

Safeguarding Safe Labour Migration of Cambodia's Migrant
Workers: An Assessment of Regulation on Private
Recruitment Agencies in Cambodia

การให้หลักประกันความปลอดภัยแก่แรงงานอพยพกัมพูชา:
การประเมินการควบคุมกำกับบริษัทตัวแทนจัดส่งแรงงานในกัมพูชา

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Abstract

This article explores the correlation between statutory regulation on private recruitment agencies and safe labour migration of Cambodia's migrant workers. Specifically, it assesses key provisions of the 2011 Sub-Decree No. 190 on the Management of the Sending of Cambodian Workers Abroad through Private Recruitment Agencies. This article argues that the implementation of thorough national regulation on private recruitment agencies in Cambodia is essential for the promotion and safeguard of safe labour migration in line with international human rights standards. It highlights that the vague and ambiguous provisions of the sub-decree may undermine protection of Cambodia's migrants' rights in terms of standardizing of employment contract, penalty and reward system, and tackling unregistered/unlicensed agencies, or lack thereof. It concludes that it is a missed opportunity for the 2011 Sub-Decree to establish comprehensive regulatory guidelines and to address pressing labour migration issues, such as undocumented migrants, unscrupulous practices of agencies, and other labour migration-related issues. Although Cambodia is a latecomer in reaping its benefits, economic labour migration in light of its inexorable status is potentially an opportunity if it is well-managed by implementing an integrated, comprehensive and cohesive national policies and programmes in line with inclusive growth and sustainable development goals.

Keywords: migrant workers; undocumented; safe labour migration; private recruitment agencies; sub-decree 190; Cambodia.

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บทคัดย่อ

บทความเรื่องนี้สำรวจสหสัมพันธ์ระหว่างการควบคุมกำกับบริษัทตัวแทนจัดส่งคนงานตามกฎหมาย และการเคลื่อนย้ายอย่างปลอดภัยของแรงงานกัมพูชา โดยเฉพาะอย่างยิ่ง จะเป็นการประเมินบทบัญญัติหลักของพระราชกฤษฎีกาย่อย (sub-decree) ฉบับที่ 190 ค.ศ. 2011 ว่าด้วยการบริหารจัดการการส่งแรงงานกัมพูชาไปต่างประเทศผ่านบริษัทตัวแทนจัดหาแรงงาน (Management of the Sending of Cambodian Workers Abroad through Private Recruitment Agencies) บทความเรื่องนี้อ้างว่า การนำเอาบทบัญญัติทางกฎหมายสำหรับการควบคุมกำกับบริษัทตัวแทนไปใช้ในระดับชาติอย่างสมบูรณ์ครบถ้วนจำเป็นยิ่งต่อการส่งเสริมและให้ความปลอดภัยแก่การอพยพแรงงานตามมาตรฐานสากลว่าด้วยสิทธิมนุษยชน บทความนี้ย้ำว่า บทบัญญัติที่คลุมเครือและกำกวมของพระราชกฤษฎีกาย่อยฉบับนี้อาจมีผลทำลายประสิทธิภาพในการให้การคุ้มครองสิทธิในด้านต่าง ๆ ของแรงงานอพยพกัมพูชาในแง่ของการกำหนดมาตรฐานด้านสัญญาจ้างงาน ระบบการลงทะเบียนและให้รางวัล และการแก้ปัญหาบริษัทตัวแทนที่ไม่ได้จดทะเบียนและไม่มีใบอนุญาต บทความสรุปว่า นับเป็นโอกาสที่สูญเสียนไปสำหรับพระราชกฤษฎีกาย่อย ค.ศ. 2011 ที่มีได้กำหนดแนวทางการควบคุมกำกับอย่างครบถ้วนสมบูรณ์ และได้จัดการกับประเด็นเร่งด่วนที่เกี่ยวกับการอพยพแรงงาน เช่น ปัญหาแรงงานที่เขามาทำงานอย่างผิดกฎหมาย วิธีปฏิบัติที่ขาดสำนึกของบริษัทตัวแทน และประเด็นด้านการอพยพแรงงานอื่น ๆ แม้ว่ากัมพูชาจะมาช้ากว่าชาติอื่น ๆ ในการแสวงหาประโยชน์จากแรงงานอพยพ แต่หากมองในแง่สถานะของแรงงานประเภทนี้ที่ยากจะหยุดยั้งได้ ก็นับว่ามีศักยภาพด้านโอกาสอย่างมากหากมีการบริหารจัดการอย่างดีด้วยการใช้นโยบายและโครงการที่มีบูรณาการกัน มีความครบถ้วนสมบูรณ์ และมีการประสานงานกันอย่างเหนียวแน่นและอย่างสอดคล้องกับเป้าหมายด้านการเติบโตอย่างครอบคลุมทุกภาคส่วน และการพัฒนาอย่างยั่งยืน

คำสำคัญ: แรงงานอพยพ, การเข้าเมืองอย่างผิดกฎหมาย, การอพยพของแรงงานอย่างปลอดภัย, บริษัทตัวแทนจัดส่งแรงงาน, พระราชกฤษฎีกาย่อย ฉบับที่ 190, ประเทศกัมพูชา

1. INTRODUCTION

Since ancient times, people have moved from one place to another as a mean of survival. Peoples move due to political, economic, social and security reasons. Economic or employment related diaspora is currently the main factor behind international migration. More than 150 million out of 207 million international migrants were migrant workers in 2013.² Southeast Asian countries particularly supplied approximately 8 percent of the world's migrant population whereas incoming migration accounted for only 4 percent. Meanwhile, intraregional migration has also been dramatically increased with Malaysia, Singapore and Thailand as the regional migration hub, accounted nearly 96 percent of the total regional migrants.³

Migrant worker refers to “a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.”⁴ Migrant workers are important agents for inclusive growth and sustainable development of the host and home countries.⁵ Migrant workers, regardless of their migratory status, should be recognized, protected and treated with dignity and equality and non-discrimination of all kinds under international human rights law (IHRL).⁶ The Special Rapporteur on human rights of migrants reaffirmed that States have positive human rights obligation toward migrants throughout the whole migratory process and duty to provide effective remedy for any discriminatory treatment or human rights violations they experienced.⁷ Nonetheless, the promotion and protection of human rights is pragmatically limited by virtue of territorial sovereignty.⁸ The implication is that the protection of migrants' rights is more attributable to the state of destination in which migrant workers are physically under the jurisdiction. State of origin is strikingly exempted from such obligation thereof.⁹ Such discrepancy thus serves as a pretext to engage and invoke meaningful discussion and human rights responsibility of the latter pertaining migrant workers, particularly in the promotion of safe labour migration.

² International Labour Organization [ILO], *Global estimates on migrant workers. Results and methodology. Special focus on migrant domestic workers* (2015) 5–6.

³ Mauro Testaverde, Harry Moroz, Claire H. Hollweg, & Achim Schmillen, *Migration to Opportunity: Overcoming barriers to Labour Mobility in Southeast Asia* (World Bank, 2017).

⁴ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families [Migrant Workers Convention] (1990), Art. 2(1); in this paper, the term “migrant worker” or “migrant” is used to refer to both documented and undocumented migrant worker, unless specified otherwise.

⁵ See The 2030 Agenda for Sustainable Development, A/RES/70/1 (25 September 2015).

⁶ Migrant Workers Convention, Art. 7; ILO Convention No. 097, Art. 6; ILO Convention No.143, Art. 1.

⁷ See A/RES/70/1.

⁸ Siobhan Mullally, (ed.) *Care, Migration, and Human Rights: Law and practice*. New York: Routledge (2015).

⁹ Gregor Noll, ‘Why Human Rights Fail to Protect Undocumented Migrants’ (2010) *European Journal of Migration and Law* 12 241-272, 243-247.

In this regard, the private recruitment agency (PRA) (or private recruitment agency) is an essential actor in facilitating supply and demand in labour markets across geographies and sectors. PRAs are also, in the worst case, facilitators of abuse and exploitation in relation to their linkage to unscrupulous recruitment practices, modern slave labour, and direct/indirect involvement in trafficking in persons.¹⁰ Private employment agency refers to any natural or legal person, independent of the public authorities, which provides one or more of the following labour market services: (a) services for matching offers of and applications for employment, without the private employment agency becoming a party to the employment relationships which may arise there from; (b) services consisting of employing workers with a view to making them available to a third party, who may be a natural or legal person, which assigns their tasks and supervises the execution of these tasks; (c) other services relating to job-seeking, determined by the competent authority after consulting the most representative employers and workers organizations, such as the provision of information, that do not set out to match specific offers of and applications for employment.¹¹ Regulating labour recruitment and such agency thereof are no longer strictly limited to the realm of private business law or corporate social responsibility of private companies.¹² There is indeed a nexus between thorough regulation on PRAs and protection of migrants' rights vis-à-vis safe labour migration under IHRL.¹³

In case of Cambodia where more than half of migrants are irregular or undocumented, regulation on PRAs in line with national mechanism on safe, orderly and regular migration is beyond a necessity.¹⁴ Correspondingly, *Sub-Decree No. 190 on the Management of the Sending of Cambodian Workers Abroad through Private Recruitment Agencies* ("Sub-Decree 190") was adopted on August 11, 2011 as the principal regulation to govern labour migration and recruitment in Cambodia.

The purpose of this paper is to explore the 2011 Sub-Decree through a critical assessment of its key provisions in line with IHRL regarding the protection of migrants' rights and safe labour migration. This paper thus aims to answer the research question, "*How are private recruitment agencies in Cambodia regulated under the framework of safeguarding*

¹⁰ See United Nations Office on Drugs and Crime, *The Role of Recruitment Fees and Abusive Fraudulent Practices of Recruitment Agencies in Trafficking in Persons* (2015); UN Inter-Agency Project on Human Trafficking. (2011). *Recruitment Agencies and the Employment of Cambodian Domestic Workers in Malaysia*. (Bangkok: United Nations Inter-Agency Project on Human Trafficking).

¹¹ Convention on Private Employment Agencies [Convention No. 181], 1997, Art. 1.

¹² ILO, *International Labour Migration: A rights-based approach*, Geneva: International Labour Office (2010).

¹³ Human Rights Council, *Report of the Special Rapporteur on the Human Rights of Migrants on 2035 Agenda for Facilitating Human Mobility* [A/HRC/35/25] 28 April 2017; see also General Assembly, *New York Declaration for Refugees and Migrants* [A/RES/71/1].

¹⁴ In this paper, labour migration in Cambodia refers to outgoing migration for employment unless otherwise specified.

safe labour migration?” In order to answer the question, the paper will provide an overview of labour migration in the context of Cambodia, explore and examine national framework on the promotion and safeguard of safe labour migration in Cambodia, and supply the author’s conclusion in that regard.

2. OVERVIEW OF LABOUR MIGRATION IN CAMBODIA

Economic labour migration started and has escalated since the early 2000s upon internal stability. The massive outflow of migrant workers from Cambodia is more importantly stimulated by regional arrangement of the Association of Southeast Asian Nations (ASEAN) integration and labour mobility promotion. The promotion of labour mobility in the region enables migrant workers from Cambodia, who are mostly low or semi-skilled, to access greater economic opportunities, like skills acquisition and remittances contributing to poverty alleviation at household and national level.¹⁵ There are more than one million Cambodian migrant workers, approximately 12% of Cambodia’s total work force.¹⁶ As of August 2017, 79 active PRAs have registered with the Ministry of Labour and Vocational Training (MoLVT).¹⁷ PRAs in Cambodia is arguably main facilitator for labour migration for migrants in terms of obtaining travel documents, providing pre-department training and job placement service.¹⁸ Regardless, small numbers migrate through regular channels whilst large majority choose irregular ones, through social networks or illegal brokers. Irregular or undocumented migration in this paper refers to movement of people across an international border without the administrative documents required by immigration.¹⁹

The top destination country for Cambodian migrants is Thailand.²⁰ Migrant workers from Cambodia are engaged in what is described to be the “3Ds” jobs—dirty, difficult and dangerous including agricultural, fishery and construction work.²¹ There are thus far more than one million Cambodian migrant workers in which more than half is undocumented.²² The actual number is unknown, yet is likely to be higher due to the porous border control and seasonal migration flow.²³ Malaysia is the second top destination in which more than 46,000

¹⁵ Suzana Crassard, *Country Profile: Cambodia*, International Organization for Migration [IOM] (n.d.).

¹⁶ IOM, *IOM in Cambodia Supporting the Sustainable Development Goals* (n.d.).

¹⁷ Data from the Ministry of Labour and Vocational Training [MoLVT], Cambodia (18 August 2017).

¹⁸ See Human Rights Watch, “*They Deceived Us at Every Step*”: Abuse of Cambodian Domestic Workers Migrating to Malaysia (November 2011).

¹⁹ Mekong Migration Network [MMN], *Speaking of Migration: Mekong Vocabulary on Migration* (2011) 189.

²⁰ ILO, ‘Cambodia (July – September 2016)’ *Triangle II Quarterly Briefing Note* (2016).

²¹ IOM. *IOM in Cambodia Supporting the Sustainable Development Goals* (n.d.); Policy on Labour Migration for Cambodia 2010-2015, 13.

²² Sineat Yon, ‘Ministry Campaign to Ease Documentation’ *The Phnom Penh Post* (7 July 2017) [online] available at: <http://www.phnompenhpost.com/national/ministry-campaign-ease-documentation> [accessed 9 July 2017].

²³ Policy on Labour Migration 2015-2018, 11.

female workers and male workers employed in domestic work and construction and manufacturing sectors respectively.²⁴ In addition, approximately 43,000 Cambodian migrants were sent to the Republic of Korea through Memorandum of Understanding (MOU) between governments whereas around 2,300 workers were sent to Japan through regular channels in light of strict technical and training requirements.²⁵

The decision for migration is mainly manipulated by the ‘pull’ factors in destination countries, including higher wages, high labour demand, and expectation of remittances. On the other hand, the ‘push’ factors include but not limited to chronic poverty, debt, lack of economic opportunities, and landlessness. In addition, the increase of irregular and undocumented migration is triggered by various factors. Geographical proximity, particularly to Thailand, is a major pull factor attracting thousands of workers living in border provinces—mainly northwestern provinces, including Siem Reap, Banteay Meanchey and Battambang.²⁶ Regularization — the process by which migrants in an irregular situation are allowed to remain or reside in a country in accordance with its laws and regulations²⁷ — of undocumented workers in Thailand further fuels the irregularity. The process was established by the Thai authority to register undocumented workers across Thailand. So far, more than 650,000 Cambodian workers were registered through national verification system and thus remain as temporary migrant workers in Thailand.²⁸

The lack of regular, safe, accessible and affordable mobility option is another major driving force.²⁹ Costly and time-consuming procedure to obtain documents for migration—i.e. passports and working visa—encourages decision for irregular channels, not to mention limited accessibility and availability of such service for potential migrants nationwide.³⁰ Furthermore, huge mobility costs further undermines the affordability of such regular mobility option. International mobility cost of Cambodia is estimated to be about nine times the annual average wage.³¹ In particular, for instance, it costs about USD 700 and takes more than three months in order to complete process to work in Thailand whereas it relatively costs USD 100

²⁴ Suzana Crassard (n.d.); Department of Employment and Manpower, MoLVT, Cambodia (January 2016); ILO. (2016). Cambodia (July – September 2016). *Triangle II Quarterly Briefing Note*.

²⁵ *ibid*; Sophal Chan, ‘Review of Labour Migration Management, Policies and Legal Framework in Cambodia’ *ILO Asia-Pacific Working Paper Series* (May 2009).

²⁶ Cambodia Development Resource Institute [CDRI], *Irregular Migration from Cambodia: Characteristics, Challenges and Regulatory Approach* (2011) 13-15.

²⁷ MMN, (2011) 152.

²⁸ Ministry of Interior, Thailand, 2014.

²⁹ See A/HRC/35/25.

³⁰ See Brett Dickson & Andrea Koenig, *Assessment Report: Profile of Returned Cambodian Migrant Workers*. IOM Cambodia (2016).

³¹ Claire H. Hollweg, *Labor Mobility and Labor Market Integration in ASEAN*. World Bank: Washington, D.C. (2016).

and takes less than a week through unlicensed brokers or friends.³² Migration through formal channels thus is an option for neither poor nor uninformed potential migrants.

Migrant workers from Cambodia regardless of their migratory status are exposed and subjected to vulnerabilities and exploitation throughout the whole migration process. Abuses in the training centers, where pre-departure training is provided, are often reported. Most training centers did not meet decent living standard due to overcrowding and lack of hygienic standards and necessary medical care. Denial of contact with families and of leaving the facility and limited access to migration information were commonly reported as unscrupulous practice of PRAs.³³ Many workers are also subject to threat or act of abuses (physical, psychological and sexual), labour and financial exploitation, indecent working and living condition, and various forms of discrimination in the state of employment. Child labour and forced labour are also often cited as concerns regarding Cambodian migrants owing to numbers of underage workers and inevitable migration as a result of debt bondage. Such persistent matter more or less associates with the flawed implementation of statutory regulation and policies on labour migration governance and oversight of PRAs in Cambodia.³⁴

3. NATIONAL FRAMEWORK ON SAFE LABOUR MIGRATION

Cambodia is a latecomer in comparison with other countries in the region regarding labour migration governance. The national framework on labour migration has been formulated in light of increasing significance of migration in national development of Cambodia. Regulation and relevant national policies were adopted, including Policy on Labour Migration, Sub-Decree 190, and relevant Prakas.

3.1 Policy on Labour Migration

The 2015-2018 Policy on Labour Migration for Cambodia was adopted in December 2014. The Policy upholds three main pillars: (1) labour migration governance; (2) protection and empowerment of migrant workers; and (3) harnessing of labour migration and development.³⁵ It also encompasses numbers of policy goal and action corresponding to the main pillars with the MoLVT as the core institution.³⁶

As the conclusion of the policy approaches, the current labour migration situation in Cambodia raises questions on the effectiveness of the policy. In lieu of addressing the inexorably irregular and undocumented migration, it remains almost silent on the matter,

³² Sophal Chan, (May 2009).

³³ See A/HRC/35/25.

³⁴ *ibid*; Policy on Labour Migration 2010-2015, 15.

³⁵ See Policy on Labour Migration 2015-2018.

³⁶ *ibid*.

except combating unlicensed brokers as a mean to tackle exploitative practices of PRAs.³⁷ Efforts on empowerment and protection of migrants are yet to be witnessed regarding awareness-raising, necessary pre-departure trainings and orientation, access to justice and effective remedies, reintegration and rehabilitation programmes. The incorporation of labour migration into national development policies does not necessarily translate into effective harnessing of labour migration and development. Challenges including lack of ownership and coordination in labour migration governance and inadequate monitoring and evaluation remains at hand notwithstanding recent political commitment of the government in incorporating labour migration into national development strategy.

3.2 Sub-Decree No. 190

Sub-Decree 190 is a regulation adopted in 2011 in place of Sub-Decree 57 (1997). To be noted, it is not a national legislation, but a regulatory framework for labour migration in Cambodia. The MoLVT has also adopted eight relevant Prakas in 2013, including Prakas 045, 046, 047, 249, 250, 251, 252 and 253. It aims to ensure safety for Cambodian migrant workers who work abroad, or in other words safeguard safe labour migration.³⁸ Sub-Decree 190 defines migrant workers as 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.³⁹ Recruitment agency in this context 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.⁴⁰ It further stipulates provisions regarding registration requirements, guaranty deposit, employment contract, penalty provisions, and commendation certificate.

3.2.1 Registration Requirements

It is mandatory for recruitment agency to register with the MoLVT before operation. The registration requirements include official address, sufficient operational materials, and training center in conformity with the minimum standards.⁴¹ Such detailed requirements serve as a guideline for supervision of de jure licensing procedure in a transparent and accountable manner. The Sub-Decree further establishes ‘ordinary’ and ‘special’ inspection of PRAs,⁴² yet fails to specify on what grounds such measures can be invoked and whether such inspection should be informed prior to inspection. Despite further information in the relevant Prakas, it however remains unclear whether the ‘ordinary’ inspection should be a regular or informed one; it is also ambiguous on whether prompt

³⁷ *ibid.*

³⁸ Sub-Decree 190, Art. 2&3.

³⁹ *ibid.*, Art. 4.

⁴⁰ *ibid.*

⁴¹ *ibid.*, Art. 7; see also *Prakas on Private Recruitment Agency*, MoLVT, No. 047/13 (13 February 2013).

⁴² *ibid.*, Art. 9.

penalty or other equivalent procedure is to be triggered for failing to comply with the standards.⁴³ The Sub-Decree is notably silent on measures dealing with unlicensed/unregistered agencies and unauthorized sub-contract agencies in Cambodia.

3.2.2 Guaranty Deposit

PRA's are required to deposit USD 100,000 as surety fund within fifteen days after receipt of authorization from the MoLVT.⁴⁴ Such huge amount is considered to be excessive in comparison with other sending countries. For instance, guaranty deposit for agencies in the Philippines and Malaysia are set at USD 20,000 and USD 50,000 respectively.⁴⁵ The increase in numbers of agencies (from 18 in 2007 to 79 agencies in 2017)⁴⁶ does not necessarily reflect positive progress in this regard. An inexorable amount of irregular or undocumented migrants in this case speaks otherwise.⁴⁷ Although there is no direct correlation between steep amount of guaranty deposit and irregular migration, the former is indeed a determining factor for recruitment fees charged to migrants. The fee is in most cases unaffordable for potential migrants aforementioned and consequently leaves no option, but irregular and unsafe mobility option for most Cambodian migrants.⁴⁸ Such fee furthermore may not be in compliance with human rights standard regarding safe labour migration in which it prohibits charge of recruitment fee directly from migrant workers for avoiding unethical practice of PRA's and combating any forms of debt bondage and slave labour. Instead, it is suggested for business-to-business practice by charging the fee directly from employers.⁴⁹ The deposit is to be used for several circumstances in the interests of migrant workers and to be refunded upon request in specific circumstances.⁵⁰ It is nevertheless found that the fund so far has never been used to compensate any worker or refunded as stipulated despite numbers of unethical practice of PRA's reported.⁵¹

⁴³ See Prakas on Inspection on Private Recruitment Agency, MoLVT, No. 250/13 (23 September 2013).

⁴⁴ Sub-Decree 190, Art. 8.

⁴⁵ Sophal Chan, (May 2009) 33.

⁴⁶ Data from the MoLVT, (18 August 2017).

⁴⁷ Department of Employment and Manpower, MoLVT, Cambodia (January 2016); ILO. (2016). Cambodia (July – September 2016). *Triangle II Quarterly Briefing Note*.

⁴⁸ Sophal Chan, (May 2009) 33.

⁴⁹ See ILO Convention No. 181, Art. 7; Report of the Special Rapporteur on the human rights of migrants, Mr. François Crépeau [A/70/310] 11 August 2015.

⁵⁰ Sub-Decree 190, Art. 10&11.

⁵¹ United Nations Inter-Agency Project on Human Trafficking, *Recruitment Agencies and the Employment of Cambodian Domestic Workers in Malaysia*, (Bangkok: United Nations Inter-Agency Project on Human Trafficking, 2011), at viii. [UNIAP], at 49; LICADHO, Comments on the Sub Decree on 'the Management of the Sending of Cambodian Workers Abroad through Private Recruitment Agencies', (2011).

3.2.3 Employment Contract.

Employment contract is an essential tool to ensure decent work and working conditions for migrants since it is enforceable under the applicable jurisdiction in case of disputes arising thereof. Sub-Decree 190 took a step backward in this regard. 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 basic working conditions are less than explicit in the new provision. Working conditions including duration of contract, salary, paid annual leave, social security benefits, and repatriation procedure are not explicitly stipulated.⁵² Such omission reaffirms the lack of 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 if there is no enforceable document with concrete minimum standard of protection. It is unseen that a copy of the employment contract shall be provided to migrant workers.

3.2.4 Penalty Provisions

In term of monitoring and oversight, the Sub-Decree addresses three kinds of administrative measures: written warning, temporary suspension of authorization/license and revocation of authorization in cases of violation of any of its provisions. The term ‘any provisions’ here is simply ambiguous. The provision does not specify any grounds or provisions for such measures to be applied and whether different types of offences shall be resulted in equivalent penalty measures. It is also silent on whether progressive penalty is applicable on repeated offences and whether any criminal proceeding is triggered in addition to administrative procedure by the MoLVT, for example, in case of repeated abuses and exploitation in training centers.⁵³

3.2.5 Certificate of Commendation

Another controversial provision is on the ‘certificate of commendation’ for PRAs. Any agencies which ‘*perform well*’ will be rewarded the certificate by the MoLVT.⁵⁴ The provision is reviewed as flawed in line with the purpose of the Sub-Decree per se. The practical aspect of such system is further questionable in term of accountability and transparency as the assessment criteria and result of PRAs is thus far not widely available and accessible for the public and more importantly for potential migrants and PRAs.

⁵² Sub-Decree 190, Art. 21, 26&33.

⁵³ Sub-Decree 190, Art. 39&40.

⁵⁴ *ibid*, Art. 37&38.

4. CONCLUSION

Labour migration in Cambodia is indeed an important element contributing to economic and social development through skills development and remittance flows within the last decades. It is and will continue to be inexorable in the next decades. The concern is that it is becoming more of a necessity, rather than an option for the economic survival of Cambodian people. The irregular nature of migration further deteriorates the situation and triggers more migration-related issues. The persistent abuses and violation of migrants' rights more or less undermines and jeopardizes the efforts to harness the positive contribution of labour migration to sustainable development of Cambodia. Meanwhile, safe labour migration is yet to be addressed in a comprehensive and cohesive manner under national framework concerning labour migration.

The Sub-Decree does not perform up to par and is a missed opportunity in regulating PRAs and addressing migration-related issues deriving from the unethical or unscrupulous practices of PRAs. In particular, it is a regression from the standpoint of migrants' rights. Several provisions can be revisited with caution. The guaranty deposit should be reduced and assessed with consultation of relevant stakeholders on the basis of either numbers of workers or of operational scope of agency.⁵⁵ Standardized employment contract should be formulated through tripartite mechanism. Necessary minimum working conditions and labor rights provisions – including duration of contract (maximum of two years'), paid annual leave (1.5 working days per month), social security benefits, and repatriation procedure – should be explicitly stipulated; a copy of the contract should also be administered to migrant workers. More importantly, safe migration would not be possible without accessible, available, and affordable mobility option through de facto implementation of expeditious and non-onerous administrative procedure in migration process. Strengthening monitoring and oversight of PRAs is absolutely essential in tackling unscrupulous practices of agencies in Cambodia through independent, transparent and regular inspection along with more comprehensive penalty provisions.

Furthermore, safeguarding safe labour migration is not and should not be treated as an isolated matter. In line with national development policy, an integrated, cohesive and comprehensive national framework on labour migration is of great essence. National legislation, i.e. labour migration law, is indispensable for statutory regulation of labour migration as well as the promotion and protection of migrants' rights in addition to the current regulation. Institutionalization is further crucial for effective implementation and enforcement by relevant institutions. Should it be better managed, economic labour migration will serve as a long-term opportunity toward inclusive growth and sustainable development of Cambodia at household, community and national level.

⁵⁵ Sophal Chan, (May 2009) 33.