

COMMENTS ON THE SUB DECREE ON ‘THE MANAGEMENT OF THE SENDING OF CAMBODIAN WORKERS ABROAD THROUGH PRIVATE RECRUITMENT AGENCIES’

A LICADHO Briefing Paper

August 2011



សម្ព័ន្ធនៃការលើកកម្ពស់និងការការពារសិទ្ធិមនុស្ស លីកាដូ

LICADHO
CAMBODIAN LEAGUE FOR THE PROMOTION
AND DEFENSE OF HUMAN RIGHTS

Cambodian League for the Promotion and Defense of Human Rights (LICADHO)

LICADHO is a national Cambodian human rights organization. Since its establishment in 1992, LICADHO has been at the forefront of efforts to protect civil, political, economic and social rights in Cambodia and to promote respect for them by the Cambodian government and institutions. Building on its past achievements, LICADHO continues to be an advocate for the Cambodian people and a monitor of the government through wide ranging human rights programs from its main office in Phnom Penh and 12 provincial offices.

LICADHO pursues its activities through two programs:

Monitoring and Protection Program:

- **Monitoring of State Violations and Women's and Children's Rights:** monitors collect and investigate human rights violations perpetrated by the State and violations made against women and children. Victims are provided assistance through interventions with local authorities and court officials.
- **Paralegal and Legal Representation:** victims are provided legal advice by a paralegal team and, in key cases, legal representation by human rights lawyers.
- **Prison Monitoring:** researchers monitor 18 prisons to assess prison conditions and ensure that pre-trial detainees have access to legal representation.
- **Medical Assistance:** a medical team provides assistance to prisoners and prison officials in 12 prisons, victims of human rights violations and families in resettlement sites.
- **Social Work:** staff conduct needs assessments of victims and their families and provide short-term material and food.

Promotion and Advocacy Program:

- **Training and Information:** advocates raise awareness to specific target groups, support protection networks at the grassroots level and advocate for social and legal changes with women, youths and children.
- **Public Advocacy and Outreach:** human rights cases are compiled into a central electronic database, so that accurate information can be easily accessed and analyzed, and produced into periodic public reports (written, audio and visual).

For More Information Contact:

Dr. Pung Chhiv Kek, President
LICADHO (Cambodian League for the Promotion and Defense of Human Rights)
#16, Street 99
Phnom Penh, Cambodia

Tel: (855) 23 727 102/216 602

Fax: (855) 23 727 102/217 626

E-mail: contact@licadho-cambodia.org

Web: <http://www.licadho-cambodia.org>

Content

SUMMARY..... 1

ANALYSIS: KEY PROVISIONS OF SUB DECREE 190 2

Chapter 3: “Recruitment Agency” 2

Chapter 5: “Job Market and Skills of Workers” 2

Chapter 6: “Contract” 2

Chapter 7: “Recruitment of Workers and Pre-Departure Orientations” 3

Chapter 8: “Repatriation of Workers” 4

Chapter 9: “Dispute Resolution” 4

Chapter 10: “Disappearance of Workers” 4

Chapter 12: “Worker’s Remittance to Cambodia” 4

Chapter 13: “Commendation” 4

Chapter 14: “Penalty” 5

SUMMARY

The newly-enacted Sub-Decree on “the Management of the Sending of Cambodian Workers Abroad through Private Recruitment Agencies” (hereinafter Sub-Decree 190) is a dismal failure from the perspective of migrant worker rights. It not only fails to expand legal protections for Cambodians who migrate overseas to work, it actually marks a regression. When compared to the law it superseded, Sub-Decree 57 of 1997, worker protections have been rolled back in many key areas.

The sub decree also fails to address a number of core issues which have been well-documented and shared with authorities over the past few years. The list includes: i) debt bondage through the provision of enticement loans to workers, ii) recruitment of underage girls, iii) illegal detention and mistreatment of workers in pre-departure training centers, iv) the facilitation and use of forged legal documents (passports, birth certificates), v) failure to provide copies of contracts to workers, vi) failure to pay workers their full salaries and/or not paying any salary until the end of the contract, and vii) recruitment agencies preventing and obstructing contacts between workers and their relatives.

Meanwhile, despite these flaws, the law’s drafters found room to include a special chapter authorizing special “commendation” prizes for recruitment agencies. This speaks volumes about the government’s goals and intent in drafting the sub-decree.

Given the sub-decree’s deep structural flaws, it is hard to see how it can be salvaged. The government needs to go back to the drawing board and come up with legislation that properly regulates recruitment agencies and provides tangible safeguards for migrant workers from well-documented abuses.

Below is a point-by-point analysis of some of the key provisions – and their shortcomings – in the law.

ANALYSIS: KEY PROVISIONS OF SUB DECREE 190

Chapter 3: “Recruitment Agency”

The section fails to put an end to the practice of unregistered recruitment agencies “borrowing” licenses from other agencies. Currently, private companies are allowed to “borrow” the license of other recruitment agencies and establish themselves as a “branch” of the licensed companies. The problem is that the branches operate under different names, and the relationship with the parent company is not always clear. This practice has become increasingly problematic, as it makes it more difficult to intervene in cases of abuses against workers, and to identify serial abusers.

Article 9: The Ministry of Labor and Vocational Training shall conduct ordinary inspections and special inspections of the recruitment agencies.

The article is too vague to be effective. Specifically, it fails to require regular intervals for inspections, or define “regular” and “special” inspections. It will do little to deter substandard living conditions and abuses at recruitment agencies’ pre-departure and training centers.

The article should also have created a mechanism to trigger inspections when outside groups – such as NGOs, workers themselves or workers’ family members – share information on ongoing abuses at recruitment agencies.

Chapter 5: “Job Market and Skills of Workers”

Article 14: In its appropriate capacity, the Ministry of Labor and Vocational Training shall cooperate with the Ministry of Foreign Affairs and International Cooperation to prepare agreements or memoranda of understanding (MoUs) between the Royal Government of Cambodia and the receiving country on the use of workforce.

The article fails to require that the MoUs provide guidelines ensuring basic protections against worker abuse, for example a minimum wage or limits on working hours.

Chapter 6: “Contract”

The section marks a regression from the migrant work framework contained in the superseded Sub-Decree 57. Most notably, it fails to insure that employment contracts do not exceed a set limit. In Sub-Decree 57, Article 11 stipulated that an employment contract could not last more than 2-years, while allowing for an extension of the contract if both parties agreed. This legal protection has disappeared.

Further, Article 10 of the old law provided that workers must receive at least 1.5 paid holidays for each month worked, allowing 18 days of holidays per year. This theoretically allowed workers to return home to Cambodia once per year. Sub-Decree 190 eliminates this benefit.

Article 15: [...] The employment contract shall clearly specify, inter alia, working conditions, job status, and types of work, benefits and key addresses that can be contacted.

Article 15, which determines the minimum information required in employment contracts, fails to explicitly include details such as salary, the portion of the salary which shall be sent to the worker's family, provisions for the repatriation of workers prior to normal termination date, transport expenses and insurance premiums.

Article 9 of the old Sub-Decree required that all of this information to be noted in the contract.

Article 17: [...] These contracts shall be forwarded to the Cambodian embassy or representative mission to the receiving country through the Ministry of Foreign Affairs and International Cooperation.

The article fails to insure that workers are also provided a copy of contracts which he/she has signed.

Article 18: The samples of the contracts stipulated in Article 15 of this Sub-Decree shall be determined by a Prakas from the Minister of Labor and Vocational Training.

The article is vague and does not explicitly say whether the samples will be used as guidelines or whether they agencies will be required to use them. The vagueness of this article raises issues similar to those highlighted in Article 15 above. While the sample contracts may contain provisions covering the issues omitted in Article 15, there is no provision in the law that requires agencies to use these contracts.

Chapter 7: "Recruitment of Workers and Pre-Departure Orientations"

The section fails to address the rampant practice of placing new recruits in a position of debt bondage. This is achieved through "enticement" loans, which are provided to the relatives of workers when they are approached by recruitment agents. This practice is described in the 2008 Law on the Suppression of Human Trafficking as an unlawful removal.

This is perhaps the most significant omission of the new sub-decree, and is doubly shocking considering the practice was highlighted as a problem in a non-legally binding set of guidelines issued by the Ministry of Labor in mid-2010.

Article 19: The recruitment agencies shall be responsible for the application forms and health checkup for Cambodian workers to be sent abroad in accordance with the determination of the receiving country.

This requirement raises the issue of potential discrimination against workers-to-be who are living with AIDS and other diseases. The discrimination issue is unaddressed in the new sub-decree.

Article 25: Every time when the workers are sent and placed at work, the recruitment agencies shall properly record all information and data pertaining to each individual worker in the record book as determined.

The article fails to insure access to the information by workers' relatives. This is a serious omission, as it leaves workers' families in the dark about their relatives' whereabouts. This disconnect makes workers more likely to be abused, as families are less likely to know of their whereabouts and maintain contact.

Chapter 8: “Repatriation of Workers”

Article 28: Upon arrival in the Kingdom of Cambodia, the recruitment agencies shall send the workers to the Ministry of Labor and Vocational Training to receive a certificate for the employment they have worked abroad for possible future use.

The article should explicitly indicate that the certificate shall be issued free of charge. In its current form, the article is ambiguous, meaning workers might be coerced into paying for the certificate.

Chapter 9: “Dispute Resolution”

While the section refers to Cambodia’s Labor Law, it fails to refer to the contracts signed by the involved parties. This is a regression as Article 17 of Sub-Decree 57’s required that disputes be resolved by referring to the terms of the employment contract.

Chapter 10: “Disappearance of Workers”

Article 32: Upon receiving information on the disappearance of any worker during the fulfillment of the employment contract, the recruitment agencies shall immediately notify the embassy or representative mission of the Kingdom of Cambodia to the receiving country, the Ministry of Interior and the Ministry of Labor and Vocational Training of the Kingdom of Cambodia.

The article fails to require that workers’ relatives – or any contact person(s) – are informed of the disappearance. This is yet another example of a high-profile and well-known problem that was unaddressed by the new sub-decree.

Chapter 12: “Worker’s Remittance to Cambodia”

At the moment, most workers receive no salary until the end of their contract. Sub-Decree 190 does nothing to change this, as it contains no requirement for salaries to be paid monthly. Thus, this section is essentially superfluous.

Chapter 13: “Commendation”

Article 37: Any recruitment agency that performs well in recruiting and sending workers abroad in accordance with the provisions of this sub-decree shall be commended according to each level of performance.

Article 38: The Ministry of Labor and Vocational Training shall confer a certification of commendation on any recruitment agencies that perform the contract well.

Despite a lengthy drafting period, intense public anticipation and international support, the drafters of the new sub-decree produced a law that is riddled with holes and lacks some of the most basic worker protections. But they did not forget to dedicate an entire chapter of the law to “commending” recruiting agencies.

The irony of an article authorizing “gold stars” for recruitment agencies is particularly bitter, given that the law itself is already a gift. This provision appears to be nothing more than a public relations tool, allowing the government to refurbish the image of tarnished agencies by distributing awards for real or imagined successes.

Chapter 14: "Penalty"

Article 39: Any recruitment agencies violating any provisions of this sub-decree shall be subject to the following penalties: - Written warning; - Temporary suspension of authorization; - Revocation of authorization.

The article fails to create an automatic trigger for the temporary suspension and revocation of agency licenses. It also does not require that penalties be escalated for repeated offenses; nor does it specify the type of offense that would invoke the suspension or revocation of authorizations.

It is impossible to imagine the authorities ever invoking a suspension or revocation penalty unless they are required to do so by law. Based on past experience, it is clear that recruitment agencies will simply be punished by multiple written warnings, even if their abuses are systematic.

In comparison, the third draft of the law on associations and non-governmental organizations states that an association or NGO will be temporarily suspended if it fails to comply with the first written warning.

Article 40: Any recruitment agencies or persons violating any provisions of this sub-decree or applicable laws or using their functions and competence to create inappropriate obstacles for the recruitment activities, and illegally sending workers abroad shall be punished under the applicable laws.

The article appears to have been crafted as to allow for recruitment agencies to distance themselves from the acts of their agents/brokers in rural areas and avoid prosecution. This is an ongoing issue hindering the prosecution of recruitment agencies and their higher-ranking staff. The Sub-Decree 190 not only fails to address the issue but actually reinforces the problem.

□□□