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The Right to Social Security in Cambodia

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Summary

Given that the social security has not been extended to vast majority of Cambodia's population, this thesis is initiated to analyze whether the implementation of the Right to Social Security is effective and in line with the international social security instruments. In doing so, the analysis is conducted by examining Cambodia's national legal framework and policies concerning the implementation of the Right to Social Security. At the same time, the thesis also tries to explore the potential challenges that affect the realization of this right by taking into consideration of the national legislation, economic and social contexts of Cambodia.

The analysis is based on the data and documents accessible through the websites of relevant organizations and Cambodia's governmental units.

This study finds that the implementation of the Right to Social Security in Cambodia is still not effective because the scheme coverage is very limited and inadequate. The national legislation excludes certain employments from the statutory provision of social security, for example, the domestic and migrant workers including other workers engaging in the informal economy.

The thesis finds several challenges affecting the implementation of this right in Cambodia. Those are: 1) governance issue; poor coordination within the overall social protection system, for example, the unclear institutional responsibility; 2) the large number of the informal economy and the limited budget to support the social protection programs; and 3) poverty, especially population in rural areas who are always affected by social risks such as diseases and natural disaster and engage in the informal economy where they cannot take part in the contributory system of the social security.

At last, the thesis also intends to explore what Cambodia should consider in relation to the protection of the Right to Social Security following by the ASEAN Economic Community.

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Abbreviation

ASEAN	Association of Southeast Asian Nations
AEC	ASEAN Economic Community
ASSA	ASEAN Social Security Association
CARD	The Council for Agricultural and Rural Development
CBHI	Community Based Health Insurance
CESCR	Committee on Economic Social and Cultural Rights
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CRPD	Convention on the Right of Persons with Disabilities
C.102	Convention No. 102 on Social Security (Minimum Standard)
DPPRMW	Declaration on the Protection and Promotion of the Rights of Migrant Workers
EU	European Union
GDP	Gross Domestic Product
GIZ	German International Cooperation
GMAC	Garment Manufacturers Association in Cambodia
HEF	Health Equity Fund
HIP	Health Insurance Project
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
ILO	International Labor Organization
MoEF	Ministry of Economic and Finance
MoH	Ministry of Health
MoLVT	Ministry of Labor and Vocational Training
MoSVY	Ministry of Social Affairs, Veterans and Youth Rehabilitation
NGO	Non-Governmental Organization
NSPS-PV	National Social Protection Strategy for Poor and Vulnerable
NSSF	National Social Security Fund
NSSF-C	National Social Security Fund for Civil Servants
NFV	National Fund for Veterans

ODA	Official Development Assistance
RGC	Royal Government of Cambodia
SPF	Social Protection Floors
UDHR	Universal Declaration of Human Rights
VAT	Value-Added Tax
WB	World Bank
WHO	World Health Organization

Chapter 1: Introduction

1.1 Background

The Right to Social Security is a human right and enshrined in major international human rights instruments, for instance, Universal Declaration of Human Rights (UDHR), International Covenant on Economic, Social and Cultural Rights (ICESCR)¹.

The Right to Social Security is the right to get protection from the society through a series of public measures to provide the benefits whether in cash or in kind from the work-resulting from various contingencies such as sickness, maternity, employment injury, unemployment, invalidity, old age and death of the breadwinner including the health care and family supports². Goldblatt pointed out that the social security can be designed and used to mitigate inequalities and contribute towards shaping progressive social outcomes, and from a human rights perspective, social security should be understood as a rights-based entitlement rather than a concessionary benefit³.

The Right to Social Security is recognized and enshrined under article 36 of the Constitution of Cambodia (hereinafter, the 1993 Constitution)⁴ and embedded in other national policies for the development and poverty reduction including the National Social Protection Strategy for Poor and Vulnerable (hereinafter, NSPS-PV) adopted in 2011⁵. Cambodia has signed and ratified a significant number of international conventions aimed at the realization of the right to social protection, and the Government perceives the NSPS-PV and the actions that follow from it as being in line with these international commitments⁶.

However, to date, most Cambodian people are not provided with adequate social protection coverage⁷. The predominance of informal employment, approximately 83%, together with an overall low-income level and limited ability to pay or contribute to any scheme

¹ See article 22, 23&25 of UDHR, 1948 and article 9, 10 (2) &10 (3) of ICESCR.

² ILO, “*Social Security for Social Justice and a Fair Globalization*”, (Report VI, 2011), page.9.

³ Beth Goldblatt, “*Gender, poverty and the development of the right to social security*”, (International Journal of Law in Context, 10,4 pp. 460–477, Cambridge University Press 2014), page.462.

⁴ Article 36 of Cambodia’s Constitution, “*Khmer citizens of both sexes shall have the right to enjoy social security and other social benefits as determined by law*”, (1993).

⁵ See my discussion on the national policies for the development and poverty reduction in the next chapter.

⁶ “*Cambodia: toward integrated employment and social protection policies / EU/ILO Project on Improving Social Protection and Promoting Employment*”, (Geneva: ILO, 2012), page.15.

⁷ This is the acknowledgment of H.E Ngy Chanphal, Cambodia’s Secretary of State of Ministry of Interior and Vice-Chairman of Vice-Chairman of the Council for Agricultural and Rural Development, in Schmitt, Valerie...et al., “*Feasibility study of the Social Service Delivery Mechanisms for the implementation of the National Social Protection Strategy in Cambodia*”, (ILO Country Office for Thailand, Cambodia and Lao People’s Democratic Republic. – Bangkok: ILO, 2013), page. xi.

based on collective arrangements are obstacles to extend the Right to Social Security to all Cambodians⁸.

1.2 Purpose and Research question

Because the vast majority of Cambodia's population is still not covered by social protection, this thesis is initiated to analyze whether the implementation of the Right to Social Security is effective and in line with the international social security instruments. The thesis also tries to examine to what extent the Right to Social Security is implemented and which groups of the population are protected, and challenges that impede the implementation. Therefore, this thesis is going to answer the following questions:

- 1) To what extent does Cambodia fulfill its obligation under international law in realization of the right to social security?
- 2) What are challenges for the implementation of the Right to Social Security in Cambodia?
- 3) How does ASEAN Integration affect the realization of the Right to Social Security in Cambodia?

1.3 Research methodology and materials

This research is conducted to examine the overall context of and potential challenges for the implementation of the Right to Social Security in Cambodia by examining and analyzing the national laws and policies concerning the social security. To achieve the comprehensive analysis, primary source such as the international legal and other relevant non-binding instruments will be elaborated together with the national laws and policies of Cambodia. Secondary source such as reports, data and statistics from organizations, for example, the International Labor Organization (ILO), the World Bank (WB), World Health Organization (WHO) and others Non-Governmental Organization (NGOs) alongside with the academic research papers, books and articles related to the Right to Social Security are also included.

1.4 Delimitation and Scope

Due to time constraint and available resources, this research conducts the analysis based on the data and documents accessible through the websites of relevant organizations and

⁸ *"Cambodia: Social security for the formal economy outlook and challenges ahead"*, / EU/ILO Project on Improving Social Protection and Promoting Employment, (International Labor Office. - Geneva: ILO, 2012), page.3&4.

governmental units. Because of the location constraint, this paper is unable to obtain the information from key informants such as government officials and experts from the organizations, who are working in the field of social security in Cambodia.

Therefore, this study is served as an academic paper aiming at expressing holistic view on the national laws and policies in relation to the implementation of the Right to Social Security in Cambodia. Accordingly, this thesis is not a specialized paper aiming at providing the comprehensive recommendations or solutions to RGC or any organization in solving the problems raised in the paper.

The study covers all Cambodian nationals by disregarding whether they are male or female, children or adults, young or old age people and rural or urban population or whether they possess employment or not. Accordingly, the thesis includes Cambodian workers from both formal and informal economies into the discussion.

When discussing the national laws and policies, this study has scope over the laws and policies that have been adopted from 1993 until present and remain in force.

This study also focuses on all various kinds of social security schemes in both formal and informal economies. There are nine (09) branches of social security coverage stipulated in ILO Convention no.102 (minimum standard) on Social Security (hereinafter, C.102) such as medical care, sickness, unemployment, old age, maternity, employment injury, family responsibility, invalidity, and survivorship.

In terms of social security branches, the international instruments such as ILO C.102 and ICESCR will be the main documents of this analysis. Other international instruments which contain specific provisions of the Right to Social Security will be briefly discussed. Because Cambodia has not yet ratified C.102 on Social Security, its obligation under the international instruments in relation to the Right to Social Security is bound by other particular international legal instruments such as ICESCR⁹, Convention on the Right of Persons with Disabilities (CRPD)¹⁰ and International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)¹¹, Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)¹².

⁹ Cambodia deposited instrument of accession to this Covenant on 26 May 1992.

¹⁰ Cambodia signed this Convention on 30 March 2007 and ratified on 10 August 2012.

¹¹ Cambodia signed this Convention on 12 April 1966 and ratified on 28 May 1983.

¹² Cambodia ratified this Convention on 15 October 1992.

1.5 Structure of the thesis

This thesis continues with:

Chapter 2 presents general overview of the Right to Social Security. In this regard, definition, characteristic and international and regional legal instruments are highlighted. Furthermore, the state's obligations related to the Right to Social Security are also reviewed.

Chapter 3 emphasizes the implementation of the Right to Social Security in Cambodia by analyzing its national legislation alongside strategies and policies of the government to see whether it is compatible with the international standards. In this respect, the research will address the main social security protection in the formal economy (private and public sectors) and other substantive social protection schemes that are provided to workers in the informal economy as well as the poor and vulnerable groups who are excluded from the social security's statutory provisions.

Chapter 4 elaborates challenges that Cambodia has faced in implementing the Right to Social Security. In this respect, the loophole of the national legislation, limited institutional capacity, scarcity of national resources and inadequacy of scheme coverage and benefit will be analyzed to see how these challenges impede Cambodia to comprehensively implement the Right to Social Security. Another issue for consideration is the implementation of Right to Social Security in Cambodia following by AEC.

Chapter 5 provides overall conclusion of the whole discussion of the Right to Social Security in Cambodia and summarizes the main finding of this research.

Chapter 2: Overview of the Right to Social Security

This chapter starts with the definition and conceptualization of the Right to Social Security. Then, it continues with elements of the Right to Social Security including the forms of social security schemes. The international and regional instruments regulating the social security as well as the national legislation of Cambodia are also examined here. Lastly, the chapter emphasizes the state's obligation in realizing the Right to Social Security by considering the nature of obligation enshrined in ICESCR.

2.1 Definition

So far, there is no a single definition of what the Right to Social Security is. Sometimes, we can see the word “social Security” and “social Protection” are used interchangeably but also are understood to have different and/or similar meaning depending on the context¹³.

The definition of social security and protection can be found in the ILO *World Social Security Report 2011* which elaborated that social protection is often interpreted as a broader than social security including protection provided between members of the family or members of a local community but is also used in some contexts with a narrower meaning (understood as comprising only measures addressed to the poorest, most vulnerable or excluded members of society). Social protection has two aspects: (1) interchangeable with “social security;” and (2) as “protection” provided by social security in case of social risks and needs¹⁴.

Social security covers all measures providing benefits, whether in cash or in kind, to secure protection from: (a) lack of work-related income (or sufficient income) caused by sickness, disability, maternity, employment injury, unemployment, old age or death of a family member; (b) lack of access or unaffordable access to health care; (c) insufficient family support, particularly for children and adult dependents; and (d) general poverty and social exclusion. Social security has two main dimensions, namely “income security” and “availability of medical care”¹⁵.

According to the ILO C.102, social security covers nine (9) branches; medical care, sickness, unemployment, old age, employment injury, family, invalidity and survivor's benefits.

¹³ Suchita Manajit & Mai Thi Thanh Nga Na, “*Migrant Workers' rights to Social Protection in ASEAN: case study of Indonesia, Philippines, Singapore and Thailand*”, (Friedrich-Ebert-Stiftung, Office for Regional Cooperation in Asia, 2011), page.15.

¹⁴ World Social Security Report 2010/11, “*Providing Coverage in Times of Crisis and Beyond*”. (ILO, 2011), page.13.

¹⁵ Ibid. para. 13&14.

For the purpose of this research, the Social Protection is the same meaning as Social Security. Meanwhile, the Social Protection Floors (SPFs) which provides sets of basic social security benefits aimed at preventing or alleviating poverty, vulnerability and social exclusion¹⁶ are included in the thesis since it is a measure to progressively achieve the high social security.

2.2 Elements of The Right to Social Security

The General Comment No.19 on the Right to Social Security (hereinafter, the General Comment) adopted by the Committee on Economic, Social and Cultural Rights (CESCR) outlines that in realizing the Right to Social Security, there are essential factors that need to be considered:

2.2.1 Availability- Social Security System

The Right to Social Security requires a system of the implementation whether composed of a single scheme or variety of schemes, is available and in place to make sure that benefits are provided for the relevant social risks and contingencies. Thus, this system should be established under domestic law, and public authorities must take responsibility for the effective administration or supervision of the system. Moreover, the schemes should also be sustainable, including those concerning provision of pensions, in order to ensure that the right can be realized for present and future generations¹⁷.

2.2.2 Social Risks and Contingencies

The coverage of the social security benefit should consist of nine branches as in ILO C.102; health care, sickness, old age, unemployment, employment injury, family and child support, maternity, disability and survivors and orphans¹⁸.

2.2.3 Adequacy

In this regard, CESCR addresses that the benefits, whether in cash or in kind, must be adequate in amount and duration in order that everyone may realize his or her rights to family protection and assistance, an adequate standard of living and adequate access to health care, as contained in articles 10, 11 and 12 of the Covenant. The states are also required to respect the human dignity and principle of non-discrimination¹⁹.

¹⁶ See also: Social Protection Floors Recommendation (202), 2012.

¹⁷ United Nations Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No.19: The Right to Social Security (art.9 of the Covenant)*, 23 Nov 2007, (E/C.12/GC/19), para.11.

¹⁸ *Ibid.*, para. 12-21.

¹⁹ *Ibid.*, para. 22.

According to ILO, the benefits are considered adequate if they are neither too low nor too high. Benefits are regarded as too low if people cannot live on them or if they perceive the “return” on their contributions to be too low. Cash benefits may be considered too high if they result in expenditure levels or behavior detrimental to the common good or to acceptance by the public of the scheme itself. The benefits are adequate when they help to achieve expected social policy outcomes, that is, meeting the needs of people who have to cope with life’s essential risks and the relationship between benefit levels and taxes and/or contributions paid during a working life is considered to be “fair” (social adequacy). Those benefits work in synergy with employment instruments and fiscal and other economic policies, and do not result in unwanted economic consequences (economic adequacy)²⁰.

2.2.4 Accessibility

The accessibility means making the social protection program(s) easy for people to reach, understand and use, irrespective of age, disability, ethnicity, geographical location or other factors²¹. In this regard, CESCR has stressed that firstly, the coverage should be provided to all persons without discrimination in particular individuals belonging to the marginalized groups. Secondly, the eligibility: the qualifying conditions of the benefit must be reasonable, proportionate and transparent. Thirdly, the affordability. If the social security scheme requires the contributions, those contributions should be stipulated in advance and the direct and indirect costs associated with the contribution must be affordable for all. Fourth, beneficiaries of social security schemes must be able to participate in the administration of the social security system. In this respect, the system should be established under national law and ensure the right of individuals and organizations to seek, receive and impart information on all social security entitlements in a clear and transparent manner. Fifth, benefits should be provided in a timely manner and beneficiaries should have physical access to the social security services in order to access benefits and information and make contributions where relevant. Particular attention should be paid to disabilities, migrants, and persons living in remote or disaster-prone areas²².

²⁰ “*Social Security for Social Justice and Fair Globalization*”, (Report VI, ILO, 2011), page.32&33.

²¹ See also, <<http://socialprotection-humanrights.org/framework/principles/standards-of-accessibility-adaptability-and-acceptability/>>

²² United Nations Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No.19: The Right to Social Security (art.9 of the Covenant)*, 23 Nov 2007, (E/C.12/GC/19), para.23-27.

2.3 Forms of Social Security Schemes

All social security benefits represent social transfers from one group to another in the society (from active age groups to old) in cash or kind (access to goods or services)²³. Social transfer is organized in different social security schemes; however, these schemes can be divided into two main groups: contributory schemes and non-contributory schemes²⁴. In the contributory scheme, the contribution is made by beneficiaries and their employers (and sometimes the state is the employer) determining their entitlement. This type of the contributory scheme is called *social insurance*²⁵. Whereas the non-contributory scheme, there is no requirement of the direct contribution from the beneficiaries or employers as a condition to receive the benefits. The non-contributory scheme is usually financed through tax or the state's revenue and consists of a range of forms, inter alia, *universal scheme* and *social assistance*²⁶. The universal scheme is available for all residents or to all members of certain groups such as the elderly, children and disabled²⁷. Social assistance is different from the universal scheme in the way that the benefit in cash or in kind is distributed to the poor by means-test or based on the similar forms of targeting, for example, proxy means test and geographical targeting²⁸.

2.4 Legal Instruments related to the Right to Social Security

This section elaborates the international, regional and national legal framework concerning the social security.

2.4.1 International instruments/standards on the Right to Social Security

The Right to Social Security became a topic of discussion following the adoption of the Declaration of Philadelphia by ILO in 1944²⁹. Accordingly, this right is also recognized as one

²³ See also, <<http://www.social-protection.org/gimi/gess/ShowTheme.action?id=11>>

²⁴ Ibid.

²⁵ Ibid., See also, Townsend, Peter, "Social Security and Human Rights", in Peter Townsend (ed.), "Building Decent Societies: Rethinking the Role of Social Security in Development", (Basingstoke: Palgrave Macmillan, 2009), page.36. And Goldblatt, Beth, "Gender, poverty and the development of the right to social security", (International Journal of Law in Context, 10,4 pp. 460–477, Cambridge University Press 2014), page.461.

²⁶ See also, <<http://www.social-protection.org/gimi/gess/ShowTheme.action?id=11>>

²⁷ Townsend, Peter, "Social Security and Human Rights", in Peter Townsend (ed.), "Building Decent Societies: Rethinking the Role of Social Security in Development", (Basingstoke: Palgrave Macmillan, 2009), page.36. And Goldblatt, Beth, "Gender, poverty and the development of the right to social security", (International Journal of Law in Context, 10,4 pp. 460–477, Cambridge University Press 2014), page.461.

²⁸ "Social Security for Social Justice and Fair Globalization", (Report VI, ILO, 2011), page.9.

²⁹ See article 3 of the Declaration of Philadelphia, 1944.

of human rights because it is articulated in the UDHR³⁰ and ICESCR³¹. Nowadays, there are other numerous international instruments that regulate this right, for example, ICERD³², CEDAW³³, CRPD³⁴ and Convention on the Rights of the Child (CRC)³⁵. For the specific and normative instruments on social security protection, we can see Conventions and Recommendations that have been continuously adopted by ILO, inter alia, C.102 which is the first international standard that outlines comprehensive formulation of social security issue.

Since the founding of the ILO in 1919, the International Labor Conference has adopted 31 Conventions and 23 Recommendations addressing issues relating to social security³⁶. The ILO Governing Body reviewed these Conventions and Recommendations on social security in 2002 in the light of the current needs of the international community, and confirmed that it regards eight of these Conventions as being up to date³⁷. It should be noted that Cambodia has not yet ratified ILO C.102 nor any other ILO conventions related to social security.

In addition to these instruments, the provision of Social Security can be found in other international documents dealing with migrant workers' protection, for instance, in the UN agenda: International Convention on the Protection of All Migrant Workers and Members of Their Families (UN Migrant Workers Convention)³⁸, International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)³⁹ and Resolution 40/144 of the UN's General Assembly in 1985 on the Declaration on the Human Rights of Individuals who are not Nationals of the Country in which they live⁴⁰. ILO has a plethora of standards that protect migrant workers. Beside its Constitution, there are numerous instruments such as the 1998 Declaration on Fundamental Principles and Rights at Work, Resolution Concerning a Fair

³⁰ See article 22, 23&25 of UDHR, 1948.

³¹ See article 9, 10 (2) &10 (3) of ICESCR.

³² See article 5 (e) (iv) of ICERD.

³³ See article 11 (1) (e), 11 (2) (b) and 14 (2) of CEDAW.

³⁴ See article 28 of CRPD.

³⁵ Article 26, 27(1), 27(2) and 27(4) of CRC.

³⁶ Suchita Manajit & Mai Thi Thanh Nga Na, "*Migrant Workers' rights to Social Protection in ASEAN: case study of Indonesia, Philippines, Singapore and Thailand*", (Friedrich-Ebert-Stiftung, Office for Regional Cooperation in Asia, 2011), page.25.

³⁷ "*Social Security for Social Justice and a Fair Globalization*", (ILO, 2011), page.12&13. The eight conventions that are still up to date:

- Social Security (Minimum Standards) Convention, 1952 (No. 102);
- Equality of Treatment (Social Security) Convention, 1962 (No. 118);
- Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121);
- Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128);
- Medical Care and Sickness Benefits Convention, 1969 (No. 130);
- Maintenance of Social Security Rights Convention, 1982 (No. 157);
- Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168), and
- Maternity Protection Convention, 2000 (No. 183).

³⁸ The right to social security of migrant workers is addressed in article 27 of the convention.

³⁹ See article 5 (e) (iv) of the Convention.

⁴⁰ See article 8 of the Resolution relating to Social Security Protection.

Deal for Migrant Workers in a Global Economy, the Migration for Employment Convention (Revised) 1949 (ILO C.97), Migrant Workers (Supplementary Provisions) Convention 1975 (ILO C.143), 2007 Multilateral Framework on Labor Migration and Equality of Treatment (Accident Compensation) Convention (1925) (ILO C.19) and 2012 Social Protection Floor Recommendation (R202), all provide protection of the Right to Social Security.

2.4.2 Regional instruments/standards on the Right to Social Security

In addition to the protection at the international level, we can see other documents relating to the social security at the regional level, for instance, European Social Charter⁴¹, American Declaration of the Rights and Duties of Man⁴² and ASEAN Charter⁴³ including the ASEAN Economic Community (AEC) agenda⁴⁴ and the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (DPPRMW) in January 2007. Notably, at ASEAN level, representatives of all Social Security Institutions of ASEAN members agreed to establish ASEAN Social Security Association (ASSA)⁴⁵, a non-governmental organization aiming to promote the development of social security in the region in consonance with the aspirations, laws and regulations of the member countries by providing a forum for member institutions to exchange views and experiences on social security issues.

2.4.3 National instruments/standards on the Right to Social Security

Social Security is enunciated in a number of the Cambodia's national laws:

- A. 1993 Constitution: stipulates about the social security and social benefits that all Khmer citizens are entitled to such as maternity leave, medical care, disability benefit, family benefit, social security regime for workers/employees and other social assistances⁴⁶.
- B. 1997 Labor Law: covers all employment relationships between employers and employees, ensures the better working conditions and keeps harmonization in vocational communication, safety and health strengthening at workplace. Most

⁴¹ The Charter was adopted in 1961 and its Additional Protocol was adopted in 1988.

⁴² See article 16 of the American Declaration of the Rights and Duties of Man, 1948.

⁴³ Article 1 (11) of the ASEAN Charter, "...enhance well-being and livelihood of ASEAN people....social welfare and justice..."

⁴⁴ In AEC Agenda, Promotion of "Social Protection and Social Risk Management System" is outlined in AEC Blueprint which ASEAN member agreed on 20 November 2007.

⁴⁵ ASEAN Social Security Association (ASSA) was formally signed on 13 February 1998 in Bangkok, Thailand.

⁴⁶ See article 36, 46, 73, 74 &75 of Cambodian Constitution, 1993.

importantly, this law is the foundation of the Law on Social Security Scheme for Persons defined by provisions of Labor Law⁴⁷.

- C. Insurance law in 2014: provides a legal framework of insurance market activities such as general and life insurance contracts, insurance companies' liquidation and dissolution processes and the micro-insurance⁴⁸. Given that the premium is mandatory, these insurance schemes will benefit only a small proportion of the population and most likely will not be accessible to the poor and near poor⁴⁹.
- D. Law on Social Security Scheme for Persons defined by provisions of Labor Law in 2002: envisages the mandatory social security system for private employee sector containing three schemes: employment injury, health care and pension benefits⁵⁰. And it is also the basis for establishment of the National Social Security Fund (NSSF) in 2007.
- E. Common Statute for Civil Servants in 1994: is a basis for adoption of Royal Decree NS/RKT/0108/039 on Social Security Scheme for Cambodian Civil Servants in 2008 aiming to protect and provide social benefits for civil servants who are governed by the Statute.
- F. Law on the Protection and the Promotion of the Rights of People with Disabilities in 2009: aims to protect and promote the rights of persons with disabilities within the Kingdom of Cambodia⁵¹. Provisions related to social security benefits are stipulated in the law to ensure that those persons are provided social assistance in order to secure their livelihoods and eradicate discrimination against them.
- G. Law on Pensions and Invalidity Pensions for the soldiers of the Cambodian Armed Forces, as amended by the Royal Decree NS/RKT 0406/008 in 2006: leads to adoption of Royal Decree NS/RKT 0710/595 on Social Security for Veterans in 2010.

Based on the above discussion, Cambodia has tremendous effort in designing and adopting the national legislation regarding the protection of the Right to Social Security. In addition to the above major national laws, there are also other numerous policies and measures dealing with the social security (*see the detail of these national policies and measures in Chapter 3*).

⁴⁷ "Social Protection Strategy for Persons defined by provisions of Labor Law: 2014-2018", (National Social Security Fund, 2014), page. 24.

⁴⁸ See Cambodia's Insurance law, 2014.

⁴⁹ Sann, Vathana. (2010), "*Social Protection in Cambodia: Toward Effective and Affordable Social Protection for the Poor and Vulnerable*", in Asher, M. G., S. Oum and F. Parulian (eds.), *Social Protection in East Asia – Current State and Challenges*. ERIA Research Project Report 2009-9, Jakarta: ERIA. Page.323.

⁵⁰ Article 1&2 of the Law on Social Security Scheme for Persons defined by provisions of Labor Law, 2002.

⁵¹ Article 1 of Law on the Protection and the Promotion of the Rights of People with Disabilities, 2009.

2.5 State Obligations under the provision of the Right to Social Security

According to General Comment No.19 on article 9 of ICESCR regarding the Right to Social Security, the committee expresses two natures of the obligations of the state member in realization of the said right.

2.5.1 General Obligation

Due to the fact that the realization of the Right to Social Security imposes the significant financial burden for the state parties, the Convention does not require all states to implement the right at the same level. The implementation can be various across the state members because of different stages of economic development. However, what the committee has stressed is that the state parties have the immediate obligation, for example, to guarantee that the right will be exercised without discrimination of any kind (article 2, para.2), ensuring the equal rights of men and women (article 3) and the obligation to take steps (article 2, para.1) towards the full realization of articles 11(1), and 12 of the ICESCR in order to reach full realization of the Right to Social Security⁵².

To emphasize on the nature of this obligation, although the ICESCR provides for the progressive realization due to the resource constraints, the state parties cannot postpone their obligation or use it as pretext for noncompliance⁵³. With regard to this point, states are obliged to move as expeditiously and effectively as possible toward the goal of full realization and required to employ all means such as legislative, administrative, judicial, economic, social, and educational—appropriate to the right concerned and the country's economic, political and social organizations⁵⁴. Although the resource is limited, the state parties have core obligation to afford minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education⁵⁵.

Accordingly, it should be borne in mind that the Right to Social Security should be appropriately prioritized in law and policy of the state parties⁵⁶. Based on a study conducted under ILO Global Study, constitutional guarantees play a very important proactive role in

⁵² United Nations Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No.19: The Right to Social Security (art.9 of the Covenant)*, 23 Nov 2007, (E/C.12/GC/19), para.40.

⁵³ *Ibid.*, para.3.

⁵⁴ Fukuda-Parr, Sakiko. et al, “*Fulfilling Social and Economic Rights: Measuring Social and Economic Rights*”, (Oxford Scholarship Online: January 2015), page.15&16.

⁵⁵ United Nations Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No.19: The Right to Social Security (art.9 of the Covenant)*, 23 Nov 2007, (E/C.12/GC/19), para.59.

⁵⁶ *Ibid.*, para.40&41.

introducing social rights into national legislation and in fostering their implementation. First, an analysis of the constitutional provisions allows position of social security rights within the framework of human rights, in particular, civil rights to be assessed according to a particular country. Thus, it is possible to obtain an answer to the question about the significance of social security rights in the legal regulations of the national law. Second, the constitutional provisions, and in particular, interpretations made on their basis by constitutional courts of particular states, indicate the minimal contents of social security rights. Finally, the analysis of the contents of constitutional provisions presents an opportunity to look at social security rights cross-sectionally, i.e. to include the perspective of international instruments ratified by the state, and of instruments of lower rank than the constitution⁵⁷.

2.5.2 Specific Obligation

States are supposed to respect and ensure rights to all individuals; however, this is a very broad obligation, thus, in the UN human rights bodies have adopted a tripartite typology of how human rights obligation should be secured, namely, the obligation to respect, to protect and to fulfill⁵⁸. Like the obligation imposed by other international human rights instruments, the Right to Social Security imposes these three obligations on state parties.

A. The Obligation to Respect

This obligation requires the state refraining from interfering directly or indirectly with the exercising of the Right to Social Security-i.e., the obligation to refrain from engaging in any practice or activity that, for example, denies or limits equal access to adequate social security; arbitrarily or unreasonably interferes with self-help or customary or traditional arrangements for social security; arbitrarily or unreasonably interferes with institutions that have been established by individuals or corporate bodies to provide social security⁵⁹.

B. The Obligation to Protect

In relation to this obligation, the state parties are obliged to prevent the third parties in interfering the enjoyment of the Right to Social Security. In this regard, the state parties shall

⁵⁷ “*The Right to Social Security in the Constitutions of the World: Broadening the Moral and Legal Space for Social Justice*”, (ILO Global Study, Volume 1: Europe, ILO, 2016), page. xvi & 1.

⁵⁸ Moeckli, Daniel. and Shah, Sangeeta. and Sivakumaran, Sandesh. and Harris, D. J. “*International human rights law/ edited by Daniel Moeckli, Sangeeta Shah, Sandesh Sivakumaran; consultant editor, David Harris*”, (Oxford University Press Oxford 2010), page.101.

⁵⁹ United Nations Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No.19: The Right to Social Security (art.9 of the Covenant)*, 23 Nov 2007, (E/C.12/GC/19), para.44.

take necessary measures on individuals, groups, corporations or other entities to respect the Right to Social Security. The effective regulatory system shall include framework legislation, independent monitoring, genuine public participation and imposition of penalties for non-compliance⁶⁰.

C. The Obligation to Fulfill

The obligation to fulfill necessitates the state parties to adopt appropriate domestic legislation and measures in implementing the social security scheme. Firstly, the obligation to facilitate entails the state parties to take positive measures to assist individuals and communities to the Right to Social Security. Secondly, the obligation to promote obliges the state parties to ensure that the public awareness and education about the access to the social security scheme are properly operated nationwide. Thirdly, the state parties are bound to provide the social security when individuals or groups are unable to realize this right themselves. In this case, the non-contributory schemes or social assistance shall be conducted and the special attention shall be paid to the disadvantaged and marginalized groups⁶¹.

Additionally, to realize the Right to Social Security, the state parties shall engage in the international cooperation and assistance. Thereof, the agreement on harmonization of the social security schemes is very crucial in safeguarding the individuals' right to social security especially for migrant workers⁶².

The CESCR has emphasized that the violation of the Right to Social Security can occur through the act of commission or omission. The violation through the act of commission is the direct actions of the states or other entities insufficiently regulated by the states; for example, the formal repeal or suspension of legislation necessary for the continued enjoyment of the right to social security and active support for measures adopted by third parties which are inconsistent with the right to social security⁶³.

The violation through act of omission is occurred when the states fail to take sufficient and appropriate action in realizing the right, for instance, the failure to enforce relevant laws or put into effect policies designed to implement the right to social security and the failure to ensure the financial sustainability of State pension schemes⁶⁴.

⁶⁰ United Nations Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No.19: The Right to Social Security (art.9 of the Covenant)*, 23 Nov 2007, (E/C.12/GC/19), para.45.

⁶¹ *Ibid.*, para.47-51.

⁶² *Ibid.*, para.52-58.

⁶³ *Ibid.*, para.64.

⁶⁴ *Ibid.*, para.65.

Chapter 3: Legal Framework and Implementation of the Right to Social Security in Cambodia

The ILO's approach to extend the social security is classified into two dimensions: vertical and horizontal. The vertical dimension refers to the pursued strategies for the extension of the social security that progressively ensure higher levels of social security to as many people as possible, guided by ILO social security standards⁶⁵. Whereas the horizontal dimension means establishing and maintaining the social protection floors as fundamental element of the national social system which provides the income security and access to health care, even at the modest basic level to the entire population⁶⁶.

With regard to the implementation of the Right to Social Security in Cambodia, the study also observes these two main approaches being conducted by the RGC. Hence, this chapter is going to discuss how the Right to Social Security is implemented and to what extent that the national laws and policies provide the protection to Cambodians' right to social security.

3.1 Vertical Approach

This section describes how the Right to Social Security is implemented in Cambodia by examining the implementation in two main sectors in the formal economy, i.e., public and private sectors. The National Social Security Fund (hereinafter, NSSF) is the only one institution that has been operating the social security schemes in private sector. NSSF was established in accordance with the Law on the Social Security Scheme for the persons defined by the provision of the Labor Law⁶⁷ with the responsibility to provide the social security to the workers who are articulated under the Labor Law⁶⁸. For the public sector, the social security schemes are being operated under the two institutions, National Social Security Fund for Civil Servants (hereinafter, NSSF-C) and National Fund for Veterans (hereinafter, NFV). NSSF-C is the institution which was established to provide the social security protection to the

⁶⁵ "The Strategy of the International Labor Organization. Social Security for all: Building Social Protection Floors and Comprehensive Social Security Systems", (Social Security Department, – Geneva: ILO, 2012), page.3.

⁶⁶ MacKellar, Landis & Henry, Carla, "Independent evaluation of the ILO's Strategy to Extend the Coverage of Social Security", (Geneva: ILO, 2010), page.11. See also; "The strategy of the International Labor Organization. Social security for all: building social protection floors and comprehensive social security systems", (Social Security Department, – Geneva: ILO, 2012), page.3.

⁶⁷ Article 3 of the Law on the Social Security Scheme for the Persons defined by the provision of the Labor Law, 2002. See explanation of Persons defined by the provision of the Labor Law in next Chapter.

⁶⁸ Article 2 of the Sub-Decree No.16 on the Establishment of the National Social Security Fund, 2007.

Cambodian Civil Servants based on the Royal Decree on the Social Security Scheme for Civil Servants⁶⁹. Civil Servants covered under this Royal Decree refers to the public employees who are governed by the Common Statute of Civil Servant of the Kingdom of Cambodia. It shall be noted that, in this regard, civil servant under this statute does not cover civil servants of the legislative branch and public employees such as judges of the judicial branch⁷⁰. NFFV was created in accordance with the Royal Decree on the Social Security Scheme for Veterans and has responsibility to provide the social security benefit for veterans such as members of the Royal Cambodian Armed Forces, members of the National Police Force (Ministry of Interior) and other persons certified as war veterans, including former civil servants and laymen who enrolled as soldiers during the war⁷¹.

After the description provided, this study will also analyze how the measures taken by Cambodia are effective in realization of the Right to Social Security. With regard to this point, all nine (09) branches of the Right to Social Security as defined under the ILO C.102 is going to be listed and examined to see to what extent Cambodia has achieved to realize this right in national context. To analyze this implementation, I will look at the specific provision of the domestic legislation related to the social security schemes and examine whether those provisions are effective to secure the populations' right to social security. Therefore, the analyzed issues will be pointed out under every branch of the social security.

The below figure is the summary of the social security schemes in Cambodia:

⁶⁹ Article 1 of the Sub-Decree No.14 on the Establishment of the National Social Security Fund for Civil Servant, 2008.

⁷⁰ Article 1 of the Common Statute of the Civil Servants of the Kingdom of Cambodia, 1994.

⁷¹ Article 3 of the Royal Decree on Social Security Scheme for Veterans, 2010 & article 1 of the Sub-Decree No.79 on the Establishment of the National Fund for Veterans, 2010. Also available at <http://www.ilo.org/dyn/ilossi/ssimain.viewScheme?p_lang=en&p_scheme_id=3193&p_geoaid=116>.

Institutions	9 Branches of Social Security (C.102)								
	Medical Care	Sickness benefit	Unemployment Benefit	Old-Age Benefit	Employment Injury Benefit	Family Benefit	Maternity Benefit	Invalidity Benefit	Survivors' Benefit
NSSF	✓ (just adopted)	✓ (just adopted)	✗	✓ (stated in the law but design of the benefit is not yet concluded)	✓	✓	✓	✓ (stated in the law but design of the benefit is not yet concluded)	✓
NSSF-C	✓ (just adopted)	✓	✗	✓	✓	✓	✓	✓	✓
NFV	✓ (just adopted)	✓	✗	✓	✓	✓	✓	✓	✓

(Note: (x) means “the Branch is not yet articulated in the national legislation”)

3.1.1 Medical Care

Medical care is enunciated in article 7-12 of ILO C.102. The contingency benefits shall be granted including morbid condition, whatever its cause, and pregnancy and confinement and their consequences⁷². According to General Comment No. 19 of CESCR on “the Right to Social Security”⁷³, the state has obligation to provide adequate access to health care including preventive and curative measures for all. In relation to this, Cambodia’s constitution also recognizes that health care is very important that needs to be guaranteed to all citizens without discrimination⁷⁴.

However, practically, Cambodia has not yet provided the health care to the citizens as the law states. Most citizens are responsible for the health expenditure by themselves (out of pocket expenditure is estimated at 60% of the total national health expenditure in 2014)⁷⁵. This trend causes vast majority of Cambodians live near or under poverty due to high cost of the medical care and treatment. Since the national election in 1993, Cambodia has strived to

⁷² Article 7 & 8 of C.102.

⁷³ United Nations Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No.19: The Right to Social Security (art.9 of the Covenant)*, 23 Nov 2007, (E/C.12/GC/19), para.13.

⁷⁴ Article 72 of Cambodia’s Constitution.

⁷⁵ “*The Kingdom of Cambodia health system review: Health Systems in Transition*”, (WHO, Vol. 5 No. 2, 2015), page.45.

provide the health care system to all citizens but it is still not comprehensively successful. Up to now, there are three main mechanisms that Cambodia enhances its health care system through the incorporation of the health system in the employment: for persons defined in the Labor Law, for civil servants, and for veterans.

A. Medical Care Scheme for Persons Defined in the Labor Law (NSSF)

Although Health Insurance Scheme for the workers is recognized as an important matter for Cambodians under the constitution, emphasized in the national policies, for instance, Rectangular Strategy Phase III of the RGC⁷⁶, and constituted as the second necessary branch of NSSF, it has not been effectively implemented. Until 2016, the Health Care was formally regulated under Sub-Decree on Establishment of the Social Security Schemes on Health Care for Persons defined by the Provisions of the Labor Law aiming to provide health care to persons defined by the Labor Law as well as spouse, children and the members of NSSF who have entitlement to permanent disability pension and survivors⁷⁷.

According to the provision of the state obligation under ICESCR, Cambodia is obliged to ensure access to a social security scheme that provides a minimum essential level of benefits, among other things, to all individuals and families that will enable them to acquire at least essential health care⁷⁸ even though the country's resource is very scarce. If we look at the timeframe of the implementation since the NSSF was established, it takes nine (9) years to adopt the legal instrument related to the health care. To emphasize again, the progressive realization of the Right to Social Security also imposes the obligation to move as expeditiously and effectively as possible towards the goal and states are required to take positive action to fulfill the rights, not merely to just respect and protect the rights⁷⁹.

B. Medical Care for Cambodian Civil Servants

Previously, medical care in case of unrelated-to-employment sickness was stipulated in Decision No.245 in 1988 on Social Insurance Policy for Senior Officials, State Employees, Retirees and Invalids. In the Decision, medical care was provided free of charge at the public

⁷⁶ Rectangular Strategy Phase III, (2013), page.37.

⁷⁷ Article 3 of Sub-Decree on Establishment of the Social Security Schemes on Health Care for Persons defined by the Provisions of the Labor Law, (RGC, 06 Jan 2016).

⁷⁸ United Nations Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No.19: The Right to Social Security (art.9 of the Covenant)*, 23 Nov 2007, (E/C.12/GC/19), para.59.

⁷⁹ Fukuda-Parr, Sakiko. et al, "*Fulfilling Social and Economic Rights: Measuring Social and Economic Rights*", (Oxford Scholarship Online: January 2015), page.15

hospitals in case public officials including civil servants who get sick⁸⁰ (*See the detail of Sickness Benefits in the next section*).

A new legal instrument related to health care was adopted on 01 February 2017, namely, Royal-Decree on the Establishment of Social Security of Employment Injury for Public Officials and Health Care for Public Officials, former Civil Servants and Veterans. The health care scheme under this Royal Decree covers general health care: preventive and curative services for injuries and diseases unrelated to the employment. Practically, because the health care under the current Royal Decree has just been promulgated, the condition, modality and procedure of registration and distribution of the benefit are not yet determined. Meanwhile, the contribution payment rate between Government as employer and the protected public officials as employees has not been designed⁸¹.

Another issue is that the health care provision does not cover the family members of those civil servants. Again, according to the CESCR's General Comment No.19 concerning the health care, state parties have obligation to guarantee that the health system is established to provide adequate access to health services for all⁸². Similarly, the ILO C.102 also classified wives and children of employees as protected persons under the medical care benefit⁸³. Therefore, Cambodia should bear in mind that family members of the civil servants are also entitled to be protected.

In term of governance, it is a bit ambiguous about the management of the distribution of the health care for the public employees. Although NSSF-C is an institution responsible for the general social security scheme for civil servants, under the new Royal Decree, the health care is under the management of NSSF⁸⁴. In this regard, *why is NSSF-C not a competent authority to govern the medical care benefit since it is the institution that has role and responsibility for managing the social security benefit for civil servants?* If the role and responsibility of NSSF-C become less important, the merging between the two institutions or the abolition of NSSF-C should be carefully considered to avoid the duplicated responsibility and budget expense in running the separate institutions which deal over the same protected group.

⁸⁰ Article 2 of Decision No.245 dated on 05 Nov 1988 on Social Insurance Policy for Senior Officials, State Employees, Retirees and Invalids.

⁸¹ Article 9 & 10 of Royal-Decree on the Establishment of Social Security of Employment Injury for Public Officials and Health Care for Public Officials, former Civil Servants and Veterans, (01 Feb 2017).

⁸² United Nations Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No.19: The Right to Social Security (art.9 of the Covenant)*, 23 Nov 2007, (E/C.12/GC/19), para.13.

⁸³ Article 9 of ILO C.102 on Social Security.

⁸⁴ Article 5 of Royal-Decree on the Establishment of Social Security of Employment Injury for Public Officials and Health Care for Public Officials, former Civil Servants and Veterans, (01 Feb 2017).

C. Medical Care for Cambodian Veterans

The issue of health care benefits for Cambodian veterans is similar to the case of civil servants. Cambodian veterans and their family members so far have not enjoyed the health care beside medical care resulted from employment injuries and sickness related to occupation. The medical care in case of non-occupational accident was just incorporated under the aforementioned Royal Decree as in the case of civil servants. Hence, the implementation of this Decree has not yet been embarked.

There is also another issue in the new Decree that should be taken into account. As said in the previous chapter, veteran under the scope of Royal Decree on the Social Security Scheme for Veteran includes the public employees such as members of the Cambodian Armed Forces, National Police and persons certified as war veterans, including former civil servants and laymen who enrolled as soldiers during the war⁸⁵. However, the new Royal Decree of 2017 does not extend the protection to the active members of Cambodian Armed Forces (the National Police and retired, disabled veterans are included). Also, from the provision of this new Decree, it states clearly that the Social Security Scheme of the members of the Armed Forces will be governed by a separate statute⁸⁶. Therefore, for the future development of the medical care benefit for the active armed forces, it is necessary to keep in mind in respect of whether they enjoy sufficient medical care.

3.1.2 Sickness Benefit

As stated in the General Comment No.19, cash benefits should be provided to those incapable of working due to ill-health to cover periods of loss of earnings⁸⁷. Similar provision can be found in article 14 of C.102.

A. Sickness Benefit under NSSF

The sickness benefit which is non-occupational disease or accident is articulated under Sub-Decree on Establishment of the Social Security Schemes on Health Care for Persons defined by the Provisions of the Labor Law in 2016 as mentioned in *Medical Care* above. In case of sickness, employee is entitled to get medical care and cash benefit (known as daily

⁸⁵ Article 3 of the Royal Decree on Social Security Scheme for Veterans, 2010.

⁸⁶ Article 3 of Royal-Decree on the Establishment of Social Security of Employment Injury for Public Officials and Health Care for Public Officials, former Civil Servants and Veterans, (01 Feb 2017).

⁸⁷ United Nations Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No.19: The Right to Social Security* (art.9 of the Covenant), 23 Nov 2007, (E/C.12/GC/19), para.14.

allowance) during the suspension of the earning⁸⁸. Because the benefit is very newly articulated, there has no available statistic about number of persons who get the daily allowance under the scheme.

Despite the slow progress of the implementation of this benefit, there is another issue in the new Decree that need to be considered. Under the Health Care benefit, the beneficiary is entitled to get free charge of the treatment within the period of not exceeding 180 days (6 months)⁸⁹. This is questionable when the beneficiary falls into chronic disease and needs the prolonged treatment. If this duration is ended and he/she is still required to be under the morbid condition, *should she get the disability benefit?* This issue is not clarified under the Prakas on Health Care Benefit. Notwithstanding, the General Comment No.19 envisages that person suffering from the long period of sickness should be qualified for the disability benefit⁹⁰. Thus, the provision under the new decree concerning this issue requires to be reexamined and revised when the provision of the disability benefit under NSSF is formulated and implemented in the future.

B. Sickness Benefit for Civil Servants

As mentioned earlier, Royal-Decree on the Establishment of Social Security of Employment Injury for Public Officials and Health Care for Public Officials, former Civil Servants and Veterans was just adopted on 01 February 2017; hence, it is very new instrument that deals with the health care benefit of civil servants for the disease or accidents unrelated occupation. According to the new Royal-Decree in 2017, civil servants are entitled to the health care benefit during sickness including curative and preventive care⁹¹. For the sickness cash benefit, the previous regulation, namely, Decision No.245 of 1988 is still in force⁹².

The problem is the same as in the medical care benefit regarding the scheme governance.

⁸⁸ Article 8 of the Sub-Decree on Establishment of the Social Security Schemes on Health Care for Persons defined by the Provisions of the Labor Law, 2016.

⁸⁹ Article 7 of Prakas 109 LV/PrK on Health Care benefits, (MoLVT, 17 Mar 2016).

⁹⁰ United Nations Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No.19: The Right to Social Security* (art.9 of the Covenant), 23 Nov 2007, (E/C.12/GC/19), para.14.

⁹¹ Article 10 of Royal-Decree on the Establishment of Social Security of Employment Injury for Public Officials and Health Care for Public Officials, former Civil Servants and Veterans, (01 Feb 2017).

⁹² Article 2 of Decision No.245: the cash benefit is provided as following:

- Shall be entitled to full salary during the treatment for 3 months and 90% of the net salary for the treatment longer than 3 months up to 12 months. This salary includes regional, family and other allowances. If the treatment takes longer than 12 months, civil servants will be entitled to Invalidity Pension.

- In case which senior officials, state employees do hard physical, difficult and hazardous work shall be entitled to full salary including regional, family and other allowances as per their current employment for a period of 18 months. At the end of this period, if the patient has not recovered they shall be entitled to invalidity benefit.

C. Sickness Benefit for Veterans

Sickness benefit is stated in the Royal Decree on Social Security Scheme for Veterans adopted in 2010. Medical care and cash allowance are provided in case of sickness. Medical care of veteran in case of sickness is governed by the current Royal-Decree on the Establishment of Social Security of Employment Injury for Public Officials and Health Care for Public Officials, former Civil Servants and Veterans that was just adopted of 01 February 2017 (see *the Medical Care for Veterans* above). The cash allowance comprises of full salary including allowances for up to three consecutive months of illness, and 90 % of salary thereafter up to 12 months depending on the number of past service years⁹³.

In terms of governance, the issue is similar to the civil servants' case. It should also be noted that the "veteran" under the new Royal Decree does not include the active members of Cambodian Armed Forces (see *the explanation under the Medical Care* above).

3.1.3 Unemployment Benefit

C.102 provides that unemployment benefit shall be provided to any person who is capable and available for work but due to some circumstances he/she cannot obtain suitable employment to support his/her living⁹⁴. Similarly, the General Comment No.19 indicates that the state has the obligation to ensure that benefits should be paid for an adequate period of time in case of loss of the employment and this benefit should be adequately protected for the unemployed worker, for example through social assistance⁹⁵.

Based on the research of the implementation of this benefit, it is revealed that there has been no legal instrument mentioning this benefit. Therefore, this benefit is not guaranteed under social security scheme operated by NSSF, NSSF-C and NFV.

Although there is a provision in the Labor Law stipulates about the Severance Pay, this type of pay is not considered as the unemployment benefit under the concept of the Right to Social Security because the severance pay in this regard refers to a lump sum benefit (or indemnity for the dismissal) given to any worker when he/she is dismissed or laid off for a reason other than his/her serious misconduct, for instance, economic problem of the employers and employee's health⁹⁶.

⁹³ "Cambodia: Social security for the formal economy outlook and challenges ahead", / EU/ILO Project on Improving Social Protection and Promoting Employment, (International Labor Office. - Geneva: ILO, 2012), page.11.

⁹⁴ Article 20 of C.102.

⁹⁵ United Nations Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No.19: The Right to Social Security* (art.9 of the Covenant), 23 Nov 2007, (E/C.12/GC/19), para.16.

⁹⁶ Article 89 of Labor Law, the amount of the indemnity depends upon the employee's length of continuous service:
- 7 days wages and benefits: for employment from 6 to 12 months

ILO has suggested that Cambodia should start introducing and coordinating the unemployment benefit with the policy of the severance payment because the unemployment benefit would redistribute evenly (and potentially reduce) the cost employers face for the replacement of workers, thereby increasing labor mobility and improving the allocation of labor inputs overall⁹⁷. According to a research conducted by Ekkehard Ernst, if the unemployment benefit is totally absent from the national framework, the jobseeker will engage in any type of work including the informal economy, therefore, it is also one of reasons why the informality is so widespread in the developing countries⁹⁸.

3.1.4 Old-Age Benefit

In addition to the protection of old-age described in C.102, the state's obligation in assuring that older person is protected by means of social security scheme is regulated in General Comment No. 19 of CESCR. Even in country where the resource is very scarce, social services and other assistances should be provided for older persons who reach the retirement age under either non-contributory or contributory form.

A. Old-Age Benefit under NSSF

According to the Law on Social Security Scheme for Persons defined by the provision of Labor Law, old age benefit is covered as one of the pension scheme⁹⁹. However, this benefit has not yet been granted in practice. One reason is that the active population who engage in the formal economy is mostly young generation. Therefore, it will take two to three decades before the first generation of contributors retires so that few retirement pensions are likely to be disbursed before the year 2035 unless special provisions are adopted that would allow for early disbursement of pensions to scheme members due to retire over the coming two decades¹⁰⁰.

- 15 days wages and benefits for each year of employment up to a maximum of six months' wages for employment over 1 year. Article 73 of Labor Law, the provision of severance pay only applies to contracts of an unspecified duration. And for the specified duration contract, the severance pay shall be also provided at the expiration of this contract in which the payment amount may be fixed by collective agreement but if there is no collective agreement, it should not in any case be less than 5 per cent of the total wages paid during the length of the contract.

⁹⁷ "Cambodia: Social security for the formal economy outlook and challenges ahead", / EU/ILO Project on Improving Social Protection and Promoting Employment, (International Labor Office. - Geneva: ILO, 2012), page.19.

⁹⁸ Ernst, Ekkehard, "Supporting job seeker: how unemployment benefits can help unemployed workers and job creation", (International Social Security Review, Vol. 68, 3/2015), page.45.

⁹⁹ Article 1 of Law on Social Security Scheme for Persons defined by the provision of Labor Law, (2002).

¹⁰⁰ "Cambodia: Social security for the formal economy outlook and challenges ahead", / EU/ILO Project on Improving Social Protection and Promoting Employment, (International Labor Office. - Geneva: ILO, 2012), page.18.

B. Old-Age Benefit under NSSF-C

Based on the Royal Decree on the Social Security Scheme for Civil Servants in 2008, old-age civil servant is eligible to grant retirement pension¹⁰¹. However, the benefit formulation is operated under the Sub-Decree No. 59 on the Scheme of Retirement and Invalidity Pensions dated on 6 October 1997. Any civil servant who reaches retirement age¹⁰² with 30 years of service is entitled to retirement benefits at 80% of the final basic salary. This retirement pensions can be increased by other allowances such as regional allowance, allowance for hazardous work that can affect his health and family allowance (spouse and children, *see the family allowance in the next section*).

There are number of issues in distribution of the old age benefit requiring the comprehensive implementation. Based on the finding conducted under the EU/ILO Project in 2009, the amount of old age pensioners was about 28,000 civil servants and the expenditure was approximately 48 \$ per month for each pensioner¹⁰³. Even though this expenditure represents only about 1.60 \$ per day, the replacement rate for retirement pensions is relatively high, at an estimated 63 % compared to the average total salary of active civil servants¹⁰⁴. Meanwhile, the retirement pension also increases alongside with the increase of civil servants' salary based on the change of living cost.

In recent years, the RGC is trying to increase the civil servants' salary as well as the retirement pension. This is a good measure to improve the living condition of the civil servants and their families; however, I think that the effective mechanism in relation to the social security needs to be considered at the same time. With regard to this, the shared responsibility between pensioners and the state- i.e., the contribution, shall be enforced in order to ensure the financial sustainability in supporting the distribution of this benefit. Otherwise, the expenditure for retirement pension will rise gradually in the next coming years with the burden of the limited national budget. The contribution rate was determined since 2011¹⁰⁵; however, so far there is no contribution from civil servants as employees and it is yet unclear when

¹⁰¹ Article 2 of Royal Decree on the Social Security Scheme for Civil Servants, (14 January 2008).

¹⁰² According to article 54 of the Common Statute on Civil Servants, Civil servants of both sexes shall retire by the age of 55. This age limit may be extended from 55 to 60 years by the particular statute governing a body, (1994).

¹⁰³ According to Sub-Decree No.41 of 2017, the Minimum Pension is 100\$/month.

¹⁰⁴ "Cambodia: Social security for the formal economy outlook and challenges ahead", / EU/ILO Project on Improving Social Protection and Promoting Employment, (International Labor Office. - Geneva: ILO, 2012), page.7.

¹⁰⁵ Article 2 of Sub-Decree No.73, 2011: the contribution rate is decided:

- Government as employer: 18 %
- Civil Servant as employee: 6 %.

contributions will be collected and whether the income from contributions will be sufficient to cover benefit expenditure¹⁰⁶.

C. Old-Age Benefit under NFV

According article 6 of the Royal Decree on Social Security Scheme for Veterans in 2010, veterans are entitled to old age benefit¹⁰⁷ when they reach the retirement age¹⁰⁸. The retirement benefit is provided in the form of minimum (50% of the basic salary) and maximum (80% of last basic salary) pensions based on the working period and position¹⁰⁹.

The problem of contribution collection is the same as in the case of civil servants.

3.1.5 Employment Injury

According to article 32 of C.102, the benefit shall be provided to the contingencies related to accident or disease resulting from the employment. State has obligation to provide the adequate social security system such as costs and loss of earning during the injury or morbid condition as well as loss of support for spouses or dependents suffered as the result of the death of a breadwinner¹¹⁰.

A. Employment Injury Benefit under NSSF

The employment injury insurance scheme under NSSF has been implemented since November 2008 when Prakas No. 022 on Determination of the Phases and Coverage of the Implementation of the Occupational Risk Scheme was adopted in February 2008¹¹¹. This insurance scheme covers occupational risk such as accidents at workplace or during working, commuting accident and occupational disease¹¹². The benefit consists of medical care, daily allowance for temporary disability, pension for permanent disability, funeral allowance and survivor benefit in case of death and rehabilitation¹¹³.

¹⁰⁶ "Cambodia: Social security for the formal economy outlook and challenges ahead", / EU/ILO Project on Improving Social Protection and Promoting Employment, (International Labor Office. - Geneva: ILO, 2012), page.7.

¹⁰⁷ See also; article 22 of the Law on the General Statute of Military Personnel of the Royal Cambodian Armed Forces, (1997).

¹⁰⁸ Age of retirement is from 38-60 according to the ranking.

¹⁰⁹ Article 2 (new) of the Law on Amendment of Retirement and Invalidity Pension Schemes for Veterans, (07 Apr 2006). See also; < <http://www.nfv.gov.kh/index.php/en/our-services/retirement>>, (NFV).

¹¹⁰ United Nations Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No.19: The Right to Social Security* (art.9 of the Covenant), 23 Nov 2007, (E/C.12/GC/19), para.17.

¹¹¹ Article 1 of Prakas No. 022 on Determination of the Phases and Coverage of the Implementation of the Occupational Risk Scheme, (11 Feb 2008).

¹¹² Article 12 of the Law on Social Security Scheme for Persons defined by the provisions of Labor Law, (2002).

¹¹³ *Ibid.*, article 15.

The employment injury is considered as a successful scheme among all schemes covered by the Law on Social Security Scheme for Persons defined by the provision of the Labor Law. The regulation of the employment injury benefit is considered as in compliance with the provision of ICESCR in terms of no requirement of the employment's length, insurance's duration or contribution's payment to be qualified as beneficiary¹¹⁴. In respect of contribution, it is the sole responsibility of the employer, that is 0.8 % of average wage in the level of monthly wage of workers¹¹⁵.

However, the scheme coverage currently extends to only enterprises that employ from eight workers¹¹⁶. Hence, it can be implied that the workers who work in smaller enterprises are left behind in terms of protection. Despite the successful registration progress of various enterprises under the scheme, the future development should take account on the smaller enterprises as expeditiously as possible so that those workers can enjoy their employment injury benefit.

B. Employment Injury Benefit under NSSF-C

The new Royal Decree on the Establishment of Social Security of Employment Injury for Public Officials and Health Care for Public Officials, former Civil Servants and Veterans in 2017 is the statutory instrument which replaces the employment injury provision in Decision No.245 on Social Insurance Policy for Senior Officials, State Employees, Retirees and Invalids in 1988. The employment injury benefit in the Royal Decree covers medical care, cash allowance for permanent disability at level that is less than 20 %, pension for the permanent disability from 20% up, and funeral allowance and pension for survivorship in case of the death of the breadwinner¹¹⁷.

Because the employment injury benefit has just been revised under the new Royal Decree of 2017, the design of condition, modality and procedure of the benefit has not yet been decided. For the future design of the benefit, I think that it is crucial to note some issues.

Firstly, the provision of benefit coverage does not expressly state about the cash benefit or allowance for the temporary disability. Hence, it is not sure whether the temporary disabled civil servant is entitled to get cash allowance or full payment of monthly salary together with

¹¹⁴ United Nations Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No.19: The Right to Social Security* (art.9 of the Covenant), 23 Nov 2007, (E/C.12/GC/19), para.17.

¹¹⁵ Article 1&2 of Prakas No. 108 on Registration of Contribution Rate and Procedures of Contribution Payment for Occupational Risk, (16 May 2008).

¹¹⁶ *Ibid*, article 1.

¹¹⁷ Article 8 of Royal Decree on the Establishment of Social Security of Employment Injury for Public Officials and Health Care for Public Officials, former Civil Servants and Veterans, 2017.

the medical care benefit. Only the previous Decree No.245 of 1988 regulated this issue: “*any civil servant who gets sick because of work-related is provided monthly salary if the sick leave in this case does not exceed 60 days*”¹¹⁸. Therefore, in this case, the future design of the employment injury benefit, the cash allowance as stated in the previous regulation should be articulated and revised to ensure the temporary disabled civil servant is provided with the cash allowance.

Secondly, any civil servant who is permanently disabled at the level of less than 20% is eligible for only one-time cash allowance. In this respect, I think that although the level of disability is less than 20%, the contingency is still permanent; therefore, he/she should be entitled to get the invalidity pension. Accordingly, that civil servant can be eligible for old age pension when they reach retirement age.

Thirdly, it is also important to note that after the said Royal Decree was adopted, the management of the employment injury is transferred to NSSF not NSSF-C. Therefore, the cooperation between the two institutions is very important, or if possible, the merging between the two should be considered to avoid duplicated and unclear responsibility.

C. Employment Injury Benefit under NFV

The employment injury is not explicitly envisaged under the Royal Decree on the Social Security Scheme for Veteran in 2010. Article 6 of the Royal Decree covers the contingencies such as retirement, incapacity to work, maternity, sickness, marriage, death on mission, invalidity, death and family. However, they are entitled to get the employment injury benefit which consists of medical care (in kind), cash benefit at full salary during treatment and convalescence, and permanent invalidity benefits (pension) in cases of permanent loss of working capacity¹¹⁹. The new Royal Decree on the Establishment of Social Security of Employment Injury for Public Officials and Health Care for Public Officials, former Civil Servants and Veterans in 2017 also stipulates the employment injury benefit for veterans.

Adding to the issue of benefit coverage and the scheme governance as mentioned in the civil servant section, there is another issue requiring to be carefully considered. As described in the previous section, the new Royal Decree of 2017 on the Establishment of Social Security of Employment Injury for Public Officials and Health Care for Public Officials, former Civil Servants and Veterans does not extend the protection to the active members of Cambodian

¹¹⁸ Article 3 of Decision No.245 on Social Insurance Policy for Senior Officials, State Employees, Retirees and Invalids, 1988.

¹¹⁹ “*Cambodia: Social security for the formal economy outlook and challenges ahead*”, / EU/ILO Project on Improving Social Protection and Promoting Employment, (International Labor Office. - Geneva: ILO, 2012), page.12.

armed forces even though it covers veterans (see the discussion in *Medical and Sickness Benefits in the above section*). In this case, the benefit of active members of the armed forces is still enforced under the outmoded instrument which likely cannot respond to the current social change.

3.1.6 Family Benefit

According to the General Comment No.19, the benefits for families are crucial for realizing the rights of children and adult dependents to protection. In relation to this benefit, children shall be considered in respect of their circumstances and resources¹²⁰.

A. Family Benefit under NSSF

The Law on Social Security Scheme for persons defined by the provision of the Labor Law has not yet expanded the benefit to the workers' family members. The new Sub-Decree on the Establishment of Health Care for Persons defined by the provision of the Labor Law adopted in 2016 extends the coverage of the health care benefit to the family members of the workers; however, this provision has not yet been implemented. So far, children and family members can only enjoy the social security benefit under the *Survivor benefit* in case of the death of the workers (*see the Survivor benefit in below section*).

Since the worker's family member is not provided the allowance to support their living, it should be noted that the purpose of the family allowances is considered as a mechanism to share the burden of child-rearing more equally within the population¹²¹.

B. Family Benefit under NSSF-C

The dependents of the civil servants are entitled to get the social security benefit¹²². Up to date, the civil servants' families (spouse and children) are entitled to get the family allowances:

- Spouse: 15000 Riel (\$3.70) per month
- Children: 10000 Riel (\$2.50) per month¹²³.

Despite this cash allowance, the family members of the civil servants do not enjoy other benefits especially the health care benefit. The health care of civil servants' family members is

¹²⁰ United Nations Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No.19: The Right to Social Security* (art.9 of the Covenant), 23 Nov 2007, (E/C.12/GC/19), para.18.

¹²¹ "Cambodia: Social security for the formal economy outlook and challenges ahead", / EU/ILO Project on Improving Social Protection and Promoting Employment, (International Labor Office. - Geneva: ILO, 2012), page.19.

¹²² Article 2 of the Royal Decree on Social Security Scheme for Civil Servants, 2008.

¹²³ Article 4 of Sub-Decree on the Increase of the Family Allowances for Cambodian Civil Servants, Armed Forces and National Police, 2016.

not articulated in the new Royal Decree of 2017 on the Establishment of Social Security of Employment Injury for Public Officials and Health Care for Public Officials, former Civil Servants and Veterans.

C. Family Benefit under NFV

The veterans' family members are benefited under the Royal Decree on Social Security Scheme for Veterans in 2010, however, they are only entitled to get the allowance like in the case of civil servants' families.

From this short discussion, it can be concluded that in the present day, Cambodian civil servants' and veterans' family members are entitled to only the small amount of the benefit. Given that the increase of living cost, this amount of benefit cannot respond to the current daily needs. Moreover, it should be understood that the family benefit under this meaning does not cover only the allowance, but it also extends to social services and other assistance such as clothing, food, housing, water and sanitation and other rights as appropriate¹²⁴.

The social health insurance should be introduced because it is very important to secure the income of civil servants' and veterans' family members in case of the health shock.

3.1.7 Maternity Benefit

The CEDAW indicates that the dismissal on the ground of pregnancy or maternity leave shall be prohibited¹²⁵. Female workers shall be also entitled to maternity leave with pay or adequate social security benefits¹²⁶. In addition to C.102, ILO has also adopted the Maternity Protection Convention, 2000 (No. 183) as well as earlier Conventions on the same subject which Cambodia also has not ratified.

A. Maternity Benefit under NSSF

Women are entitled to have 90 days for maternity leave and for any female worker who has worked at the enterprise or factory at least one year shall be eligible for cash benefit at 50% of the salary plus allowance¹²⁷. After the Sub-Decree on the Health Care benefit adopted, female worker who registered with NSSF under the Health Care Scheme is additionally granted

¹²⁴ United Nations Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No.19: The Right to Social Security* (art.9 of the Covenant), 23 Nov 2007, (E/C.12/GC/19), para.18. See also article 42 of ILO C.102.

¹²⁵ Article 11 (2) (a) of CEDAW.

¹²⁶ Article 11 (2)(b) of CEDAW. See also: United Nations Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No.19: The Right to Social Security* (art.9 of the Covenant), 23 Nov 2007, (E/C.12/GC/19), para.19.

¹²⁷ Article 182&183 of Labor Law, 1997.

70 % daily allowance¹²⁸ of daily average wage and health care benefit (pre-natal, confinement and post-natal period) during the contingency¹²⁹.

According to the ICESCR and CEDAW, women are protected against discrimination on maternal status or marital status¹³⁰. They are also entitled to have maternity with adequate social security benefits. Article 46 of Cambodian Constitution also envisages that women have the right to take maternity leave for 90 days with full pay and shall not be dismissed based on the maternity reason. However, in relation to the paid leave, the private female employee is entitled to only 50% of her wage during the leave with strict condition that they have to work at least one year uninterruptedly before the maternity leave¹³¹. This can be inferred that Labor Law is inconsistent with the Constitution in which women are entitled to get full pay during the maternity leave. Although the latter Prakas on Health Care Benefit provides female employee with 70% of daily average wage as mentioned, it should be noted that this additional allowance can be provided unless she registers with NSSF.

B. Maternity Benefit under NSSF-C

Maternity benefit is guaranteed under Article 2 of Royal Decree on Social Security Scheme for Civil Servants. The said provision stipulates that female civil servant is entitled to have the maternity leave for 90 days with full salary and a cash allowance of KHR 600,000 (US\$150) per child¹³².

C. Maternity Benefit under NFV

Maternity benefit is stipulated under article 6 of Royal Decree on Social Security Scheme for Veterans. The benefit comprises of maternity leave for 90 days with full salary and a cash allowance of KHR 600,000 (US\$150) per child¹³³ as in the case of the civil servant.

So far, the female civil servants and veterans have enjoyed the maternity benefit; full pay and allowance. However, they should be provided the medical care including prenatal,

¹²⁸ To get the daily allowance during the maternity leave, the workers shall have paid contribution to NSSF at least 09 months consecutively; Clause 6 of Prakas 109 LV/PrK on Health Care benefits, (MoLVT, 17 Mar 2016).

¹²⁹ Clause 7 of Prakas 109 LV/PrK on Health Care benefits, (MoLVT, 17 Mar 2016).

¹³⁰ Article 10 of ICESCR and article 11 (2)(b) of CEDAW.

¹³¹ Article 182 &183 of Labor Law, 1997.

¹³² Article 3 of Decision No.52 on Revision of Social Insurance Policy on Allowances, 2005. See also, "*Cambodia: Social security for the formal economy outlook and challenges ahead*", / EU/ILO Project on Improving Social Protection and Promoting Employment, (International Labor Office. - Geneva: ILO, 2012), page.6.

¹³³ See also "*Cambodia: Social security for the formal economy outlook and challenges ahead*", / EU/ILO Project on Improving Social Protection and Promoting Employment, (International Labor Office. - Geneva: ILO, 2012), page.11.

childbirth and postnatal care and care in hospital where necessary¹³⁴. Therefore, in the future development of health care benefit for female workers in accordance with the Royal Decree of 2017 on the Establishment of Social Security of Employment Injury for Public Officials and Health Care for Public Officials, former Civil Servants and Veterans, should ensure that those female workers enjoy the appropriate health care benefit, i.e. to maintaining, restoring or improving the health of the woman protected and the ability to work and to attend to their personal needs¹³⁵.

3.1.8 Invalidity Benefit

CRPD stipulates that persons with disabilities should be respected and provided social protection without discrimination on the ground of the disability¹³⁶. The importance of the invalidity benefit is also emphasized by CESCR providing that the adequate income support shall be guaranteed for the person with disabilities in a dignified manner and can respond to their special needs¹³⁷.

Michael emphasizes that persons with disabilities and their families are constituted as one of the worthy recipients of the social protection because any household with disabled member is classified by low human capital resulting in reduced earning capacity of the disabled member and their career, health-related expense, equipment and social discrimination¹³⁸.

A. Invalidity under NSSF

Worker can enjoy disability benefit in the case where the disability caused by the employment injury. The invalidity benefit of the private employee is provided by determining whether the disability is temporary or permanent. In both cases, they enjoy the medical care, allowance and pension. If it is temporary disability, they are entitled to get the daily allowance in addition to the medical care benefit¹³⁹. Disabled worker who gets injury from work-related is entitled to get the disability pension if the accident causes permanent disability incurred at

¹³⁴ United Nations Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No.19: The Right to Social Security* (art.9 of the Covenant), 23 Nov 2007, (E/C.12/GC/19), para.19.

¹³⁵ Article 49 (3) of C.102.

¹³⁶ Article 28 (2) of the Convention on the Rights of Persons with Disabilities, 2008.

¹³⁷ United Nations Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No.19: The Right to Social Security* (art.9 of the Covenant), 23 Nov 2007, (E/C.12/GC/19), para.20.

¹³⁸ Palmer, Michael, “*Social Protection and Disability: A Call for Action*”, (Oxford Development Studies, Vol.41, No.2, 2013), page.144.

¹³⁹ Article 15, 16&17 of the Law on the Social Security Scheme for person defined by the provision of the Labor Law, 2002.

least equally to 20%. Nevertheless, if the degree of the permanent disability incurred less than 20%, the worker is entitled to only lump sum allowance.¹⁴⁰

It should be borne in mind that the invalidity pension is not provided to the beneficiary only in the case the disability caused by the employment injury. But the invalidity benefit shall be also guaranteed in the event that they become disabled because of other related factors, for instance, from the exhaustion of the sickness benefit¹⁴¹. As mentioned, the worker is entitled to get the disability benefit only in the case where it is resulted from the occupational risk. According to the Law on the Social Security Scheme for persons defined by the provision of the Labor Law, the worker who becomes disabled before the age of 55 is entitled to the invalidity pension¹⁴². However, the pension scheme under this law has not yet commenced and the design of this benefit is still on the preparation.

B. Invalidity under NSSF-C

Any civil servant who becomes disabled and obtains 20-30 years of service and has not yet reached the retirement age shall be eligible invalidity pension. For the invalidity caused by the work-related factor or on the mission, the civil servant shall get the maximum pension which equals to 65% of the final salary. For the invalidity caused by not work-related factors such as sickness, civil servant shall be entitled to the minimum pension which equals to 50% of the final salary plus the additional allowance¹⁴³. If the civil servant does not fulfill the working period, he/she is entitled to only lump sum which equals to 7 times of their basic salary¹⁴⁴. The beneficiary enjoys other allowances such as regional, hardship and family allowances including other subsidies as the retirement beneficiary¹⁴⁵.

As mentioned earlier, so far, the disabled civil servant can only enjoy the cash benefit whereas the medical care benefit has not been provided yet. The invalid beneficiary is eligible to enjoy medical care benefit in accordance with the Royal Decree of 2017 on the Establishment of Social Security of Employment Injury for Public Officials and Health Care for Public Officials, former Civil Servants and Veterans. Therefore, it is necessary to foster the

¹⁴⁰ Article 18 of the Law on the Social Security Scheme for person defined by the provision of the Labor Law, 2002.

¹⁴¹ See also article 54 of ILO C.102 and United Nation Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No.19: The Right to Social Security* (art.9 of the Covenant), 23 Nov 2007, (E/C.12/GC/19), para.20.

¹⁴² Article 9 of the Law on the Social Security Scheme for person defined by the provision of the Labor Law, 2002.

¹⁴³ This additional allowance is 1.5% per year of the basic salary.

¹⁴⁴ Article 14 of the Sub-Decree No.59 on the Implementation of the Retirement and Invalidity Pension Scheme for Civil Servant, 1997.

¹⁴⁵ *Ibid.*, article 11&12.

design and implement this benefit so that the disabled civil servants can be protected against the risk of catastrophic health expenditure¹⁴⁶.

One more thing that should be taken into consideration is that under the employment injury benefit, any civil servant who gets the permanent disability pension does not require the working period to be qualified as beneficiary¹⁴⁷. In this case, the civil servant can get the permanent disability pension if he/she has permanent disability incurred at least 20% (permanent disability pension is measured by the degree of the disability, not by the working period). However, the provision of disability benefit under Sub-Decree No. 59 on the Implementation of the Retirement and Invalidity Pension Scheme for Civil Servant entails the civil servant to have at least 20 years of service in order to get the disability pension in case where the disability caused by work-related. I think these two provisions are contradictory on the same matter. Hence, for the future development of the invalidity benefit in accordance with the new Royal Decree on the Establishment of Social Security of Employment Injury for Public Officials and Health Care for Public Officials, former Civil Servants and Veterans, the provision of these two benefits (disability and employment injury benefits) of 2017 should be in consistency because these benefits are interrelated.

C. Invalidity under NFV

For veteran who becomes disabled because of the work-related is entitled to get pension at 60%, 80% and 100 % respectively of the final salary, based on the degree of the disability¹⁴⁸ without the qualified working period required¹⁴⁹. For veteran who is invalid because of the non-work-related factor, for example from the chronic disease, is entitled to get the invalidity benefit in the amount of 50% of the final salary (with requirement of 15 years of service for man and 10 years for woman) plus the additional allowance¹⁵⁰.

As of now, the veteran has enjoyed the pension of invalidity benefit; however, they have not yet provided the health insurance provision as in the case of the civil servant.

¹⁴⁶ “Cambodia: Social security for the formal economy outlook and challenges ahead”, / EU/ILO Project on Improving Social Protection and Promoting Employment, (International Labor Office. - Geneva: ILO, 2012), page.6.

¹⁴⁷ See also the employment injury entitlement in United Nations Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No.19: The Right to Social Security* (art.9 of the Covenant), 23 Nov 2007, (E/C.12/GC/19), para.17.

¹⁴⁸ Article 9 (2) of the Law on the Retirement and Invalidity Pensions Scheme for Armed Forces, 1994, the level of the disability is divided into three levels as following:

- Level 1: disability incurred for more than 80%
- Level 2: disability incurred for more than 60%
- Level 3: disability incurred for more than 40%.

¹⁴⁹ Article 12 of the Law on the Retirement and Invalidity Pensions Scheme for Armed Forces, 1994.

¹⁵⁰ Article 9&12 of the Law on the Retirement and Invalidity Pensions Scheme for Armed Forces, 1994; additional allowance is 1.5% per year calculated at the 4th or the 6th year of the service.

3.1.9 Survivor's Benefit

When the family support is cut off because of the breadwinner's death, the state shall ensure that the survivors still can enjoy the social security benefit without any discrimination¹⁵¹.

A. Survivor's benefit under NSSF

There are two situations in which the survivor can be eligible to get the survivor benefit. Firstly, the survivor is entitled to enjoy the survivor benefit such as the allowance or pension provided following the death of the holder of old-age or invalidity benefit¹⁵². Secondly, they can enjoy the benefit after the death of the breadwinner resulting from the employment injury¹⁵³. The survivors who are provided the benefit under this provision do not include only children or wife but also the parents or ageing people under the direct charge of the breadwinner. In this respect, those survivors are entitled to obtain the benefit such as funeral allowance (4 million Riels=USD1,000) and pension granted based on which category of survivors that the breadwinner has (wife, children or parents)¹⁵⁴.

Regarding this benefit, there are two issues required to be taken into account. Firstly, the provision of survivors benefited from the death of the holder of old-age or invalidity has not been commenced. This leaves the survivors who lost the support from the breadwinner (who died because of non-work-related factor) unprotected. Not only the pension for supporting the living but also the social health guarantee is not provided. This kind of survivorship is not even regulated in the Sub-Decree on the Health Care for persons defined under the provision of the Labor Law in 2016.

Secondly, the survivors who are entitled to receive the pension due to the death of the breadwinner caused by the employment injury have not yet enjoyed the social health protection even though this benefit is stipulated in the said Sub-Decree on the Health Care. It should be noted that under ICESCR, the state parties are obliged to pay high attention to a large number

¹⁵¹ United Nations Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No.19: The Right to Social Security* (art.9 of the Covenant), 23 Nov 2007, (E/C.12/GC/19), para.21. And see also; article 60 of ILO C.102.

¹⁵² Article 10&11 of the Law on Social Security Scheme for persons defined by the Labor Law, 2002.

¹⁵³ *Ibid*, article 15.

¹⁵⁴ Article 11 of the Prakas No.109 on the Benefit of Work injury, 2008 and article 10 (new) of the Prakas No.233 on the Revision of article 8 and 10 of the Prakas No.109 on the Benefit of the Work Injury, 2011. Also available at <<http://www.nssf.gov.kh/default/employment-injury-scheme-2/benefit/>>.

of children or older persons without family or community support especially when they are affected by the health risks, for instance, endemic disease, HIV/AIDs and tuberculosis¹⁵⁵.

B. Survivor's benefit under NSSF-C

Following the death of the breadwinner, the deceased civil servants' survivors are provided the benefits such as the funeral allowance, lump sum and pension. For those who die because of illness, the family will get 1,200,000 Riels (USD 300) and 1,500,000 Riels (USD 375) for those who die on the mission or occupational injury¹⁵⁶. In the case of the pensioners' death (invalidity and retirement pensioners), the family is entitled to get the lump sum equals to 12 months of the monthly pension for the funeral preparation¹⁵⁷. In addition to these benefit provisions, survivors are entitled to continuously given the monthly family pension¹⁵⁸ (Spouse: 15000 Riels = USD3.70 per month, Children: 10000 Riel = USD2.50 per month), (*see the family allowance for spouse and children above*).

C. Survivor's benefit under NFV

The deceased veteran's survivor is entitled to funeral allowance, lump sum (6 months of final salary if the veteran dies because of work-related and 12 months in the case of the retirement and invalidity's death)¹⁵⁹ and family pension (the same as in the case of civil servant's family benefit).

There are few issues under the survivor's benefit schemes of civil servants and veterans. Firstly, as described, the civil servant's and veteran's survivors are not given additional pension beside the continuity of the family benefit payable under the form of monthly family allowance. As understood, this family pension is clearly inadequate and cannot respond to the social basic needs.

Secondly, they are not entitled to enjoy any health benefit. Relating to this issue, the ICESCR affirms that the benefits whether in cash or in kind should be adequate in amount and duration in order that everyone may realize his or her rights to family protection and assistance, an adequate standard of living and adequate access to health care¹⁶⁰.

¹⁵⁵ United Nations Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No.19: The Right to Social Security* (art.9 of the Covenant), 23 Nov 2007, (E/C.12/GC/19), para.21.

¹⁵⁶ Article 2 of the Decision No.52 on Revision of the Social Insurance Policy on Allowances, 2005.

¹⁵⁷ Article 10 of Sub-Decree No.59 on the Implementation of the Retirement and Invalidity Pension, 1997.

¹⁵⁸ *Ibid*.

¹⁵⁹ Article 14 of the Law on the Retirement and Invalidity Pensions Scheme for Armed Forces, 1994. See also: <http://www.ilo.org/dyn/ilossi/ssimain.viewScheme?p_lang=en&p_scheme_id=3193&p_geoaid=116>

¹⁶⁰ United Nations Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No.19: The Right to Social Security* (art.9 of the Covenant), 23 Nov 2007, (E/C.12/GC/19), para.22.

3.2 Horizontal Approach

This section aims to describe and analyze the social protection initiatives adopted by the RGC in line with the Social Protection Floors Recommendation No.202 (SPFs).

As described above, SPFs are nationally defined sets of basic social security guarantees that should ensure that, as a minimum, over the life cycle, those in need have access to essential health care and to basic income security which together secure effective access to goods and services defined as necessary at the national level. Thus, the idea of SPF is to: (a) establish and maintain, as applicable, social protection floors as a fundamental element of their national social security systems; and (b) implement social protection floors within strategies for the extension of social security that progressively ensure higher levels of social security to as many people as possible, guided by ILO social security standards¹⁶¹.

The horizontal approach of this study refers to the national social protection strategies that deliver the social health care, National Social Protection Strategies for Poor and Vulnerable (NSPS) and other social assistance programs aiming to protect the population who are not covered by the social security strategies in the vertical approach.

3.2.1 Social Health Protection

The patient out-of-pocket payment in Cambodia remains high providing for 60 % of total health expenditure in 2014;¹⁶² therefore, users are the main source of national health financing. In this regard, it is necessary to establish social health protection mechanisms in order to secure the living of the poor and vulnerable. The social health protection under this section consists of: User Fee Exemption, Health Voucher, Health Equity Fund and Community Based Health Insurance. Additionally, this section also tries to analyze whether the social health protection strategies in this regard can relieve the population from the health contingency.

A. User Fee Exemption

The user fee exemption was included in the Health Finance Charter 1996 aiming to provide free charge for the poor under the government's subsidy¹⁶³. Given that in part of

¹⁶¹ See SPF Recommendation No.202, (ILO, 2012), para.1.

¹⁶² “*The Kingdom of Cambodia health system review: Health Systems in Transition*”, (WHO, Vol. 5 No. 2, 2015), page.45.

¹⁶³ The cost of the subsidy scheme is funded as part of the Ministry of Health's regular budget allocation. Until 2010, this subsidy scheme has been implemented in all 6 national hospitals, 11 out of 83 Referral Hospitals and 152 out of 1024 Health Centers (57 actually implemented). In 2012, subsidies were provided for approximately 25 000 inpatient and outpatient cases with a total expenditure on benefits of USD 285 000.

incomplete administrative procedures and the lack of a strong monitoring system, this scheme has been less effective. The Coverage and utilization fell dramatically between 2011 and 2012, and a 2011 evaluation report raised the possibility of amalgamating the scheme with Health Equity Funds (HEF)¹⁶⁴.

B. Health Voucher

Health voucher was launched in 2011 by the Ministry of Health (MoH) to provide Reproductive Health Service for poor pregnant women¹⁶⁵. This scheme is co-funded by German Development Bank KfW, GIZ and other donors.

C. Health Equity Fund (HEF)

The HEF has been developed since 2003 and later on was included in the Health Sector Support Protect (HSSP-1, 2004–2008). Jointly funded by government and donors, this project targets the poor as beneficiary based on Identification of Poor (ID poor)¹⁶⁶. Because of the remarkable outcome, the evaluation suggested that this project should be continuously implemented especially in government's strategic policy on poor and vulnerable.

D. Community Based Health Insurance (CBHI)

CBHI was created in 1998 which selects “near poor”, workers engaged in the informal economy and their families who is able to afford voluntary contribution payment. It complements other social health protection schemes that target only poor with non-contribution as beneficiaries¹⁶⁷. By 2012, there was less than 1% of the national population covered by this project¹⁶⁸.

¹⁶⁴ “*The Kingdom of Cambodia health system review: Health Systems in Transition*”, (WHO, Vol. 5 No. 2, 2015), page.62.

¹⁶⁵ The targeting of poor women is based on ID poor. In 2012, voucher schemes were provided in 9 out of 79 ODs, 5 out of 83 Referral Hospitals and 118 out of 1024 Health Centers, covering a population of 108 000 with approximately 36 000 patient visits (principally at Health Centers) and a total expenditure on benefits of USD 396 000.

¹⁶⁶ After the noticeable result, it then has been implemented under HSSP-2, 2009-2013. By 2013, HEFs had achieved 16% coverage of the total population or 2.2 million people living below the poverty line, providing for 1.1 million outpatient (OPD) and inpatient (IPD) visits and USD 8 million in medical and non-medical patient benefits annually. See also, “*The Kingdom of Cambodia health system review: Health Systems in Transition*”, (WHO, Vol. 5 No. 2, 2015), page.62.

¹⁶⁷ “*Cambodia: social protection expenditure and performance review*”; EU/ILO Project on Improving Social Protection and Promoting Employment; in cooperation with the GIZ Social Health Protection Program, Cambodia, in the context of the P4H initiative, (Geneva: ILO, 2012), page.84.

¹⁶⁸ Also, there were 19 CBHI schemes encompassing two National Hospitals, 17 Referral Hospitals and 231 Health Centers nationally, covering 166.663 persons, see; “*The Kingdom of Cambodia health system review: Health Systems in Transition*”, (WHO, Vol. 5 No. 2, 2015), page.62.

E. Analysis on the Social Health Protection mechanism

Health care is the minimum essential level of benefit that the state shall provide to all individuals and families to ensure the access of the social security scheme¹⁶⁹. Providing minimum essential level of health care benefit is the core obligation of the state prescribed by the international human rights laws; however, Cambodia has not yet fulfilled this obligation. The aforementioned has shown that Cambodia has adopted different strategies in assuring population can be covered by the social health protection. Based on the report conducted under EU/ILO Project, the social health coverage is still limited and inadequate, deficient, low take-up and the quality of service is also relatively low at the present¹⁷⁰.

Firstly, the limited coverage and inadequacy of the benefit. As discussed, most of social health programs are poor targeted, based on ID Poor. Hence, other population who are also entitled to get health care as prescribed by law is left behind, for example middle income household in rural area. One more thing is that the ID Poor fails to capture concrete statistics on vulnerable people such as the urban poor, migrant workers and homeless people¹⁷¹. The benefit is inadequate because the specific needs of some vulnerable people are not taken into account in benefit packages, for instance, disabled, pregnant women, and the elderly, who have specific needs for transportation which are not accommodated in the scheme.

Secondly, the social health protection is a low take-up because even for those covered by insurance, other barriers to access may remain, such as lack of information and awareness among the potential beneficiaries about their entitlements. For instance, in some CBHI cases, there is also a lack of understanding of the benefits of social health insurance: the schemes have difficulty in convincing households to enroll, and they easily drop out, for instance, having paid a premium in one month during which they did not need to use the health facilities, households may not register the following month¹⁷².

Thirdly, about the portability of the social health protection programs. CBHI schemes are not portable: households registered under a scheme in a specific district will not be covered if they have to move to another district. Since the CBHI schemes operate under different organizations, their payment mechanisms are not harmonized, which makes it difficult to ensure portability. While beneficiaries of HEFs are theoretically covered anywhere in the

¹⁶⁹ United Nations Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No.19: The Right to Social Security* (art.9 of the Covenant), 23 Nov 2007, (E/C.12/GC/19), para.59 (a).

¹⁷⁰ “*Cambodia: toward integrated employment and social protection policies*”, (EU/ILO Project on Improving Social Protection and Promoting Employment, Geneva: ILO, 2012), page. 36& 37.

¹⁷¹ Ibid.

¹⁷² Ibid., page. 37.

country, some practical issues arise in so far as the schemes are managed by different operators in different areas. In this case, coordinated guideline is needed to strengthen the program¹⁷³.

Fourth, service quality. At the provincial level, health facilities appear to be insufficient. Existing facilities lack modern equipment such as delivery rooms, waiting rooms, clean water systems and so on. There is also a lack of medical personnel such as doctors and nurses. The physical infrastructure is in bad condition, preventing people from reaching health-care facilities easily¹⁷⁴.

3.2.2 National Social Protection Strategies for Poor and Vulnerable (NSPS-PV)

NSPS-PV was endorsed by the government in 2011 with the objective to define appropriate policy directions towards a more integrated and coordinated social protection system in Cambodia¹⁷⁵. The vision of the NSPS-PV is to promote investment in social protection as both a contribution to long-term poverty reduction goals and a short-term emergency/shock response measure to address the consequences of crises confronting Cambodia and its citizens¹⁷⁶.

Given that the NSPS-PV is a new strategy that aims to integrate and coordinate the existing social protection for the poor and vulnerable toward sustainable and comprehensive social protection for all people, NSPS is still facing some challenges in the implementation. Firstly, it is important to learn that the existing social intervention programs are fragmented; therefore, the new NSPS-PV should adopt broader objectives and range of instruments that respond to the poor and vulnerable groups. Secondly, the institutional capacity is required to develop in order to adjust with the new strategy. Thirdly, owing to the budget constraint, financing of the social protection program must be seen as an investment rather than expenditure¹⁷⁷.

3.2.3 Other Social Assistance programs

In addition to the above social protection policies, there are other numerous social assistance programs such as scholarship provided to poor students, public work programs,

¹⁷³ “*Cambodia: toward integrated employment and social protection policies*”, (EU/ILO Project on Improving Social Protection and Promoting Employment, Geneva: ILO, 2012), page.37.

¹⁷⁴ Ibid.

¹⁷⁵ “*Cambodia: financial assessment of the national social protection strategy for the poor and vulnerable/ EU/ILO Project on Improving Social Protection and Promoting Employment*”, (ILO, Geneva, 2012), page. 3.

¹⁷⁶ “*National Social Protection Strategy for Poor and Vulnerable*”, (The Royal Government of Cambodia, 2011), page.5.

¹⁷⁷ Sann, Vathana, “*Cambodia: National Social Protection Strategy for Poor and Vulnerable*”, page.156.

vocational and technical trainings, cash transfer program and disaster relief operation, are being implemented in Cambodia¹⁷⁸. However, these programs are beyond the analysis in this paper.

¹⁷⁸ "*Cambodia: social protection expenditure and performance review*"; EU/ILO Project on Improving Social Protection and Promoting Employment; in cooperation with the GIZ Social Health Protection Program, Cambodia, in the context of the P4H initiative, (Geneva: ILO, 2012), page.98.

Chapter 4: Analysis on Challenges for the implementation the Right to Social Security in Cambodia

In recent years, the Royal Government has signaled a strong commitment to expand social protection both vertically and horizontally¹⁷⁹. This statement is also evidenced by the Decent Work Country Program for Cambodia (2011-2015) developed by the International Labor Organization's Country Office for Cambodia, Lao PDR, and Thailand which addresses that Cambodia's Government efforts at reducing vulnerability and alleviating poverty through social protection have gathered pace since the early 2000s with a range of new initiatives and programs aimed at extending access to basic provisions like health and income support across various groups of society¹⁸⁰.

However, as discussed in Chapter 3, some categories of workers are not provided the protection although they engage in the formal economy, and for population employed in the informal economy are excluded from statutory provision concerning the social security. Furthermore, the benefit is not adequate in response to the need. Some branches such as old age pension in the private sector and health care in the public sector have not yet been implemented. It is likely not possible to succeed in a short-term for developing countries like Cambodia to achieve effective and full realization of the Right to Social Security.

Hence, this chapter explores and analyzes potential challenges such as the loophole of the national statutory provisions relating to the social security benefit, limited and imperfect governance, economic issue, poverty and education problems that hinder the full realization of the Right to Social Security. Additionally, this chapter also demonstrates few issues for consideration to see to what extent Cambodia can provide the social protection to the population after AEC fully implemented.

4.1 Statutory Provisions relating to the Social Security Benefit

The implementation of the Right to Social Security in Cambodia is not comprehensive because the statutory provisions regulating the social security benefit exclude parts of the population based on the employment category, are fragmented and do not stipulate the remedy and recourse provisions when the individuals are arbitrarily provided improper benefit.

¹⁷⁹ See <<http://www.social-protection.org/gimi/gess/ShowTheme.do?tid=3006>>

¹⁸⁰ "*Decent Work Country Program for Cambodia (2011-2015)*", (the ILO's Country Office for Cambodia, Lao PDR, and Thailand, February 2012), page.37.

4.1.1 Exclusion from the protection because of employment status

According to article 1 of the Law on Social Security for Persons defined by the provision of the Labor Law, Social Security is provided to only workers who are protected under the Labor Law. From this wording, other categories of workers are outside of the protection, i.e. not only some categories of workers in the formal economy but also workers in the informal economy. Who are excluded from the protection under Labor Law?

Based on article 1 of the Labor Law, there are certain of persons excluded:

- Judges of the Judiciary
- Persons appointed to a permanent post in the public service
- Personnel of the Police, the Army, the Military Police, who are governed by a separate statute.
- Personnel serving in the air and maritime transportation, who are governed by a special legislation. These workers are entitled to apply the provisions on freedom of union under this law.
- Domestics or household servants, unless otherwise expressly specified under this law. These domestics or household servants are entitled to apply the provisions on freedom of union under this law¹⁸¹.

From this description, it can be understood that there are certain types of workers excluded from the Labor Law:

Firstly, not all workers in the formal economy are covered by the Labor Law and the coverage varies through different laws. Those who work in the formal economy and are excluded from the protection under the provision of labor law can be protected under other separate laws. For example, civil servants receive benefit from social security scheme under NSSF-C and veterans (Army and Police) from NFV. Based on the Royal Decree on Social Security Scheme for Civil Servants, the scheme is provided to only those civil servants governed by the provision of Common Statute of Civil Servants. In this regard, it should be noted that the definition of civil servant under the Common Statute does not extend to civil servant in the Legislative Branch and officials in the Judicial Branch¹⁸². Even though these public employees are entitled to some social benefits provided by their particular statutes, the regulatory provision related to the benefit is not comprehensive.

¹⁸¹ See article 1 of Cambodian Labor Law, 1997.

¹⁸² See article 1 of the Common Statute of Civil Servants, 1994.

Secondly, worker in informal economy is excluded. From the wording of article 1 of Cambodian Labor law which stipulates “*the law governs relations between employers and workers resulting from employment contracts.....,....applies to every enterprise or establishment of industry, mining....any nature whatsoever*”, implies that self-employed and other workers like domestic and unpaid family workers are not governed by the Labor Law. The worker in informal economy is always left unprotected due to their employment’s conditions. In this regard, why are workers in the informal economy excluded from the protection?

The informal economy is usually known as all economic activities by workers and economic units that are – in law or in practice – not covered or insufficiently covered by formal arrangements¹⁸³. It should be noted that about 30 years ago, the ILO first used the term “informal sector” to describe the activities of the working poor who were working very hard but who were not recognized, recorded, protected or regulated by the public authorities, for instance, the own-account workers inter alia street vendors, shoe-shiners, and garbage collector; homeworkers and self-employed in the micro-enterprises¹⁸⁴.

Generally, workers in informal economy are excluded from the distribution of social security and social protection in the sense that they are not recognized because, firstly, their economic activities are not covered or insufficiently covered by formal arrangements under the law or in practice¹⁸⁵. Workers in the informal economy and their dependents are for the most part completely excluded from (formal) social protection schemes, in particular social insurance schemes because the notion of employee is by large used for referring only to standard formal sector workers¹⁸⁶. Secondly, either employers or employees in the informal economy usually earn low income in addition to non-registration status; therefore, they are unable to contribute in tax collection to the state¹⁸⁷. In this case, they are outside of the consideration of social security and other forms of social protection. Thirdly, to get benefit from social schemes, workers are required to fulfill certain conditions such as contribution and qualifying period. Due to their irregular incomes, they cannot provide contribution for their social coverage benefit. Accordingly, working period is also irregular or just seasonal so they are concerned only about their risks “here and now” not for other risks in the future¹⁸⁸.

¹⁸³ ILO Recommendation 204, “*Transition from the Informal to the Formal Economy*”, (12 June 2015), page. 2

¹⁸⁴ Report VI: “*Decent Work and Informal Economy*”, (ILO, 2002), page.1&2.

¹⁸⁵ ILO Recommendation 204, “*Transition from the Informal to the Formal Economy*”, (12 June 2015), page. 2

¹⁸⁶ Nicola Smit & Letlhokwa George Mpedi, “*Social Protection for Developing Countries: can social insurance be more relevant for those working in the informal economy?*”, (Law Democracy & Development, Volume 14, 2010), page.160.

¹⁸⁷ Resolution Concerning Decent Work and the Informal Economy, (adopted by ILO at the 90th session, 2002), para.12.

¹⁸⁸ Nicola smit & Letlhokwa George Mpedi, “*Social Protection for Developing Countries: can social be more relevant for those working in the informal economy?*”, (Law Democracy & Development, Volume 14, 2010), page.175.

In Cambodia, certain categories of the informal workers are entitled to grant the social security protection in accordance with the Law on Social Security for the persons defined by provision of Labor Law 2002, for example, persons with self-employed profession and seasonal or occasional workers¹⁸⁹. However, the mechanism on how this provision should be implemented has not yet been articulated and the distribution of the benefit has not also been commenced; therefore, it is not sure when the social security benefit can be formulated.

4.1.2 Exclusion from the Protection Because of Migration Status

Another type of workers excluded from the social security protection is migrant worker. Based on the wording of Cambodian Labor Law, the law explicitly applies the protection to the relationship between employers and workers performed their employment contracts *within the territory of Cambodia*¹⁹⁰. Since the labor law does not contain provision to protect Cambodian migrants working abroad, this leads the Law on Social Security for persons defined under the labor law limits its application to only workers who are employing in the territory too¹⁹¹. At this point, it can be concluded that workers can get protection unless they perform their jobs in the country and for those who migrate for employment will lose their rights and protection from the national legislation.

Migrant workers are vulnerable group due to the lack of protection from both home and host countries. In the host country, they can be denied the access or have limited coverage of the social security scheme because of their status, nationality, insufficient duration of employment period and residence¹⁹². Meanwhile, they are excluded from the protection of the home country due to the limit of state's jurisdiction and lack of the cooperation and monitoring between the host and home countries on living status of those migrants, i.e. principle of territoriality, according to which the scope of application of social security legislation, as of any national legislation, is confined to the territory of the country in which it has been enacted. This is not only a reflection of the sovereignty of the state but is also a result of the legal and administrative difficulty of enforcing mandatory legislation in another state. As consequences, migrant workers may not only lose coverage under the national social security system in their

¹⁸⁹ Article 4 of the Law on Social Security 2002.

¹⁹⁰ Article 1 of Cambodian Labor Law, 1997.

¹⁹¹ Article 1 of the Law on Social Security of persons defined under provision of Labor Law, 2002.

¹⁹² ILO, "*Labor Migration Highlight No.04: Social Protection for Migrant Workers*", (ILO, June 2015), page.1.

country of origin, but also face the risk of having limited or no coverage at all in their country of employment as well¹⁹³.

With 300,000 young Cambodians entering the labor market each year and no national minimum wage set, many Cambodian workers go abroad seeking employment opportunities and higher wages¹⁹⁴. An estimated one million Cambodians engaged the employment overseas in 2013, majority in Thailand¹⁹⁵. Cambodian migrant workers travel through both legal and illegal channels. Until now, Cambodia does not have any comprehensive legislation to extend the social security protection to migrant workers outside the country.

According to the international instruments on migrant workers' social security (*see chapter 2*), migrants should have access to social security benefits. With regard to this, ILO has played an important role by adopting conventions and recommendations to safeguard migrant workers' social security right.

To ensure the protection of migrant worker's right to social security, the extension of this right from the home and the host countries is very important. Firstly, the extension of the social security right can be made through cooperation and coordination between the home and host countries. In this respect, in addition to the C.102 and SPFs, numerous instruments have been adopted by the ILO; Equality of Treatment (Social Security) Convention, 1962 (No. 118), Maintenance of Social Security Rights Recommendation, 1983 (No. 167) and The Multilateral Framework on Labor Migration in 2006, to provide principles and guidelines for member states to conclude bilateral and multilateral agreement on social security agreements in ensuring portability of social security entitlements. Secondly, an extension of the protection by means of providing social security benefit by the home country during repatriation. In this regard, Maintenance of Social Security Rights Convention, 1982 (No. 157) is an instrument that calls for the maintenance of rights in the course of acquisition by providing for the totalization of qualifying periods completed in different countries during post-return in order to grant social security benefit (for instance, old age pension)¹⁹⁶.

These instruments are potential to safeguard the migrant workers' social security right. However, none of the above conventions is ratified by Cambodia. Several bilateral agreements

¹⁹³ Kenichi Hirose, Milos Nikac & Edward Tamagno, "*Social security for migrant workers: a rights-based approach*", (Decent Work Technical Support Team and Country Office for Central and Eastern Europe, Budapest: ILO, 2011), page.3.

¹⁹⁴ "*Triangle II Quarterly Briefing Note*", (ILO, 2016). Available at <http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_531471.pdf>

¹⁹⁵ <<http://www.mekongmigration.org/?p=5519>>

¹⁹⁶ ILO, "*Labor Migration Highlight No.04: Social Protection for Migrant Workers*", (ILO, June 2015), page.3.

between Cambodia and Asian countries¹⁹⁷ in regard to employment of Cambodian migrants overseas (Thailand, Malaysia, South Korea and Japan), provide only for technical cooperation, for example, the administrative matters concerning procedure of registration of migrant employment without comprehensive address of the social security right. Given that the national legislation excludes migrant workers from the protection together with the lack of effective coordination between Cambodian government with the host countries, Cambodian migrant workers not only are exposed to the labor exploitation, trafficking or other kinds of difficulties, but also have their social security right denied. Currently, a positive development can be found in Cambodia and South Korea Agreement on the Occupational Safety and Health of Cambodian workers in three different sectors (industrial, construction and mining sectors) in December 2016. This agreement, although it is not enough, is considered a crucial step in safeguarding the migrant workers' social security right when Cambodian national law does not have extraterritorial jurisdiction to protect those workers.

During the repatriation, Cambodian migrant workers still confront manifold challenges, for example, some of them have to pay loan or debt that they borrowed to spend for the travel and first settlement in the host country. Cambodian migrants also face health issue; mental or physical health upon the return. Due to financial constraint, they often lack the access to the health care¹⁹⁸.

Because of the absence of certain workers in the social security protection, in response to the Cambodia's report on its obligation in implementation of the ICESCR submitted to CESCR in 2008, CESCR is concerned whether the protection of the Right to Social Security is *accessible and affordable* for all categories of workers (including casual workers and self-employed) and whether social assistance is available for certain groups such as unemployed, persons with disabilities, widows, migrant workers, and old age people who are not government officials¹⁹⁹.

4.1.3 Fragmentation of laws and regulations on the Social Security Benefit

In public sector, social security benefit is still not integrated in a specific legal instrument. This is because the laws and regulations related to this issue are very fragmented

¹⁹⁷ There are other countries outside Asia which signed employment agreement with Cambodia: Saudi Arabia, Qatar and Kuwait.

¹⁹⁸ Dickson B, Koenig A, "Assessment Report: Profile of Returned Cambodian Migrant Workers", (International Organization for Migration (IOM) Cambodia, 2016), page.9.

¹⁹⁹ CESCR, "Implementation of the ICESCR: List of issues to be taken up in connection with the consideration of the initial report of Cambodia concerning the rights covered by articles 1 to 15 of the ICESCR", (E/C.12/KHM/Q/1, 8 January 2009, CESCR), page.4.

due to different employment unit. The Royal Decree on Social Security Scheme for Civil Servant and Veteran was promulgated since 2008 and 2010 respectively, however, there is no a single formulation of the benefit following by these decrees. For example, the social security in the Royal Decree on Social Security Scheme for Civil Servant covers retirement, invalid, maternity, death and survivors but the formulation of these benefits is still implemented through different regulations and some of those regulations are outdated.

4.1.4 Absence of Remedy Clause from Social Security Statutory Provision

According to General Comment No.19 of CESCR on the Right to Social Security, any person or group who has experienced violation of their right to social security should have access to effective judicial or other appropriate remedies at the national and international levels²⁰⁰. The ILO C.102 also has the same provision in which the right of appeal is given to the beneficiary in case of refusal of the benefit or as to its quality or quantity²⁰¹. In this respect, the legalization and legislation involving the social policies at the national level should define the consequences of violating rights or defaulting on duties which include, inter alia, particular performance, monetary damages and punitive measures²⁰². Such remedial provision is guaranteed only to the private employees under the operation of NSSF²⁰³. Whereas the right of appeal or to complaint of the public employees is absent from the statutory provision of the social security schemes for civil servants and veterans. The absence of such right brings the doubt whether the public employees are provided the right to complaint and find recourse when their right to social security is denied or inappropriately distributed.

Also, the absence of the remedy provision leads to the question of whether the Cambodia's judicial branch has jurisdiction to enforce the Right to Social Security at the national level. Beside the monitoring and evaluation measures, the social protection strategies and policies do not contain the provision of judicial review and the recourse clauses. In relation to the judiciary role in realizing the social rights, Gauri and Daniel have emphasized that the judges are very significant in implementing the welfare policy²⁰⁴. Another example is from a

²⁰⁰ United Nations Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No.19: The Right to Social Security* (art.9 of the Covenant), 23 Nov 2007, (E/C.12/GC/19), para.77.

²⁰¹ Article 70 of C.102 on Social Security (Minimum Standard).

²⁰² CHOPRA, SURABHI, "Legislating Safety Nets: Comparing Recent Social Protection Laws in Asia", (Indiana Journal of Global Legal Studies Vol. 22 #2, Summer 2015), page.622.

²⁰³ Based on article 31 of the Law on Social Security for Persons defined by the provisions of Labor Law, employee is entitled to bring the complaint or dispute relating to the implementation of the provisions or regulations of social security provision to the court if the dispute cannot be solved by the Commission of Solving the Dispute or Complaint of NSSF.

²⁰⁴ Varun, Gauri, and Daniel M. Brinks. "Introduction: The Elements of Legalization and the Triangular Shape of Social and Economic Rights." *Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World*, (edited by Varun Gauri and Daniel M. Brinks, Cambridge University Press, Cambridge, 2008), pp. 1–37, cited in, CHOPRA,

case in India where the court ordered to expand a program providing school lunches to primary schools throughout India in 2001²⁰⁵.

4.2 Governance

This section analyzes institutional and organizational practice issues concerning the implementation of the Right to Social Security.

In addition to the challenges deriving from the legislation loophole, the realization of the Right to Social Security also encounters with the inefficient governance. Generally, there are main four key governance issues; poor coordination within the overall social protection system, unclear institutional responsibilities with a lack of implementation capacity, conflicting systems of accountability, and inadequate monitoring and evaluation that impede the implementation of the right to social security²⁰⁶.

4.2.1 Coordination

In Cambodia, the government has also recognized that the impact of existing social protection intervention is limited by lack of coordination between the various ministries and non-government organizations (NGOs)²⁰⁷.

4.2.2 Unclear responsibilities

In the public sector, NSSF-C is a competent authority to administer and distribute the social security benefit for Cambodia's civil servants. However, so far NSSF-C has been administering only the disbursement of civil servants' pensions and for other benefits, the disbursement is still administered through the respective line ministries of beneficiaries²⁰⁸, for example, child and spouse allowances are still paid by Ministry of Economic and Finance (MoEF)²⁰⁹.

Another interesting fact is that the competent authority of the current Royal Decree on Social Security Scheme of Employment Injury for the Public Officials and Health Care for the

SURABHI, "*Legislating Safety Nets: Comparing Recent Social Protection Laws in Asia*", (Indiana Journal of Global Legal Studies Vol. 22 #2, Summer 2015), page.575.

²⁰⁵ Indian Supreme Court's orders in PUCL vs. Union of India and Others, (Writ Petition [Civil] 196 of 2001), cited in CHOPRA, SURABHI, "*Legislating Safety Nets: Comparing Recent Social Protection Laws in Asia*", (Indiana Journal of Global Legal Studies Vol. 22 #2, Summer 2015), page.581.

²⁰⁶ Van Stolk, Christian, "*To strengthen the governance dimension of social safety net programs in the ASEAN region*", (2010), cited in Vannarith Chheang, "Social Protection in Cambodia", (2014), page.23.

²⁰⁷ Rachael Chadwick & Valerie Schmitt: "*Social Protection Floors in South East Asia: Closing protection gaps for children and families*", Conference on 'Child Poverty & Social Protection's Jakarta, Indonesia 10-11 September 2013, page.9.

²⁰⁸ "*Cambodia: Social security for the formal economy outlook and challenges ahead*", (EU/ILO Project on Improving Social Protection and Promoting Employment, Geneva, ILO, 2012), page.3.

²⁰⁹ Ibid, page.6.

Public Officials, Former Civil Servants and Veterans on 01 February 2017 is NSSF²¹⁰ (not NSSF-C or NFV that is responsible for the social security benefit distribution to civil servants and veterans).

Not only the responsibility of each institution is unclear but also duplicate. It is important to note that NSSF-C and NFV are under the same supervision body, Ministry of Social Affairs, Veterans and Youth Rehabilitation (MoSVY). Therefore, merging of certain administrative functions may be appropriate so as to pool resources for administration and avoid duplication of efforts²¹¹.

4.2.3 Institutional capacity

Cambodia is emerging as a country that efforts to extend the social security benefit for the population; hence, the institutional capacity is very important to achieve the ambition. In this respect, NSSF has expressed its concern about the its organization's capability in relation to the implementation of the social security scheme for private employees due to limited capacity of some staffs, non-smooth data management and some late deliveries²¹². To overcome the challenges, the effective management of the scheme as an independent body, there is a need to develop the required expertise and management instruments, including Information Technology (IT) systems and administrative tools such as rules and regulations, operational procedures²¹³.

Meanwhile, if the social security scheme is decentralized, the local government agencies' and authorities' capacity or lack thereof should be taken into consideration.

4.2.4 Contribution collection

Under NSSF, NSSF-C and NFV, the beneficiaries under these schemes are required to pay the contribution to secure the resource allocation for the benefit distribution. However, there is only beneficiaries under NSSF have paid the contribution so far whereas the beneficiaries under NSSF-C and NFV have not yet done so. As discussed earlier, the contribution rate has planned to collect 6% from the public employees and 18% from the

²¹⁰ Article 5 of Royal Decree on Social Security Scheme of Employment Injury for the Public Officials and Health Care for the Public Officials, Former Civil Servants and Veterans on 01 February 2017.

²¹¹ “*Cambodia: Social security for the formal economy outlook and challenges ahead*”, (EU/ILO Project on Improving Social Protection and Promoting Employment, Geneva, ILO, 2012), page.14.

²¹² The Report on Annual Achievements in 2015 and Future Action Plans, (NSSF), page.31.

²¹³ “*Cambodia: Social security for the formal economy outlook and challenges ahead*”, (EU/ILO Project on Improving Social Protection and Promoting Employment, Geneva, ILO, 2012), page.14.

government as employer²¹⁴ but the collection of the contribution has not been made and there still has no legal framework that determines the contribution formulation and collection. Up to date, the whole social security benefit for the public employees is from the expenditure of national budget.

4.3 Economic Issue

The CESCR acknowledges that the realization of the right to social security carries significant financial implications for States Parties; therefore, the state parties should allocate adequate fiscal and other resources at the national level. If necessary, the state parties should call for the international cooperation or technical assistance²¹⁵. This section will analyze how the economic issue affects the implementation of the Right to Social Security. The economic issue in this respect refers to the problem of state's revenue and expenditure, and large share of the informal employment in Cambodia's economy.

4.3.1 State's Revenue and Expenditure

Cambodia collects revenue from various taxation mechanisms, both direct and indirect – income tax, company tax, consumption tax, and trade and customs duties and the bulk of tax revenues derived from indirect taxes given the small numbers of formally employed workers, the large informal economy and the strong potential for tax evasion²¹⁶. One third of all revenues come from value-added tax (VAT), of which 60% is from imported goods. In practice, VAT may not be regressive as it applies largely to the urban sector and to commercial goods²¹⁷.

In 2010, the tax revenue was 12.3 % of GDP but the expenditure was 19.9 % of GDP. In this case, the deficit was 7.6 %²¹⁸. Although the revenue has been increased sharply to 14.6 % of GDP in 2014²¹⁹, the balance of the revenue and expenditure is still at critical point because the expenditure in the same year was very close to the revenue, at 12.4 %²²⁰. Given that the national budget is very tight because of a narrow tax base, weakness in revenue collection and other public spending priorities such as infrastructure, basic public services, and remuneration

²¹⁴ “*Cambodia: Social security for the formal economy outlook and challenges ahead*”, (EU/ILO Project on Improving Social Protection and Promoting Employment, Geneva, ILO, 2012), page.7.

²¹⁵ United Nations Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No.19: The Right to Social Security* (art.9 of the Covenant), 23 Nov 2007, (E/C.12/GC/19), para.41.

²¹⁶ “*The Kingdom of Cambodia health system review: Health Systems in Transition*”, (WHO, Vol. 5 No. 2, 2015), page.64.

²¹⁷ *Ibid.*, page.64&65.

²¹⁸ “*Cambodia: social protection expenditure and performance review*”, (EU/ILO Project on Improving Social Protection and Promoting Employment; in cooperation with the GIZ Social Health Protection Program, Cambodia, in the context of the P4H initiative, Geneva: ILO, 2012), page.30.

²¹⁹ <<http://data.worldbank.org/indicator/GC.TAX.TOTL.GD.ZS?end=2014&locations=KH&start=2002&view=chart>>

²²⁰ <<http://data.worldbank.org/indicator/GC.XPN.TOTL.GD.ZS?end=2014&locations=KH&start=2002&view=chart>>

of public employees, there is only little fiscal space for the design and implementation of social protection programs²²¹.

Because the revenue is very close to the expenditure and the contribution from the public employees cannot be enforced, it is a reason why Cambodian government still relies on the fund and assistance from external donors such as Official Development Assistance (ODA) and Non-profit organizations to support the social protection especially for health expenditure²²².

4.3.2 State's economy relies heavily on Large Share of Informal Economy

It is estimated that the labor market participation rate is 78 % among the population aged 15 and older²²³ in 2008 with active population approximately 7 million people. Total employment that year was estimated at 6.8 million people, however, there was only 1.2 million people are paid employees and the rest is unpaid family and self-employed workers²²⁴. It should be also noted that Cambodia's main economy depends on primary sector which consists of agriculture, fishery and forestry about 72.1%, secondary 8.6% in manufacturing and industry and tertiary 19.3 % in trade and services²²⁵. Based on this outlook, agriculture is the main share of the economy; hence, the informal employment in Cambodia's agriculture is also at a large rate. This is because Cambodia's agriculture is constituted as subsistence sector. Subsistence sector is defined as an employment that consist of own-account and unpaid family workers. Sometimes, farmers also hire laborers for short period at planting and harvesting time. With regard to this, the subsistence agricultural sector is characterized as abundance of labor with low wages (\$3.17/day) and low productivity²²⁶. Significant informal employment can be also found in the second and tertiary sectors (or non-agricultural sector) of Cambodia's economy, for instance, in manufacturing, retail and wholesale trade, transport, accommodation and food,

²²¹ “*Cambodia: Social security for the formal economy outlook and challenges ahead*”, (EU/ILO Project on Improving Social Protection and Promoting Employment, Geneva, ILO, 2012), page.23.

²²² “*The Kingdom of Cambodia health system review: Health Systems in Transition*”, (WHO, Vol. 5 No. 2, 2015), page.65.

²²³ The Labor Force in 2014 was at 82.5 %, approximately 8.62 million people. Available at <http://data.worldbank.org/indicator/SL.TLF.CACT.ZS?locations=KH>.

²²⁴ “*Cambodia: toward integrated employment and social protection policies*”, (EU/ILO Project on Improving Social Protection and Promoting Employment, Geneva: ILO, 2012), page.55.

²²⁵ “*Cambodia: Social security for the formal economy outlook and challenges ahead*”, (EU/ILO Project on Improving Social Protection and Promoting Employment, Geneva, ILO, 2012), page.3.

²²⁶ Kang Chandararot & Dannel Liv, “*Rural development and employment opportunities in Cambodia: how can a national employment policy contribute towards realization of decent work in rural areas?*”, (ILO Country Office for Thailand, Cambodia and Lao People's Democratic Republic, Bangkok: ILO, 2013, page.4&6).

and construction²²⁷. From this outlook, there is no doubt that the informal economy in Cambodia reaches 83 %²²⁸.

Therefore, it can be concluded that the population who are provided social security in Cambodia is only 17 % (of total employment including public administration and defense)²²⁹ and the rest of population such as poor and vulnerable can only enjoy the limited or none of social protection benefits. The extension of the social security can be also achieved through expansion of formal employment, otherwise, informal types of employment will persistently exist. Accordingly, the expansion of the social security coverage in line with the SPFs should be effectively implemented so as to secure income security and health care for these aforementioned people working in informal economy as well as to help their transition to the formal economy²³⁰.

4.4 Poverty

Poverty rate in Cambodia has been dropped significantly from 47.8 % in 2007 to 13.5 % in 2014²³¹. Despite the achievement in poverty alleviation, many Cambodians remain poor and live in precarious condition especially in rural areas²³². Rural populations engage in the subsistence agriculture as mentioned above; therefore, they are often highly vulnerable to climatic shocks, including droughts and flooding. Other factors contributing to the vulnerability of Cambodians include high levels of poor maternal and child health and nutrition, high seasonal unemployment, income insecurity, health shocks and poor education²³³. It is worth mentioning that the mass poverty is also one of factors contributing the increase of informal economy²³⁴.

In this regard, I think that poor population is unable to contribute to social security scheme due to low income and they only think about the basic need to support their daily expenses.

²²⁷ Asian Development Bank, “*Cambodia: Addressing the skills gap*”, (Mandaluyong City, Philippines: ADB, 2015), page.34.

²²⁸ “*Cambodia: Social security for the formal economy outlook and challenges ahead*”, (EU/ILO Project on Improving Social Protection and Promoting Employment, Geneva, ILO, 2012), page.3&4.

²²⁹ “*Cambodia: toward integrated employment and social protection policies*”, (EU/ILO Project on Improving Social Protection and Promoting Employment, Geneva: ILO, 2012), page.55.

²³⁰ <<http://socialprotection-humanrights.org/key-issues/disadvantaged-and-vulnerable-groups/informal-and-precarious-workers/>>

²³¹ <<http://www.worldbank.org/en/country/cambodia/overview>>

²³² “*Cambodia: toward integrated employment and social protection policies*”, (EU/ILO Project on Improving Social Protection and Promoting Employment, Geneva: ILO, 2012), page.56.

²³³ Ibid.,

²³⁴ Economic Institute of Cambodia (EIC), “*Decent Work in the Informal Economy in Cambodia: A Literature Review*”, (Bangkok, ILO, 2006), page.15.

4.5 The Right to Social Security following ASEAN Economic Community

ASEAN Economic Community (AEC) was launched in 2007 by the ten members of Association of the Southeast Asian Nations and was concluded in 2015. The AEC is the realization of the economic integration in the region which is based on a convergence of interests of ASEAN Member Countries to deepen and broaden economic integration²³⁵. With this respect, the AEC will establish a single market and production base in order to bring ASEAN more dynamic and competitive opportunities with new mechanisms and measures to strengthen the implementation of its existing economic initiatives; enhance regional integration in the priority sectors; facilitate movement of business persons, skilled labor and talents; and strengthen the institutional mechanisms of ASEAN²³⁶.

With this ambition, the state members strongly hope that the AEC will bring more prosperity and the economic growth for the citizens of the region. After the initiative launched, the economy in the region has remarkably accelerated. For instance, the ASEAN's GDP stood at 3.3% of the world's economy in 2013²³⁷. In parallel with the economic growth, the AEC will bring more jobs for the ASEAN's citizens that increases the income and alleviates poverty. Cambodia is one of the members which expects to have its economy more developed after the deeper integration. Also, the country's poverty can be reduced and the transition to the middle-income country status is potential²³⁸. To exemplify this statement, it is estimated that Cambodia's GDP will grow 20%, the highest relative change in the region and the additional 1.1 million jobs will be created which represents 9.8% of the total employment in 2025²³⁹.

Following this integration, there are also challenges that need to be considered. The accelerated pace of job creation has been accompanied by job losses, contributing to increased job insecurity and a rise in atypical forms of work such as subcontracting and trend of migration within the region²⁴⁰.

Firstly, the increase of the informal employment. The bulk of the job creation is expected to take place in agriculture, transportation, construction, and light manufacturing, where jobs can sometimes be informal, perpetuating poverty²⁴¹ because with the aspect of the

²³⁵ ASEAN Economic Community Blueprint: 2007-2015, (2007), para.5.

²³⁶ Ibid., para.6.

²³⁷ ASEAN Community 2015, "*Managing integration for better jobs and shared prosperity*", (ILO & ADB, 2014), page.2.

²³⁸ ASEAN Community 2015: Managing integration for better jobs and shared prosperity, "*Will the AEC contribute to the Cambodia's quest for the inclusive growth?*", (Cambodia Country Brief: ILO & ADB, November 2014), page.1.

²³⁹ Ibid.

²⁴⁰ "*Labor and Social Trends in ASEAN 2007 Integration, Challenges and Opportunities*", (ILO, 2007), page.5.

²⁴¹ ASEAN Community 2015: Managing integration for better jobs and shared prosperity, "*Will the AEC contribute to the Cambodia's quest for the inclusive growth?*", (Cambodia Country Brief: ILO & ADB, November 2014), page.2.

occupational demand, the largest absolute demand is generally for low- and medium-skilled occupations²⁴². Thus, this job creation trend still leaves the vulnerable and poor people excluded. In this case, it is important to emphasize that if the employment is still casualised and informalized, this persistently ensures the flexibility for employers and reduced social responsibility for corporations and states²⁴³.

In Cambodia, the low-skilled occupations will grow by 71 %, highlighting the continued importance of ensuring quality standards in basic education and training²⁴⁴. Therefore, in this regard, the AEC will have major consequences on Cambodia's economy and society and may constitute a major threat for the poor and the vulnerable people of Cambodia if a comprehensive social protection plan is not developed aiming at protecting the most vulnerable and enhancing the full potential of youth and other active age groups²⁴⁵. As discussed above, there are a lot of workers left behind the social protection in Cambodia especially for those who engage in the informal economy. If the job creation after the AEC takes place in the sectors as mentioned, they are still not entitled to enjoy the social protection. At this point, the comprehensive social protection plan and policy need to be reformed to include the vast majority of workers under the protection.

Secondly, the AEC not only brings the social structural change in every state member by offering more occupations but also trend of people's movement. When ASEAN is deeply integrated, people will migrate to seek better jobs within the region. Since joining ASEAN in 1999, the share of Cambodian outward migrants going to other ASEAN countries rose from approximately 38 % to 69 %, due to the wage gap (the average wages in Thailand and Malaysia are roughly three and five times those in Cambodia, respectively) and the ageing ASEAN members such as Singapore and Thailand where the labor force replacement is required²⁴⁶. In relation to the migration trend, it should be noted that the majority of these migrant workers engage in the low- and medium-skilled employment, for example, in the agriculture,

²⁴² ASEAN Community 2015, “*Managing integration for better jobs and shared prosperity*”, (ILO & ADB, 2014), page.48.

²⁴³ Razavi, Shahra, et al. “*Gendered Impacts of Globalization – Employment and Social Protection*”, (Gender and Development Paper No. 16). Geneva: UNRISD, 2012), cited in Beth Goldblatt, “*Gender, poverty and the development of the right to social security*”, (International Journal of Law in Context, 10,4 pp. 460–477, Cambridge University Press 2014), page.465.

²⁴⁴ ASEAN Community 2015, “*Managing integration for better jobs and shared prosperity*”, (ILO & ADB, 2014), page.72.

²⁴⁵ Valerie Schmitt ... [et al.], “*Feasibility study of the Social Service Delivery Mechanisms for the implementation of the National Social Protection Strategy in Cambodia*”, (ILO Country Office for Thailand, Cambodia and Lao People's Democratic Republic, Bangkok: ILO, 2013), page. xi.

²⁴⁶ ASEAN Community 2015: Managing integration for better jobs and shared prosperity, “*Will the AEC contribute to the Cambodia's quest for the inclusive growth?*”, (Cambodia Country Brief: ILO & ADB, November 2014), page.3.

construction, domestic work and manufacturing²⁴⁷. In this regard, they face a lot of challenges and with regard to social security protection, they are often outside of the protection.

In term of the social security protection of the migrant workers, Cambodia does not have comprehensive system to protect those Cambodian migrants during the working performance and repatriation. As mentioned in the previous subsection, the migrants' right to social security shall be respected and protected not only through the implementation of the national law of the host country but also of the home country. The comprehensive Cambodia's domestic legislation related to the social security shall ensure that the right to social security is portable and transferrable across the borders. For instance, during the repatriation, their working period abroad shall be recognized and included so that they can enjoy the social protection upon the return, for example, the old-age and invalidity benefits. In this regard, not only the long-term migrants are protected but also the migrants temporarily working in another country²⁴⁸. In the absence of portability, migrants run the risk of financial loss when leaving their host or home country²⁴⁹. Given the domestic legislation limits the protection to only workers who perform their employment within the territory of Cambodia, the extension of the coverage to the repatriated workers is hardly possible (*see also the explanation in the previous subsection*). Moreover, the bilateral or multilateral agreements between Cambodia and other member states on social protection in ASEAN are crucial to safeguard migrants' right to social security.

To achieve the comprehensive social protection in ASEAN has a long way to go because since the adoption of the Declaration on the Protection and Promotion of the Rights of Migrant Workers in 2007 and the Declaration on Strengthening Social Protection in 2013, there has neither any cohesive social protection system nor bilateral/multilateral agreements between the member states on comprehensive protection of the migrant's right to social security adopted although there are some agreements on the employment of migrants, for instance the MoU between Cambodia and Thailand, and between Cambodia and Malaysia.

²⁴⁷ ASEAN Community 2015: Managing integration for better jobs and shared prosperity, "Will the AEC contribute to the Cambodia's quest for the inclusive growth?", (Cambodia Country Brief: ILO & ADB, November 2014), page.3.

²⁴⁸ United Nations Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No.19: The Right to Social Security (art.9 of the Covenant)*, 23 Nov 2007, (E/C.12/GC/19), para.56.

²⁴⁹ See the discussion on this matter in Sabates-Wheeler, Rachel & Feldman, Rayah, "Migration and Social Protection Claiming Social Rights Beyond Borders", (Palgrave Macmillan, 2011), page.94.

Chapter 5: Conclusion

In conclusion, the Right to Social Security is a human right enshrined in numerous instruments at the international and regional levels. This right constitutes one of the basic rights stipulated in the Cambodia's Constitution. After the constitution adopted in 1993 and as a party to the international instruments such as ICESCR, Cambodia has committed to realizing this right by initiating the legal framework and policies to provide social protection to all Cambodians.

However, this study found that the implementation of the Right to Social Security in Cambodia is still not effective in several ways. Firstly, the scheme coverage is very limited. The vast majority of people are left behind; only some categories of employment and workers are covered in a selective manner. The social security scheme offers selective coverage since the workers who enjoy the social security benefit so far are those who engage in the so called formal economy. Moreover, not all workers in the formal economy enjoy comprehensive social security benefit due to the fact that, for instance, in the private sector, the employment injury coverage is currently expanded to only enterprises that consist of eight workers and above. In addition to the selective coverage provided, there is also strict requirement on qualification of beneficiary. For example, the old age pension of Cambodian civil servants and veterans require the beneficiaries to have working engagement at least 20 years in the service. Non-qualifiers who reach the age of retirement but have work seniority of less than 20 years are entitled to a single lump sum and allowance; not old age pension.

Secondly, the benefit is inadequate. The benefit provided is insufficient and cannot respond to even the basic needs. This holds especially for the benefits that support the family and survivor, for example, family allowance and survivor benefit under NSFF-C and NFV schemes.

Thirdly, the exclusion of workers from the social security law. Some workers' categories are excluded from the protection under the national law, for instance, the domestic worker is not covered by the Labor Law. This exclusion is further found in the Law on the Social Security Scheme for Persons defined under the provision of the Labor Law. Similarly, the workers in the informal employment are not rigorously protected because they fall outside of the said Labor Law. Although the Law on Social Security Scheme envisages providing the social security benefit to those workers, the formulation of the benefit is yet to be designed.

Fourth, Cambodian migrant workers' right to social security are also not protected. Due to the absence of the protective provision under the domestic law, those migrants are not provided the social protection upon their return. They still face a lot of challenges upon return, for instance, lack of health care and income insecurity because they are not entitled to sickness or old age benefits. Furthermore, because a social security agreement has not been concluded between Cambodia and other destination countries, those migrants are left behind the protection during their stay in the host countries.

This research also found certain potential challenges that hinder the full realization of the Right to Social Security in Cambodia. The laws and regulations regarding the social security are fragmented and inconsistent. For example, the Royal Decree on the Social Security Scheme for Civil Servants was adopted in 2008; however, the implementation of the benefits is still based on the previous fragmented instruments.

Furthermore, in the public sector, the remedy clause in relation to the social security is not stipulated under the law or regulation dealing with the public employees. At this point, it is questionable whether civil servants, veterans and other state employees have the right to appeal when their social benefits are denied or abnormally provided.

In addition to the challenges arising from the provisions of the national legislations, there are other multiple factors that hinder full realization of the Right to Social Security. First, in relation to the governance issues: poor coordination within the overall social protection system; unclear institutional responsibility, for example, NSSF-C is formed to distribute the social benefits for civil servants; however, so far it has been administering only the disbursement of civil servants' pensions and for other benefits, the disbursement is still administered through the respective line ministries of beneficiaries; and the institutional capacity. Additionally, the contribution collection in the public sector is still not implemented. On this matter, it is concerned about the sustainability of the social security scheme in the public sector because Cambodia still depends heavily on the foreign donors due to scarcity of the national resource in supporting the social protection programs. If the contribution provision cannot be enforced in the public sector, the government will persist in using limited national budget to support the whole social security scheme, hence, the social security benefit can be disregarded or reduced in case of the country's economic downturn.

Second, Cambodia's economy still relies heavily on the informal economy. It is understood that large majority is outside of the social security protection. The implementation of the Right to Social Security also faces with the shortage of the national budget. Given that the national budget is very tight because of a narrow tax base, weakness in revenue collection

and other public spending priorities such as infrastructure, basic public services, and remuneration of public employees, there is only little fiscal space for the design and implementation of social protection programs.

Third, the social context also contributes to the difficulty in implementing the Right to Social Security because of poverty especially populations in rural areas. Thus, a comparatively large number of Cambodians engage in the precarious and hazardous works especially in the informal economy. Others migrate to other countries for low-skilled works where they encounter risks, such as labor exploitation, trafficking or exclusion from the social protection in the host countries.

The Right to Social Security is very important in alleviating poverty and social exclusion. If the said right is still ineffectively implemented, Cambodia's strategy to reduce the poverty rate is hardly achieved even though the RGC is trying to reap the benefit for the economic growth from the AEC integration. It is true that the AEC will bring more jobs for Cambodians; however, the job creation not only takes place in the formal employment but also the informal employment where the majority of the population has not enjoyed the social protection. Another issue for consideration is the migration trend after the AEC. As of now, there have been no agreements concluded between Cambodia and other ASEAN members to vigorously protect the migrant's right to social security. Therefore, it should be the time to strengthen the implementation of the Right to Social Security through regional cooperation so that migrants can be protected and feel secure when they migrate in the region. Alongside, Cambodia's national legislation should be revised to make the Right to Social Security portable and transferrable across the borders.

The recent development such as continuous adoption of the legislation on the social security such as the Sub-Decree on Health Care for Persons defined under the provision of Labor Law of 2016 and Royal Decree on the Establishment of Social Security of Employment Injury for Public Officials and Health Care for Public Officials, former Civil Servants and Veterans of 2017 including the increase of minimum wage and salary for private and public employees respectively, can be implied that the RGC has strong commitment to overcome the mentioned challenges and achieve the comprehensive implementation of the Right to Social Security.

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