

International
Labour
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Country of origin complaints mechanisms for overseas migrants from Myanmar

International standards, current mechanisms and practices from other countries

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International Labour Organization
ILO Liaison Officer for Myanmar

Briefing paper was prepared by Kimberly Rogovin, Jackie Pollock and Thet Hnin Aye
in cooperation with Department of Labour.

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Abbreviations

AFFM	Agriculture and Farmers' Federation of Myanmar
ASEAN	Association of South East Asian Nations
ATIPD	Anti-Trafficking in Persons Division
ATTF	Anti-Trafficking Task Force
BNP2TKI	National Body for the Placement and Protection of Indonesian Migrant Workers
CoC	Code of Conduct
CTUM	Confederation of Trade Unions Myanmar
CSO	Civil Society Organization
DoL	Myanmar Department of Labour
DoFE	Department of Foreign Employment (Nepal)
FAST	Foreign Domestic Worker Association for Social Support and Training (Singapore)
HOME	Humanitarian Organization for Migration Economics (Singapore)
ILO	International Labour Organization
LEO	Labour Exchange Office
MEA	Ministry of External Affairs (Sri Lanka)
MMK	Myanmar Kyats
MMTU	Myanmar Maritime Trade Union
MOEAF	Myanmar Overseas Employment Agencies Federation
MOLIP	Ministry of Labour, Immigration and Population (Myanmar)
MoM	Ministry of Manpower (Indonesia)
MRC	Migrant Resource Centre
MWRN	Migrant Worker Rights Network
OWWA	Overseas Worker's Welfare Administration (Philippines)
PEA	Private Employment Agency
Php	Philippine Peso
POEA	Philippines Overseas Employment Administration
RA8042	Migrant Workers Act of 1995 (Republic Act 8042)
SLBFE	Sri Lanka Bureau of Foreign Employment
TIP	Trafficking in Persons
TWC2	Transient Workers Count Too (Singapore)
UN	United Nations

I. Objective of the briefing paper

In recent years, the Government of the Union of Myanmar has made migration management a priority, with commitments to strengthening the legal framework, reviewing bilateral agreements with countries of destination, regulating recruitment actors, and improving support services to migrant workers. Indeed, the governance of labour migration is a national, regional and a global priority; nevertheless, the normative framework governing international and internal migration in Myanmar and the region is still not robust enough to ensure the safety of those migrating or to increase the potential development benefits that migration could bring.

For this reason, the International Labour Organization (ILO) Myanmar Office will produce a series of briefing papers to provide technical inputs on particular migration issues for the drafting or reviewing of legislation relating to overseas employment. This initial briefing paper will focus on complaints mechanisms in the country of origin for migrant workers.

Section II highlights the main obligations of governments to provide avenues for complaint and redress as set out under international law and other key guiding documents. Section III identifies national legislation relevant to the establishment of a complaints mechanism and other options for redress through the court system.

Based on interviews with key national actors, Section IV presents the avenues for complaint currently available to overseas migrants, including the government complaints mechanism, embassies, the employment agencies federation, the court system, and civil society and labour organizations. This section notes successes and challenges in implementation as described by the various actors.

Section V looks at good practices and lessons learned from other countries of origin, namely Nepal, Indonesia, Sri Lanka and the Philippines. It analyses the benefits and drawbacks of using informal negotiations, administrative dispute resolution systems, embassies, labour courts, and regular court systems to address migrants' complaints.

Finally section VI makes recommendations for policy development in Myanmar which aim to: (6.1) Strengthen and expand the government complaints mechanism; (6.2) Improve the alternative dispute settlement systems; (6.3) Strengthen the role of embassies in addressing complaints; (6.4) Ensure greater awareness of complaints mechanisms; and (6.5) Prevent and address problems related to sub-agents and unlicensed brokers.

II. International legal framework and guidelines

A range of United Nations (UN) and ILO conventions provide guidance for origin countries to establish complaints mechanisms for overseas migrant workers, including the Migration for Employment Convention, 1949 (No. 97), the Migrant Workers Convention, 1975 (No. 143), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), and the Private Employment Agencies Convention, 1997 (No. 181).¹

In addition, there are several non-binding frameworks and international guidelines that expand upon the obligations in the international conventions, and provide more concrete guidance for implementation. These include the ILO Multilateral Framework on Labour Migration; the ILO Guide to Private Employment Agencies; the IOM-OSCE-ILO Handbook on Establishing Effective Labour Migration Policies in Countries of Origin and Destination; and recommendations from the 6th Association of South East Asian Nations (ASEAN) Forum on Migrant Labour.²

On protection of migrant workers, the ILO Multilateral Framework on Labour Migration provides guidelines on effective application of national laws and regulations in accordance with international standards as follows:

- a) Provide for effective remedies to all migrant workers for violations of their rights, and create effective and accessible channels for all migrant workers to lodge complaints and seek remedy without discrimination, intimidation or retaliation;
- b) Provide for remedies from any or all persons and entities involved in the recruitment and employment of migrant workers for violation of their rights;
- c) Provide effective sanctions and penalties for all those responsible for violating migrant workers' rights;
- d) Provide information to migrant workers on their rights and assisting them with defending their rights;
- e) Provide information to employers' and workers' organizations concerning the rights of migrant workers;
- f) Provide interpretation and translation services for migrant workers during administrative and legal proceedings, if necessary; and
- g) Offer legal services, in accordance with national law and practice, to migrant workers involved in legal proceedings related to employment and migration.³

¹ See Annex I for the status of Myanmar ratifications on these conventions.

² For detailed analysis of the international standards related to complaints mechanisms, see *Policy Brief: Equality of treatment for migrant worker complaints and benefit claims in Thailand*, Appendix 2, ILO's Tripartite Action to Protect the Rights of Migrant Workers in the Greater Mekong Subregion and International Programme on the Elimination of Child Labour; see also the *Thailand Migration Report 2014*, UN Thematic Working Group on Migration in Thailand, 2014, Chapter 8, http://th.iom.int/images/report/TMR_2014.pdf (accessed 27 April 2016).

³ *ILO Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration*, ILO, 2006, Articles 10.5 – 10.10, p. 20, http://www.ilo.org/wcmsp5/groups/public/@ed_protect/@protrav/@migrant/documents/publication/wcms_178672.pdf (accessed 21 March 2016).

The ILO Private Employment Agencies Convention, 1997 (No. 181) provides standards for the regulation of private employment agencies to ensure fair practices and help prevent human trafficking and other forms of exploitation. According to Article 10, employers and workers organizations should be involved in the process to investigate abuses and fraudulent practices concerning employment agencies.⁴ The ILO Guide to Private Employment Agencies recommends that employment agencies inform migrants of all possible complaint procedures during the pre-departure phase of migration, including information on diplomatic missions or labour attachés abroad.⁵

The international conventions and guidelines recommend adjudication systems as a last resort for addressing migrants' complaints, as court processes are typically expensive, time-consuming and present jurisdiction issues with regard to offences committed overseas. As such, dispute resolution, mediation and other alternative means to resolve complaints should be fully explored before resorting to administrative or judicial processes.⁶ However, when an administrative grievance procedure is chosen, it should take on an approach that allows for settlement among different parties and at different stages before choosing adjudication.⁷ To facilitate this approach, the IOM-OSCE-ILO Handbook on Establishing Effective Labour Migration Policies in Countries of Origin and Destination illustrates a three-tiered strategy, which is presented in Box 1.⁸

Box 1: International Handbook on Labour Migration Policies: Complaints Procedures

Tier 1 Private Employment Agencies (PEA)

In the event of abusive employment conditions abroad, the migrant should first contact the PEA that hired him or her. The PEA should then attempt to settle the dispute between the employee and employer amicably and by voluntary agreement.

Tier 2 Responsible State Authority

If Tier 1 fails, then the appropriate institutions should provide impartial and effective third-party assistance through conciliation, arbitration and mediation. Institutions should get in touch with their counterparts in the country of employment. Should the complaint be proven, the responsible authority should revoke or suspend the licences or satisfy claims for refunding.

Tier 3 Adjudication

Although prolonged and costly, this is the best way to deal with serious abuses of human rights in the recruitment process, including human trafficking. Complaints involving acts that are criminal in nature and require the imposition of penalties such as fines and imprisonment come within the jurisdiction of the courts.

⁴ The Private Employment Agencies Convention, 1997 (No. 181), Article 10, http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID:312326 (accessed 21 March 2016); see also the Private Employment Agencies Recommendation, 1997 (No. 188), http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0::55:P55_TYPE,P55_LANG,P55_DOCUM,ENT,P55_NODE:SUP,en,R188./Document (accessed 21 March 2016).

⁵ *Guide to Private Employment Agencies: Regulation, monitoring and enforcement*, ILO, 2007, p. 32, http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/instructionalmaterial/wcms_083275.pdf (accessed 21 March 2016).

⁶ Recommendations from the 6th ASEAN Forum on Migrant Labour, Principle 6 (see Annex II).

⁷ *Guide to Private Employment Agencies: Regulation, monitoring and enforcement*, ILO, 2007, p. 48.

⁸ *Handbook on Establishing Effective Labour Migration Policies in Countries of Origin and Destination*, OSCE; IOM; ILO, 2006, pp. 48-49, <https://www.osce.org/cca/19242?download=true> (accessed 21 March 2016).

ILO tools have also provided guidance on the role of foreign missions, in particular, labour attachés, in the protection of migrant workers. Related to assisting migrants with complaints and other problems, the guide recommends that labour attachés:

- a) Assist migrant workers who have issues with their employment (e.g. payment issues, violations of contract);
- b) Provide legal counselling and welfare assistance;
- c) Assist undocumented migrants who may also be victims of transnational crimes;
- d) In the case of death, coordinate the repatriation of remains and personal effects and ensure payment of compensation and benefits; and
- e) Establish good relations with relevant civil society groups and non-government organizations in the host country.⁹

A detailed set of recommendations for the creation of an effective and accessible complaints or grievance handling mechanism resulted from the 6th ASEAN Forum on Migrant Labour (see Annex II).

⁹ *The role of ASEAN labour attachés in the protection of migrant workers*, Policy Brief # 1, ILO, October 2015, http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/projectdocumentation/wcms_417372.pdf (accessed 28 April 2016).

III. National laws and other policies

The Law Relating to Overseas Employment

The Law Relating to Overseas Employment (1999) does not include a specific provision for the establishment of a complaints mechanism for overseas migrant workers; however, the law does contain several provisions that set out a right for workers to make a complaint, bodies responsible for migrant protection, and particular offences and penalties related to overseas employment which may be addressed in the courts.

Under the law, overseas migrants have a duty to report any unusual conditions of work to the employment agency in accordance with their employment agreement or other stipulations. Workers have “the right to claim through the service agent [employment agency] full compensation or damages to which he is entitled for injury sustained at a foreign worksite” and “has the right to take civil or criminal action for loss of his rights and privileges relating to overseas employment.”¹⁰

When workers’ rights have been violated, the law requires licensed employment agencies to “communicate with the overseas employer concerned and undertake responsibility for obtaining in full the rights and privileges ... of workers.”¹¹

The law establishes an Overseas Employment Central Committee and an Overseas Employment Supervisory Committee, both with a duty to communicate and coordinate with government departments, organizations and persons to “ensure there is no loss of rights and privileges of workers arising out of their employment”.¹² These committees are composed mainly of the Myanmar Ministry of Labour, Immigration and Population (MOLIP)¹³ staff, but also have places allocated for representatives from other government ministries and civil society or labour organizations. Both committees have the ability to make decisions on matters relating to the cancellation and revocation of employment agency licenses.¹⁴

According to Section 26 of the Law, “whoever performs the service agency functions without the license, shall on conviction be punished with imprisonment for a term which may extend to seven years and shall also be liable to a fine”. According to Section 29, “any service agent license holder who violates any of the rules, procedures, orders or directives issued under this law shall, on conviction be punished with imprisonment for a term which may extend to one year or with fine of 5,000 Kyats (MMK) or with both”.

Other national legislation

Employment agents, unlicensed brokers and other individuals involved in facilitating recruitment and migration may be prosecuted for a range of criminal offences under the Code of Criminal Procedure (1898), the Penal Code (1861) and The Anti-Trafficking in Persons Law (2005).

¹⁰ Law Relating to Overseas Employment (1999), Articles 24(a) and (b).

¹¹ Law Relating to Overseas Employment (1999), Article 25(d).

¹² Law Relating to Overseas Employment (1999), Myanmar, Articles 6(c) and 8(b).

¹³ Prior to April 2016, the ministry was named the Ministry of Labour, Employment and Social Security (MOLES).

¹⁴ Law Relating to Overseas Employment (1999), Articles 6(f) and 8(e).

Code of Conduct for Overseas Employment Agencies

Taking into account national and international law and other commitments, the Myanmar Overseas Employment Agencies Federation (MOEAF) developed a standard Code of Conduct (CoC) for registered employment agencies. It was developed in technical cooperation with the ILO and endorsed by MOLIP. The CoC should play an important role in preventing exploitation and abuse of migrant workers.¹⁵

The CoC sets out several responsibilities for employment agencies with regard to facilitating avenues for complaint or redress for overseas migrants. Employment agencies (that have signed the CoC) are required to cooperate with the government and civil society and labour organizations to ensure all migrants receive pre-departure training, which includes information about complaints mechanisms. In case of disputes arising due to breach of contract issues or any other rights violations, the CoC requires that employment agencies respond in a timely manner to migrants' needs, facilitate dispute settlement and, where requested, facilitate access to legal assistance to lodge a complaint with relevant agencies. Employment agencies are also advised to support migrant workers in changing employers when their rights have been violated under the law.

In case of emergencies, including serious injury or death of migrants, natural disasters, political unrest or armed conflict, the employment agency is required to "do everything possible to ensure the safety and, when necessary, the return of the migrant workers, keep the families of migrants well informed, and liaise closely with the Myanmar Embassy, Labour Attaches and Multilateral agencies".

If the employment agency has knowledge of cases of abuse, they must immediately inform the relevant bodies. In the case of trafficking or bonded labour, they should inform the Anti-Trafficking Police. In the case of labour exploitation, they should inform the Labour Department or the Police.

According to the CoC, employment agencies should also assist workers with recovering entitlements under the repatriation fund or any other lump-sum payments due to migrants upon completion of their contracts.

¹⁵ At the time of writing this paper, nearly 100 overseas employment agencies had signed the Code of Conduct and a launch was being prepared for August 2016.

IV. Origin country complaints mechanisms available to overseas migrants from Myanmar

a. Government complaints mechanism

To fulfill the needs of international and internal migrant workers, two complaints mechanism centres were initiated by the Migration Division within the Department of Labour (DoL) in Nay Pyi Taw and Yangon in mid-2013 with supervision from the Overseas Employment Supervisory Committee. On a daily, rotating basis, staff from the Department of Labour provide 24-hour service through a phone hotline. In 2015, two Myanmar Migrant Workers's Counters were set up in the departure and arrival lounge of the international airport in Yangon. These mechanisms are not yet formalized in any law or policy.¹⁶

Receipt and verification of complaints

Complaints by overseas migrants may be submitted by phone, email, in a letter or in person at one of the centres. Complaints may also be made at one of the 97 labour exchange offices (LEOs), which includes the 77 main offices and 20 small township offices. But only those LEOs that house migrant workers resource centres (MRCs),¹⁷ are currently equipped with the information and knowledge to provide effective services. Complaints received at the LEOs are then processed at the Migration Division of Labour complaints mechanism centre. Complaints may be submitted by overseas workers with an overseas employment identification card. Complaints may be submitted by the migrant themselves, or by family or friends, UN agencies, civil society or labour organizations, or other representatives on behalf of the migrant. Once complaints are received, an inquiry team composed of three or four representatives from MOEAF and the Labour Exchange Office, attempt to verify the complaint.

Types of complaints

Between December 2013 and March 2016, a total of 302 cases were addressed (see Table 1). The complaints are related to death or injury; missing persons; arrest; issues related to the employment contract including different nature of work or not receiving agreed upon benefits; financial problems with the fee charged by the agency; delayed job placement upon arrival in the destination country; and other issues. Among a total of 256 employment agencies were identified in the complaints, 11 agencies had their licenses temporarily suspended and nine agencies had their licenses revoked.

¹⁶ The information in this section about the complaints mechanism centres was gathered during a meeting with Department of Labour staff on 24 March 2016.

¹⁷ The ILO supported the establishment of MRCs with LEOs in Dawei, Meiktila, Myingyan, Kyaukse, Chan Aye Tha San and with Mawk Kon local development organization in Kyaing Tung, Shan State. IOM supported MRCs with LEOs in Mawlamying, Magway, Pha-An, Myawaddy and Yangon.

Table 1: Types of complaints received by the complaint mechanism centre¹⁸

Year	Total	Death	Injury	Missing	Arrest	Employ. contract	Recruitment fee	Other
July-Dec 2013	21	2	-	-	4	-	4	11
2014	85	35	7	4	6	10	4	19
2015	194	52	4	10	26	38	16	48
Jan-March 2016	2	-	-	-	-	-	-	2
Total	302	89	11	14	36	48	24	80

Addressing complaints

With regard to addressing complaints related to employment agencies, the DoL first negotiates between the employment agency and the worker. MOLIP has the power to suspend or revoke an employment agency’s license.¹⁹ MOLIP also has the power to compel an employment agency to compensate the worker when it deems necessary. If the agency cannot pay the compensation, it is taken from the 5 million kyats (US\$5,000) which the employment agency paid as deposit when it obtains its license. If the worker is not satisfied with the outcome of the negotiation, they may take up the case in a Myanmar civil or criminal court.

If MOLIP determines that the agency should be placed on the national blacklist, it submits the names of employment agencies associated with complaints to the Ministry of Planning and Finance. Agencies are placed on the blacklist for more serious violations, for example sending workers for employment to countries when Myanmar law prohibits it.²⁰

With regard to addressing complaints related to individual agents and unlicensed brokers, the DoL may first refer the case to the police who will check that the agent is a licensed representative or sub-agent of an employment agency with the ability to operate in that township. If the agent is licensed, the case will be negotiated with the employment agency as described above. If the agent is unlicensed, the DoL does not have the authority and all cases will be handled by the Ministry of Home Affairs and investigated by the Anti-Trafficking in Persons Division (ATIPD) and police officers regardless of the seriousness of the incident. According to Article 26 of the Law Relating to Overseas Employment (1999), an unlicensed broker can be punished with seven years imprisonment.

When the complaint involves an employer in the destination country, the worker can report the complaint to a labour attache or at the Myanmar embassy, if it is present in that country. If a migrant is arrested in the destination country, MOLIP may also negotiate and appeal to the host government on their behalf.²¹

¹⁸ Gender disaggregated data was not made available.

¹⁹ According to a Myanmar government directive, the Ministry of Labour has the ability to suspend the employment agency’s license for 1, 3 or 6 months or to revoke the license.

²⁰ For example, due to labour exploitation of domestic workers, the Myanmar government has banned emigration of female domestic workers since September 2014.

²¹ For example, in July 2014, 75 Myanmar nationals were detained for entering Malaysia with fake visas. The Myanmar Embassy identified that 14 of the 75 were holding real visas and a total of 20 people (those with real visas and elderly and children were deported). The remaining 55 individuals were sentenced to

Awareness of complaint mechanism

Overseas migrants should be made aware of the complaints mechanism and contact addresses in countries of destination by the employment agency during pre-departure trainings. During these trainings, the employment agency should provide the migrant with information regarding how to contact the employment agency, particularly if they have an office located in the employment country. Brochures on the complaints mechanism are distributed to migrants at the migrant reporting counter at Yangon international airport. As only a small percentage of migrants have access to pre-departure trainings and depart from the airport, awareness of the complaints mechanism options may still be low.

b. Myanmar embassies

Overseas migrants from Myanmar can file a complaint related to their employer with a labour attaché in a Myanmar embassy, or with general embassy representatives when an attaché is not posted in the embassy. In such cases where no attaché is present, the Myanmar embassy will contact MOLIP.

At the time of this briefing paper, labour attachés were stationed in Thailand (2, male), Malaysia (2, male) and Korea (1, male). Only an embassy is present in Singapore and only an embassy but no labour attachés exist in China, despite being the third most common destination country for Myanmar migrants.

At present, the roles and responsibilities of labour attachés are not formalized in any policy or directives. In Thailand, Malaysia and Korea, the labour attaché can organize a meeting with the worker, employer, employment agency and MOEAF (if all parties are available in the destination country). If the dispute cannot be settled in this manner, the Department of Labour in the destination country would be contacted.

one year imprisonment as per Malaysian law, but the embassy continues to make efforts to get relief and amnesty for them. See *Myanmar Five-Year National Plan of Action to Combat Trafficking 2014 Annual Progress Report*, The Ministry of Home Affairs, 2014, p. 9.

Box 2: Snapshot - Accessing complaints mechanisms in Singapore

Myanmar migrants in Singapore: 79,659 migrants; 40,581 female and 39,078 male (includes professionals and students, 2014 Myanmar population census).

Access to complaints mechanisms: Migrants can file a complaint with the Myanmar Embassy, the Singapore Ministry of Manpower (MoM) or migrant organizations, such as HOME, FAST or TWC2. MoM addresses all labour law/rights violations, while the police address all physical or sexual violence-related cases.

For migrants in Singapore, the Myanmar Embassy is the only place where migrants can file complaints with the origin country. Closer collaboration between migrant organizations and the embassy has made migrants more aware that they can file complaints with the embassy.

Challenges: The embassy lacks sufficient capacity and staff to deal with complaints. It is challenging for migrant organizations to follow-up on cases after they are handed over to the embassy and authorities in Myanmar.

Future improvements:

- ✓ Continued collaboration between the Myanmar Embassy and migrant organizations in Singapore.
- ✓ Deployment of a Singapore-based labour attaché.
- ✓ Increased coordination and information sharing between migrant organizations in Singapore and MOLIP, MOEAF and ATIPD to ensure proper follow-up on cases.

Source: Email interview with a Singapore-based migrant organization, March 2015.

c. Myanmar Overseas Employment Agencies Federation (MOEAF)

MOEAF is registered as a non-governmental organization representing private employment agencies in Myanmar.²² There are currently 240 licensed agencies within the federation responsible for sending migrants to work abroad. In 2013, MOEAF established offices in Yangon (headquarters), Bangkok, Thailand and Kuala Lumpur, Malaysia, although the Kuala Lumpur office was closed in March 2015.

Submission and type of complaints

Regular migrants, whose recruitment was facilitated by a MOEAF member agency, may submit complaints related to their overseas employment to any MOEAF office in person, by letter or by calling a 24-hour hotline. MOEAF receives complaints related to breach of contract issues, overcharging of recruitment fees, delayed or non-payment of wages, forced overtime, difficult nature of a job, accommodation problems, placement with a company that is different from expected, and cases of physical violence. The majority of cases received occur in Thailand, as well as in Malaysia, Singapore, Japan and countries in the Middle East.²³

All cases are recorded at MOEAF offices in Thailand and Malaysia and are reported back to the headquarters on an annual basis. MOEAF estimates that 12-15 cases are received per month in Thailand, which amounts to an estimated 504 complaints over the course of three years.²⁴

Investigation and mediation of complaints

When a case is received by MOEAF, they first have to report the case to MOLIP and to submit a report on the progress. Then they will investigate the details of the case, identify the location of the migrant and identify which employment agency facilitated the recruitment. The investigative officers are representatives of employment agencies, assigned on a rotating basis.²⁵

With regard to the investigation of cases in Thailand and Malaysia, MOEAF officials will investigate the case in person, and will first try to settle the dispute between the worker and the agency. MOEAF also visits factories and work sites to negotiate between employers, agencies and workers. Civil society organizations (CSO) or labour organizations sometimes accompany migrants to these negotiations. According to MOEAF, this type of in-person investigation is not yet possible in Japan, Singapore and Middle Eastern nations, as MOEAF does not have offices in those countries and it is too far, costly and complicated to travel regularly to address complaints.

²² Most of the information in this section was gathered when the ILO spoke with U Win Tun and Ko Lay from MOEAF on 1 April 2016 regarding its complaints mechanism for overseas migrants.

²³ According to MOEAF officials, this is due to a lack of compliance with labour laws by employers in Thailand, compared with employers in other countries of destination.

²⁴ MOEAF was unable to share the record of complaints with the ILO at the time of the meeting.

²⁵ According to MOEAF officials who spoke to the ILO, there are guidelines related to investigating complaints, but could not be shared at that time.

Coordination with MOLIP

If the dispute cannot be solved in the destination country, MOEAF will try to settle the dispute between the worker and agency in Myanmar. If MOEAF efforts are unsuccessful in solving the dispute for any reason or the worker is not satisfied with the outcome, the worker can submit the to MOLIP. In some cases, MOEAF and MOLIP officials will undertake additional negotiation efforts together.

Repatriation and remuneration

When complaints related to breach of employment contract and accommodation issues cannot be addressed by the above methods, MOEAF will facilitate the repatriation of the worker. In such cases, the employment agency is required to reimburse the worker for the legal recruitment fees.²⁶ According to MOEAF, employment agencies are typically unwilling to provide any additional compensation. Thus, in practice, migrants are typically not compensated for time lost, recruitment fees above the legal amount, or unpaid wages. MOEAF explained various scenarios in which this occurs, which are highlighted in Box 3.

²⁶ The legal recruitment fee is US\$2,800 to send interns to Japan; between US\$1,880 to US\$4,400 for Singapore; US\$850 for Malaysia; and for Thailand, it is MMK 150,000 and an additional THB 10,000 for the medical checkup and work permit in Thailand.

Box 3:

Scenarios in which migrants are denied compensation beyond the recruitment fee

1. A migrant reports a complaint directly to CSOs/NGOs and then returns to Myanmar. In such cases, MOEAF does not have any evidence of problems at the worksite and is unable to negotiate with the employer for compensation or require that it be paid by the employment agency. **This case highlights the need for improved coordination and trust building between MOEAF and CSOs/NGOs in complaints handling.**
2. A migrant is in debt to the employer and the employment agency pays off that debt when the worker is repatriated
3. The agency is then unwilling to pay any compensation to the worker. **The debt typically results from an inability of a migrant to pay for common costs associated with migration. This highlights a need for a welfare fund or other strategy to prevent migrants from going into debt to employers.**
4. A migrant finds themselves in a situation where they are employed by a different company than the one listed on their overseas worker identification card (smart card). But the employment agency finds they are employed by the correct company and refuses compensation. **According to MOEAF, this problem occurs when the employment demand letter includes two company names, a larger company with the legal ability to request workers, and does so on behalf of a smaller company, which is the actual employer. The incorrect company name (the larger company) is used on the 'Overseas Worker Identification Card'.**
5. A migrant is recruited by an unlicensed broker who is working with a sub-agent of a licensed employment agency. The broker arranges a general business passport, as opposed to a passport for a specific job, and the migrant is unable to undertake employment in the destination country. In these cases, the employment agency feels they cannot be held responsible for recruitment arranged by a broker (see more on problems of sub-agents below).

When the complaint is about physical or sexual violence in Thailand, the case is reported to the Royal Thai police and MOEAF does not play a role except to arrange repatriation with the embassy if needed. The Myanmar Embassy in Malaysia typically deals with cases of migrants being held in detention centers in Malaysia. However, in 2014, MOEAF and MOLIP issued a letter to the Malaysian Ministry of Home Affairs advocating for improved cleanliness of food and sleeping quarters.

In Thailand, migrants can change employers only in certain conditions, the employer's death, an employer's activities cease, an employer breaches the rights of workers or commits a violent act, or the employer does not act in accordance with the labour protection laws. In the latter condition, the migrant must make an official report before

being allowed to change employers.²⁷ Where the conditions comply with the regulations, MOEAF can assist the worker in negotiating a new contract with a different employer. Due to national laws in Japan, Singapore and Malaysia, MOEAF is unable to assist migrants in switching employers; the worker can choose to complete the contract or in some cases, they run away. MOEAF has not received any complaints from workers in the hotels and tourism industry in the United Arab Emirates.

Irregular migration of domestic workers

According to MOEAF, all migration of domestic workers to Singapore, Hong Kong and other countries has been facilitated by non-MOEAF member employment agencies or by unlicensed brokers since the Myanmar government banned the emigration of domestic workers in September 2014. In practice, female domestic workers continue to migrate abroad but are unable to claim their rights under national law in destination countries and now face exploitation and abuse by employers. In these cases, MOEAF has no legal authority to provide assistance, but has provided some assistance informally or reported cases to ATIPD.

Prior to the ban, domestic workers going to Singapore received professional training by the sending agency at a training center in Myanmar. According to MOEAF, these skills, in addition to protection under the law through legal emigration, prevented exploitation from occurring among the majority of migrants. MOEAF advises removing the ban on emigration of domestic workers to afford them more protection.

Sub-agents

Overseas migrants also report problems related to the overcharging of recruitment fees and exploitation and abuse by sub-agents. Sub-agents are hired by employment agencies to carry out recruitment roles throughout the country. According to government policy, in order to hire sub-agents, the employment agencies need to submit the name list of sub-agents to operate in a specific township to MOLIP for its authorization. According to MOEAF, sub-agents often charge more than the legal recruitment fee because that fee does not include a fee for the sub-agent's work.

Some overseas employment agencies will pay the sub-agent MMK 20,000 per recruited worker, but this is not a consistent practice. According to MOEAF, government policy should contain a provision to require agencies to pay a certain amount of money to each sub-agent as a fee. Once such a policy is implemented, employment agencies could hold sub-agents accountable and could raise awareness among migrants regarding the legal sub-agent fee. At the present time, MOEAF does not have guidelines for member overseas employment agencies with regard to hiring sub-agents. There is a contract between the sub-agent and the agency, which could be amended to include provisions that prevent exploitative practices and hold agents accountable.

²⁷ Thai Cabinet Resolution, 19 January 2010. Restrictions on changing employers have been included in Cabinet Resolutions since the Cabinet Resolution of May 18th 2006. For additional information, see "Review of the effectiveness of the MOUs in managing labour migration between Thailand and neighbouring countries," ILO Regional Office for Asia and the Pacific, Bangkok, 2015, p. 21, http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_356542.pdf (accessed 28 April 2016) and "Migrant Movements, 1996 – 2010", MAP Foundation, Chiang Mai, 2010, p 78 http://www.mapfoundationcm.org/pdf/eng/MigrantMovements_1996-2010.pdf (accessed 01 May 2016)

Furthermore, sub-agents often work with unlicensed brokers, who recruit workers in their own communities. In practice, this has meant that overseas employment agencies are hiring workers through brokers, with no mechanism for holding the brokers accountable.

Monitoring

MOEAF maintains a blacklist of Thai (8) and Malaysian (7) companies. MOEAF-member employment agencies are not permitted to accept recruitment demand letters from the blacklisted companies. Such companies were placed on the blacklist due to: significant delays in production of work permits; allowing workers in their factories to be arrested during police raids; non-payment or delayed payment of wages; or breaching workers' rights under national law. In collaboration with MWRN, MOEAF also maintains a black list of Thailand-based employment agencies (6).

Awareness

MOEAF informs migrants of its Complaints Mechanism Centers during its pre-departure trainings. At the present time, these trainings are only available to migrants going to Malaysia. Between September 2014 and March 2016, MOEAF provided pre-departure training to 56,300 overseas migrants (48,912 male and 7,388 female) with job placements in Malaysia.²⁸

If permitted by the new Myanmar government and if adequate resources are obtained, MOEAF plans to re-open the complaints mechanism centre in Malaysia and institute new centres in Japan, Singapore and United Arab Emirates (UAE).²⁹ In Thailand, MOEAF plans to appoint a licensed lawyer, emergency transport system and a media representative to increase the capacity of the office to assist migrants, and create a shelter where migrants can stay while their case is processed. MOEAF also plans to coordinate further with CSOs and labour organizations to provide pre-departure trainings to more overseas migrants.

d. Anti-Trafficking in Persons Division

In 2013, the Myanmar government established a special division within the Myanmar Police Force, the Anti-Trafficking in Persons Division (ATIPD), composed of 340 personnel and Anti-Trafficking Divisions (3), Anti-Trafficking Units (18), Anti-Trafficking Task Forces (11) and Child Protection Units (3) in select areas throughout 15 Regions and States and Nay Pyi Taw Council Area. ATIPD maintains a 24-hour hotline and potential cases of human trafficking can be reported via the hotline or at the ATTF offices. These units work in partnership with the police to investigate reports of human trafficking.

As can be seen in Table 2, international human trafficking cases identified by ATIPD occurred in China, Thailand and Malaysia. The cases from China relate mostly to forced marriage and sexual exploitation, while those in Thailand and Malaysia were mostly labour exploitation and sexual exploitation cases.³⁰

²⁸ MOEAF official pre-departure training record; provided to the ILO on 1 April 2016.

²⁹ The only method for recruitment to Japan is through the Japan International Training Cooperation Organization (JITCO) Intern Training Program. Under this program, Myanmar workers should be provided with skills training in Japan, but this has not always happened in practice.

³⁰ Data obtained from the Myanmar Five-Year National Plan of Action to Combat Trafficking 2014 Annual Progress Report, The Ministry of Home Affairs, 2014; the Myanmar Five-Year National Plan of Action to

e. Court system

Migrant workers can use Myanmar's regular court system to hold perpetrators accountable and seek redress for crimes under various laws, as described below.

Law Relating to Overseas Employment (1999)

According to Section 26 of the law, anyone who recruits migrants without licenses can be sentenced with seven years imprisonment and a possible fine. In 2014, Section 26 of the Overseas Employment Act was used in four instances, with three cases resulting in 1 to 1.5 years imprisonment with labour.³¹

Under Section 29 of the law, any licensed holder who is determined to violate any aspect of the rules and regulations, ministerial order or directives can be sentenced with one year imprisonment or with a fine of MMK 5,000 or both.

Anti-Trafficking in Persons Law (2005)

When a potential human trafficking case is reported to the police or to ATIPD, specially trained ATIPD officials will investigate the case. The Myanmar Central Body for Suppression of Trafficking in Persons (Ministry of Home Affairs) works in collaboration with the Union Attorney General's Office to sanction cases for prosecution under the law.

In 2015, 93 prosecutions under the Anti-Trafficking Law were ongoing from previous years and 130 new cases were received. In 2015, a verdict was given for 37 cases. 30 additional cases were received in 2016 but prosecutions have not resulted in any verdicts thus far.³²

According to the law, trafficked persons have a right to monetary compensation. As per Articles 22 and 23, the Central Body was to establish and administer a fund with money supported by the government and money donated from local and foreign sources. According to Article 33, once a court makes a determination on a particular case, it may pass an order for confiscation or disposal of the property of the traffickers, which would be subsumed into the fund. The court may also pass an order to pay damages to the trafficked victim from the fund.

In practice, there have been many challenges in implementing the fund. The Central Body has not been able to accrue very much money into the fund and little money has been seized from traffickers. In 2013, victims were provided with compensation amounting to MMK 10,000 or MMK 40,000 by district courts.³³

Combat Trafficking 2013 Annual Progress Report, The Ministry of Home Affairs, 2013; and telephone correspondence with ATIPD officials regarding 2015 – 2016 cases, 8 April 2016.

³¹ See *Myanmar Five-Year National Plan of Action to Combat Trafficking 2014 Annual Progress Report*, The Ministry of Home Affairs, 2014, p. 29.

³² 2015 and 2016 information provided to the ILO by an ATIPD official by phone on 7 April 2016.

³³ See *Myanmar Five-Year National Plan of Action to Combat Trafficking 2013 Annual Progress Report*, The Ministry of Home Affairs, 2013, p. 26.

Table 2: Reported international human trafficking cases (2013 – 2016)

Year	Destination country	# Cases reported
2013	China	59
	Thailand	23
	Total	82
2014	China	77
	Thailand	18
	Malaysia	3
	Total	98
2015	China	80
	Malaysia	13
	Thailand	21
	Total	114
2016 (Jan. - March)	China	26
	Malaysia	1
	Thailand	3
	Total	30

f. ILO forced labour complaints mechanism

In 2007, the Myanmar government and the ILO reached an agreement to implement a forced labour complaints mechanism, which gives residents of Myanmar the right to lodge complaints on cases of forced labour, including underage recruitment, forced recruitment, human trafficking for forced labour, and bonded labour. The ILO Liaison Officer determines if the case amounts to forced labour and discusses such cases with the High Level Working Group on Forced Labour established by the government. The Working Group then refers the cases to the relevant ministry/department to be addressed.³⁴

The majority of the cases received into the mechanism relate to underage recruitment and forced labour occurring within the country, but cases related to overseas migrants are also submitted. Between 2013 and March 2016, the ILO received 29 complaints from overseas migrants. These complaints were from migrants in Thailand (10), Malaysia (7), Singapore (4), China (4), Indonesia, Japan, Republic of Korea and Egypt. The cases relate mostly to human trafficking for forced labour, as well as to missing persons; unpaid wages and other labour law violations; and issues related to illegal migration. The complainants are typically the relatives of the migrants.

With regard to human trafficking for forced labour cases or other labour exploitation, the ILO assists the complainants in reporting the case to ATIPD and the MOLIP complaints mechanism and in certain cases, collaborates with unions or CSOs and embassies to locate missing persons, facilitate compensation payments, or follow up on documentation.

g. Civil society organizations and labour organizations

Overseas and internal migrants can report complaints to several CSOs and labour organizations in Myanmar. Among others, these include the Confederation of Trade Unions Myanmar (CTUM) and its members - the Myanmar Maritime Trade Union (MMTU), the Agriculture and Farmers' Federation of Myanmar (AFFM-CTUM), Agriculture and Farmers' Federation of Myanmar (IUF), as well as members of the CSO and LO Network for Migrants, Yangon and other CSOs such as the Mawk Kon Local Development Organization in Shan State.³⁵

Civil society and labour organizations receive a range of different types of complaints against employment agencies, agents, unlicensed brokers and employers. The complaints relate to overcharging of recruitment fees and other fraudulent offences committed by recruiting agents, breach of contract issues, occupational injuries and deaths, labour abuse and exploitation, and human trafficking cases. The complaints sometimes come from a family member stating they have lost contact with the worker, which is common for fishermen.

³⁴ To read more about the complaints mechanism, see the Supplementary Understanding between the Government of the Union of Myanmar and the International Labour Organization (2007), www.ilo.org/yangon/info/meetingdocs/WCMS_106131/lang--en/index.htm (accessed 26 April 2016).

³⁵ For this report, interviews in Myanmar were held with CTUM, MMTU, 88 Generation Open Society and MAP Foundation, Thailand, Home Singapore, Health Initiatives, Malaysia responded to email questionnaire.

These organizations typically do not have formal mechanisms for receiving complaints, but rather receive individual complaints by phone, email or on different forms of social media. For example, CTUM typically receives complaints by phone, while 88 Generation Open Society staff receive complaints via their personal and organization Facebook accounts. The organizations use basic methods for recording complaints, such as paper filing systems, notebooks and Microsoft Word. Notably, MMTU keeps a detailed record of unpaid wages for Myanmar seafarers on fishing vessels.

When possible, organization representatives will investigate and verify the complaint, and play a mediation role between the migrant and various actors. In practice, the organizations liaise with their affiliate offices or civil society and labour organizations in destination countries, as well as MOLIP, MOEAF and ATIPD to address complaints. CTUM reports cases of non-payment of wages, occupational injury or death to CTUM staff in Thailand, who will negotiate with the employer for compensation according to Thai labour laws. MMTU has staff based in Bangkok and collaborates with the Seafarers Union of Burma (SUB) and the Thai police to investigate cases, and has collaborated with South African unions and the government to search for workers when they come to shore. 88 Generation Open Society has collaborated with MOEAF to negotiate with employers to release workers from exploitative work and to repatriate workers. 88 Generation has also collaborated with the Singapore-based INGO, HOME, to gain financial assistance for injured domestic workers while they are still in Singapore. Mawk Kon in Shan State has liaised with MAP Foundation in Chiang Mai to locate missing persons and share information with migrants' families of migrants who have been arrested or are in hospital.

Civil society and labor organizations report trafficking related cases to ATIPD. If the organization is unable to settle the dispute or if it relates to a serious issue, they will transfer the complaint to the MOLIP complaints mechanism centre.

Labour organizations also play an important role in raising awareness among the general population on safe migration practices. Between 2013 and 2015, CTUM, AFFM, MMTU, and other organizations have run pre-departure trainings in various locations for potential migrant workers, which include information about how to submit complaints to a range of actors once abroad.

V Policies and practices and lessons learned from countries of origin

This section looks at policies and practices and lessons learned from Nepal, Indonesia, Sri Lanka and the Philippines in regards to origin country complaints mechanisms for overseas migrants.³⁶ These countries have a similar set of options for migrants to claim their rights and seek redress, but differ greatly with regard to their level of formalization under the law and accessibility and effectiveness for migrant workers. The avenues for complaint include: an administrative complaints mechanism with some adjudicative authority; a specialized labour court; the regular court system; services provided by embassies; and informal negotiation. For a breakdown of the practices and lessons learned described in this section, see the table in Annex VI.

a. Nepal

In Nepal, the Department of Foreign Employment (DoFE) is the chief agency charged with handling complaints from migrant workers. It has the ability to investigate complaints related to employment agencies and individual agents and adjudicate over some cases, while a Foreign Employment Tribunal adjudicates over more serious cases and those that relate to individual agents. The DoFE mechanism and the Tribunal are governed by the Foreign Employment Act (2007) and the Foreign Employment Rules (2008).

Avenues for complaints in Nepal:

- ✓ DoFE complaints mechanism.
- ✓ Foreign Employment Tribunal.
 - ✓ Court system.
 - ✓ Embassies.

The Act also sets out a statute of limitations for minor offences under the act, with no statute of limitations for more serious crimes. The Act specifies the type of documents required to submit a complaint and, in recognition that migrants do not always have access to travel or employment documents, the Act permits copies of documents to be used for complaints proceedings.³⁷

While the Act is open to hearing a complaint from any person, in practice, DoFE officials are unclear about whether they can actually take claims from irregular migrants. Another issue, is that the DoFE mechanism has only an office in Kathmandu with no representation in any other part of the country.³⁸

DoFE investigative officers are experienced government lawyers charged with certain investigative powers. They can summon the accused to make a statement and detain them for a limited period of time. While this investigation system is robust, insufficient numbers of officers and resources have prevented thorough investigation of employment agencies or agents implicated in cases. While given powers of the police, the officers are not trained in investigative police techniques and regular police officers are not included in investigations, which has led to a range of problems.³⁹

³⁶ While not included in this briefing paper, the complaints handling system in Cambodia also offers good practices. To read about this system, see *Assessment of the complaints mechanism for Cambodian migrant workers*, GMS TRIANGLE project, Phnom Penh, ILO, 2016, http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_466494.pdf (accessed 28 April 2016).

³⁷ *Migrant Workers' Access to Justice at Home: Nepal*, Open Society Foundations, 2014, pp. 92-93.

³⁸ *Ibid.*, p. 107.

³⁹ *Ibid.*, p. 108.

The DoFE also has the power to adjudicate certain cases in which the accused is an agency, including key offenses such as excessive recruitment fees, fraud or failure to pay compensation as ordered.⁴⁰ It has the ability to order the payment of fines, suspension or revocation of licenses and order compensation to be paid to the worker. Notably, the DoFE has the authority to hold recruitment agencies partially liable for exploitation committed by the employer in the destination country.⁴¹

The Act also lays out provisions for the enforcement of DoFE decisions. In cases when the employment agency does not pay the compensation to the worker, the DoFE may take it from the cash deposit the agency paid to become licensed. If the amount is insufficient or the agency refuses, the fee can be recovered from the agency's assets. In practice, the Act does not establish clear enough guidelines for evaluating claims or resolving cases, which has resulted in a very informal process of reviewing evidence, making a decision and estimating the amount of compensation.⁴²

As the offenses under the Act are criminal, parties are not permitted to independently negotiate a settlement or withdraw a complaint that alleges violations of the Act. Restricting dispute settlement to the DoFE (and the Tribunal) aims to get a just outcome for the worker through a formal process, but has presented some challenges. The Act does not establish guidelines for resolving every possible type of case and migrants and their families are not always able and willing to go through the adjudication process and return regularly to Kathmandu. As a result, civil society organizations have negotiated settlements between workers and agencies or brokers. In some cases, DoFE officers have settled cases outside of the proscribed process or allowed for a lower amount than as set out in the law.⁴³

The Foreign Employment Tribunal is comprised of three members and is chaired by the judge of the appellate court. It is designed to deal with cases promptly; in theory, a case may be received and registered on the same day; the hearing will be set and the judge will give their verdict on the same day of the hearing. One issue is that, cases submitted to the Tribunal from the DoFE often do not contain adequate information and are not heard by the court. The Tribunal also does not have the power to enforce its decisions and the victim must make a separate application to a district court. This process serves as a major disincentive for migrants to participate in the process when the compensation cannot be guaranteed by the Tribunal. Further, the court is located in Kathmandu and migrants do not want to travel back and forth at their own expense.⁴⁴ For all of these reasons, the number of cases heard by the court is very low.⁴⁵

A third avenue for complaint is Nepal's regular court system, where migrants may seek redress for violations of the human trafficking act or the civil code. Criminal proceedings usually begin with a complaint filed at the police station, after which the case is

⁴⁰ Ibid., p. 96.

⁴¹ Ibid., see p. 96 and Table 6, on p. 97 for a list offences for which DoFE is authorized to make determinations.

⁴² Ibid., p. 96 and 101.

⁴³ Ibid., p. 103.

⁴⁴ All procedures for filing cases; detention, bail and hearings; decisions, execution and enforcement are outlined in the Act and related Rules for the Tribunal; Ibid., p. 111 – 113.

⁴⁵ In 2012/13, just 178 cases were registered at the tribunal; Ibid., p. 113.

investigated and prosecuted by a district attorney. The decision can be appealed to the Supreme Court. Nepal's courts are known for being costly, complex and inaccessible to the poor. In addition, there is a lack of clarity over jurisdiction related to migrant worker cases (between the DoFE, the Tribunal and the normal court system), and there is a chance that the Supreme Court would find that the district court did not have jurisdiction over the case.⁴⁶

Nepali citizens can also seek assistance on labour issues from an embassy. Nepal has embassies in most destination countries of migrant workers and the Foreign Employment Act requires that labour attachés are posted in destination countries where 5,000 or more Nepali migrant workers are based.⁴⁷ Unlike the above mechanisms, embassies deal with legal issues pertaining to actors in the destination country. Attachés provide counsel regarding the employment contract, refer workers to local lawyers, register cases at labour courts, assist workers with collective grievances, provide translation services, and assist with the repatriation of workers.⁴⁸

In Nepal, the responsibilities of labour attachés to assist migrants are not formalized in any law or policy, which has led to confusion among embassy officials regarding which services should be provided. This also prevents workers from requesting assistance as a right. At present, the embassy has not provided any financial assistance or accommodation for migrants going through court proceedings in the destination country, which has resulted in workers giving up on litigation and accepting a plane ticket home. Migrants were also unaware of the services provided by embassies, as they were not informed of them during the pre-departure phase.⁴⁹

b. Indonesia

In Indonesia, Law 39/2004 requires that migrants and employment agencies negotiate their disputes informally before submitting a complaint to the government. Such negotiation is also the only option for workers in disputes with individual brokers who are not subject to regulation. While the law does not establish a procedure for informal negotiation, communities have learned strategies from each other. Typically, a local authority or CSO assists the worker to gather documents and contact the accused. Negotiations range from informal conversations to formal meetings in which representatives present evidence and request redress. Disputes may be discussed by letter or phone, but in-person meetings have usually achieved a better result.⁵⁰

Avenues for complaints in Indonesia:

- ✓ Informal negotiation.
- ✓ MoM/BNP2TKI Dispute Resolution.
- ✓ Court system.
- ✓ Embassies.

Informal negotiation presents certain challenges. There is no mechanism to compel employment agencies to participate or to provide relevant documents, while negotiations

⁴⁶ Ibid., p. 117.

⁴⁷ See The Nepal Foreign Employment Act, Section 68. Labour attachés are posted in eight countries: Bahrain, Kuwait, Malaysia, Oman, Qatar, the Republic of Korea, Saudi Arabia and the United Arab Emirates.

⁴⁸ Ibid. 126-127.

⁴⁹ Ibid., pp. 128 – 130.

⁵⁰ *Migrant Workers' Access to Justice at Home: Indonesia*, Open Society Foundations, 2013, pp. 71-74.

with agents can be difficult as some disappear after arranging recruitment. Those who can be contacted often deny any responsibility or blame an agency. In person meetings can be intimidating for workers or expensive if it involves travel to Jakarta. While the law only specifies negotiation between an agency/agent and worker, negotiations also occur with employers, which in practice has prevented workplace problems from escalating.⁵¹

Beyond informal negotiation, a claim may be filed with a government agency, followed by a process of mediation. Law 39/2004 authorizes the Ministry of Manpower (MoM) to assist in resolving disputes and to sanction recruitment agencies. In practice, complaints are submitted to MoM through one of their eight offices, as well as through the National Body for the Placement and Protection of Indonesian Migrant Workers (BNP2TKI) crisis center hotline or to the Ministry of Foreign Affairs.⁵²

Despite the powers granted by law to MoM, officials are unclear about their responsibilities to resolve disputes and have taken mostly a facilitation role. Some senior MoM officials have also stated that all complaints should be received through BNP2TKI.⁵³

In the absence of any formal operating procedures prescribed by law, BNP2TKI developed a standard operating procedure for resolving migrant worker disputes and service standards for migrant worker protection (see Annex III). The procedures provide guidelines for receiving, verifying, and registering a complaint as well as a process for mediation including responsibilities of the mediator. If the recruitment agency does not agree with the outcome, BNP2TKI will suggest that MoM sanction the agency.⁵⁴

This type of administrative dispute resolution is much less expensive than litigation through the courts, as neither BNP2TKI nor MoM charge a fee. It also gives civil society a chance to represent workers and can be empowering for workers too, by providing a forum in which they may receive counsel and education about the process. As mediation is limited to parties who are based in Indonesia and recognized under the law, the process works best for claims for unpaid wages or for reimbursement of pre-departure fees.

This process is limited in that it is not legislated in any way. It also does not have an internal appeal process if the migrant is dissatisfied by the outcome of mediation. Geographic distance is also a barrier, as the law requires complaints against agencies to be negotiated at a local MoM office, which typically takes place in Jakarta since most of the recruitment agencies are based there. It has also been difficult for migrants to gather all the necessary documents and to find skilled representation for mediation. As with informal negotiation, there is no mechanism to enforce the agency to attend or to provide copies of documents. Additionally, the law does not set benchmarks for financial or other penalties and the system lacks any guarantee of confidentiality or other protections.⁵⁵

⁵¹ Ibid. pp. 71-74.

⁵² Since 2008, BNP2TKI has provided dispute resolution services from its crisis center in Jakarta and established the Hello TKI hotline in 2011. It received more than 200,000 calls and registered 7,601 complaints in its first year of service; Ibid., p. 76.

⁵³ Ibid., p. 75.

⁵⁴ To read the step-by-step dispute resolution and mediation process, see Ibid., pp. 78 and 80.

⁵⁵ Ibid., pp. 81-85.

If disputes cannot be resolved through mediation, a regulation requires officials to direct parties to the district courts. Migration-related crimes can be prosecuted under the Penal Code, such as fraud, abduction of children, child labour and deprivation of liberty. However, there are rarely prosecutions of such kind as the statute of limitations is too short (6 months) and complaints may only be filed by the migrant themselves.⁵⁶

Prosecutions can also take place under Indonesia's Anti-Trafficking Law (2007), which includes witness protection and the right to restitution. Notably, if a corporation (such as an employment agency) is found guilty under the law, the managers and board can be held liable and heavy financial and other penalties imposed. The trafficking law is still not widely used, as the penalties are extremely high and criminal justice practitioners are less familiar with the law.⁵⁷

In general, criminal justice prosecution has the benefit of highlighting cases of abuse and giving migrants and their families a greater sense of justice than which can be achieved through informal negotiation or an administrative dispute system. At the same time, it is very difficult to obtain evidence of what occurred abroad, litigation is expensive and slow, and migrants are unable to hire sophisticated legal representation. In Indonesia, migrants frequently report criminal acts committed by individual brokers to the police, but prosecution rarely results. In court proceedings, the victim is more disempowered compared with negotiation and dispute resolution. The nature of the judicial system in Indonesia is also very closed and there is a strong perception of corruption and nepotism, which dissuades most people from using the courts.⁵⁸

A fourth avenue for complaint is through embassies abroad, for which Indonesia offers good guidance compared with Nepal. Law 39/2004, presidential directives and MoM regulations contain provisions that embassies and labour attachés should advocate for migrants' rights under national law, provide dispute resolution services between workers and employers, coordinate with local law firms, and can request police attachés as needed. Indonesia-based recruitment agencies are also required to assist the embassy in providing protection and legal aid to the migrant worker during the placement period.⁵⁹

With regard to complaint resolution by embassy officials, a Ministry of Foreign Affairs standard operating procedure sets out the procedures for foreign missions to handle different kinds of cases. The process is similar to the BNP2TKI system but addresses problems in the destination country related to the nature and conditions of work.⁶⁰

Overseas migrants are aware of this embassy service and regularly file complaints and seek redress (16,000 cases received in 2010). While the law and directives provide significant guidance, they do not provide guidance on case selection or prioritization, nor do they contain time-lines or guarantee a right of the worker to information. In some cases, migrants feel they have no choice except to accept the resolution.⁶¹

⁵⁶ Ibid., p. 99-102.

⁵⁷ Ibid., p. 102-103.

⁵⁸ Ibid., p. 103-107.

⁵⁹ Ibid., p. 107-111.

⁶⁰ Ibid., p. 111.

⁶¹ Ibid., p. 112-116.

Embassy staff in Indonesia have played an important role in preparing workers for repatriation by ensuring they have all the necessary documents related to their employment and for any potential redress they may seek. Crucially, embassies are required to provide shelter for workers who are involved in court proceedings (nearly 11,000 migrants in 2010). However, there are issues of overcrowding and migrants are not permitted to leave the embassy grounds nor do they have any legal status in the country once they leave their employer; these factors serve as a disincentive to bring a case abroad.⁶²

c. Sri Lanka

Since 2007, Sri Lanka has had a Ministry dedicated to migrant workers, which was renamed the Ministry of Foreign Employment in 2015. The Sri Lanka Bureau of Foreign Employment (SLBFE) under this Ministry operates a grievance handling mechanism for complaints related to migrant workers. SLBFE collaborates with the Ministry of Foreign Affairs and Ministry of Labour and Welfare to take remedial action for non-payment of wages and harassment of workers abroad and are exploring ways to assist migrants who get stranded or fall into difficulty. They have also jointly set up a system whereby migrants who have registered with SLBFE can be traced by their families.⁶³ The SLBFE has a Conciliation Division run by two managers under the direct supervisor of a Deputy General Manager with a team of around 16 Conciliation Officers and support staff who are mostly female. The Division is computerized with on-line input of information and dissemination links with Sri Lankan missions overseas, relevant state agencies and local recruitment agencies. The system for receipt and registration of complaints is technologically advanced and offers best practice in the region.⁶⁴

Avenues for complaints in Sri Lanka:

- ✓ SLBFE grievance handling mechanism.
 - ✓ Conciliation Division.
 - ✓ Foreign Relations Division.
 - ✓ Sociologist Division.
- ✓ Embassies/Consulates.

An operational manual for labour sections of Sri Lankan diplomatic missions in destination countries outlines the details of handling grievances/complaints of migrant workers.⁶⁵ The officer should decide which modality is to be taken to deal with each complaint. Available modalities include negotiating with the workers, negotiating with the sponsor, employer or agent or taking legal action within the system, i.e. referring to the police, immigration or labour officials of the host country. Section 2.6.1 also sets out special procedures for handling issues related to domestic workers who have fled their place of employment, which includes providing safe accommodation. It also notes that officers should have counselling skills, be patient, good listeners and quick decision makers. Other sections give procedures related to domestic workers in service and to non-domestic worker

⁶² Ibid., pp. 112-121.

⁶³ <http://www.mea.gov.lk/index.php/en/foreign-policy/protecting-sri-lankans-abroad-> (accessed May 3 2016)

⁶⁴ *Strengthening Grievance and Complaint Handling Mechanisms to Address Migrant Worker Grievances in Sri Lanka: A Review and Analysis of Mechanisms*, ILO Country Office for Sri Lanka and the Maldives, January 2013, p. 27. http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-colombo/documents/publication/wcms_233367.pdf

⁶⁵ *Operational Manual for Labour Sections of Sri Lankan Diplomatic Missions in Destination Countries*, December 2013, Chapter 2 <http://www.ilo.org/dyn/migpractice/docs/270/Manual.pdf> (accessed May 3, 2016)

sectors and to procedures for blacklisting errant recruitment agencies, employers, sponsors or workers.

According to the Investigation Division of SLBFE reporting on the first three quarters of 2015, 2,250 complaints had been settled, 73 illegal recruitment agencies raided, 473 inquiries conducted on complaints against persons who engaged in foreign employment businesses without a valid license issued by the Bureau and 853 legal actions taken against licensees/non-licensed persons over offenses under the SLBFE Act (Act No 21 of 1985 amended by Act No 04 of 1994 & Act No 56 & 2009). According to the Legal Division of SLBFE, in the same time period, 91 cases appeared in courts of law and tribunals for the cases filed against the SLBFE, 238 cases were filed against licensed agents and non-licensed persons who violated the law, and there were 2,659 appearances in courts of law or tribunals for the cases filed by SLBFE against the licensed and non-licensed agents.⁶⁶

Within the Conciliation Division, which deals with breach of contracts by recruitment agencies, a computer programme has been developed to input data for reference of the particular recruiting agent by using the password and user name given to each agency by the SLBFE. The Division also has the legal authority to compel agencies to compensate workers through different options: recovery of funds at a district court, cancellation of a license, suspension of current recruitment orders, and delay of annual renewal of a license.⁶⁷

The Foreign Relations Division deals with deaths, convictions and repatriations. It fills an important gap in dealing with cases for which no recruiting agents can be held liable and has provided funding for repatriation on humanitarian grounds.⁶⁸

A Welfare Division deals with requests of family members while an Investigation Division deals with fraud and is operated by police officers with expertise and the authority to conduct investigations and prosecute cases in the courts. Its investigative work was attributed to raising the Sri Lankan U.S. TIP rating to Tier 2 in 2011.⁶⁹

⁶⁶ <http://www.foreignemploymin.gov.lk/PROJECTINFO/2015/Performance-report-2015-English.pdf>

⁶⁷ Ibid., p. 30.

⁶⁸ Ibid., p. 30.

⁶⁹ Ibid., p. 31.

d. Philippines

The Philippines Overseas Employment Administration (POEA) hears and arbitrates complaints and cases filed against recruitment agencies, foreign principals and employers, and implements a system of incentives and penalties for private sector participants.⁷⁰ According to the Omnibus Rules and Regulations Implementing the Migrant Workers and Overseas Filipinos Act of 1995, as amended by Republic Act No. 10022 pre-employment/recruitment violation cases, which are administrative in nature, may be filed with a POEA Adjudication Office or at any Department of

Labour and Employment (DOLE) or POEA regional office (of the place where the complainant applied or was recruited). Disciplinary action cases are filed with the POEA Adjudication Office. Any person may file a complaint in writing and under oath for violation of the Labor Code or the POEA Rules and Regulations. The statute of limitations is three years after the cause of action occurred. For pre-employment/recruitment violation cases, the Administrator may impose the penalty of reprimand, suspension, or cancellation or revocation of a license.⁷¹ Suspension may be lifted in appropriate cases, as allowed by the Administrator. However, if so granted the agency must pay Php50,000 (US\$1,085) for every month of suspension. For disciplinary action cases against employers, the administrator may disqualify them from the overseas employment programme. The decision may be appealed to the Secretary of Labour and Employment within fifteen days from the receipt of the decision.⁷² Regulators in the Philippines cancelled as many as 96 licenses and suspended 52 others in 2014.

Avenues for complaints in the Philippines:

- ✓ POEA Adjudication Office.
- ✓ National Labour Relation Commission.
- ✓ Overseas Worker's Welfare Administration.
- ✓ Philippines Overseas Labour Offices.

There are a number of good practices in the Philippines is its regulation of private employment agencies. The agencies are required to enter into legally enforceable work contracts with workers seeking employment abroad. The POEA regulates these agreements by requiring an initial approval, during which the POEA checks for previous malpractice or prosecutions. The agencies are required to post a bond to provide compensation to workers in case their rights are violated; they also must sign a power of attorney agreement, which holds them jointly and solitarily liable for contract violations by overseas employers.⁷³ Positive incentives are provided through a reward system for recruiters who maintain a clean record on recruitment improprieties.⁷⁴

The POEA provides free legal services to victims of illegal recruitment cases (human trafficking offences). With regard to such cases, the 1995 Act Rules and Regulations

⁷⁰ POEA Website, "About" Page, <http://www.poea.gov.ph/about/aboutus.html> (accessed 9 April 2016).

⁷¹ Migrant Workers and Overseas Filipinos Act of 1995, Section 10.

⁷² Omnibus Rules and Regulations Implementing the Migrant Workers and Overseas Filipinos Act of 1995, as amended by Republic Act No. 10022, Sections 7-11, <http://www.gov.ph/2010/07/08/omnibus-rules-and-regulations-implementing-the-migrant-workers-and-overseas-filipinos-act-of-1995-as-amended-by-republic-act-no-10022/> (accessed 9 April 2016).

⁷³ Migrant Workers and Overseas Filipinos Act of 1995, Section 10.

⁷⁴ See Section 2.8.1 Philippines in *Regulating recruitment of migrant workers: An assessment of complaint mechanisms in Thailand*, TRIANGLE, ILO Regional Office for Asia and the Pacific; Asian Research Center for Migration, Institute of Asian Studies, Chulalongkorn University, Bangkok, 2013, http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_226498.pdf (accessed 28 April 2016).

provide detailed guidance for receiving, evaluating, and endorsing cases to the relevant prosecution office, as well as rights for POEA lawyers to serve as witnesses and to take the lead in prosecution.⁷⁵

The POEA, after evaluation and proper determination that sufficient evidence exists for illegal recruitment and other related cases, endorses the case to the proper prosecution office for the conduct of preliminary investigation. The DOLE Secretary, POEA Administrator, DOLE Regional Director or their duly authorized representatives, or any aggrieved person, may initiate the corresponding criminal action with the appropriate office.⁷⁶

The National Labour Relation Commission is a quasi-judicial agency attached to the Department of Labour and Employment and is mandated to adjudicate labour and management disputes involving both local and overseas workers through compulsory arbitration and alternative modes of dispute resolution (see Annex IV for the organizational chart).⁷⁷ Under the 1995 Act, it has the exclusive jurisdiction to hear and decide, within 90 calendar days after filing of the complaint, the claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damages.⁷⁸

According to the Joint and Several Liability Clause, the liability of the principal/employer and the recruitment/placement agency on any and all claims under Rule VII of the Omnibus Rules and Regulations shall be joint and several. This liability is incorporated in the overseas employment contract and is a condition precedent for contract approval. The performance bond filed by the recruitment/placement agency is answerable for all money claims or damages that may be awarded to workers. Such liabilities continue during the entire duration of the employment contract and cannot be affected by any substitution or amendment of the contract done locally or abroad. Any compromise or settlement on money claims inclusive of damages shall be paid within thirty (30) days from the approval of the settlement by the appropriate authority, unless a different period is agreed upon by both parties with approval from the appropriate authority.⁷⁹

The Overseas Worker's Welfare Administration (OWWA) is the main agency for protecting Filipinos while they are abroad. OWWA membership is mandatory and gives migrants

⁷⁵ Omnibus Rules and Regulations Implementing the Migrant Workers and Overseas Filipinos Act of 1995, as amended by Republic Act No. 10022, Sections 2-15.

⁷⁶ Omnibus Rules and Regulations Implementing the Migrant Workers and Overseas Filipinos Act of 1995, as amended by Republic Act No. 10022, Rule VI, Sections 4-5, <http://www.gov.ph/2010/07/08/omnibus-rules-and-regulations-implementing-the-migrant-workers-and-overseas-filipinos-act-of-1995-as-amended-by-republic-act-no-10022/>

⁷⁷ It has jurisdiction over several issues related to employee-employer relations, see NLRC Website, <http://nlrc.dole.gov.ph/?q=node/5> (accessed 9 April 2016).

⁷⁸ Migrant Workers and Overseas Filipinos Act of 1995, Section 10, <http://www.poea.gov.ph/rules/ra8042.html> (accessed 9 April 2016).

⁷⁹ Omnibus Rules and Regulations Implementing the Migrant Workers and Overseas Filipinos Act of 1995, as amended by Republic Act No. 10022, Rule VII, Sections 3-4, <http://www.gov.ph/2010/07/08/omnibus-rules-and-regulations-implementing-the-migrant-workers-and-overseas-filipinos-act-of-1995-as-amended-by-republic-act-no-10022/>

access to a welfare fund (See Annex V for the organizational chart).⁸⁰ With regard to complaints, welfare officers (who are recommended by the OWWA administrator, nominated by the Department of Labour and Employment secretary and appointed by the President of the Philippines) work together with labour attachés and ambassadors or consul-generals to assist Filipino migrant workers. They are usually attached to embassies and consulates.⁸¹ OWWA plays an important role in the destination country, providing conciliation assistance to settle worker disputes with employers, agents, other employees or authorities. A major benefit of the welfare fund is that it has no charter which allows flexibility to allocate funds to meet the demands of destination countries.

The RA 8042 also called for the establishment of migrant worker and other overseas Filipinos resource centers within the premises of Philippine embassies in countries where there are large concentrations of overseas Filipino workers. This provision in the law is being implemented through Philippine overseas labor offices (POLOs) and Filipino workers' resource centers (FWRCs) that are headed by labour attachés. POLOs issue employment certificates; verify employment documents; provide mediation and conciliation services; handle migrant workers' requests for assistance; provide welfare, counseling and legal services; and repatriation assistance. In addition, the POLOs manage the daily operation of the FWRCs under the supervision of the Chief of Mission

To foster collaboration among embassy staff, the RA 8042 introduced a country team approach under which all officers posted to a mission should follow one approach irrespective of their different agencies of origin.⁸² The RA 8042 also created the Office of the Undersecretary for Migrant Workers Affairs within the Department of Foreign Affairs (DFA-OUMWA). DFA-OUMWA is responsible for the provision and coordination of all legal assistance services to be provided to Filipino migrant workers as well as overseas Filipinos in distress.⁸³ It establishes links among government agencies, civil society organizations, legal experts and law firms to ensure effective coordination in the provision of legal services, as well as administers a legal assistance fund for migrant workers.⁸⁴ The fund is used to pay for the fees of foreign lawyers representing migrant workers facing criminal and labour cases; in the filing of cases against employers; to pay for bail bonds to secure the temporary release of workers under detention; and to pay court fees and other litigation expenses abroad when so recommended by the lawyers and the concerned Philippine mission (Omnibus Rule IX, Section 3).

⁸⁰ OWWA is an international operation and entails a complex organizational structure that includes a board of trustees, a secretariat, and regional and international offices. Membership may be obtained at the time when an employment contract is processed or by voluntary registration at a site overseas. In theory the employer or agent should pay the US\$25 fee, but in practice it is often born by the worker. D.R. Agunias and N. G. Ruiz, *Protecting Overseas Workers: Lessons and Cautions from the Philippines*, Migration Policy Institute, *Insight*, September 2007, p. 10.

⁸¹ D.R. Agunias and N. G. Ruiz, *Protecting Overseas Workers: Lessons and Cautions from the Philippines*, Migration Policy Institute, *Insight*, September 2007, p. 10.

⁸² *Ibid.*, Section 28.

⁸³ *Ibid.*, Section 24.

⁸⁴ *Ibid.*, Section 25.

VI. Recommendations for policy development in Myanmar

The following recommendations are adapted from good practices of other countries of origin which have been identified as being appropriate to Myanmar and could be included in a law review or by practical measures to improve the current complaints handling systems in Myanmar.

1. Strengthen the government complaints mechanism

The MOLIP complaints mechanism provides the first centralized system for receiving complaints from overseas migrants. It acts to deter employment agencies from overcharging migrants for recruitment and offers an avenue for redress when migrants are defrauded by employment agencies. In strengthening this mechanism, Myanmar should look at the similar mechanisms and relevant laws in Nepal, Sri Lanka and the Philippines for guidance.

1.1 Legislate the authority and procedures of a particular government body in handling migrant worker complaints

It is recommended for national legislation to authorize one government body with the authority to handle migrant worker complaints, and such legislation should clarify the jurisdiction of the body and its investigative and adjudicative powers. As can be exemplified from similar pieces of national legislation in Nepal, Sri Lanka and the Philippines.⁸⁵ The Myanmar Law Related to Overseas Employment should:

- Authorize the DoL (or other government body) with the power to receive and investigate complaints from migrant workers;
- Update through the Parliamentary process the offences committed by employment agencies, agents, employers or other actors, and specify fines, penalties and statutes of limitations based on the type of offence;
- Authorize the DoL with the power to adjudicate over particular offences as set out in the law; including cases by unlicensed agencies or brokers;
- Include provisions for the enforcement of DoL decisions;
- The Overseas Employment Supervisory Committee should develop processes for:
 - 1) Transferring more serious cases or those outside the mandate of the mechanism; including human trafficking by unlicensed agents to another ministry/department or the normal court system (or a specialized labour court in the future).
 - 2) Developing processes for appealing an unfavourable decision, within a certain period of time, to higher-level officials within the MOLIP or through the court system (or a specialized labour court in the future);
- Specify who may file a complaint and the type of documentation necessary to support such a complaint, with consideration of irregular migrants and other vulnerable people; and
- Specify where a complaint can be submitted and a process by which it should be transferred to the centralized mechanism in Nay Pyi Taw.

⁸⁵ See the Nepal Foreign Investment Act (2007), the Sri Lanka Bureau of Foreign Employment Act and the Migrant Workers and Overseas Filipinos Act of 1995.

1.2 Strengthen systems and the capacity of the complaints mechanism officials to receive and register complaints

- The complaints mechanism officers who receive and register complaints should be particularly skilled in computer and database systems;
- While some of the complaints registration officers could be rotating general staff from a designated department, a certain number of officers should have permanent roles. It may be beneficial to create a specific complaints registration division and create clear guidelines regarding case management;
- Ensure an adequate number of registration officials are posted based on the number of complaints typically received, with consideration for gender balance;
- Further refine the standard complaints form and provide training for authorities to:
 - 1) Assist migrants and their families in filling out the form;
 - 2) Effectively log all information from the form into the record keeping system;⁸⁶
- Institute a computer software programme in which complaints related to specific overseas employment agencies are registered, prioritised and monitored (see Nepal).
- It may also be advisable to include a provision in the Law Related to Overseas Employment that requires relevant ministries/departments to share information and data related to overseas labour migration, including information about complaints, recruitment agencies and foreign employers, as is included in the Philippines' law.⁸⁷

1.3 Strengthen the capacity and powers of the complaints mechanism officers to investigate complaints

- In general, it is advisable for complaints mechanism investigating officers to be lawyers or have a legal background to some extent. This is particularly the case for investigating officers who deal with breach of employment contract issues that need to be taken up with Myanmar-based employment agencies;
- The attitude and commitment of the officers is also critical to the success of the complaints mechanism. All staff should be required to pass specialized training;
- The Law Related to Overseas Employment should give investigating officers the power to conduct interviews with the complainant and the accused.
- With regards to cases related to fraud and overcharging of recruitment fees by employment agents, the complaints mechanism should undertake investigation in collaboration with police or ATIPD officials;
- A more advanced option is to create separate divisions for investigating and handling different types of complaints by skilled officials or in collaboration with other departments/ministries. This could include a conciliation division staffed with lawyers for breach of employment contract issues; a foreign relations division (in coordination with the Ministry of Foreign Affairs) for cases related to overseas deaths, being jailed or convicted or payment of compensation from country of destination and an investigation division manned by police or in partnership with ATIPD for fraud, overcharging of recruitment fees and cheating by employment agents (see Sri Lanka).

⁸⁶ See an example of a complaints mechanism form from Cambodia in Annex VII.

⁸⁷ For example, see Migrant Workers Act of 1995, Philippines, Section 4.

1.4 Authorize the designated department with the ability to adjudicate over certain categories of cases related to overseas employment

At present, officials have the ability to negotiate between the employment agency and the worker, suspend or revoke a license and compel an agency to compensate a worker (via the possible suspension or revocation of the license). When compared with the equivalent complaints handling departments in Nepal, Sri Lanka and the Philippines, the Myanmar officials still lack an ability to make formal determinations and orders over certain offences against migrant workers on the basis of a law.

Adjudication over offences committed by employment agencies:

- The Law Related to Overseas Employment could be revised to grant the designated department with the authority to adjudicate over complaints against employment agencies related to fraud, overcharging of recruitment fees and failure to comply with the Law or other Ministry of Labour directives, rules or orders.⁸⁸
- The law should contain fines, penalties and mechanisms to enforce or appeal a decision.⁸⁹ As well as incentives for high performing agencies such as reducing administrative requirements.⁹⁰
- The law should specify criteria for when the designated department may suspend or revoke an employment agency's license, or when the Ministry of Home Affairs may place it on the blacklist. There could also be criteria for when a department is authorized to: penalise employment agency directors; suspend active job recruitment orders; delay annual renewals of licenses; employ monthly fines in lieu of suspension; employ specific monetary fines for failure to comply with laws and orders; and compel the agency to provide remuneration equivalent to different types of monetary losses encountered by migrants.
- The law should also specify the conditions that must be met for the suspension or blacklisting to be lifted.

Holding employment agencies liable for breach of contract by overseas employers:

In addition, the designated department could have the authority to hold recruitment agencies partially liable in the event that the employer in the destination country does not abide by the terms of the employment contract signed in the origin country. This type of provision would be significant for an origin country as it would provide what may be the worker's only avenue for redress for harms suffered abroad.

- Non-intent based cases: In such cases when the employer, without the knowledge or complicity of the employment agency, does not abide by the terms of the agreement, the amount of compensation awarded to the migrant could be limited to the sum of costs incurred in going for foreign employment, but not for the full amount of the worker's actual loss. The worker should, however, be supported

⁸⁸ This could include sending workers to destination countries banned for migration, operating without a license, establishing offices without a license, etc.

⁸⁹ For examples, see Sri Lanka SLBFE Act No. 21 of 1984, Section 44; see also Nepal FEA (2007), Sections 48 – 55.

⁹⁰ As done by the Philippines Overseas Employment Administration (POEA).

throughout the process of claiming compensation in the country of destination through the local complaints systems.

- **Intent-base cases:** In such cases where the employment agency knowingly engaged the worker in different work than was set out in the employment contract or did not take adequate steps to ensure that the terms and conditions were met, a more significant monetary fine could be imposed and awarded to the migrant as a form of redress. This could include compensation for unpaid wages, payments in lieu of holidays, payment for other benefits, the cost of travel to the destination country or recruitment fees paid over the legal amount.⁹¹ Licences could be revoked and the agencies could be put on the blacklist.
- Public officials involved with labour migration and their family members should be prohibited from owning a financial stake in a private employment agency while they hold their office or position and for a certain number of years afterwards (to prevent corruption).

Holding employers directly accountable

- The department should disqualify particular employers from recruiting migrants from Myanmar as a response to complaints amounting to forced labour or labour exploitation, human trafficking or serious breach of employment contract issues; and

Due to issues with jurisdiction, the department's ability to hold employers accountable is limited. More options for holding employers accountable are possible through a legally mandated joint and several liability of the domestic private recruitment agency and foreign principal/employer t as in the Philippines. This may be considered in future.

1.5 Decentralization of the complaints mechanism dispute resolution services

At present, it is possible to report a complaint through a hotline, at two complaints mechanism centres and with labour exchange offices (LEOs) which is then referred to the Complaints Mechanism. Although in theory all LEOs may receive complaints, unless a migrant workers resource centre or unit is housed in the LEO, most migrants would be unaware of this service and most staff would be unable to provide accurate information. A major lesson learned from other countries of origin is that, in addition to the decentralization of complaints registration centres, dispute resolution services should also be decentralized in order for them to be affordable and accessible for migrants and their families throughout Myanmar.

- The designated department could open regional offices that carry out some of the functions of the complaints mechanism, including mediating certain complaints;
- Build the capacity of the LEO officials to mediate certain types of complaints and deploy lawyers to the offices that will offer investigation or mediation services;
- Develop relations with labour organizations and civil society groups to provide counselling and receive complaints which could then be referred to the LEO or central complaints mechanism;

⁹¹ For examples of intent and non-intent based penalties in law, see Sri Lanka SLBFE Act No. 21 of 1985, Section 21; see also Nepal FEA (2007), Sections 36 and 55.

- Provide funding for migrant workers or their families who are required to travel for dispute resolution or litigation in the courts. The law should make provision for such a fund; and
- The law should include procedures for registering and monitoring local branches of employment agencies or local employment agencies.

2. Alternative dispute settlement

As recommended by the 6th ASEAN Forum on Labour Migration, dispute resolutions, mediation, and other alternative dispute settlement mechanisms should be fully explored before administrative or judicial litigation processes.⁹² In other countries this has meant that particular national actors play a role in informal dispute resolution as a first attempt before a case is registered with a government body or court. There are many benefits to creating a space for informal negotiation of migrant worker complaints, including ensuring a larger number of cases are addressed quickly and cost-effectively. Informal negotiation would typically be used to address common issues and non-criminal offences that are outside of the jurisdiction of the government complaints mechanism, ATIPD or the court system.

- MOEAF and the Civil Society and Labour Organization Network should develop a systematic process for investigating and mediating complaints related to employment agencies, sub-agents and unlicensed brokers, including developing a manual with mediation guidelines and identifying skilled mediators among MOEAF, CSOs, labour organizations and local communities;
- To avoid bias in mediating disputes, it is preferable for mediation teams to be comprised of MOEAF and CSO/labour organization representatives;
- As MOEAF is only able to mediate over disputes by regular migrants and related to member employment agencies, CSOs and labour organizations can play a larger role in regards to mediating complaints from irregular migrants and those recruited by non-MOEAF member recruitment agencies;
- The Law relating to Dispute Settlement should be reviewed to assess whether overseas migrants complaints could be processed through the system;
- The informal mediation guidelines should include the types of complaints addressed, mediation step-by-step processes and strategies based on best practices. The guidelines should identify a stage at which cases are transferred to the DoL complaints mechanism, the police or are registered with a local court;
- This mediation process should provide an opportunity to educate migrants and allow migrants a greater say over the negotiated outcome;
- The Myanmar government could include a provision on informal negotiation in the Law Related to Overseas Employment or other policies or directives. For example in Indonesia, the law requires workers and recruitment agencies to negotiate their disputes informally before filing a claim with the government; and
- Data on complaints should be collected in a systematic way and reported so that trends can be identified, the effectiveness of the mechanism monitored and repeat offenders reported.

⁹² See Annex II for full set of recommendations.

3. Strengthen the role of embassies in addressing migrant worker complaints

The Law Related to Overseas Employment, presidential directives, MOLIP regulations and Ministry of Foreign Affairs guidelines should charge embassy representatives with the responsibility of protecting migrant workers abroad, and outline the roles and responsibilities of embassy officials in addressing migrant workers' complaints. These laws, policies or other actions could aim to do some of the following.

1.3 Establish embassies and consulates and deploy labour attachés

- Establish Myanmar embassies or temporary diplomatic missions in all major migrant destination countries;
- Establish consulates in remote areas, as many migrants work far from an embassy and do not have access to a phone or the Internet;
- Deploy sufficient numbers of labour attachés in embassies and at consulates throughout the country, with consideration for gender balance and ensuring the presence of female labour attachés in destination countries with large female migrant populations.
- Labour attachés should be experienced in migrant protection and should have strong references to account for their integrity and ability to represent Myanmar abroad;
- Where there is no embassy, establish diplomatic relations with an embassy which has a presence and which would be able to assist Myanmar migrants; and
- Labour attachés should develop close contacts and network with CSOs and labour organizations which include migrants and provide effective and fair services to migrants.

3.2 Provide mediation services, legal aid and repatriation assistance

- Assign labour attachés with the responsibility to mediate disputes and conflicts between migrant workers and employers for both regular and irregular migrants;
- Assign labour attachés with the responsibility to provide legal aid for migrant workers, including providing legal advice based on the national law in the destination country, coordinating with local law firms and registering cases at labour courts;
- Establish a mechanism for embassies to access funding for the provision of legal aid;
- Require the Myanmar-based employment agencies to assist the embassy in providing legal aid (e.g. providing information or documentation);
- For migrants undergoing litigation in the destination country or waiting to be repatriated, safe accommodation should be provided. The shelters should guarantee the basic rights of migrants to freedom of movement to the greatest extent possible, should be gender responsive and should take all measures to provide decent living conditions and avoid overcrowding; and
- Instruct embassy staff to play a role in preparing workers for repatriation by ensuring that the migrant has all necessary documents that they may need to file a complaint or seek redress upon return to Myanmar.

3.3 Other strategies to strengthen embassies

- In the longer-term, establish a special protection division or a migrant worker resource centre within the embassy. This special section could provide mediation and legal services, as well as undertake a range of other protection functions. Specialized officials can be deployed to this section as needed, including police attachés, psychologists, social workers, human rights lawyers, public relations officers and others (see Indonesia and the Philippines);⁹³ and
- Additional presidential, MOLIP or Ministry of Foreign Affairs directives should be issued over time to address specific issues and enhance the embassies' protection roles.

4. Ensure awareness of complaints mechanisms through expansion of pre-departure trainings

Currently, all regular migrants who have signed an employment agreement to work in Malaysia receive pre-departure trainings through MOEAF, while labour organizations and CSOs provide general safe migration trainings.

- The Law Related to Overseas Employment should contain a provision to guarantee pre-departure training for all migrants who sign an employment agreement to work overseas, including identifying who is responsible for training costs;
- The pre-departure training curriculum should contain core standard information as well as providing information on gender sensitive social, cultural, legal and other issues tailored to the destination country. The curriculum should include information about all of the possible avenues for complaint or redress with all contact details; and
- MOLIP, MOEAF, Labour Organizations and Civil Society should coordinate to provide pre-departure trainings to the largest number of migrants possible, ensuring equal access for men and women and inclusion of irregular migrants.

5. Prevent and address complaints related to sub-agents and unlicensed brokers

One major gap in the current system is the challenge to deal with complaints related to sub-agents and unlicensed brokers.

There is as yet no agreement on the best policy regarding supervising and regulating sub-agents and local representatives. Much of the debate focusses on whether there should be a system of sub-agents attached to licenced agents, mostly in Yangon; or whether agencies should be allowed to set up and apply for licences in the states and regions and be monitored regionally.

⁹³ In the Philippines, see the Rules and Regulations to the Migrant Workers and Overseas Filipinos Act of 1995, Establishment of Migrant Workers and other Overseas Filipinos Resource Center, Section 17. In Indonesia, see the Presidential Instruction 6/2006 and the Government Regulation 3 of 2013 regarding Protection of Indonesian Migrant Workers Abroad, January 2, 2013, articles 20-21.

Consultations involving national and regional levels to further discuss and reach a common way forward should be held and a MOLIP policy directive regarding the hiring and licencing of sub-agents should be issued. It should require that sub-agents have specific skills and submit character references. Sub-agents should be prohibited from charging service fees to migrants and systems to monitor and enforce should be clearly laid out. Recommendations may include:

- Based on the MOLIP policy directive, MOEAF should develop guidelines and trainings for their members to ensure better hiring practices of sub-agents;
- Employment agencies should improve the monitoring of sub-agents through probation periods and by restricting them to particular geographic areas;
- Create an investigation unit within the department that works to identify individual agents and brokers who overcharge or defraud migrants; and
- Include a provision in the Law Relating to Overseas Employment to permit the designated complaints department to adjudicate over certain cases related to unlicensed brokers that do not amount to human trafficking.

Annexes

Annex I: Relevant treaties and Myanmar government ratifications

Treaty	Ratification status
Forced Labour Convention, 1930 (No. 29)	Ratified, March 1955
Migration for Employment Convention (Revised), 1949 (No. 97) and Recommendation No. 86	Not yet signed/ratified
Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) and Recommendation No. 151	Not yet signed/ratified
The Private Employment Agencies Convention, 1997 (No. 181) and Recommendation No. 188	Not yet signed/ratified
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)	Not yet signed/ratified

Annex II: 6th ASEAN forum on migrant labour recommendations

(b) Promote effective complaint mechanisms and grievance handling mechanisms

The forum recognised the importance of and access to effective complaint mechanisms by migrant workers in countries of origin and destination in order to promote and protect the rights of migrant workers in line with international human rights and labour standards. For better access to complaint mechanisms, where appropriate, family members may file a report or complaint on behalf of migrant workers.

9. Develop and strengthen the existing complaint mechanisms for migrant workers in ASEAN Member States that are transparent, accessible and simplified during recruitment, employment and in the case of termination and deportation. In this regard, it is important to ensure that the integrity of complaints be carefully examined.
10. Ensure that complaint mechanisms are gender sensitive and responsive to the vulnerability of migrant workers.
11. Support the development of a one-stop service centre for migrant workers that among others, facilitate access to complaint mechanisms and assistance, including interpretation and free legal counseling/referrals, in collaboration with all stakeholders including migrant communities, workers' and employers' organizations, and CSOs to ensure that the services are accessible to migrant workers.
12. Ensure that information on the availability of such service centres and complaint mechanisms is disseminated to migrant workers and their families through appropriate communication channels, such as, electronic and print media, migrant workers resource centres, information outreach programmes, pre-departure trainings, pre-employment orientation seminars, and diplomatic missions.
13. Ensure and strengthen the roles of labour attachés, embassies and consular officials to include support services on availing of complaint mechanisms for migrant workers.
14. Dispute resolutions, mediation and other alternative dispute settlement mechanisms should be fully explored before administrative or judicial litigation processes.
15. Ensure timely notification and communication between the countries of destination and origin on judicial cases of migrant workers and extend cooperation to provide access to migrant workers to file cases for violation of rights in the country that the violation took place.
16. Promote inter-country trade unions collaboration to support migrant workers in case of complaints.
17. Ensure, where possible, the joint accountability of employers and recruitment agencies in the case of migrant workers' complaints when the recruitment agencies are responsible for recruiting and placing workers abroad.
18. Ensure adequate arrangements in case of return and repatriation to be shouldered by the employers.
19. Promote sharing of experiences and information among ASEAN Member States in implementing their respective complaint mechanisms through stock taking of the processes in the handling of grievances of migrant workers.
20. Consider developing regional guidelines and tools on the establishment of key aspects and standards of complaint mechanisms for migrant workers.

Annex III: Indonesia's BNP2TKI dispute resolution process

A) Procedure for handling and resolving problems

- a. The prospective migrant worker/migrant worker/family member [complainant or their legal representative] submits a complaint in person or indirectly to the relevant agency (i.e. BNP2TKI, Deputy of Protection, BP3TKI, or Ministry of Manpower at the provincial, district or city level) and completes a complaint form.
- b. Recording the complaint and researching the complainant's personal documents and other related documents in support of the complaint (i.e. passport, KPA, placement and employment agreements and medical report).
- c. Verification of the type and character of the case to determine the appropriate person to handle the case.
- d. Scheduling a mediation (calling the recruitment company/insurer and complainant) to resolve any case arising from overseas placement, not including criminal cases.
- e. If the case involves criminal matters the complainant is guided to file a complaint with the relevant authorities.
- f. Prepare a summary of a concluded case including notes of the agreement.

B) Pre-mediation stage

- a. The mediator must suggest to both parties that they negotiate their dispute directly.
- b. The mediator must give the parties a negotiation period and must explain the mediation process to both parties.
- c. Any decision made by an attorney (on behalf of a client) must be approved in writing by both parties.

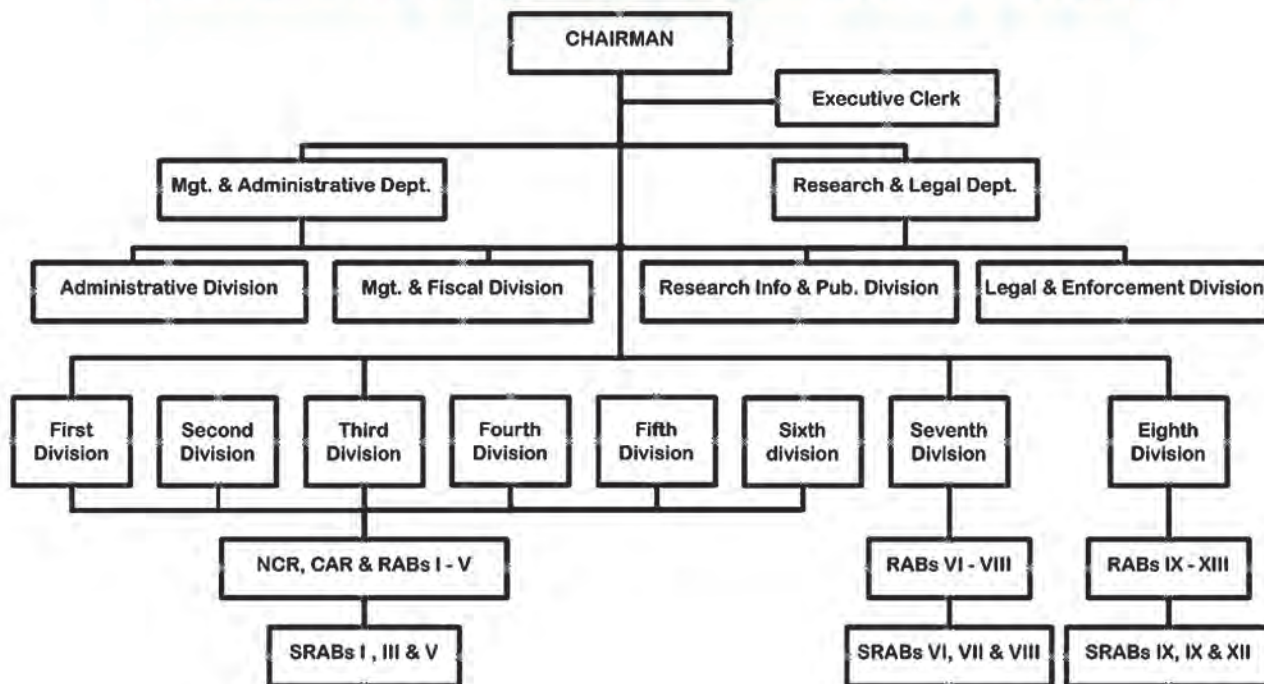
C) Mediation stage

- a. The mediator must determine a time to hold the mediation.
- b. During the mediation either party may be accompanied by an attorney.
- c. The mediator must encourage the parties to explore their individual interests and to find a solution that is best for both parties.
- d. The resulting agreement from the mediation must be completed within 14 working days.
- e. The agreement must be stated in the minutes of the meeting and signed by both parties.
- f. When the parties cannot reach agreement, the failure to agree is noted, and the mediator must suggest the parties seek legal recourse.
- g. In the event the recruitment company does not respond to calls to attend three times or is not proactive in resolving the case, BNP2TKI may delay the placement processing services.

- h. In the event that the recruitment agency does not fulfil its obligations, it will be suggested that the Ministry of Manpower impose a sanction in line with the law.
- i. If the parties fail to reach an agreement, any information or admission made by the other party during the mediation cannot be used as evidence in a court of law.

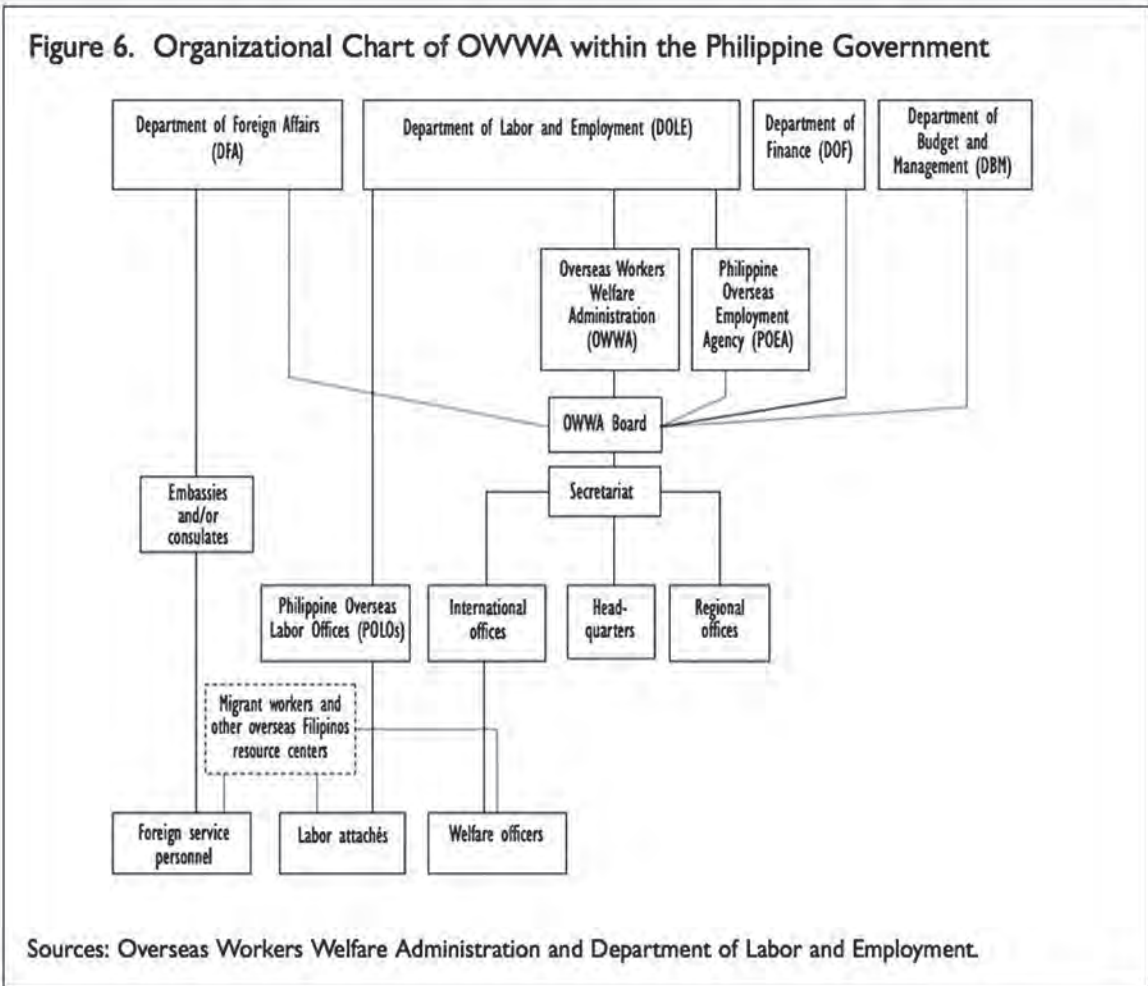
**Annex IV: Philippines National Labour Relations Commission (NLRC)
organizational chart**

ORGANIZATION STRUCTURE (UNDER RA 6715 & RA 9347)



Source: Philippines National Labour Relations Commission

Annex V: Philippines Overseas Worker's Welfare Administration (OWWA) organizational chart



Annex VI: Breakdown of lessons learned from other countries of origin

(Starting on next page)

Country	Avenue for complaint	Good practices	Challenges and lessons learned
Nepal	<p>Department of Foreign Employment (DoFE)</p> <p>Foreign Employment Tribunal</p> <p>Court system</p>	<ul style="list-style-type: none"> ✓ All powers and procedures specified under law. ✓ Officer are given investigative powers similar to that of the police. ✓ Power to adjudicate over some cases and compel fines from agencies. ✓ Power to hold recruitment agencies partially liable for abuse committed by an employer. ✓ Agencies compelled to pay compensation to avoid sanctions. ✓ No fees for using the mechanism. ✓ Original documents are not needed. ✓ Investigating officers are experienced government lawyers. ✓ All powers and procedures specified under law. ✓ Designed to deal with cases promptly. ✓ Deals with offences against employment agencies with possible jail time and against individual agents. ✓ Can file reports at a local police station. ✓ Used to seek redress for crimes of human trafficking or others under the civil code. 	<ul style="list-style-type: none"> ✓ Not limited to regular migrants, but officials unclear if they can accept irregular cases. ✓ Insufficient resources have limited investigation. ✓ Submits incomplete cases to the tribunal. ✓ Officers not trained in police techniques. ✓ Regular police not involved. ✓ Law does not establish clear guidelines for evaluating claims and resolving a case. ✓ Costly travel to Kathmandu for migrants. ✓ Does not have the power to enforce its decisions. ✓ Costly travel to Kathmandu for migrants. ✓ Not able to process incomplete cases received from the DoFE. ✓ Costly, complicated, non-transparent and inaccessible. ✓ Conflict over jurisdiction between the court system and the tribunal.

	Embassies	<ul style="list-style-type: none"> ✓ Can address issues relating to the destination country. ✓ Referrals to local lawyers and labour courts. ✓ Assistance with repatriation. 	<ul style="list-style-type: none"> ✓ Responsibilities of labour attachés not specified in any law. ✓ No financial assistance or accommodation provided for migrants. ✓ Not informed about embassies during pre-departure phase.
Indonesia	Peaceable negotiation	<ul style="list-style-type: none"> ✓ Required by law as a first step. ✓ Negotiation may take place in-person, by phone or through letters. ✓ For disputes related to repayment for lost fees/wages, or return of documents. ✓ Only option to bring a case against brokers who are not subject to regulation and oversight. ✓ Negotiation with employers can prevent workplace problems from worsening. 	<ul style="list-style-type: none"> ✓ Law does not establish a procedure for negotiation but migrants can learn from each other. ✓ Difficult to locate brokers. ✓ In-person meetings can be intimidating and require travel, but achieve the best result.
	Administrative dispute resolution	<ul style="list-style-type: none"> ✓ Law gives the Ministry of Manpower authority to receive complaints and sanction employment agencies. ✓ BNP2TKI developed standard operating procedure with guidelines for registering a case and mediation. ✓ Much cheaper than litigation in courts. ✓ Gives civil society representatives the chance to represent and educate migrants. ✓ Empowers migrants to be involved in negotiating their own redress. 	<ul style="list-style-type: none"> ✓ Mediation procedures are not legislated and the BNP2TKI manual provides general guidance only. ✓ No internal appeal process if a migrant dissatisfied with the outcome. ✓ Difficult to travel to Jakarta for negotiations. ✓ Difficult to gather necessary documents and obtain skilled mediation. ✓ No mechanism to compel the agency to participate or provide documents. ✓ No guarantee of confidentiality.

	<p>Court system</p>	<ul style="list-style-type: none"> ✓ Regulation requires unresolved disputes from the administrative process to be heard in the courts. ✓ Migration-related criminal cases can be prosecuted under the Penal Code. ✓ Passport related violations prosecuted by the Ministry of Immigration. ✓ Trafficking offenses prosecuted under the Anti-Trafficking law, which includes witness protection and restitution. ✓ If a corporation is found guilty of a trafficking offense, managers and board can be held liable. ✓ Greater sense of justice can be achieved through criminal justice prosecution. 	<ul style="list-style-type: none"> ✓ Penal code statute of limitations is too short (six months) and only the worker can file a case. ✓ Workers unlikely to file passport related cases as they could also be prosecuted. ✓ High penalties under the trafficking law act as a disincentive for police to bring charges. ✓ Difficult to obtain evidence of what occurred abroad. ✓ Expensive and slow. ✓ Required sophisticated representation. ✓ Victim plays a small role (disempowering). ✓ Strong perception of corruption and nepotism.
<p>Sri Lanka</p>	<p>Sri Lanka Bureau of Foreign Employment (SLBFE)</p>	<ul style="list-style-type: none"> ✓ Labour attachés in embassies abroad required by law to provide legal assistance and cooperate with local lawyers. ✓ MoFA released a standard operating procedure for dispute resolution. ✓ Migrants very aware of the system and receives tens of thousands complaints. ✓ Prepare migrants for repatriation. ✓ Provide shelter during legal proceedings. 	<ul style="list-style-type: none"> ✓ Legal services not mandatory. ✓ No guidance for prioritising cases. ✓ No right to information for the worker. ✓ Some migrants too far from an embassy and no access to a phone or internet. ✓ Shelters are overcrowded; migrant cannot leave embassy grounds.
	<p>Sri Lanka Bureau of Foreign Employment (SLBFE)</p>	<ul style="list-style-type: none"> ✓ All grievance handling mechanism procedures are laid out in Act No. 21 of 1985. ✓ Well-staffed with 2 managers and 16 conciliation officers who are mostly female. ✓ Computerized with online input of information and dissemination links with missions overseas, relevant state agencies and recruitment agencies. 	<ul style="list-style-type: none"> ✓ Insufficient number of complaint registration officers; cases are backed up. ✓ Conciliation officers lack legal experience. ✓ Lack of awareness of the location of SLBFE offices which receive complaints.

		<ul style="list-style-type: none"> ✓ Decentralized, with complaints received at the headquarters, regional and district offices. ✓ Complaints negotiated informally as first attempt before registration. ✓ Four specialized divisions for processing complaints. ✓ Legal authority to penalise agencies. ✓ Manages a welfare fund with distribution of funds to embassies/missions overseas. ✓ Special investigation division manned by police. ✓ Can institute legal action against the licensee at a district court for recovery of awards. ✓ Can suspend job recruitment orders, delay annual renewal of license or the full cancellation of the license. ✓ Empowered by law to assist migrants abroad with non-SLBFE registered cases. ✓ Coordinates with Sri Lankan diplomatic and foreign missions to address a wide range of complaints. ✓ Embassies have developed complaints procedures unique to the destination country. ✓ Provide shelter to thousands of runaway domestic workers on a regular basis. ✓ Access funding from the welfare fund of the SLBFE to support complaints handling. 	<ul style="list-style-type: none"> ✓ Lack of coordination with Ministry of External Affairs has led to mishandling and duplication of complaints.
<p>Ministry of Foreign Employment, Consular Division</p> <p>Embassies/ Consulates</p>	<ul style="list-style-type: none"> ✓ All powers responsibilities outlined in the 1995 Act and Rules and Regulations. 	<ul style="list-style-type: none"> ✓ Lacks a computerized system and a complaint reception and registration component. ✓ No structured mechanism or manual with procedures and guidelines for all embassies to follow. ✓ Inability of most embassies to access the welfare fund. ✓ Inadequate staffing. 	
<p>Philippines</p>	<p>Overseas Employment Administration (POEA)</p>		

	<p>National Labour Relation Commission (NLRC)</p>	<ul style="list-style-type: none"> ✓ Hears and arbitrates complaints against recruitment agencies, foreign principals and employers. ✓ Disciplinary action cases are adjudicated by the specialized POEA adjudication office. ✓ May impose the penalty of reprimand, suspension, cancellation or revocation of employment agency license. ✓ May disqualify employers from an overseas employment programme. ✓ Statute of limitations is sufficient: Three years after occurrence. ✓ Any person may file a complaint. ✓ Makes both the employment agents and employers liable. ✓ Decisions can be appealed to the Secretary of Labour and Employment. ✓ Decentralized: Can be filed at a POEA office or DOLE regional office where complainant applied or was recruited. ✓ Provides free legal services in the Philippines for cases of illegal recruitment. ✓ Aims to resolve cases quickly and at lower cost than normal court proceedings. ✓ Mandated under the 1995 Act to adjudicate employer-employee disputes involving both local and overseas workers through compulsory arbitration and alternative modes of dispute resolution. 	<ul style="list-style-type: none"> ✓ Difficult to compel employers in other countries to attend to adjudication.
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	<p>Overseas Worker's Welfare Administration (OWWA)</p>	<ul style="list-style-type: none"> ✓ Mandatory membership gives migrants access to a range of services through a welfare fund. ✓ Welfare officers with excellent reputation based on site of embassy. ✓ Provide conciliation services with the employer in destination country. ✓ Works together with labour attachés, ambassadors or consul-generals to assist Filipino migrant workers. ✓ Can be relied on for large-scale/emergency repatriation fees. 	<ul style="list-style-type: none"> ✓ Membership fee should be paid for by agency/employer, but in practice it is born by the migrant. ✓ Save-first-spend-later strategy has compromised welfare services. ✓ No charter allows for flexible allocation of funds, but some misuse of authority. ✓ Aims to have migrants represented in staff and on the board, but very few in practice.
<p>Migrant workers and other overseas Filipinos resource centers</p>	<ul style="list-style-type: none"> ✓ Based on premises of embassies. ✓ Provides a range of counselling, legal, welfare services and registers irregular migrants. ✓ Staffed by Foreign Service Personnel, service attachés, representatives of organisations from host countries. ✓ In problematic countries, staffed with a lawyer and a social worker. ✓ Country team approach to facilitate good relations among staff from different government ministries/department. 		
<p>Office of the Legal Assistant for Migrant Workers Affairs</p>		<ul style="list-style-type: none"> ✓ Coordinates legal services for migrants at destination. ✓ Administers a legal fund so legal services can actually be provided. 	

Annex VII: Cambodia complaints handling form

Migrant worker complaint form

Kingdom of Cambodia

Nation Religion King

Migrant worker complaint form
to Department of Employment and Manpower of the Ministry of Labour / Provincial Department
of Labour and Vocational Training

Individual complainant

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

Group complainants

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

Complainants from other sources

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

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

<input checked="" type="checkbox"/> Remuneration	<input checked="" type="checkbox"/> Workers' compensation
<input checked="" type="checkbox"/> Claim money that paid to PRA	<input checked="" type="checkbox"/> Harassment
<input checked="" type="checkbox"/> Food and accommodation	<input checked="" type="checkbox"/> Disciplinary actions / Termination of employment
<input checked="" type="checkbox"/> Occupational safety and health	<input checked="" type="checkbox"/> Delay in deployment / Job not provided
<input checked="" type="checkbox"/> Job duties	<input checked="" type="checkbox"/> Contract substitution
<input checked="" type="checkbox"/> Work hours	<input checked="" type="checkbox"/> Missing migrant worker – Want migrant worker return home country

X Days off	X Missing migrant worker – Want to know information about migrant worker
X Leave	X Forced labour
X Insurance	X Other

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

Respondent

Name:.....

Address:

Contact Number:.....

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

Financial compensation

Amount owed (if known) _____

How calculated (hours / days): _____

Reimbursement

Amount owed (if known) _____

How calculated (hours / days): _____

Find migrant worker to return home _____

Want to know information about the migrant worker _____

Want to get passport and other documents _____

Ask the PRA to clearly determine the date of departure to work abroad _____

Better working conditions _____

Better living conditions _____

Changes in company policies and practices _____

Re-instatement of job lost _____

Employment as promised _____

Deployment to destination country _____

Enforcement of original contract _____

Apology _____

Locate missing migrant worker _____

Other (Explain) _____

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

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Country of Origin Complaints Mechanism for overseas migrants from Myanmar

This Briefing Paper is the first in a series of Briefing papers providing technical input on particular migration issues being produced by the ILO Yangon supported by Livelihoods and Food Security Trust Fund (LIFT). The briefing paper provides the international legal framework and guidelines governing complaints or grievance mechanisms for migrants. It analyses different mechanisms currently available to Myanmar migrants including the government complaints mechanism, embassies, Myanmar Overseas Employment Agencies Federation (MOEAF), Anti-Trafficking in Persons Division, ILO Forced Labour complaints mechanism and civil society organisations and labour organisations support services. It provides examples of good practices from other countries of origin. Finally the paper proposes a set of policy recommendations to extend and improve complaints mechanisms for migrants. The Annex includes relevant treaties, examples of laws and structures from other countries, a tabulated breakdown of lessons learnt and samples of complaints forms. Other Briefing papers in this series to support the development of improved labour migration governance in Myanmar will include Recruitment, Social Protection and Policy Cohesion.

ILO Liaison Office - Myanmar
No.1(A), Kanbae(Thitsar) Road,
Yankin Township,
Yangon, Myanmar
Tel: 95 1 566538 Fax: 95 1 566582
Email: yangon@ilo.org www.ilo.org/yangon

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