

# SAFEGUARDING SAFE LABOUR MIGRATION OF CAMBODIA'S MIGRANT WORKERS: AN ASSESSMENT OF REGULATION ON PRIVATE RECRUITMENT AGENCIES IN CAMBODIA

## Key Messages

- ✚ Safeguarding safe labour migration closely correlates with thorough statutory [regulation on private recruitment agencies](#) due to the inexorable irregular or undocumented migration from Cambodia every year.
- ✚ [Policy on Labour Migration](#) resonates with the aim of harnessing labour migration and socio-economic development of Cambodia yet failed to address the pressing concern of irregular or undocumented migrants.
- ✚ In August 2011, [Sub-Decree 190](#) was adopted in response to the pressing challenges of labour migration, yet did not sufficiently address the issue nor echo the spirit of inclusive growth and sustainable development goals 2030.
- ✚ [Ambiguous and arbitrary provisions](#) render doubts on effectiveness of the regulation in addressing the issue including regulation on licensing requirements, excessive guaranty deposit, non-standardized employment contract, unjustified certificate of commendation and penalty measures.
- ✚ [Integrated, comprehensive and cohesive national policies and programmes](#) addressing labour migration in a rights-based and migrant-centered approach are crucial for a sustainable and inclusive management of labour migration in Cambodia.

## Introduction

Migrant workers are important agents for inclusive growth and sustainable development of the host and home countries. In that regard, private recruitment agency (PRA) is an essential actor in facilitating employment placement services across geographies and sectors as well as in the worst case, facilitating abuse and exploitation in relation to their linkage to unscrupulous recruitment practices, slave or forced labour, and direct/indirect involvement in trafficking in persons (UNIAP, 2011). Safe, orderly and regular labour migration policy is utterly crucial to minimize the risks and vulnerabilities of migrant workers throughout the whole migration process. Hence, there is indeed a nexus between thorough regulation of PRAs and protection of the rights of migrant workers vis-à-vis safe labour migration in alignment with the international human rights law (HRC, 2017).

In case of Cambodia where more than half of migrants are irregular or undocumented, regulation on PRAs is beyond an option but a pressing necessity. Correspondingly, on August 11, 2011, the Royal Government of Cambodia adopted the *Sub-Decree No. 190 on the Management of the Sending of Cambodian Workers Abroad through Private Recruitment Agencies* (Sub-Decree 190). This research brief discusses the role of Sub-Decree 190 in regulating PRAs and safeguarding safe labour migration in Cambodia through comparative study of national framework in parallel with

the international human rights standards on the rights of migrant workers.

## Labour Migration in Cambodia

The massive outflow of migrant workers from Cambodia is predominantly stimulated by regional integration arrangement via labour mobility framework. More than 150 million out of 207 million international migrants were reported to be migrant workers in 2013 (ILO, 2015). The Association of Southeast Asian Nations (ASEAN) member countries supplied approximately 8% of the world's migrant population. The intraregional migration has been dramatically increased with Malaysia, Singapore and Thailand as the regional migration hub which accounted nearly 96% of the total regional migrants (World Bank, 2017).

So far, there are more than one million Cambodian migrant workers, approximately 12% of Cambodia's total work force working mainly in Thailand, Malaysia, South Korea, and Japan. Cambodian migrant workers have contributed to economic and social development in terms of remittances and skills development. As of August 2017, there are 79 active licensed PRAs registered with the Ministry of Labour and Vocational Training (MoLVT). Regardless, small numbers of migrants migrate through regular channels whilst large majority choose irregular ones, through social networks or illegal brokers triggering inexorable irregular/undocumented migration posing great challenge to the labour migration control.

The lack of regular, safe, accessible and affordable mobility option is one of major driving forces of undocumented diaspora, i.e. costly and time-consuming administrative procedure in obtaining travel documents (including passport and work permit), high mobility costs via PRAs and limited access of such safe migration options in remote area especially border provinces (Dickson & Koenig, 2016). Furthermore, migrant workers from Cambodia have been exposed to great risks and vulnerabilities throughout the whole migration process including abuses in the training centers, threat and/or abuses (physical, psychological and sexual), labour and financial exploitation, indecent working and living conditions, and various forms of discrimination in the country of employment; child labour and forced labour were also cited as major problems resulting from underage workers and debt bondage (Human Rights Watch, 2011).

## Safe Labour Migration in Cambodia: Policy and Regulation

In light of the increasing significance of labour migration on national development of Cambodia, national regulation and policies were correspondingly formulated, albeit provisional, including the Policy of Labour Migration 2015-2018 and Sub-Decree 190 as well as relevant Prakas (Prakas 045, 047, 249, 350, 251, 252 and 253).

### Policy on Labour Migration

The 2015-2018 Policy on Labour Migration for Cambodia was adopted in December 2014 upon the completion of the 2010-2015 Policy. The policy upholds the existing framework of action, the three main pillars: 1) labour migration governance; 2) protection and empowerment of migrant workers; and 3) harnessing of labour migration and development. The spirit of the Sustainable Development Goal 2030 was not well-echoed. The policy did not offer a comprehensive framework addressing the pressing challenges of labour migration although including combating unlicensed brokers as a policy goal, yet remains silent on efforts addressing irregular/undocumented migration.

### Sub-Decree 190

Sub-Decree 190 is a regulation adopted in 2011 in place of Sub-Decree 57 (1997). It aims to ensure safety for Cambodian migrant workers who work abroad, or in other words safeguard safe labour migration through provisions on registration requirements, guaranty deposit, employment contract, penalty, and commendation certificate.

### Definitions

Migrant workers refer to “Cambodian people of both sexes, who are at all phases of labour migration from the time when a job placement contract is entered into with the recruitment agency until the time they return home” (Article 4). Recruitment agency refers to “any private legal entity duly established under applicable law and regulations of the Kingdom of Cambodia and officially licensed by the MoLVT to be responsible for providing full job placement service abroad” (Article 4).

### Licensing Requirements

Article 7, providing detailed guidelines for registration of PRAs, requires official address, sufficient operational materials (staff, office,

communication and transportation), and training center in conformity with the minimum standards stipulated in the Sub-Decree (Article 7). The Sub-Decree further establishes ‘ordinary’ and ‘special’ inspection of PRAs (Article 9), yet fails to specify on what grounds such measures can be invoked and whether such inspection should be an informed one. Despite strict requirements for registration, the regulation is however silent on measures dealing with unlicensed or unregistered agencies and un-authorized sub-contract agencies in Cambodia.

### Guaranty Deposit

PRAs are required to deposit USD 100,000 as surety fund within 15 days after receipt of authorization from the MoLVT. The deposit will be refunded upon request in cases of: (1) when agencies cease operation; (2) when all workers returned home; and (3) when agencies fully resolve issues with workers (Articles 8, 10 & 11). Although there is no direct correlation between steep amount of guaranty deposit and irregular migration, the former is indeed a critical factor in registration application and determination of recruitment fees charged to migrants. The fee is in most cases unaffordable for potential migrants and consequently leaves no option, but irregular and unsafe mobility option. It is strikingly found that the fund so far has never been used to compensate any worker as stipulated despite numbers of unethical practices of PRAs reported (UNIAP, 2011).

### Employment Contracts

Employment contracts, enforceable under applicable jurisdiction, are an essential tool to ensure decent work and working conditions for migrants in case of disputes arising thereof. Article 15 reads: “[t]he employment contract shall clearly specify, inter alia, working conditions, job status, and types of work, benefits and key addresses that can be contacted.”

Numbers of minimum labour conditions do not resonate in the provision. As a minimum standard, duration of contract (maximum of two years’), salary, paid annual leave (1.5 working days per month), social security benefits, and repatriation procedure shall be additionally stipulated in a standardized employment contract for migrant workers. Such omission reaffirms degeneration of employment contract standards vis-à-vis standardized employment contract for Cambodian migrant workers. Migrants may in

such case be exposed to greater risk of abuses and exploitation by PRAs and/or employers in and outside of Cambodia.

### Penalty Provisions

In term of monitoring and oversight, the Sub-Decree addresses three kinds of administrative measures: written warning, temporary suspension and/or revocation of authorization in cases of violation of any provisions of the Sub-Decree (Articles 39 & 40). The term ‘any provisions’ here is per se ambiguous. The provision does not specify on what grounds or which provisions in particular to be violated for such measures to be applied or whether different types of offences under the sub-decree will be resulted in equivalent penalty measures. It is also silent on whether progressive penalty will be applied on repeated offences of PRAs and whether any criminal proceeding will be triggered in addition to administrative procedure by the MoLVT, for example, in case of repeated abuses and exploitation in training centers. Such ambiguity could result in arbitrary interpretation of the provision by administrative authorities.

### Certificate of Commendation

Another controversial provision is on the ‘certificate of commendation’ issued by MoLVT for PRAs which ‘*perform well*’ (Articles 37 & 38). The provision is reviewed as flawed for the lack of legitimate justification for such measure. The accountability and transparency of the system is also questioned since the assessment criteria and result of PRAs are not widely available and accessible for the public and more importantly for potential migrants and PRAs in regular monitoring of services provided.

## Conclusion

Labour migration in Cambodia is and will be inexorable; therefore, if better managed, it would be an opportunity for Cambodia albeit in the long term. Safeguarding safe labour migration is not an end state, but a multi-level and multi-dimensional process. Ambiguities and discrepancies between the regulation and international human rights standards on safe labour migration renders legitimate concerns on the promotion and protection of migrant worker rights. Integrated, cohesive and comprehensive national framework of action is thus vital with inclusive participation of and meaningful discussion with relevant stakeholders. Institution-alization and

internalization of labour migration in a more rights-based and migrants-centered approach are utmost essential to address the matter in a systematic manner and in line with the sustainable development goals 2030.

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