ul style="list-style-type: none"> - Mr Hou Vudthy, Acting Deputy Director General of Labor, MoLVT - Mr. Mom Sokchar, program manager, LSCW - Ms. Khem Srey Touch, Cambodian Women Migrant Network - H.E San Arun, Chair of Commit and Secretary of State, MoWA
2:25-2:40	Q&A	
2:40-3:25	<p>Moderator: Ouk Damry, NA</p> <ol style="list-style-type: none"> 1) Analysis and recommendations on migration policy and sub-decree by WI (15mn) 2) Role of RAs on protection of migrant workers/s rights by ACRA (15mn) 3) Coordination Mechanism of Labor Migration in Cambodia by a chair of Migration Working Group (15mn) 	<ul style="list-style-type: none"> - Mr. Chum Phally, Labor Trafficking Technical advisor, Winrock - Ms. Ung SeangRithy, President of ACRA - H.E Chou Bun Eng, Secretary of State, Ministry of interior, Chair of Migration working Group
3:25-40	Q&A	
3:40-3:50	Break	
3:50-4:45	<p>Session3: Discussion on Recommendations on Promotion and Protection of the Rights of Migrant Workers Facilitator: H.E Dr. Pen Pannha, Chairperson of Commission on Legislation and Justice, NA and Vice-Permanent Chair of CAPPD</p>	NA
4:45-5:00	Wrap up	H.E Dr. Pen Pannha, NA
5:00-5:45	<p>Press Conference Facilitator: H.E Dr. Pen Pannha, Chairperson of Commission on Legislation and Justice, NA and Vice-Permanent Chair of CAPPD</p>	<ul style="list-style-type: none"> - Mr. Hou Vudthy (MoLVT) - H.E Chou Bun Eng (MoI) - Ms. Jenna Holliday (UN Women) - Ms. Sarah Piazzano (Winrock) - His Excellency Mr. Ouk Damry (NA)