

## **Briefing Note**

The Senate General Secretariat

# **The Moral and Economic Imperative for Fairer, Smarter, and More Humane Migration**



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## I- Introduction

1. **Definition of migrant:** at the international level, no universally accepted definition for "migrant" exists. The term "migrant" has usually been understood to cover all cases where the decision to migrate has been taken freely by the individual concerned for reasons of "personal convenience" and without intervention of an external compelling factor; it has therefore applied to persons, and family members, moving to another country or region to better their material or social conditions and improve the prospect for themselves or their family. Migrants can be grouped as: economic migrant; documented migrant; irregular migrant; skilled migrant; and temporary migrant worker.<sup>1</sup>
2. **Protection and empowerment:** the protection and empowerment of migrant workers remain major policy challenges for labor migration. Cambodian migrant workers are mainly low-skilled workers and, thus, mostly likely have received little or no formal education. Therefore, they may be ill equipped to confront major problems and cases of exploitation or abuse while abroad. Furthermore, the types of work they engage in, coupled with their low status as a migrant workers, are likely to make them more susceptible to gender, administrative, legal and financial discrimination as well as xenophobia.<sup>2</sup>

## II- Issues and Challenges Facing Cambodian Migrant Workers

1. The Royal Government of Cambodia (RGC) has recognized that labor migration is a major contributor in the promotion of employment and the reduction of poverty through remittances that can provide positive effects at both household and national level.<sup>3</sup> However, challenges and issues remain:
2. **High cost:** the total cost of legally sending a migrant worker to Thailand is approximately US\$700, while for Malaysia it is US\$840 to US\$1,200. In comparison, an illegal migrant would typically pay US\$100 to be smuggled into Thailand and would not have to wait long to travel.<sup>4</sup>
3. **Lack of a standardized contract:** the employment contract is the principle document to be obtained, reviewed and signed before the departure of a migrant worker to a destination country. While working abroad, migrant workers will be bound by the terms and conditions set out in the employment contract, and such a contract should be clear, sound and enforceable in both the sending and receiving countries. However, a lack of standardized contracts with employers in the destination country remains a problem and there have been a number of cases where the employment contracts signed in the sending country were later replaced by contracts in the receiving country.<sup>5</sup>
4. **Lack of standardized pre-departure training:** pre-departure training is vitally important to prepare migrant workers to adapt to culture shock and to prepare them for work in the receiving countries. In Cambodia, pre-departure training on culture, languages, communication, health and

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<sup>1</sup><http://www.iom.int/key-migration-terms> (accessed 01/08/2015)

<sup>2</sup> International Organization for Migration, "Safe Migration: A Pre-Departure Orientation Manual for Migrant Workers." Cambodia, 2010, p. 2.

<sup>3</sup>Policy on Labor Migration for Cambodia, 2010.

<sup>4</sup> Max Tunon and Khleang Rim, Cross-border labor migration in Cambodia: Considerations for the national employment policy, ILO Asia-Pacific Working Paper Series, October 2013. p. 2.

<sup>5</sup>Chan Sophal (December 2009), Costs and Benefits of Cross-Country Labor Migration in the GMS: Cambodia Country Study, CDRI Working Paper Series No. 44. P. 56.

legal issues has been provided by some NGOs and recruitment agencies. Although pre-departure training is mandatory (article 7 of sub decree 190), there are no standardized pre-departure training or curriculum packages in place.<sup>6</sup>

### III- Policy and Legal Framework

1. For overseas migration to be safe and migrants protected, legal and institutional mechanisms need to be in place to inform potential migrant workers about working abroad and their rights at work, among other measures. Cambodia has initiated, and continues to develop, policy actions and institutions to enhance governance of the migration process.<sup>7</sup>
2. **Sub-Decree No. 52:** the Cambodian government agency responsible for the governance of labor migration is the Department of Employment and Manpower, under the Ministry of Labor and Vocational Training's General Department of Labor. Sub-Decree No. 52 (2005) mandates that the MOLVT is in charge of two tasks that are directly related to labor migration: (1) to improve the management of overseas employment service provision through private companies and the promotion of employment of Cambodian workers overseas; and (2) to coordinate and cooperate with other ministries, local authorities, and regional and international organizations.<sup>8</sup>
3. **Sub-Decree No. 190:** in August 2011, the Cambodian government adopted Sub-Decree No. 190 on the Management of the Sending of Cambodian Workers Abroad through Private Recruitment Agencies, which replaced Sub-Decree 57 of 1995. The Sub-Decree acknowledges the potential impact of migration on poverty reduction and human resource development. It also strengthens the regulatory framework for managing labor migration and protecting migrant workers.<sup>9</sup>
4. **Prakas:** to implement the Sub-Decree, the Ministry of Labor and Vocational Training issued 3 Prakas: Prakas 045 dated 2013 on the Definitions of the Terms of Use in Sub Decree 190; Prakas 046 dated 2013 on the Recruitment Process and Pre-departure Orientation; and Prakas 047 dated 2013 on Recruitment Agencies.
5. **International conventions:** Cambodia is also a signatory party to following international conventions:
  - International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990<sup>10</sup>
  - Convention No.97 dated 1949 on Migration for Employment
  - Convention No. 143 dated 1975 on Migrant Workers
  - Convention No. 181 dated 1997 on Private Employment Agencies
  - Convention No. 189 dated 2011 on Domestic Workers<sup>11</sup>
6. **Regional and bilateral agreements:** Cambodia signed the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (adopted on 13 January 2007) and adopted the Bangkok Declaration on Irregular Migration in 1999.<sup>12</sup>In addition, Cambodia has signed

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<sup>6</sup>Ibid,p. 57.

<sup>7</sup>Max and Khleang, P. ix.

<sup>8</sup>Ibid. P. 7.

<sup>9</sup>Ibid. P. 10.

<sup>10</sup>[http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg\\_no=IV-13&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-13&chapter=4&lang=en)

<sup>11</sup> For the status of Cambodia regarding these Conventions please see

[http://www.ilo.org/dyn/normlex/en/f?p=1000:11210:0::NO:11210:P11210\\_COUNTRY\\_ID:103055](http://www.ilo.org/dyn/normlex/en/f?p=1000:11210:0::NO:11210:P11210_COUNTRY_ID:103055)

<sup>12</sup>Hing Vutha, Lun Pide, and Phann Dalis (August 2011), Irregular Migration from Cambodia – Characteristics, Challenges and Regulatory Approach, CDRI Working Paper Series No. 58.P. 23.

Memoranda of Understanding (MoUs) with Thailand, South Korea, Kuwait, Qatar and Japan to manage the deployment of workers to those countries.

## IV- Good Practices in Cambodia

1. Having gone through numerous stages in terms of labor migration, Cambodia has learned a great deal, and various measures have been undertaken regarding best practices in this field. These actions could be considered as best practices for replication in other areas in the region. They include:
2. **Labor migration policy:** Cambodia, with support from the International Labour Organization (ILO), has developed a labor migration policy plan with the participation of all stakeholders to address all the issues and challenges arising from labor migration. The policy focuses on three areas: i) governance of labor migration; ii) protection and empowerment of migrant workers; and 3.) harnessing labor migration for development. The goal of the policy is better governance in terms of migration, more regulated recruitment agencies, provision of support services for migrants, maximizing remittances, and the provision of support for re-integration of returning migrants.
3. **Pre-departure training:** Prakas 108, issued by the Ministry of Labour and Vocational Training (MLVT) in 2006 on Education on HIV/AIDS, Safe Migration and Labour Rights for Cambodian Workers Abroad, has stipulated that there should be pre-departure training for workers intending to migrate so that they can protect themselves from diseases, particularly HIV/AIDS. Also, according to Article 20 of Sub-decree Number 190 in 2012, recruitment agencies are required to provide migrant workers with the means to communicate with the Cambodian embassies in the destination countries. A Pre-Departure Orientation Manual for Migrant Workers was developed in 2010 with support from the International Organization on Migration (IOM) putting emphasis on the pre and post - recruitment stages.<sup>13</sup>
4. **MoU development:** An MoU between the countries of origin and destination is another strategy to protect migrant workers. Data has shown that the number of legal migrant workers increased by approximately 173 percent between 2006 and 2010 since the MoU between Cambodia and Thailand was signed<sup>14</sup>. The content of the MoU mainly focuses on procedures for migration, preventing illegal migration, employment and human trafficking, effective procedures for repatriation of workers, and the protection of workers from any form of abuse.<sup>15</sup>
5. **Labor attaché:** Cambodia has appointed a labor attaché at the Cambodian embassy in each of the countries of destination to follow up and be responsible for labor migration issues. Tasks include the vetting of jobs and employers before giving approval for Cambodian nationals to work in destination countries, and providing cooperation with destination countries in protecting Cambodian migrant workers.
6. **Cost reduction:** before 2009, the Cambodian migrant workers needed to pay more than 130 USD for passport costs and had to wait for more than one month before receiving the documentation. After 2009, the cost of the passport was lowered to \$20 and became free of charge from the end of 2014.<sup>16</sup>This is intended to encourage migrant workers not to proceed through illegal channels.

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<sup>13</sup>International Organization for Migration, “Safe Migration: A Pre-Departure Orientation Manual for Migrant Workers.” Cambodia, 2010.

<sup>14</sup>Max and Khleang, p. 2.

<sup>15</sup>[http://ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms\\_160944.pdf](http://ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_160944.pdf)

<sup>16</sup><https://bnglegal.com/sys-content/uploads/2015/03/150112-MLU-January-pdf.pdf>

7. **Protection mechanism institutionalized:** The Migration Working Group was created in 2012 to protect the rights and the interests of migrants. It was established under the Secretary of the National Committee to lead the Inter-Ministerial Committee on the Suppression of Human Trafficking, Smuggling, Labor and Sexual Exploitation of Women and Children.
8. **Social partners:** participation from “social partners” is another effective approach to protect migrant workers. The Cambodian Trade Union Committee on Migration was established (CTUC-M) in 2012 as the united voice of three federations to protect the rights and interests of migrant workers in line with ILO principles. Participation from Civil Society Organizations (CSOs) has been promoted in Cambodia. There is increased participation from CSOs and international organizations in the cooperation and consultation process in respect of policy developments regarding migration issues in order to support migrant workers by insuring that policy development will comprehensively address all the issues emerging from migration.<sup>17</sup>

## V. Conclusion and Policy Options

1. Cambodia has come a long way and made remarkable progress in the protection and empowerment of migrant workers. The government has acknowledged and promoted labor migration as a tool in reducing poverty. Cambodia has signed numerous international conventions to facilitate smooth migration of its workers. In addition, regional and bilateral agreements have been signed. Numerous good practices ranging from cost cutting to the posting of a labor attaché to Cambodian embassies in the relevant countries have been carried out. However, reports of the abuse and mistreatment of Cambodian migrant workers still prevail. To better facilitate labor migration, some policy options should be considered:
- 2 **Make pre-departure training compulsory:** pre-departure training on culture, language, communication, health and legal issues, has been provided mostly by NGOs and recruitment agencies. Although pre-departure training is mandatory (Article 7 of sub-decree 190), some migrant workers do not receive any training at all, making them vulnerable to abuses and exploitation. Recruitment agencies should be subject to penalties for sending migrant workers abroad without adequate pre-departure training. Recruitment agencies should therefore be effectively monitored in this regard.
- 3 **Ensure joint responsibility:** in cases where migrant workers have been abused, responsibility should be shared by employers, recruitment agencies and other relevant agencies. There have been reports of recruitment agencies shirking their responsibilities when the rights of workers are abused, with the responsibility, in most cases, shifting to NGOs and MoLVT.
- 4 **Set up labor migrant database:** statistics on migrant workers can be used to measure the impacts of migration on economic and social development, and for the government to weigh the benefits against the challenges for national development strategies. Collecting, analyzing and sharing data concerning migrant workers in the countries of both origin and destination are one part of enhancing the protection of migrant workers.<sup>18</sup> Yet it is difficult to obtain complete and up-to-date migration related data in Cambodia. Thus, establishment of a comprehensive labor migrant database should be one of the priorities for Cambodia as well as for other countries. Migration-related information should also be shared more widely; awareness should be raised among the general public.

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<sup>17</sup>Max and Khleang, p. 8.

<sup>18</sup> The 6<sup>th</sup> ASEAN Forum on migrant labour, 26-27 November 2013, Bandar Seri Begawan, Brunei Darussalam. Retrieved from [http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/meetingdocument/wcms\\_234228.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/meetingdocument/wcms_234228.pdf)

- 5 **Continue cost-cutting measures:** one reason why labor migrants resort to irregular methods in the migration process is the high cost and long waiting time involved in using legitimate methods. Reducing costs and waiting times would lessen this problem.
- 6 **Strengthening capacity the labor attaché:** Cambodia has appointed a labor attaché at each of the Cambodian embassies in the countries of destination to be responsible for labor migration issues. Their tasks include the vetting of jobs and employers before approving Cambodian nationals to work in the destination country. However, there seems to be lack of adequate coordination between the labor attaché, the MoLVT and the recruitment agencies. Coordination between the key stakeholders should be strengthened as well as the capacity of the labor attaché. The functions of the labor attaché and consular officials should also be enhanced. They should be well trained and adequately supported to provide effective on-site protection.

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