

► Policy Brief

August 2025

Fair recruitment of Lao migrant workers: A comparative review with international labour standards and guidelines

Key points

- The labour migration governance framework of the Lao People's Democratic Republic has a number of measures in place that are in line with the provisions of the Private Employment Agencies Convention (No. 181) and Recommendation (No. 188), 1997, and the ILO General Principles and Operational Guidelines for Fair Recruitment. Although Lao legal instruments can be seen to align with international labour standards in some respects, legislative and implementation gaps remain.

Incomplete prohibitions on worker-paid recruitment fees and related costs

- Charging of most worker-paid recruitment fees and related costs is now prohibited in the Lao People's Democratic Republic. However, some legislative instruments and memoranda of understanding (MOUs) with destination countries still allow for the charging of fees and costs to migrant workers directly or through deductions to their wages. In practice, some private employment agencies (PrEAs) are still charging these fees and costs to workers and through provision of loans despite the legislative changes.

Legislative gaps in relation to the application and enforcement of penalties and remedies

- Administrative penalties included in legislation are not linked to violations, and there are no processes outlined for how penalties should be imposed, how remedies should be applied, or by which actor(s). The legislation does not outline what amounts of compensation or fines should be paid, to whom these should be paid, or the statute of limitations regarding the payment. There are also substantial gaps in the practical enforcement of penalties and remedies for violations committed by PrEAs. Stakeholder interviews revealed that when violations are identified, it is rare for sanctions to be imposed and that PrEAs operate largely with impunity

because they do not face sanctions for violations.

Procedural and capacity challenges for the resolution of disputes

- The dispute resolution process outlined in legislation requires workers to access a three-tiered process administered by the district, provincial and ministerial levels of the Labour and Social Welfare Department. At each level, parties must participate in mediation before the matter is referred to the next level, and only after moving through all three levels can the dispute be referred to Court for adjudication and determination. The process for resolution of disputes is currently lengthy, expensive and inevitably requires referral to the Labour Court, as the responsible authorities at the district, provincial and ministerial levels are not sufficiently resourced or trained to resolve disputes on their accord.

Lack of clarity in the roles and responsibilities of government agencies

- Many of the provisions provided in legislation are not sufficiently detailed or prescriptive about how activities are to be carried out or who has ultimate responsibility for undertaking these duties. Responsibility for key functions such as complaint handling, inspection and monitoring are replicated across three layers of government with no guidance on which level has primary responsibility.

Ratification of the Private Employment Agencies Convention, 1997 (No. 181)

- The Government should strongly consider ratifying Convention No. 181 to take the next steps forward in improving protection of the rights of Lao migrant workers during recruitment and placement. The ILO stands ready to provide any further technical support needed to facilitate the process of ratification.

► Background on labour migration in Lao People's Democratic Republic

Unemployment, low wages and a lack of job security in the Lao People's Democratic Republic push many Lao people abroad in search of work to improve their economic circumstances. It is estimated that 660,258 Lao nationals (58 per cent women) are living abroad (UNDESA 2024). Financial remittances from migrant workers are a significant source of income for the Lao People's Democratic Republic, with over US\$287 million in formal remittances per year in 2023 (World Bank, n.d.), which does not include the substantial amount remitted through informal channels.

The Lao People's Democratic Republic has signed four agreements with Thailand, the Republic of Korea and Japan to send migrant workers abroad (Xayamoungkhoun and Harkins 2023). The Republic of Korea and Japan have received only small numbers of regular Lao migrant workers, with 5,309 and 556 Lao migrant workers in each respective country as of December 2024; while Thailand is the largest country of destination, with 324,276 documented Lao workers in the country in February 2025 (ILO 2025). Thousands of Lao migrants are also known to work in Thailand without legal status – representing as many as half of all Lao migrant workers (Harkins and Ahlberg 2017). Malaysia is also widely recognized as another major country of destination for Lao migrant workers, despite the absence of a formal bilateral agreement between the two countries.

The large numbers of Lao migrant workers relying on irregular channels to enter Thailand can be seen as a direct response to the high cost, long duration and considerable complexity of the regular process laid out in the Memorandum of Understanding (MOU) between the two countries. Migrant workers interviewed for a 2023 ILO study said that the process of using irregular channels was much simpler, and the costs and fees involved were generally small or non-existent (Xayamoungkhoun and Harkins 2023). As private employment agencies (PrEAs) are key to the regular labour migration framework, it is important to examine how they, and the corresponding legislative framework, are contributing to migrant workers' decisions to travel abroad to work regularly or irregularly.

In all, 43 out of the 48 PrEAs in the Lao People's Democratic Republic are licensed to send migrant workers abroad. PrEAs play a vital role in implementing the legal labour migration framework, and how these agencies are regulated is critical to their accessibility and decent work outcomes for migrant workers.

Legislative framework

The Lao People's Democratic Republic has one primary and three subordinate legislative instruments governing labour migration and PrEAs. All four legislative instruments are overseen by the Ministry of Labour and Social Welfare (MoLSW), and all four apply both to PrEAs that recruit Lao workers for employment abroad and to PrEAs that recruit for domestic employment.

The primary legislative instrument is the Labour Law 2013, which articulates, among others:

- a high-level framework for the rights and obligations of PrEAs;
- licensing and dissolution of PrEAs; and
- migrant workers' rights and obligations.

The first of the subordinate legislative instruments is Decree No. 245 on the Placement of Lao Workers to Work Abroad (hereafter "Decree 245"), which came into effect in 2020 with the goals of enhancing protections for workers and better regulating the PrEAs sending workers abroad. Decree 245 includes the roles and responsibilities of labour migration actors – including workers, PrEAs, the MoLSW, the Provincial and Vientiane Capital Departments of Labour and Social Welfare, and the District and Municipal Offices of Labour and Social Welfare.

Agreement No. 1050 on the Management of Employment Service Enterprises (hereafter "Agreement 1050") came into effect in 2022 with the intention to provide further guidance on the regulatory framework for the governance of PrEAs through licensing, monitoring and dispute resolution systems. The dispute resolution framework enacted in Agreement 1050 is similar to the system that has been in effect under Decree No. 76 on Labour Dispute Resolution 2018 for domestic labour disputes.

The most recently enacted secondary legislation is the Regulations of the Lao Employment Business Association, which was passed in 2024 and outlines the proposed operational framework for the establishment of the Lao Employment Business Association (LEBA), the new industry body for PrEAs.

As noted above, the Lao People's Democratic Republic is also party to four bilateral agreements governing regular labour migration, including an MOU with Thailand, an MOU with the Republic of Korea and two Memoranda of Cooperation (MOCs) with Japan. In addition, the Lao Penal Law 2005 includes provisions that define criminal offences and applicable penalties that can be applied to protect migrant workers.

Rationale for comparative analysis

The ILO Ship to Shore Rights South East Asia programme signed an implementation agreement with the MoLSW in 2022, which included organizing consultations to strengthen policy and legislation related to the recruitment of Lao migrant workers.

To support the consultation process, the ILO has conducted a comparative analysis of the Lao legislative labour migration framework with the ILO Private Employment Agencies Convention (No. 181) and Recommendation (No. 188), 1997, and the ILO's General Principles and Operational Guidelines for Fair Recruitment. ILO Convention No. 181

regulates PrEAs and provides guidance on how they should operate and on the legislation that should guide their operation – including critical provisions concerning:

- prohibiting worker-paid recruitment fees and related costs;
- enforcing legislative penalties for PrEAs that engage in fraudulent or abusive practices; and
- making accessible dispute resolution mechanisms for migrant workers access to justice.

The ILO and MoLSW organized a Consultation Workshop on Strengthening the Lao People's Democratic Republic's Legal Framework for Recruitment of Migrant Workers on 31 January 2023 in Vientiane. The 45 workshop participants reviewed the gaps identified by the ILO between national legislation and Convention No. 181, including in relation to regulation of recruitment agencies, protection of labour rights and complaint mechanisms. Lao stakeholders agreed to hold a follow-up meeting to further discuss the steps that would be necessary if the Government decides to move to ratify the Convention.

To support this effort, this comparative analysis reviewed the current legislative framework in the Lao People's Democratic Republic against the above-mentioned ILO instruments, with a view to identify gaps and provide recommendations for greater alignment to help ensure fair recruitment and decent work for Lao migrant workers.

► Comparative analysis methodology

Objectives

The objectives for this analysis include:

- Reviewing the laws, subordinate legislation and MOUs/MOCs relevant to labour migration governance in the Lao People's Democratic Republic;
- Identifying whether and how the provisions of Convention No. 181, Recommendation No. 188 and the ILO's General Principles and Operational Guidelines for Fair Recruitment (GPOG) are reflected in existing laws, regulations and practices in the Lao People's Democratic Republic (noting that Recommendation No. 188 and the ILO's GPOG are non-binding recommendations, not legal standards); and
- Providing recommendations on changes to be made in law and practice to enhance compliance with Convention No. 181, Recommendation No. 188 and the ILO's GPOG, and to move towards ratification of the Convention.

Methodology

This comparative analysis was prepared using a mix of qualitative techniques, including:

- a desk review of literature and legislative instruments; and
- key informant interviews.

Desk review

The desk review included reports by United Nations (UN) agencies, government and non-government organizations (NGOs), as well as media. The legislative review identified key legal instruments regulating PrEAs and labour migration in the Lao People's Democratic Republic. These instruments were subject to legal analysis in relation to the level of cohesion across the instruments, implementation capacity and compatibility with international instruments. Instruments reviewed for this analysis included:

- Labour Law 2013
- Decree No. 245 on the Placement of Lao Workers to Work Abroad, 2020
- Agreement No. 1050 on the Management of Employment Service Enterprises, 2022
- Regulations of the Lao Employment Business Association, 2024

- Lao Penal Law 2005
- MOU between the Ministry of Labor and Social Welfare of the Lao People's Democratic Republic and the Ministry of Employment and Labour of the Republic of Korea on the Sending and Receiving of Workers under the Employment Permit System, 2016
- MOU between Lao People's Democratic Republic and Thailand on Labour Cooperation, 2016
- MOC on the Technical Intern Training Program between the Ministry of Justice, the Ministry of Foreign Affairs and the Ministry of Health, Labor and Welfare of Japan and the Ministry of Labor and Social Welfare of the Lao People's Democratic Republic, 2017
- MOC between the Ministry of Justice, the Ministry of Foreign Affairs, the Ministry of Health, Labor and Welfare and the National Police Agency of Japan and the Ministry of Labor and Social Welfare of the Lao People's Democratic Republic on a Basic Framework for Information Partnership for Proper Operation of the System Pertaining to Foreign Human Resources with the Status of Residence of "Specified Skilled Worker", 2022.

For comparative purposes, the following were also reviewed:

- Decree No. 76 on Labor Dispute Resolution, 2018
- Law on Economic Dispute Resolution 2010

Key informant interviews

A total of 17 key informant interviews were conducted over four months in 2022 with key stakeholders including:

- government agencies;
- PrEAs;
- trade unions;
- civil society organizations (CSOs); and
- UN agencies (ILO and the United Nations Development Programme).

The key informant interviews were designed to explore the implementation of the existing labour migration framework in the Lao People's Democratic Republic to better understand the progress achieved and challenges remaining, as well as identify opportunities for improving the current legislative instruments.

► Findings of the comparative analysis

Definition of private employment agency

Convention No. 181, Article 1

1. For the purpose of this Convention the term private employment agency means any natural or legal person, independent of the public authorities, which provides one or more of the following labour market services:

(a) services for matching offers of and applications for employment, without the private employment agency becoming a party to the employment relationships which may arise therefrom;

(b) services consisting of employing workers with a view to making them available to a third party, who may be a natural or legal person (referred to below as a “user enterprise”) which assigns their tasks and supervises the execution of these tasks;

(c) other services relating to jobseeking, determined by the competent authority after consulting the most representative employers and workers organizations, such as the provision of information, that do not set out to match specific offers of and applications for employment.

Each of the four pieces of labour migration-specific legislation in the Lao People’s Democratic Republic (Labour Law 2013, Decree 245, Agreement 1050 and the Regulations of the Lao Employment Business Association) use different names for **private employment agencies** – foreign recruitment services, recruitment agencies, labour recruitment agencies, recruitment and employment service enterprises, and employment services – with no consistent definition of PrEAs among them. There is language in each piece of legislation that provides guidance on different aspects of PrEA functions. Apart from the definitions of “domestic employment service” and “overseas employment service” in article 3(4–5) of Agreement 1050, the legislations do not draw distinctions between PrEAs that recruit workers for work in the Lao People’s Democratic Republic and those that recruit workers for work abroad, which necessarily require different provisions for effective operation in these different situations.

Under Decree 245, Lao workers working abroad are defined as Lao citizens who are granted permission to work, undertake apprenticeships and practice on-the-job training in other countries legally (art. 8), establishing that this Decree does not apply to workers who migrate via irregular channels. Under the Labour Law, “migrant labour” is defined as Lao workers who migrate domestically and abroad, and foreign workers who enter the Lao People’s Democratic Republic (art. 3(5)).

While Agreement 1050 refers to the requirement for each PrEA to have a system for data collection, monitoring and management of workers sent to work abroad (art. 11(3)), legislation reviewed for this analysis does not specifically refer to processing of personal data that is related to an identified or identifiable worker.

Recommendations:

- A uniform definition that encompasses the different elements outlined in the individual instruments is required to properly define the role and functions of PrEAs across the legislative framework.
- Specific legislative provisions for PrEAs that recruit workers for work in the Lao People’s Democratic Republic and for PrEAs that recruit workers to work abroad are required for effective guidance in these different operating environments.

Prohibitions on deployment into specific sectors

Convention No. 181, Article 2

4. After consulting the most representative organizations of employers and workers concerned, a Member may:

(a) prohibit, under specific circumstances, private employment agencies from operating in respect of certain categories of workers or branches of economic activity in the provision of one or more of the services referred to in Article 1, paragraph 1;

(b) exclude, under specific circumstances, workers in certain branches of economic activity, or parts thereof, from the scope of the Convention or from certain of its provisions, provided that adequate protection is otherwise assured for the workers concerned.¹

¹ Abbreviated from Convention No. 181, Article 2.

Article 38 of the Labour Law contains broad prohibitions against the sending of Lao workers overseas to work in certain “vocations or areas that are dangerous to health and safety, contrary to Lao customs and traditions, or the laws of the Lao People’s Democratic Republic, or any country in which safety cannot be guaranteed”. The “vocations or areas that are dangerous to health and safety” in this article have commonly been interpreted by Lao and international stakeholders to include work in fishing. Article 19(2) of Decree 245 also prohibits workers from working in “jobs on small fishing boats”. The MoLSW was consulted on the prohibition against migration for work in fishing, and they clarified that “jobs on small fishing boats” refers to boats containing less than ten crew members selling fish directly to the public, and that migration for such work is indeed prohibited. However, migration for work on larger fishing boats or in the seafood processing sector is allowed under the Labour Law or Decree 245.²

Article 19(1) of Decree 245 prohibits Lao migrant workers from working in occupations “such as sex work, prostitution broker, arms trader, masseuse with sex service, selling sex toys, performance of sexual activities, including pornography or nude photographs”.

It should be noted, however, that the prohibition against sex work or work in the sex industry can have unintended and potentially severe consequences for migrant workers, particularly affecting women and LGBTQI+ persons. Such a prohibition can force workers into accepting poor wages and working conditions in a sector that is already largely lacking in labour and social protections. As such, prohibitions do not deter migrant workers from engaging in sex work and work in the sex industry but instead degrade their quality of work and discourage them from seeking help when they experience abuse and exploitation.

In addition, the prohibitions in article 19 of Decree 245 are drafted as “occupations prohibited for Lao workers abroad”, which places the onus on workers to avoid the prohibited work rather than on PrEAs and employers. This misplacement of responsibility makes the prohibitions difficult to enforce, given the volume of migrant workers who may not be aware of the prohibitions or who travel independently abroad. Moreover, economic disadvantage limits workers’ choice of work, and prohibitions do not deter workers from engaging in what work they can find – instead they punish and marginalize workers who have limited choices in the areas of work they engage in.

Recommendations:

- “Vocations or areas that are dangerous to health and safety, contrary to Lao customs and traditions, or the laws of the Lao People’s Democratic Republic, or any country in which safety cannot be guaranteed” should be clearly defined in article 38 of the Labour Law to ensure a unified understanding and proper implementation of occupational safety and health and enforcement.
- Any prohibitions included in the legal framework for labour migration should be:
 - non-discriminatory in application;
 - carefully defined so as not to push workers into unregulated and unmonitored sectors of work;
 - clearly justified; and
 - made the responsibility of PrEAs and employers.
- Decisions to prohibit or exclude workers or activities in legislation should only be made after consulting the most representative organizations of employers and workers concerned, and provided that adequate protection is otherwise assured for the workers concerned in line with Article 4 of Convention No. 181.

Licensing of private employment agencies

Convention No. 181, Article 3

1. *The legal status of private employment agencies shall be determined in accordance with national law and practice, and after consulting the most representative organizations of employers and workers.*
2. *A Member shall determine the conditions governing the operation of private employment agencies in accordance with a system of licensing or certification, except where they are otherwise regulated or determined by appropriate national law and practice.*

Articles 46–49 of the Labour Law articulate a high-level framework for licensing PrEAs. Agreement 1050, section 2, further outlines provisions that impose obligations on PrEAs to comply with the governing legal framework, including:

- criteria and requirements for operating a PrEA (arts 10–11);
- required registered capital and warranty (arts 13–14);
- license validity and criteria for renewal (arts 16–17); and
- documents required for application of license and license renewal (arts 12 and 18).

2 Informant interview with the Department of Employment, MoLSW, 14 June 2022.

Agreement 1050 includes the requirement for PrEAs to have registered capital of at least 2 billion kip (US\$89,933) and a warranty in kip equal to US\$20,000 to be submitted to the MoLSW to be kept as a contingency in case of emergencies related to the PrEA (arts 13–14). PrEAs will only be refunded the warranty once all workers have been “followed up and managed in line with the labour contract” (art. 14).

Recommendation: The situations where the warranty paid by PrEAs can be used for the benefit of migrant workers should be articulated in legislation.

Qualifications of private employment agency staff

ILO Recommendation No. 188, Paragraph 14 (non-binding)

Private employment agencies should have properly qualified and trained staff.

The Lao legislative framework provides high-level guidelines for PrEAs in relation to the employment of properly qualified and trained staff. Article 47(2) of the Labour Law prescribes that a condition for the establishment of a PrEA is to “have technical staff with a clean record, and a level of education and expertise appropriate for the business operation”. Agreement 1050 requires that individuals or entities intending to operate an PrEA will have completed “vocational training at higher level or more” (art. 10), and that staff will have “appropriate knowledge, capacity and experience related to management and employment” (art. 11(2)).

The legislation also requires training and capacity-building activities to be carried out by the MoLSW (Agreement 1050, art. 40), and requires the employment service development unit of the LEBA to develop a training plan and to improve and strengthen PrEAs (art. 18(3)). These provisions offer some guidance on training and qualifications of PrEA staff, but there is insufficient detail to facilitate implementation.

Stakeholders interviewed said that PrEAs provide their staff with in-house training, but there is no official training requirements or guidance from MoLSW other than what is included in legislation. This leads to inconsistency in skills and qualifications across the industry.

Recommendations:

- The MoLSW and LEBA should develop a training curriculum covering the minimum standards that PrEA staff must be trained in to be considered sufficiently qualified.
- Training could be shared between the MoLSW and LEBA. For example, the MoLSW should provide training on the legislative framework, licensing requirements, and the duties and obligations of PrEAs; while LEBA could offer training on practical aspects of the business, such as account management, application for travel documents, keeping deposit accounts, and monitoring and providing support to workers overseas.
- Penalty provisions should be made for failure to ensure that staff are sufficiently qualified to engage in the work of the PrEA.

Freedom of association and collective bargaining

Convention No. 181, Article 4

Measures shall be taken to ensure that the workers recruited by private employment agencies providing the services referred to in Article 1 are not denied the right to freedom of association and the right to bargain collectively.

Section XIV, Chapters 3 and 4 of the Labour Law outline Lao workers’ ability to join trade unions and collectively bargain if they work “within a labour unit”³ (art. 164), limiting the application of freedom of association and the right to collectively bargain to Lao workers working domestically. Otherwise, there were no provisions in the Lao legislation reviewed for migrant workers to have the right to freedom of association and collective bargaining.

Recommendations:

- The rights of workers to participate in trade unions and bargain collectively in the Labour Law should be broadened to include migrant workers. This would enable trade unions to support migrant workers’ negotiations in relation to the working conditions included in employment contracts to certain destinations and in contracts between workers and PrEAs. It would also give migrant workers a point of contact if they encounter abuse or exploitation by PrEAs or employers.
- PrEAs should be prohibited in legislation from including within their employment contracts specific restrictions on

3 Article 3(19) of the Labour Law defines a “labour unit” as a legally registered production, business or service unit in the economic and social sector registered according to Lao laws and regulations.

► **ILO brief**

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Lao migrant workers joining trade unions abroad.

- The Government should consider the inclusion of provisions on freedom of association and collective bargaining in MOUs with destination countries.

Recruitment in response to established labour market needs

ILO Recommendation No. 188, Paragraph 6 (non-binding)

Private employment agencies should not make workers available to user enterprise to replace workers of that enterprise who are on strike.

ILO GPOG General Principle 2 (non-binding)

Recruitment should respond to established labour market needs, and not serve as a means to displace or diminish an existing workforce, to lower labour standards, wages, or working conditions, or to otherwise undermine decent work.

Article 24 of Agreement 1050 requires PrEAs to recruit and train workers to correspond with labour market demand in countries of destination. Article 37(6) of Agreement 1050 prohibits government agencies from providing false information on the demand for labour in overseas markets in order for PrEAs to send Lao workers abroad. The Regulations of the Lao Employment Business Association gives responsibility to the “labour market information team” to “collect information on labour supply and demand ... improve programme to link to employment service of the members; conduct research on opening and expanding labour market” (art. 20(1)), and responsibility to the “labour market information analysis unit” to conduct research on the impact and changes in the labour market in each period (art. 20(2)). These provisions do not seem sufficient to ensure that workers are deployed to workplaces where there is a genuine need for workers, rather than situations where cheaper workers are sent to displace existing workers.

Recommendations:

- Include a provision in the legal framework that PrEAs must not send workers to:
 - displace striking workers or as a means to displace or diminish an existing workforce;
 - lower labour standards, wages or working conditions; or
 - otherwise undermine decent work in countries of destination.

- Include a provision in the legal framework requiring PrEAs to demonstrate the established labour market need for the workers they are sending overseas via providing evidence that a credible labour market test was conducted by the employer.

Non-discrimination during recruitment

Convention No. 181, Article 5

1. In order to promote equality of opportunity and treatment in access to employment and to particular occupations, a Member shall ensure that private employment agencies treat workers without discrimination on the basis of race, colour, sex, religion, political opinion, national extraction, social origin, or any other form of discrimination covered by national law and practice, such as age or disability.

2. Paragraph 1 of this Article shall not be implemented in such a way as to prevent private employment agencies from providing special services or targeted programmes designed to assist the most disadvantaged workers in their job seeking activities.

Lao legislation contains general principles that prohibit discriminatory treatment of potential migrant workers by PrEAs during recruitment. Decree 245 mandates that PrEAs are prohibited from providing recruitment services “with strict or discriminatory conditions, or through applying by direct or indirect pressure toward the workers, including with respect to gender” (art. 22(3)). Agreement 1050 prohibits PrEAs from creating “conditions to prevent different populations from applying to work, especially based on gender, ethnicity and religion and direct or indirect coercion” (art. 38(2)). Articles 176–177 of the Penal Law identify discrimination against ethnic persons or women as criminal offences punishable by fines and imprisonment.

However, stakeholder interviews reveal that, in practice, it is a requirement that prospective women migrant workers undergo compulsory pregnancy testing as part of a routine medical exam to qualify for labour migration. The way a positive pregnancy test will be treated is unclear – whether workers will be prohibited from working altogether or whether the type of work available to these workers will be restricted by the result. Compulsory pregnancy testing appears to be in contravention of the listed provisions in Decree 245, Agreement 1050 and the Penal Law.

Discrimination in relation to reproductive rights is in contravention of the Convention on the Elimination of

all Forms of Discrimination against Women (CEDAW) – to which the Lao People’s Democratic Republic is a party – and its General Recommendation No. 26 on Women Migrant Workers (GR26).

Recommendations:

- The Government should immediately enforce a cessation of compulsory pregnancy testing as part of routine medical exams to qualify for labour migration, in line with Decree 245, Agreement 1050 and the Penal Law.
- Include a legislative prohibition against health status discrimination in recruitment, including pregnancy status discrimination, and include penalties against PrEAs and other actors that conduct pregnancy tests during health exams, and ensure enforcement in line with CEDAW and GR26.

Processing of personal data

Convention No. 181, Article 6

The processing of personal data of workers by private employment agencies shall be:

- (a) done in a manner that protects this data and ensures respect for workers privacy in accordance with national law and practice;*
- (b) limited to matters related to the qualifications and professional experience of the workers concerned and any other directly relevant information.*

Under article 104 of the Penal Law, “any person disclosing another person’s confidential matter which has come to the offender’s knowledge during the performance of his profession or duties, thereby causing damage to the other person, shall be punished by three to six months of imprisonment and shall be fined from LAK 50,000 [US\$2.25] to LAK 500,000 [US\$22.52]”. There is not, however, a definition in the Penal Law of “confidential matter”, and the disclosure of a confidential matter that has been obtained in a professional capacity is not an offence per se, as evidence of “causing damage to the other person” needs to exist to activate the penalties in this provision.

Apart from this article in the Penal Law, there are no provisions in the reviewed legislation concerning PrEAs’ responsibility to protect migrant workers’ data and ensure respect for workers privacy. Nor are there any provisions limiting the collection of workers’ data to information related to qualifications and professional experience.

In stakeholder interviews it was revealed that some PrEAs implement their own guidelines for the management of

personal information; however, there is no guarantee that good practices will be followed by all PrEAs in the absence of clear legislative guidelines. Clear guidance in relation to the management of personal information obtained from migrant workers during recruitment is essential, including the requirement that the use of health information is limited to the relevance of that information to the job in question.

Recommendations:

- Legislative provisions should be developed that clearly articulate the circumstances in which personal information can be collected from workers, including a prohibition on collecting personal information prior to confirmation of a job offer.
- Legislative prohibition on the collection of unnecessary or irrelevant information should be developed – with the onus placed on PrEAs and employers to justify the need for the personal information.
- Clear guidance should be provided in legislation on the type of criminal history information that can be collected from workers, and prohibitions should be included against criminal status discrimination in employment.
- Clear guidance should be provided in legislation on the type of medical information that can be collected from workers, including a requirement that any medical information collected must be demonstrated to be directly relevant to the work being applied for.
- Clear guidance should be provided on the management of personal information – including in relation to its collection, retention and disposal – with strict requirements about treating all personal information confidentially.

Recruitment fees and related costs

Convention No. 181, Article 7

- 1. Private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers.*
- 2. In the interest of the workers concerned, and after consulting the most representative organizations of employers and workers, the competent authority may authorize exceptions to the provisions of paragraph 1 above in respect of certain categories of workers, as well as specified types of services provided by private employment agencies.*

Article 38(7–9) of Agreement 1050 prohibits PrEAs from charging workers employment service fees, charging employment service fees more than specified in the laws and regulations, or collecting deposit fees or assets with deposit fees. In addition, PrEAs have a duty to monitor the status of workers by ensuring that employers do not collect fees or charge workers later (art. 23). PrEAs also have a duty to cover the cost of pre-departure training, food, accommodation, relevant documentation and travel costs for workers (art. 23). The criteria for the renewal of a PrEA's license include a prohibition against collecting fees from workers "unless they are specified in relevant laws and regulations" (art. 17). In Decree 245, PrEAs are prohibited from demanding or claiming illegal fees and service charges and from misusing revenue or asking for any deposit fees or collateral as a deposit in exchange for sending Lao workers abroad (art. 22).

Despite this legislation, stakeholders interviewed for this analysis (in 2022) – including staff at the MoLSW – were not yet aware of these provisions, and the charging of recruitment fees and related costs to migrant workers was still occurring. Interviewed stakeholders disclosed that PrEAs charge 13,901,593 kip (US\$638) to send a worker to Thailand, where the minimum monthly wage is 14,075,908 kip (US\$646) (ILO 2020). Recruitment fees and related costs to migrate via a PrEA to the Republic of Korea were reported to be above US\$1,000 (21,789,331 kip). These costs are significant, particularly as 60 per cent of Lao returned migrant workers previously surveyed by the ILO reported that they did not receive minimum wages while working overseas (Harkins, Lindgren and Suravoranon 2017). The interviewed PrEAs felt that the high cost of labour migration is linked to the cost of government documentation in both countries of origin and destination. The length of time it takes for the Lao Government to process migration documentation was also identified as a contribution to migration costs, as migrant workers must wait outside their hometown for documents to be processed, spending funds on accommodation and living expenses.

Stakeholders also stated that loans are a readily used means of assisting workers to pay for their migration costs, where PrEAs deduct a proportion of the worker's salary to pay for the cost of migration through instalments. Loans provided by PrEAs in the Lao People's Democratic Republic can make migrant workers more vulnerable to abuse, exploitation and debt bondage, particularly if they require workers to take on excessive debt or if the costs to be paid back through wage deductions do not leave the worker with enough to live on. The size of these fees may result

in workers being unable to leave an employer, even if they are experiencing abuse or exploitation, because they are indebted to the PrEA or employer for the cost of migration. Workers also fear losing their collateral, which may be the family home, if they leave an employer (Harkins, Lindgren and Suravoranon 2017).

Under the MOCs on the Japanese Technical Intern Training Program (TITP) and Specified Skilled Worker (SSW) programme, workers are charged recruitment fees and related costs by PrEAs that are not specified or capped in legislation (Japan Platform for Migrant Workers towards Responsible and Inclusive Society, n.d.). The MOCs outline that Lao PrEAs must specify the calculating criteria of commissions and fees to be collected from workers, make the criteria publicly available, and explain the details to workers (Attachment 1, 1.(2), 4(1)(e)). The MOCs do not allow Lao PrEAs to send workers to Japan if they have collected deposits from workers or if they have imposed monetary sanctions on workers for breach of contract (Attachment 1, 7.(a)(b), 4(1)(a)(b)).

Under the Lao–Japan TITP MOC, when a Japanese PrEA is found to have received money that is not regarded as fees from any person (including a Lao PrEA), their license to supervise will be revoked and penalties imposed (Attachment 5). Japanese PrEAs must ensure that workers will not be made to directly or indirectly pay for supervision fees, and must also pay the travel expenses required for workers to return to the Lao People's Democratic Republic (Attachment 7, 3., 5.).

The MOU between the Lao People's Democratic Republic and the Republic of Korea on the Sending and Receiving of Workers under the Employment Permit System (2016) requires each worker to pay PrEAs the "actual costs incurred in the process of receiving application and sending workers" (para. 4(1)). Paragraph 4 of the MOU deals specifically with fees, including how they are set, how they are changed and what they cover. The MOU requires migrant workers to pay for medical tests, skills tests and training, issuance of travel and work documents, airfares and taxes. Under the ILO GPOG, these fees constitute "related costs" of recruitment and placement, and therefore should not be collected from workers by labour recruiters, employers or public employment services (ILO 2019, 20, 28–29).

Article 137 of the Labour Law enables the Government to deduct 5 per cent of a migrant worker's wages per month for a labour fund "created to serve the ... development of labour skills, assist Lao employees working abroad, and assist foreign employees working in ... Lao PDR" (art. 136).

The MOU between the Lao People's Democratic Republic and Thailand on Labour Cooperation (2002) also includes provisions for Thai authorities to deduct 15 per cent of workers salary each month into a "returning fund" in order to organize workers' repatriation (art. 11), and voids the right of workers to receive the money accumulated in this fund if the workers do not identify themselves to authorities once back in the Lao People's Democratic Republic (art. 15). Under the ILO GPOG, any charging of deductions from workers' wages and benefits is prohibited, including to fund return and repatriation, and workers should not be charged any recruitment fees or related recruitment costs by a public employment service (ILO 2019, 20, 28–29). Moreover, governments, as primary regulators, should take measures to eliminate the charging of recruitment fees and related costs to workers (ILO 2019, 16).

Recommendations:

- Urgently revise the Labour Law, the Lao–Republic of Korea MOU, the Lao–Thai MOU, the Lao–Japan TITP MOC and the Lao–Japan SSW MOC to remove the recruitment fees and related costs chargeable to migrant workers, in line with Agreement 1050 and Decree 245.
- Train PrEAs, local and national authorities, NGOs and trade unions on the legislative provisions in Agreement 1050 and Decree 245 that prohibit the charging of recruitment fees and related costs to migrant workers to ensure effective enforcement by Lao authorities and implementation by PrEAs.
- Penalties for violations related to charging migrant workers recruitment fees and related costs should be added to a schedule of penalties for offences against migrant workers to act as a deterrent, and these penalties should be effectively enforced (see the following section).
- Streamline the process by which the Government issues travel and work documentation to ensure that migrant workers do not have to pay out-of-pocket costs while they wait.

Penalties for violations

Convention No. 181, Article 8

1. A Member shall, after consulting the most representative organizations of employers and workers, adopt all necessary and appropriate measures, both within its jurisdiction and, where appropriate, in collaboration with other Members, to provide adequate protection for and prevent abuses of migrant workers recruited or placed in its territory by private employment agencies. These shall include laws or regulations which provide for penalties, including prohibition of those

private employment agencies which engage in fraudulent practices and abuses.

Article 51 of Agreement 1050 outlines administrative penalties for PrEAs. Article 51(2) outlines the measures that should be taken for a PrEA's first five violations: the first three violations incur compensation penalties and fines of increasing increments; the fourth violation results in temporary suspension of PrEA activities; and the fifth violation results in cancellation of the PrEA's license. The lack of implementing details around these provisions poses a significant challenge to their enforcement. The penalties are not linked to any specific violations, and there is no process outlined for how the penalties should be imposed, how the remedies should be applied or by which actor. The legislation does not outline what amount of compensation or fine should be paid, to whom these should be paid or the statute of limitations regarding the payment.

While article 51(3–4) outlines the violations – PrEAs not following the contract or unlicensed actors acting in the capacity of a PrEA – there is still no process outlined for how the penalties should be imposed or remedies applied, by which actor or the statute of limitations. It is also unclear under which process PrEAs should be "taken to court", what is meant by "re-educated", and which laws and regulations are being referred to when stated "that violators shall be prosecuted according to relevant laws and regulations".

The Penal Code outlines a criminal provision for mobilization of unlawful migration or immigration, wherein any person publicly encouraging and misleading people into migrating in contravention of the law will be punished by imprisonment and fines, with more severe cases or recidivism punished by increased prison time and larger fines (art. 75). It is assumed that this is one of the provisions referred to in Agreement 1050 (art. 51), the Labour Law (art. 179) and Decree 245 (art. 32) when offences against migrant workers will be "prosecuted according to relevant laws and regulations", but without specific articulation in legislation there is no way to be sure.

In addition to the lack of clarity in legislation, there are substantial gaps in the practical enforcement of penalties and remedies for violations committed by PrEAs. Stakeholder interviews revealed that when violations are identified, it is rare for sanctions to be imposed, and PrEAs operate largely with impunity because they do not face

sanctions for violations. Interviews with the MoLSW and a PrEA confirm that license cancellations rarely, if ever, occur. Without enforcement of sufficient penalties and remediation, there is no incentive for PrEAs to comply with the law and respect the human and labour rights of migrant workers. Effective penalties against PrEAs committing violations are necessary to protect migrant workers' rights and to dissuade recidivism.

Article 32 of Agreement 1050 outlines the conditions for suspension or cancellation of PrEA licenses, which include:

- not performing their duties to migrant workers;
- violating prohibitions;
- multiple complaints reported by workers or by the Provincial or Capital Department of Labour and Social Welfare;
- being prosecuted and convicted of human trafficking in court; and
- operating a PrEA in contravention of relevant laws and regulations.

This process is administrative, and it is the MoLSW that ultimately gives approval for the license suspension or cancellation.

Recommendations:

- To enable effective penalties against PrEAs that violate migrant workers' rights, legislation should clearly designate one actor to be in charge of the process by which penalties are imposed and the process by which remedies are applied. Penalties should be linked to specific violations, and the schedule of penalties should clearly outline what amount of compensation or fines should be paid, to whom they should be paid and the statute of limitations.
- The schedule of penalties should be appropriately severe to dissuade recidivism, and it should clearly outline the provisions for compensation and damages to be paid on top of restitution in order to compensate victims and prevent repeat offenses. Payment provisions should include the use of the PrEA's warranty.
- The impunity of PrEAs who abuse the rights of migrant workers should be reduced through enforcement of appropriately severe sanctions, which should be handled by officials with designated authority at the Office of Labour and Social Welfare. These officials should be trained and properly resourced to perform this function.

Forced labour and human trafficking

ILO GPOG General Principle 5 (non-binding)

The competent authorities should take specific measures against abusive and fraudulent recruitment methods, including those that could result in forced labour or trafficking in persons.

ILO GPOG General Principle 12 (non-binding)

Workers should be free to terminate their employment and, in the case of migrant workers, to return to their country. Migrant workers should not require the employer's or recruiter's permission to change employer.

Decree 245 contains provisions that may contribute to increased vulnerability to forced labour. It prohibits workers to "abstain from work or leave work without permission" or to "change employers or return to the home country irregularly or without permission from the employment services in Lao PDR and the receiving organizations" (art. 23(4–5)). These articles may limit migrant workers' right to leave employment, and the legal penalties may constitute a "menace of penalty" under Article 2 of the ILO Forced Labour Convention, 1930 (No. 29). Article 23(4–5) of Decree 245 appears to be contradicted somewhat by article 10(8) of Decree 245, which states that Lao migrant workers have a right to change employers "subject to conditions and regulations of the origin and destination countries".

Agreement 1050 includes provisions for PrEAs to monitor and ensure they are not creating situations that create risk factors for forced labour or human trafficking – including the charging of recruitment fees and related costs (arts. 17, 23, 38) – but does not outline for PrEAs what the risk factors for forced labour or human trafficking are.

The Penal Law defines and criminalizes human trafficking, debt bondage and human trafficking for the purposes of forced labour, articulating clear and heavy penalties (art. 134). However, this effectively only allows for the prosecution of forced labour against migrant workers where it also involves human trafficking. Not having forced labour as a stand-alone offense can pose significant challenges to the identification, investigation and prosecution of cases of severe labour exploitation that are determined to not be a consequence of human trafficking or where the trafficking element is not clearly evident. Taking into consideration that forced labour is a broader concept than trafficking in persons, the lack of specific provisions sanctioning forms

of forced labour involving migrant workers can hinder the effective identification and protection of survivors, impeding their access to appropriate and effective remedies and preventing adequate punishment of forced labour practices.

Recommendations:

- Article 23(4–5) in Decree 245 which restricts migrant workers' rights to leave employment or return home without permission may not be in line with ILO Convention No. 29, and should be removed.
- A clear definition of what constitutes situations that “create risk factors for forced labour or human trafficking” could be included in Agreement 1050, and could be mandated to be included in PrEA staff training.
- A stand-alone offence in the Penal Code for forced labour not linked to human trafficking could be considered to ensure the effective identification and protection of survivors, improve their access to appropriate and effective remedies, and provide adequate punishment for forced labour offences.

Unfair advertising by recruitment agencies

ILO Recommendation No. 188, Paragraph 7 (non-binding)

The competent authority should combat unfair advertising practices and misleading advertisements, including advertisements for non-existent jobs.

Decree 245 and Agreement 1050, respectively, prohibit “advertising beyond the reality of the service provided” (art. 22(9)) and “issu[ing] exaggerated service advertisement[s]” (art. 38(11)). While Decree 245 (art. 32) and Agreement 1050 (art. 51) both outline broad sanctions for offenders, there is no guidance on what specific sanctions or other measures are to be implemented to regulate unfair advertising. There is also no guidance in legislation to assist PrEAs with what should be included in advertisements.

Recommendations:

- Legislative guidance is required on the information that should be contained in advertisements for migrant workers. This information should include the nature of the work, location, accommodation, salary, required skills and the training offered.
- The MoLSW and labour inspectors should conduct robust monitoring of advertising, including review of advertisements prior to publication.
- The penalties that apply to PrEAs that fail to adhere to advertisement requirements need to be more clearly articulated in legislation.

Development of bilateral agreements

Convention No. 181, Article 8

2. Where workers are recruited in one country for work in another, the Members concerned shall consider concluding bilateral agreements to prevent abuses and fraudulent practices in recruitment, placement and employment.

In terms of provisions to prevent abuses and fraudulent practices in recruitment, placement and employment, the Lao–Republic of Korea MOU states that employers will draw up the standard labour contract form approved by the Korean Ministry of Employment and Labour pursuant to the Foreign Employment Act (para. 8(1)). While the minimum standards for a “standard labour contract” are contained in Korean legislation,⁴ it would be useful to attach these to the MOU so that Lao actors can enforce them.

The Lao–Republic of Korea MOU also includes provisions that could increase abuses and fraudulent practices, including requiring workers to pay recruitment fees and related costs (para. 4), and mandating that workers be deported if they have not received pre-departure training from an authorized training agency (para. 9(4)) or if a “health problem” is found during their destination country medical check-up (para. 12(3)), with workers bearing the costs of deportation unless it is deemed that they cannot afford it.

4 Article 9(1) of the Republic of Korea Act on the Employment of Foreign Workers states that “any employer who intends to employ a foreign worker ... shall enter into an employment contract in the standard employment contract form prescribed by Ordinance of the Ministry of Employment and Labor”.

In terms of provisions to prevent abuses and fraudulent practices in recruitment, the Lao–Thai MOU includes a provision on non-discrimination (art. 18), but without any details on monitoring or enforcement. The Lao–Thai MOU also includes provisions that could increase abuses and fraudulent practices, including authorizing deductions from workers’ salaries to fund repatriation and voiding workers’ rights to access these funds if they do not identify themselves to the authoritative bodies once back in the Lao People’s Democratic Republic (arts. 11 and 15).

Recommendations:

- Both the Lao–Republic of Korea MOU and the Lao–Thai MOU should be revised to be in line with Convention No. 181, removing provisions that make migrant workers more vulnerable to abuse, exploitation, debt bondage and forced labour, such as charging recruitment fees and related costs.⁵
- Attaching a copy of the “standard labour contract” as an annex to the Lao–Republic of Korea MOU could support better implementation and enforcement of contracts that adhere to minimum standards in Republic of Korea legislation.

Child labour

Convention No. 181, Article 9

A Member shall take measures to ensure that child labour is not used or supplied by private employment agencies.

Under article 9(2) of Decree 245, Lao workers travelling abroad for work must be at least 18 years old.

Dispute resolution

Convention No. 181, Article 10

The competent authority shall ensure that adequate machinery and procedures, involving as appropriate the most representative employers and workers organizations, exist for the investigation of complaints, alleged abuses and fraudulent practices concerning the activities of private employment agencies.

The dispute resolution process outlined in Agreement 1050 (arts 43–45) requires parties to file a complaint with the District Office of Labour and Social Welfare. The complaint is assessed and investigated and the parties invited to

participate in a negotiated dispute resolution process referred to as “mediation”. If the dispute is not resolved at the district level, parties can approach the Provincial and Ministerial offices of Labour and Social Welfare for further mediation. If the dispute is not settled at provincial and ministerial levels, parties can file an application with the Labour Court.

However, the process outlined in Agreement 1050 does not resemble a formally structured mediation and is more akin to a negotiation. Some stakeholders interviewed observed that when a complaint is received, the investigator assigned from the Labour Management Organization will ask for payment to investigate the complaint. Many complainants do not have the means to pay investigators, and therefore do not pursue complaints. Interviews also revealed that the dispute resolution process is lengthy, time consuming and expensive, and that complaints are inevitably referred to the Labour Court for resolution, as the responsible authorities are not sufficiently resourced or trained, and consequently lack the expertise to resolve disputes. The process reportedly takes 1.5 years before reaching a court hearing, with the delays primarily caused by the way disputes are handled by mediators who lack a framework that includes time frames or circumstances for elevation to the next level of mediation – nor are there avenues to appeal decisions or failed mediations.

A review of the implementation of Decree No. 26 on Labour Dispute Resolution (2018) suggests that where all three agencies – Ministerial, Provincial and District Offices of Labour and Social Welfare – are responsible for dispute resolution, they lack the confidence and training to properly discharge their duties.

The legislation currently does not provide for an arbitration process prior to a court hearing. Arbitration provides the opportunity to present the case to a legally trained and impartial arbitrator who would be empowered to make a legally binding decision.

Recommendations:

- The dispute resolution process laid out in Agreement 1050 and Decree 245 should be amended to include a single formal mediation process, followed by arbitration and then judicial review at the People’s Court. Inclusion of arbitration would support a faster, cheaper and more accessible dispute resolution process. Legislated time limits are required to ensure that disputes are managed in a timely manner.

5 Further advice on the development of bilateral agreements is available in: [Guidance on Bilateral Labour Migration Agreements](#).

- A complaints process that is accessible to people experiencing complex disadvantage – including workers with limited education, persons with disabilities, persons from culturally and linguistically diverse backgrounds or anyone who is otherwise not equipped to draft a written document – must include numerous avenues through which complaints can be lodged with the appropriate agency. Workers should have the right to file complaints verbally by phone or in person. The officer receiving the complaints should be trained in documenting complaints from workers with communication challenges.
- Delegation of key functions to specific government agencies is required to ensure that respective agencies hold a clear mandate and are accountable for their responsibilities. Ensuring that specific government agencies are responsible for key functions will also increase the skills, confidence and expertise of the respective agency and the delegates undertaking these duties.
- Mediators should be hired and/or MoLSW officials should be designated as mediators, trained and resourced to provide dispute resolution. Mediators require training to ensure they follow the rule of law rather than relying on their own personal judgment. Formal training in structured mediation and the relevant laws would properly equip mediators to conduct formal mediation, offering the chance to reach a satisfactory resolution outside of a lengthy and potentially expensive court hearing.
- Mediators must be gender- and culturally sensitive, and the MoLSW must ensure that there are women mediators available to conduct mediations where the complainants are women.
- A legislative provision should be added that complainants must have free access to an interpreter, support people and legal representation, if required.
- The dispute resolution process should be made available to all migrant workers, regardless of whether they migrated through regular or irregular channels.
- The MoLSW should consider production of available data on the number of disputes it has received and processed and the outcome of these disputes.
- Penalties should be enforced against government officials who request payment to investigate a complaint, in line with article 27(11) of Agreement 1050.

ILO GPOG General Principle 13 (non-binding)

Workers, irrespective of their presence or legal status in a State, should have access to free or affordable grievance and other dispute resolution mechanisms in cases of alleged abuse of their rights in the recruitment process, and effective and appropriate remedies should be provided where abuse has occurred.

The Lao–Thai MOU outlines that any dispute between workers and employers will be considered and solved by Thai authorities utilizing Thai law (art. 19), but there is no elaboration of the dispute resolution process, the schedule of offences, penalties or remedies, or a statute of limitations.

The Lao–Republic of Korea MOU states that “parties may establish a complaint center where malpractices can be reported” (art. 15(1)) but does not include access to grievance mechanisms or other dispute resolution mechanisms.

Language barriers, lack of knowledge about how to make a complaint, fears of retaliation and other challenges can prevent migrant workers from pursuing grievances in destination countries. Moreover, the transient nature of migrant workers’ immigration status in a foreign country means that they often do not have the time or resources to fully participate in legal proceedings before returning home.

Recommendations:

- A process for handling cross-border disputes should be established to facilitate the resolution of cases after migrant workers have returned home.
- A provision for access to free legal assistance for migrant workers in destination countries – including through labour attachés, trade unions and civil society organizations – should be included in MOUs.

Protection for workers employed by recruitment agencies

Convention No. 181, Article 11

A Member shall, in accordance with national law and practice, take the necessary measures to ensure adequate protection for the workers employed by private employment agencies as described in Article 1, paragraph 1(b) above, in relation to:

- (a) freedom of association;
- (b) collective bargaining;
- (c) minimum wages;
- (d) working time and other working conditions;
- (e) statutory social security benefits;
- (f) access to training;
- (g) occupational safety and health;
- (h) compensation in case of occupational accidents or diseases;
- (i) compensation in case of insolvency and protection of workers claims;
- (j) maternity protection and benefits, and parental protection and benefits.

The Labour Law provides that “the rights and obligations of migrant labor exiting the country are in accordance with the employment contract and the rules of the relevant country” (art. 132) but does not ensure the specific protection requirements outlined in Article 11 of Convention No. 188.

Although Lao legislation broadly provides migrant workers with the right to statutory social security benefits (Decree 245, arts 10(2) and 3(8); Lao–Republic of Korea MOU, para. 14(4)), no details are provided on the types of protection benefits that are required.

Lao legislation also allocates broad responsibilities to PrEAs to provide pre-departure training (Decree 245, art. 15(8)), and mandates that the MoLSW is to develop and improve pre-departure training manuals (Decree 245, art. 40). In addition, under the Lao–Republic of Korea MOU, the Korean Ministry of Employment and Labour is to conduct post-arrival education (para. 12(1)). However, these instruments do not provide detail on the content for pre-departure training, the duration of training or how delivery of training should be monitored.⁶

Recommendations:

- Include the provisions in Article 11 of Convention No. 181 in sufficient detail within Lao legislation to ensure that adequate standards for labour and social protection are established for employment of Lao migrant workers.
- Outline the requirements for mandatory pre-departure training for migrant workers in the legislation, including the content, duration and procedures for monitoring delivery of the training by PrEAs.

Employment contracts

ILO GPOG General Principle 8 (non-binding)

The terms and conditions of a worker's employment should be specified in an appropriate, verifiable and easily understandable manner, and preferably through written contracts in accordance with national laws, regulations, employment contracts and applicable collective agreements. They should be clear and transparent, and should inform the workers of the location, requirements and tasks of the job for which they are being recruited. In the case of migrant workers, written contracts should be in a language that the worker can understand, should be provided sufficiently in advance of departure from the country of origin, should be subject to measures to prevent contract substitution, and should be enforceable.

The Labour Law states that migrant workers' rights and obligations are in accordance with their employment contract (art. 132), and Decree 245 lists signing an employment contract as one of the conditions for Lao workers to travel abroad for work (art. 9(8)). However, neither piece of legislation specifies the contents of the employment contract. Interviews suggest that migrant workers commonly face problems with confusing or misleading employment contracts.

Recommendations:

- Minimum standards should be included in written employment contracts, such as the location, requirements and tasks of the job, wages and benefits, and days and hours of work. Contracts should be written in a language that workers can understand, should be provided sufficiently in advance of departure from the country of origin, should be subject to measures to prevent contract substitution, and should be enforceable.
- Requirements for standard employment contracts for Lao migrant workers already exist in the Lao–Republic of Korea MOU and the legislation of the Republic of Korea. These minimum standards should be reviewed to ensure that they provide sufficient protection to migrant workers, and they should also be attached to the Lao–Republic of Korea MOU to ensure proper implementation and enforcement.
- Standard employment contracts for Lao migrant fishers going to Thailand should be attached to the Lao–Thai MOU to ensure proper implementation and enforcement.

⁶ Further analysis and recommendations with respect to freedom of association, collective bargaining, maternity protection and other labour rights are provided in the relevant sections of this report.

Government-allocated responsibilities of recruitment agencies

Convention No. 181, Article 12

A Member shall determine and allocate, in accordance with national law and practice, the respective responsibilities of private employment agencies providing the services referred to in paragraph 1(b) of Article 1 and of user enterprises in relation to:

- (a) collective bargaining;*
- (b) minimum wages;*
- (c) working time and other working conditions;*
- (d) statutory social security benefits;*
- (e) access to training;*
- (f) protection in the field of occupational safety and health;*
- (g) compensation in case of occupational accidents or diseases;*
- (h) compensation in case of insolvency and protection of workers claims;*
- (i) maternity protection and benefits, and parental protection and benefits.*

Under Agreement 1050, PrEAs must:

- have a skills training centre to prepare workers for overseas deployment (art. 11(4));
- cover the costs for pre-departure training and accommodation;
- organize pre-departure training in accordance with the MoLSW curriculum (art. 23); and
- collect data on labour market supply and demand to plan for training and to develop the skills of workers to meet labour market demands abroad (art. 24).

Under the Lao–Republic of Korea MOU, PrEAs must conduct pre-departure education for migrant workers (para. 9(1)).

Recommendation: Include the provisions outlined in Article 12 of Convention No. 181 on PrEAs' and employers' responsibilities to migrant workers in sufficient detail in Lao legislation for effective implementation by all stakeholders.

Cooperation with the public employment service

Convention No. 181, Article 13

1. A Member shall, in accordance with national law and practice and after consulting the most representative organizations of employers and workers, formulate, establish and periodically

review conditions to promote cooperation between the public employment service and private employment agencies.

2. The conditions referred to in paragraph 1 above shall be based on the principle that the public authorities retain final authority for:

- (a) formulating labour market policy;*
- (b) utilizing or controlling the use of public funds earmarked for the implementation of that policy.*

3. Private employment agencies shall, at intervals to be determined by the competent authority, provide to that authority the information required by it, with due regard to the confidential nature of such information:

- (a) to allow the competent authority to be aware of the structure and activities of private employment agencies in accordance with national conditions and practices;*
- (b) for statistical purposes.*

4. The competent authority shall compile and, at regular intervals, make this information publicly available.

There is no provision in the Lao legislation reviewed for this analysis on cooperation between the public employment service and PrEAs.

Recommendation: Cooperation should be established between the public employment service and PrEAs under the auspices of the newly established Lao Employment Business Association.

Convention No. 181, Article 14

1. The provisions of this Convention shall be applied by means of laws or regulations or by any other means consistent with national practice, such as court decisions, arbitration awards or collective agreements.

The Lao legislation that includes articles relating to the provisions of Convention No. 181 are listed above in the desk review section of this brief.

Labour inspection

Convention No. 181, Article 14

2. Supervision of the implementation of provisions to give effect to this Convention shall be ensured by the labour inspection service or other competent public authorities.

Section 10 of Agreement 1050 outlines the monitoring and inspection framework for PrEAs that is to be implemented by the Labour Management Organization: namely, the MoLSW, the Provincial and Vientiane Capital Departments of Labour and Social Welfare, and District and Municipal Offices of Labour and Social Welfare. The framework does

not outline which level of government or which officials will conduct the inspections. Articles 47–48 of Agreement 1050 outline at a high level the contents of inspection – including supervision of implementing duties in laws and regulations, recruitment activities, and assistance to workers – as well as the forms of inspection – including regular scheduled inspections, unplanned inspections with advanced notice and urgent unannounced inspections.

According to interviews, PrEAs are not monitored, investigated or sanctioned, and therefore can operate with impunity because they seldom face penalties for law violations. According to PrEAs, the licensing system has documentary requirements that involve the submission of annual reports to MoLSW on their operations but that the on-site inspections outlined in the law are rarely conducted.

Under the Lao–Japan TITP MOC and the Lao–Japan SSW MOC, the MoLSW should:

- assess whether PrEAs meet the approving standards included in the MOCs (TITP MOC, article 3(2); SSW MOC, article 7(1));
- conduct investigations and provide necessary guidance and supervision when it is suspected that PrEAs are conducting improper activities not in line with the approving standards (TITP MOC, article 3(4); SSW MOC, article 7(3)); and
- revoke approval when PrEAs no longer meet approving standards (TITP MOC, articles 2(6–8) and 3(5); SSW MOC, article 7(4)).

The MOCs do not clearly designate the responsible agency that will carry out these activities.

Recommendations:

- Duties for labour inspection should be allocated to designated labour inspectors who are resourced and trained specifically to implement regular, in-person inspections of PrEAs and who are given the authority to enforce penalties, such as license revocation.
- The documentary monitoring system for inspection of PrEAs should be clearly articulated in legislation, with details about the documentation required to satisfy inspections.

Remedies for abuse

Convention No. 181, Article 14

3. Adequate remedies, including penalties where appropriate, shall be provided for and effectively applied in case of violations of this Convention.

Article 51(2) of Agreement 1050 outlines that compensation and fines should be paid by PrEAs for their first, second and third violations, but does not outline what amount of compensation or fine should be paid, to whom it should be paid or the statute of limitations regarding the payment. The compensation and fine penalties are also not linked to any specific violations, and there is no process outlined for how the remedies or penalties should be applied or by which actor. The lack of a defined process poses a significant challenge for the enforcement of these provisions.

Article 51(3–4) of Agreement 1050 outlines that, in situations where PrEAs do not follow contracts with workers or individuals or where entities operate a PrEA without approval, they should be fined or taken to court, “re-educated”, and “if any harm or loss has occurred to workers ... violators shall be prosecuted according to relevant laws and regulations”. It is unclear under which process PrEAs should be “taken to court”, what is meant by being “re-educated”, and which laws and regulations are being referred to when it is stated “that violators shall be prosecuted according to relevant laws and regulations”. There is no process attached to these articles for how any remedies should be applied for workers or how penalties are to be imposed on PrEAs, which actor should preside over the process, or the statute of limitations.

Article 75 of the Penal Code outlines that imprisonment and fines will be imposed on people who publicly encourage and mislead people into migrating in contravention of the law but does not outline any remedies for workers.

According to interviews, there are substantial gaps in the practical enforcement of remedies for migrant workers in relation to violations committed by PrEAs. Interviewees reported that very few complaints are made because stakeholders consider the process to yield limited outcomes. In situations where migrant workers are not restored to the financial position they were in prior to the violations, let alone compensated for the harm suffered to their livelihoods, there is little incentive for workers to participate in a complaints and dispute resolution process.

Recommendations:

- Adequate remedies and remediation for migrant workers – including provisions for compensation and damages to be paid to victims on top of restitution – should be included in the legislative schedule of penalties in labour migration legislation and in the relevant provisions in the Penal Code.
- Application and enforcement of remedies should be included in the training for mediators/MoLSW staff who are charged with overseeing the dispute resolution process.

► Conclusion

The Lao Government has clearly indicated its intention to strengthen the labour migration governance regime in the Lao People's Democratic Republic through the suite of legislation that has been enacted to improve regulation of the recruitment process. If properly enforced, the Labour Law, Decree 245, Agreement 1050, the Regulations of the Lao Employment Business Association and other instruments will make it more viable for Lao workers to migrate for work through regular channels and access labour and social protections – reducing their risk of exploitation and abuse.

Development of a comprehensive, coherent and well-implemented labour migration governance regime will not only protect migrant workers from hazardous and exploitative employment situations but also assist them to gain new skills, improve their standard of living and that of their families, and contribute to the social and economic development of the Lao People's Democratic Republic.

Examining the legislative framework for recruitment of Lao migrant workers through the prism of international labour standards and guidelines, the process of ratifying Convention No. 181 would likely require a relatively small number of reforms that would significantly help to ensure fair recruitment practices. The Lao PDR legal framework

already incorporates many of the labour standards set forth in Convention No. 181, as well as the guidance outlined in Recommendation No. 188 and the General Principles and Operational Guidelines for Fair Recruitment, including a clear commitment to the elimination of worker-borne recruitment fees.

The Government should strongly consider ratifying Convention No. 181 to take the next steps forward in improving protection of the rights of Lao migrant workers during recruitment and placement. Ratification would reaffirm the Government's commitment and give international visibility to its efforts, which deserve recognition for the progress achieved in strengthening its labour migration framework through social dialogue with tripartite stakeholders. In addition, ratification of this international standard will enable the Government to further improve the legal framework and its enforcement through access to technical assistance under the ILO supervisory mechanisms.

The ILO stands ready to provide any further technical support required by the Lao Government and social partners to facilitate the process of ratification for Convention No. 181 in the Lao People's Democratic Republic.

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