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**Universal Periodic Review, Cambodia
Joint Submission on Human Trafficking for Labor Exploitation
(CLEC, LICADHO, LSCW, Human Rights Watch)**

INTRODUCTION & EXECUTIVE SUMMARY

1. The Community Legal Education Center (CLEC)¹, the Cambodian League for the Promotion and Defense of Human Rights (LICADHO)², the Legal Support for Children and Women (LSCW)³, and Human Rights Watch⁴ submit this joint submission on human trafficking for labor exploitation of Cambodian workers. CLEC promotes access to law through legal awareness; legal training and legal assistance to poor and vulnerable Cambodians since 1996. LICADHO, operating since 1992, investigates and documents rights violations; provides legal, medical and other assistance to victims of human rights abuses, including victims of trafficking, and advocates for tangible improvements in rule of law and human rights in Cambodia. LSCW was created in 2002, and focuses on issues surrounding domestic workers and trafficking, offering legal and other assistance to victims, promoting public awareness and policy change.
2. CLEC, LICADHO and LCSW are Cambodian NGOs working directly with victims of labor trafficking and exploitation, investigating abuses, providing legal assistance and supporting repatriation and reintegration of trafficking victims.⁵ There is a close cooperation and regular exchange with several anti-trafficking NGOs in Malaysia and other countries of the region.
3. Human trafficking in Cambodia has received considerable attention in recent years, with a focus primarily on sex workers. But labor trafficking is emerging as an equally important problem. In the past four and a half years, there has been a substantial increase in trafficking, exploitation and abuses of Cambodian workers. Thousands of vulnerable Cambodians fall prey to human trafficking syndicates and an unregulated labor recruitment industry and are sent as domestic workers or fishermen abroad into situations that amount to forced labor, trafficking, and debt bondage. Abuses include child recruitment, forced confinement, unpaid wages, dismal working conditions, physical and sexual abuse, enforced disappearances, and limited access to assistance or redress. A number of Cambodian migrant workers died in the past years. In the vast majority of cases, Cambodian authorities have failed to investigate and prosecute the perpetrators operating in Cambodia.

¹ www.clec.org.kh

² www.licadho-cambodia.org

³ www.lscw.org

⁴ www.hrw.org

⁵ As a result of cooperation between LICADHO, LSCW and CLEC, there may be an overlap in the number of cases documented and/or victims repatriated contained in this report.

BACKGROUND INFORMATION AND FRAMEWORK

International Obligations

4. Cambodia has ratified the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the International Covenant on Civil and Political Rights (ICCPR), among others. Cambodia has also ratified all eight International Labour Organization (ILO) Core Labor Standards, the Palermo Protocol to Prevent, Suppress, and Punish Trafficking in Persons Especially Women and Children, and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices. Moreover, Cambodia has signed in 2004 the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and, as a signatory, Cambodia has a general obligation under international law to refrain from acts which would defeat its object or purpose.
5. As parties to these treaties, as well as customary international law protections, Cambodia is obligated to protect the rights of Cambodian migrant workers, especially women and children, including against forced labor, forced confinement, exploitation, and human trafficking. For instance, Articles 1, 3 and 5 of the 2000 Protocol on Trafficking in Persons, especially Women and Children, which Cambodia ratified in 2007, provides that attempts to commit trafficking in persons, participation as an accomplice in trafficking in persons and organization or direction of other persons to commit trafficking in persons shall be criminalized.
6. Convention No. 189 Concerning Decent Work for Domestic Workers, adopted in June 2011 by the ILO, addresses the specific obligations of governments to protect domestic workers. Cambodia has yet to ratify Convention No. 189, which provides valuable guidance on issues such as establishing complaint mechanisms, ensuring substantial penalties for agencies that violate standards, and prohibitions on salary deductions for recruitment fees.
7. In 2004, Cambodia adopted the ASEAN Declaration against Trafficking in Persons, particularly Women and Children. In the same year, Cambodia committed to bi- and multilateral cooperation – with China, Laos, Myanmar, Thailand, and Vietnam – as well as government-NGO cooperation in responding to trafficking in persons under the framework of the Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT). A Memorandum of Understanding with Malaysia on cooperation in efforts to combat trafficking remains unsigned.

Legislative & Constitutional framework

8. The Labor Code of Cambodia (1997) prohibits forced labor, and Cambodia's Law on Suppression of Human Trafficking and Sexual Exploitation (2008) prohibits human trafficking.
9. On August 17, 2011, the Prime Minister signed the Sub-Decree on "the Management of the Sending of Cambodian Workers Abroad through Private Recruitment Agencies" ("Sub-Decree 190"). This supersedes Sub-Decree 57, which was enacted in 1997. Sub-Decree 190 is a failure in efforts to protect Cambodians who use recruitment agencies to work abroad.

10. Documented abuses such as near-systematic debt bondage upon recruitment, deaths inside pre-departure training centers, the recruitment of underage workers and subsequent falsification of documents, illegal detention of workers, confiscation of passports and contracts from the workers, and the failure to pay salaries are not addressed in the Sub-Decree 190. Worker protections, meanwhile, are vague, limited in scope, and in many cases less stringent than the 1997 Sub-Decree it superseded.
11. On October 15, 2011, amid increased media scrutiny and public pressure, Prime Minister Hun Sen signed a moratorium on the sending of women to Malaysia for domestic work. To date, the temporary ban remains in place, preventing more domestic workers from being trafficked through debt bondage by recruitment agencies or falling into abusive labour conditions in Malaysia. However, the Cambodian authorities have failed to prosecute the majority of documented offenders. Furthermore, it has not provided protection and support of domestic workers already working in Malaysia at the time of issuance of the ban, leaving Cambodian women vulnerable to further abuses and forced contract extensions. Recruitment agencies are seeking to lift the ban as soon as possible. Underlying problems, especially gaps in the regulation of Cambodian recruitment agencies as well legal protections and complaint and support mechanisms for victims have yet to be addressed.

Policy measures

12. In December 2011, a National Plan of Action on the Suppression of Human Trafficking, Smuggling, Labour and Sexual Exploitation (STSLs) for 2011-2013 was adopted, in line with accepted recommendations under the previous UPR cycle. The plan designates responsibility among involved ministries, provides a basis for allocation of resources and identifies time-bound goals and objectives; however, to date there are serious gaps in the implementation of the measures.

PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

Trafficking of Cambodian Migrant Domestic Workers to Malaysia

Abuses of Prospective Migrant Workers in Cambodia

13. Prior to the ban on sending Cambodian domestic workers to Malaysia, announced in October 2011, prospective migrant workers suffered from a myriad of illegal activities and abuses in Cambodia due to weak regulation of private recruitment agencies and lack of law enforcement. Migrant workers were offered up-front loans and charged exorbitant processing fees, resulting in debt bondage. Girls and women were regularly confined in pre-departure training centers; children and young women below the 21 years minimum age under Malaysian law were recruited and identity documents forged.
14. Recruits were required to attend pre-departure training at centers run by the agencies before leaving for Malaysia, and in most occasions were illegally confined in such centers prior to their departure. The centers were generally overcrowded and conditions poor. Many girls and women fell seriously ill, and medical care was virtually non-existent. Moreover, the women and/or their families accumulated debts through cash advances for “processing fees” and through “incentives” such as up-front loans, mobile

phones or bags of rice, provided by the agencies upon recruitment. Women who changed their mind about migrating and wished to leave the center were prohibited from doing so unless they could repay the processing fees, loans and incentives. The agents often inflated the total cost, rendering repayment virtually impossible. Illegal detention or confinement is a criminal offence under Cambodia's Penal Code, and Cambodia's anti-trafficking law includes enticement among methods of "unlawful removal of a person" that contributes to trafficking.

- From 2009 to 2011, LICADHO documented 29 cases of illegal detention at training centers in Cambodia, affecting 52 girls and women. Recruitment agencies demanded payments of up to US \$1,500 for their "release". Some women were subjected to forced labor during their confinement at the centers.
 - During 2010 and 2011, CLEC facilitated the rescue of 115 girls and women from such conditions within training facilities.
 - Out of 28 migrant workers interviewed by Human Rights Watch in 2011, all except one woman reported that they were forced to stay inside their recruitment center during their entire training period. Several workers reported that those who tried to run away from the training centers were brought back and detained in a separate room, and were sometimes beaten.
 - Between July 2010 and February 2011, three workers died on the premises of training centers. In one case, the recruiting agents denied repeated requests by the worker's family to take her to a hospital for treatment. In the other two cases, the agency did not call family members until after the workers had died. No independent investigation has been conducted into the three deaths.
 - In March 2011, one worker attempted to escape from a pre-departure center through a third-story window. She fell and sustained serious injuries. The worker had made multiple requests to leave the center so that she could see her children. All of the requests were denied.
15. Several labor agencies repeatedly recruited underage girls in violation of Cambodian law. Brokers and staff at recruitment centers falsified documents to list children as 18, the minimum legal age required in Cambodia to migrate for employment (under Malaysian law, the minimum legal age for recruitment into domestic work is 21).
- Of the 193 migrant domestic workers abuse cases handled by LICADHO from 2009 until early 2013, 37 involved girls below the age of 18 – in total 59 girls. The underage girls suffered from forced confinement in poor conditions in training centers in Cambodia, overwork and non-payment of salaries, beatings, torture, and rape in Malaysia.
 - Of the 216 cases handled by CLEC from 2010 until early 2013, 90 victims were girls below the age of 18.
 - A partner organization in Malaysia recently reported rescuing a 12-year-old Cambodian girl sent for domestic work, as well as a 15-year-old who arrived in Malaysia at the age of 14.
16. Recruitment agencies enjoy the backing of government officials both at the local and national levels. Some of the key players in the recruitment field are relatives of high ranking officials in charge of regulating or investigating abuses within this labour sector. Corrupt police and officials have been reluctant to investigate crimes and complicit in the illegal activities of the agencies, such as knowingly issuing passports with fake birthdates for underage girls. When the Cambodian Government announced a ban to sending workers to Malaysia, it failed to prosecute the majority of the perpetrators in Cambodia or

making provisions for the repatriation of women already working in abusive environments in Malaysia. To date, only one Cambodian recruitment agency for domestic workers has been closed following an investigation by the government, and staffers at another two agencies were convicted, while more than 10 agencies involved in the trafficking of girls and women to Malaysia were never held accountable and remain in operation.

Rights Violations Affecting Domestic Workers in Malaysia

17. Cambodian migrant domestic workers in Malaysia face poor living conditions, excessively long working hours, withholding of salary payments, food deprivation, physical, mental and sexual abuse, and even forced labor. A clear trend towards forcing contract extensions on Cambodian migrant workers is discernible, to make up for the absence of new arrivals from Cambodia. Extension work contracts are frequently being signed in private between the employer and the worker (i.e. with no Embassy or NGO present) and often under the direct threat that if a worker does not sign, she will not receive her salary. Employers are claiming that their workers have voluntarily signed the contract, but many workers claim they could not understand the contract. Often passports are withheld and women are threatened with physical violence or imprisonment if they attempt to escape. Many domestic workers have no opportunities to contact their relatives or NGOs and are forced to work for other employers, and hence go missing.

- In 2012, LICADHO documented 90 cases of forced contract extensions, physical abuse and torture, disappearances or missing women, or women waiting for unpaid salaries in Malaysia, affecting a total of 153 girls and women. In 2011 and 2012, LICADHO has helped assist and/or repatriated some 250 Cambodian domestic workers from Malaysia, some with the help of LSCW and/or CLEC.
- LSCW reports having dealt with 86 victims from 2010 to 2012, all subjected to violations of their human rights, such as forced contract extension, denial of payment and abuses.
- From 2012 to May 2013, CLEC has provided assistance to 103 girls and women in cases of death, rape, physical and mental abuse, loss of contact, unpaid salaries, and forced contract extension.
- In May 2012, a 23-year-old-woman died in Malaysia after being subjected to overwork, food deprivation, and torture by her employers. In October 2012, LICADHO documented the cases of two sisters, including one underage girl, who contacted relatives in Cambodia reporting torture and rape by two their employers.

18. Assistance to migrant domestic workers provided by the Cambodian Embassy in Malaysia is inconsistent, and protection is inadequate. There is a lack of staff and resources to deal with the complaints and cases. Moreover, there seems to be a lack of willingness to assist the victims. Embassy staff fails to provide much needed services such as repatriation or legal aid and the provision of lawyers. In several cases documented, the Embassy simply sent abused domestic workers back to their agents against their will, who in turn force the women to return to their employer, or send them to a second or third employer.

- In 2011 Human Rights Watch found that the Embassy sent three rape survivors back to their recruiters. In one case, the recruiter eventually sent the rape victim back to the same employer who abused her. None of the three workers had access to any medical or psychological care after they were raped. The two other victims were forced to work against their will on the recruitment company premises.

- Human Rights Watch also received information that agents at times coerced women to exchange sexual favors for expediting repatriation to Cambodia.
 - A domestic worker rescued in August 2011 by a Malaysian NGO from severe abuse by her employers decided to stay in Malaysia and testify during the prosecution of her former employers. The procedures took one year, during which the Cambodian Embassy offered no assistance at all. After she testified, the Embassy actively thwarted the return of the victim to Cambodia.
19. The Cambodian Government does not provide effective complaints and redress mechanisms and support services, like legal aid and psychosocial services, for returned domestic workers from Malaysia who have either suffered physical or sexual abuse, became victims of forced labor, or who have not been paid. It remains unclear what ministry is responsible for receiving the complaints of missing and returned migrant workers; implementing officers often refer the supporting NGO to file the complaint with another ministry, typically the Ministry of Interior (MOI). Therefore the majority of supporting NGOs file complaints to the Anti-Trafficking Police under the MOI for victim identification and to identify the responsible broker. Another challenge is jurisdiction in Cambodia for complaints about physical and emotional abuse that happened in Malaysia.

Trafficking of Cambodian fishermen & other migrant workers to Thailand and beyond

20. The past four-and-a-half years saw a dramatic increase of Cambodian men to work in exploitative conditions on long-haul fishing trawlers in the South China Sea and off the coasts of Africa. Thousands Cambodian boys and men are affected. Some are lured by Cambodian labor agencies; others are trafficked by brokers and crime syndicates. The victims are kept at sea for months and sometimes years, working 20-hour days without pay, adequate food, or freedom to leave. At the hands of the boat crew, they are often subjected to physical abuse, like beating, torture and drugging. Several Cambodian fishermen have been killed by the crew or died during attempts to escape by swimming to shore.
- In the past four-and-a-half years, LICADHO documented rights abuses of 350 trafficked Cambodian fishermen. In 2011 and 2012, LICADHO helped repatriate more than 235 fishermen, most of whom fled their boats off the coast of Malaysia and Indonesia. The victims reported slave-like labor conditions and horrific abuses aboard the fishing boats.
 - During the same period, CLEC has documented rights abuses of 69 trafficked fishermen and repatriated 34 victims from similar conditions.
21. Cambodian men, mostly the rural poor, are lured by brokers with the promise of better-paying jobs in factories or on farms in neighboring Thailand. Upon arrival in Thailand, however, the victims are sold to boat owners and forced to work as fishermen in the South China Sea or further away.
22. The Cambodian recruitment office of the South African-owned Giant Ocean International Fishery Co. Ltd. is responsible for sending nearly 1,000 Cambodian men into exploitative work conditions on fishing boats. The recruitment agency promised lucrative work in Malaysia, Thailand, Japan, but almost none of the Cambodians who were recruited by Giant Ocean were sent to the country identified in the contract. Indeed, most were sent to different countries and even to countries as far away as South Africa, Senegal, and Mauritius. Since the discover in March 2012 of the Giant Ocean, Cambodian NGOs and UN agencies have witnessed a steady increase in the number of victims repatriated back

to Cambodia. Their tragic stories reveal a systematic pattern of deception and abuse. In August 2012, a victim of Giant Ocean provided key pieces of documentary evidence which linked Giant Ocean to the Singaporean agency Step-Up Marine Enterprise, which was allegedly been involved in the illegal recruiting and trafficking of fishermen since 1987.

- In 2012, CLEC facilitated the repatriation of 19 Giant Ocean victims.
 - In the same year, LICADHO documented six cases involving 13 Cambodian men trafficked to work as fishermen by Giant Ocean. The men were subjected to unpaid labor, food deprivation, torture and beatings.
 - From December 2011 to early 2013, LSCW has represented in court 44 victims of Giant Ocean.
23. In 2012, Giant Ocean was accused of illegally sending workers to China after former workers and their relatives filed complaints. Soon afterwards, the recruitment office in Phnom Penh closed and the head of the recruitment office, Lin Yun Shin, went into hiding. On May 10, 2013, Lin Yu Shin was arrested in Siem Reap on charges of human trafficking. Her husband, the co-owner of Giant Ocean, remains at large.
- Since the closure of Giant Ocean in early 2012, CLEC has received 36 distinct complaints from both relatives of missing men and fishermen trapped overseas.
24. Reintegration in Cambodia after forced labor on fishing boats is particularly difficult. There are significant mental health issues to cope with upon return but there is a near-total absence of social and mental health services available for men.

Trafficking of workers in other industries

25. In 2012 and 2013, CLEC and LICADHO began investigating an increasing number of cases of exploitation and abuse of Cambodian workers sent to construction sites and in factories in Thailand by Cambodian recruitment agencies. Some of the agencies used to be involved in sending domestic workers to Malaysia prior to ban in 2011. Furthermore, anti-trafficking NGOs in Malaysia reported frequent abuses of Cambodian migrant workers in construction, factories, and service industries.
- In February 2013, LICADHO recorded five cases of trafficking to construction sites and factories in Thailand. All of the eight victims were sent by Cambodian recruitment agencies. Abuses included overwork, food deprivation, physical abuse, and disappearance. In two cases the workers were asked to pay US \$600 for the right to return to Cambodia. One of the victims was below 18 years of age.
 - Since 2012, CLEC has documented rights abuses of 1,690 Cambodian victims from the seafood processing and construction industries in Thailand. CLEC facilitated the repatriation of 745 victims from situations of severe debt-bondage, illegal confinement and violent imprisonment whilst improving working conditions, erasing debts and returning documents for 940 victims.
26. Further, newly emerging in 2012 were cases of trafficking to China involving forced labor in Chinese garment and laundry factories and forced marriage. CLEC facilitated the repatriation of 14 of the 16 Cambodian victims identified.

RECOMMENDATIONS

Recommendation 1: We urge the Cambodian Government to immediately ratify ILO Convention No. 189 on Decent Work for Domestic Workers and to bring national laws and enforcement into alignment.

Recommendation 2: We urge the Cambodian Government to immediately ratify ILO Convention No. 181 on Private Employment Agencies and to fully implement its provision concerning the prohibition of private employment agencies to charge directly or indirectly any fees or costs to workers.

Recommendation 3: Cambodia should develop and enforce new legislation that properly regulates recruitment agencies and provides tangible safeguards for migrant workers. The process of drafting the new law should be transparent and involve meaningful consultation with relevant civil society groups.

Recommendation 4: The moratorium on export of labor to Malaysia should be upheld until a Memorandum of Understanding between Cambodia and Malaysia is signed that guarantees full protection of Cambodian workers' basic rights as well as proper domestic legislation to protect against recruitment agencies' abuses.

Recommendation 5: The Cambodian Government should clarify which ministry in Cambodia is responsible for receiving cases of labor exploitation of domestic workers in Malaysia. The Ministry of Interior, Ministry of Labour, and Ministry of Foreign Affairs are said to be the primary ministries that complaints are filed with but there is a lack of clarity about which actually has the responsibility to deal with the complaints. There should be an agreed allocation of duties among key Cambodian ministries so that it is clear to whom complaints from domestic workers should be addressed.

Recommendation 6: The Cambodian Government should investigate seriously and thoroughly violations of Cambodian migrant workers' rights by Cambodian recruitment agencies and their allies and bring all those responsible to justice. In particular, all persons responsible for illegal activities linked to the Giant Ocean Recruitment Company should be identified and appropriately prosecuted to the full extent of the law.

Recommendation 7: We urge the Cambodian Government to strengthen the capacities and willingness of the Cambodian Embassy in Malaysia to improve screening to identify victims of abuse and provide adequate services such as legal aid and cost-free repatriation.

Recommendation 8: The Cambodian Ministry of Foreign Affairs should call for the Cambodian Embassy in Malaysia to suspend extending passports and Certificates of Identification until there are clearer mechanisms in place to ensure the free and fully informed consent of Cambodian domestic workers who are signing extension contracts. Such clearer mechanisms should include a request the physical presence of a domestic worker at the Embassy in order to extend that worker's passport or Certificate of Identification, as well as that the Cambodian Embassy staff in Malaysia privately interview all Cambodian domestic workers seeking extension of work contracts in order to minimize the opportunity for duress by the employer and to identify any potential abuse of the worker.

Recommendation 9: The Cambodian Government should ensure that victims of labor trafficking have effective access to redress, legal remedies and psychosocial support services.

In order to fully implement the Palermo Protocol, the Cambodian Government should enact a law on the protection of the victims of human trafficking that clearly identifies the responsibilities of national authorities for the protection of the victims.

Recommendation 10: Cambodia should investigate and take action against human trafficking syndicates operating in Cambodia, and cooperate with authorities in Thailand, Malaysia and other countries in accordance with Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

Recommendation 11: The Government of Cambodia should cooperate with the Authorities of all countries of destination of migrant workers in opening a clear channel of communication for the safe repatriation of Cambodian migrant workers and the thorough investigation and prosecution of all perpetrators.