



Session VIII

Strategies to Enhance Safe Migration:

Supervision and Control



Objectives and Structure of the Session

- Main purpose of the session:
 - To identify the main challenges in the current recruitment system in terms of possible malpractices and negligent behavior and identify gaps in the current normative and law enforcement systems.
 - Review registration, licensing and inspection systems as concrete instruments to regulate and control the activities of private recruitment agencies



Supervision and Control of Recruitment Agencies

Need to set up regulating standards which should:

- Define, delimit and describe the activities of private recruitment agencies (PRA)
 - who is allowed to recruit
 - what services to deliver and what is the cost of such services
 - what methods of recruitment PRAs can use in terms of advertisement, interview, other forms or sourcing manpower



Supervision and Control of Recruitment Agencies

Need to set up regulating standards which should:

- Define the respective liability of PRA and employer
 - in the event of violations of labor laws and other relevant legislative provisions
 - in case of the employer's or sub-contractor's violation of the contract (Joint and solidary liability: PRA and employer are liable for any claims arising out of the implementation of the contract)



Supervision and Control of Recruitment Agencies

Need to set up regulating standards which should:

- Set up and detail remedies and sanctions for non-compliance
 - establish a system of classification of offenses and schedule of penalties
- Establish a monitoring and enforcing mechanism, including complaints mechanism (auditing and inspection of PRA)



Relevant Regulatory Framework

- **ILO MLF on Labour Migration**
 - **Guideline 13.1:** Operation of PRA in accordance with standardized licensing and certification system
 - **Guideline 13.5:** Effective enforcements mechanisms, including license withdrawal
 - **Guideline 13.6:** Establishment of a system of protection in the form of insurance or bond



Relevant Regulatory Framework

- **ILO Convention 181**
 - **Art 3:** conditions governing the operation of PRAs thru licensing and certification system
 - **Art 8:** rules and regulations which provide for penalties for those involved in fraudulent practices
 - **Art 10:** setting up of complaints and investigation machinery
 - **Art 12:** allocation of responsibilities of PRA and employers



Relevant National Legislation

Sub-decree 57 on Sending Khmer Migrants to Work Abroad

- **Art 2:** The dispatch of Cambodian workers to work abroad and the management of those workers are within the competencies of the Ministry of Social Affairs, Labour and Veterans. The Ministry may authorize, according to the Parkas of the Ministry, any company to send any Cambodian workers to work abroad.



Relevant National Legislation

- Art 6: the dispatch of workers abroad can only be done with authorization from the Ministry
- Art 7: impose to the PrRA the payment of guarantee deposit of US\$100,000 with the Ministry, that has the right to use it to compensate workers if the PrRA “fails to comply with any of the conditions as stated in the employment contract



Relevant National Legislation

- **Art 20:** Any individual who sends Cambodian workers to work abroad and violates provisions of the Sub-decree herewith shall be punished according to the law in force.



Recommended Guidelines for Migrant Recruitment Policy and Practice in the Greater Mekong Sub-Region

Section 3. Regulation of recruitment agencies

- Licensing and supervision of recruitment agencies and their sub-contracts
- Accountability of PRA for their agents and contractors
- Reporting and information sharing
- Establishment of assessment and monitoring systems
- Liability of PRA for recruiting workers for hazardous, risky conditions or for recruiting underage worker
- Penalties for non-compliance with the law, including suspension or cancellation of license for contract violation



Recommended Guidelines for Migrant Recruitment Policy and Practice in the Greater Mekong Sub-Region

- Establishment of grievance procedures
- Establishment of system of protection, including insurance, bond or deposit for workers' compensation
- Establishment of contingency fund for repatriation, insurance, medical care return and reintegration and pension
- Promoting incentives and good practices
- Promotion of codes of practices



Licensing Systems : most common instruments of regulation and control of PRA

Some characteristics of licensing systems:

- **Simple and affordable:** procedures are easy to follow; not too burdensome to entrepreneurs and eventually encourage irregular migration
- **Clearly defined:** license conditions must be well defined and specific to avoid discretion in interpretation
- **Transparent:** information should be publicly available and verifiable



Requirements for Licensing

- **Licensing or registration fees**
 - amount should not discourage business; can be proportionate to the size of PRA
 - filing fees are also used to cover administrative cost
- PrRA in Cambodia must be registered with the Ministry of Commerce and licenses are issued by MoLVT
- No registration or license fee is required



Requirements for Licensing

- **Financial Capacity of the applicant**
 - proof of a specific start up capital, verified income tax returns, financial statements, savings account certificates
 - guarantee deposit in the form of escrow; posting of bonds (surety bond, etc) to be used for workers' compensation

*****In Cambodia, Sub-decree 57 imposes a guarantee deposit of US\$100,000**



Requirements for Licensing

- **Personal and professional qualification of officers and staff**
 - qualification criteria as to age, nationality, professional training and experience, educational attainment
 - disqualification criteria such as criminal or derogatory records, conflict of interest, involvement in previous illegal recruitment

*****In Cambodia, there's no restriction as to nationality or ethnicity of applicant agency**



Requirements for Licensing

- **Management and marketing capability of the applicant:** competency to organize, operate and manage a recruitment business
 - proof of educational background and relevant experience of applicant
 - sufficient and adequately equipped business premises
 - available Special Power of Attorney or concluded Recruitment Agreement with the employer
 - Available job order/manpower demand



Requirements for Licensing

- **Validity of license and re-application**
 - licenses should have definite validity period
 - license renewal should be in accordance with a set of criteria which includes the previous business conduct of the PRA and compliance with the conditions of license (undertaking)
(Current license in Cambodia is for 5 years, renewable for another 5 years)



Requirements for Licensing

- **Scope and transferability of license**
 - could be restricted to the license holder, location of the agency or country for which recruitment is made, or to a specific sector
 - license may not be transferred or assigned to any person or corporation

(No provision on this issue in the
Cambodian law)



Undertaking Statement: Philippine example

A verified undertaking stating that the applicant:

1. Shall select only medically and technically qualified applicants
2. Shall assume full and complete responsibility for all claims and liabilities which may arise in connection with the use of the license
3. Shall assume joint and solidary liability with the employer for all claims and liabilities which may arise in connection with the implementation of the contract, including but not limited to payment of wages, death and disability compensation and repatriation



Undertaking Statement: Philippine example

A verified undertaking stating that the applicant:

4. Shall guarantee compliance with the existing labor and social legislations of the Philippines and of the country of employment of the recruited workers
5. Shall assume full and complete responsibility for all acts of its officials, employees and representatives done in connection with recruitment and placement
6. Shall negotiate for the best terms and conditions of employment



Undertaking Statement: Philippine example

A verified undertaking stating that the applicant:

7. Shall disclose the full terms and conditions of employment to the worker
8. Shall deploy at least 100 workers to its new markets within 1 year from the issuance of its license
9. Shall provide orientation on recruitment procedures, terms and conditions and other relevant information to its workers and provide facilities therefor; and
10. Shall repatriate the deployed workers and his personal belongings when the need arises



Monitoring and Enforcement Systems

The Inspection System

(Inspections may be conducted in accordance with the inspection program and procedures)

- **Determination of competent inspection authority**
 - regular Labor Inspectorate
 - Ad-hoc administrative structures within the Ministry of Labor

(In Cambodia, Task Force on Labour Migration within the Ministry of Labour and Vocational Training)



Monitoring and Enforcement System

- **Conduct of Desk and Field Audits**
 - Pre-licensing inspection
 - Regular or routine Inspection
 - Inspection for renewal of license or transfer of offices
 - On the spot inspection as a result of reports on violation of regulations



Monitoring and enforcement system

- **Scope of inspection**

- Inspection of premises (space, facilities and equipment)
- Books of accounts, official receipts, cash receipts, cash disbursements
- Review of regular reports on job placements, etc
- Personnel – should be the ones declared to and approved by the licensing authority
- Review and clearance of employment contracts

(In Cambodia, employment contract is subject to review of Labour Inspectors, Art 12 Sub decree 57)



Monitoring and Enforcement System

- **Issuance of a license number as a monitoring tool**

(compulsory requirement for agency office and advertisement of jobs)



Monitoring and Enforcement systems

- **Characteristics of Inspection system**
 - Based on official inspection authority
 - Carried out by professional and trained personnel
 - Procedures are clear, transparent and impartial
 - confidential



Monitoring and Enforcement System

- **Report on Violations Found in the Course of Inspection :Sanctions**
 - excessive collection of fees – license cancellation
 - non-issuance of official receipt- 1st and 2nd offense- suspension of license; 3rd offense, license cancellation
 - obstruction of inspection -1st offense-suspension

Adjudicatory body not the inspection authority imposes the sanctions



THANK YOU!