

**Combating Human Trafficking in Cambodia:
Establishing A Legal Environment for the Effective
Counter Trafficking Measure**

Submitted by

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1st May 2004

A paper in partial fulfillment of the requirement towards the Master of Arts Degree in Sustainable International Development at Heller School of Social Policy and Management, Brandeis University

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I. EXECUTIVE SUMMARY

This paper was developed as a result of the second year project for the Sustainable International Development (SID) Program of Brandeis University. The major research for the project was done through the author's internship at the International Organization for Migration (IOM) Mission in Cambodia both as a part of his experience on the IOM's Enhanced Migration Management (EMM) Project as well as independent research on the counter trafficking capacity of the Cambodian Government.

Due to the newly established legal structure and the extreme poverty in the country, Cambodia has become a hotbed of transnational crimes in the past decade. Human trafficking is one of these crimes that is growing rapidly and making negative impact to the society. Under the objective of contributing to the reduction of trafficking in persons in Cambodia, this paper makes a series of recommendations to improve the legislative functions in migration management, law enforcement, and international and regional activities that will eventually contribute to make anti-trafficking measures more effective and efficient. Throughout the study of world best practices to combat trafficking, this research identified that strengthening the legal system in Cambodia is important and should be addressed widely as the effective counter trafficking measure.

II. PROBLEM STATEMENT

Human trafficking is one of the most popular forms of global exploitation these days. It has gained significant attention from the international community and has led to the creation of numerous organizations working to seek a solution. Yet no organizations have made a clear impact on reducing or abolishing the trafficking of human beings in any region. Southeast Asia, in particular, has become the ‘center of human trafficking’ in terms of its large number of trafficked persons that are estimated move into and out of the region. Moreover, the past and the ongoing conflicts in the region, as well as the extreme poverty derived from the conflicts, have increased the vulnerability of the population towards trafficking. Despite the large numbers of on-going counter trafficking efforts, the trafficked population is estimated to increase every year.

There are no accurate statistics available on the number of trafficked persons, but the estimation done by various agencies indicate that a number of trafficked persons worldwide is varied from 700,000 to 2 million each year. The UN also estimated that procurers, smugglers, and corrupt public officials engaged in international human trafficking extracted 7 billion US dollars from their involvement in the crime¹. This estimation of the profit is larger than that of international trade in illegal weapons. In Cambodia, trafficking of persons occurs domestically as well as internationally. The Human Rights Commission estimated that there were 14,725 prostitutes in Cambodia during 1996-97, of which 81% were Cambodian nationals, 18% were Vietnamese and 1% had other nationalities. It is also known that many Cambodian nationals seek work or are sold to Thailand and other economically better off Asian countries.

A. DEFINITION OF HUMAN TRAFFICKING

Before discussing the issues of anti-trafficking measures in Cambodia, it is important to define what the trafficking in human being is. Many counter trafficking efforts are working to prevent both trafficking and smuggling of human beings, although there is a clear difference between the two. Therefore, the approach to solve these issues should be different as well. People smuggling is a crime that transports people from one place to another illegally. Smugglers provide forged or fake travel documents to their clients and make a profit from it. After smugglers send out their clients to wherever the destinations are, their work is done. On the other hand, Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, (2000) supplementing the United Nations Convention against Transnational Organized Crime, defines trafficking as “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or

¹ USAID: Gender Matters Quarterly No.1 February 1999

the removal of organs.” Moreover, human trafficking has four stages in its process as follows:

Stage 1: Recruitment

Most traffickers target the poor for their recruitment just because they are more willing to join, with or without the knowledge of what they might be doing once trafficked. Hnin Pyne (1993) has identified three types of entries into trafficking. These are: 1) “voluntary” indicates that the person, trafficked-to-be, approaches the traffickers by him/herself; 2) “bonded” implies the involvement of parents or guardians who receive money from an agency or owner for giving away their children or family members; 3) “involuntary” involves the use of deception and coercion of the persons by an agent or owner/manager. The entry to trafficking network is usually due to many reasons such as poverty, unemployment, lack of education and abduction. In Cambodia, there are also some other types of entry e.g. results of false marriage, domestic violence and weakening of the family. Refugees and asylum seekers are also vulnerable to trafficking. Some of the Balkan refugee camps were visited by black Mercedes, and young girls were taken by them at gunpoint. In Europe, traffickers often advertise the false job announcement on newspaper for the recruitment in to trafficking networks.

Stage 2: Transport

Trafficking happens both domestically and internationally. The principle is that it is a demand-led crime, thus victims are transported to where there are needs and financial sources for whatever their uses are (i.e. prostitution, forced labor, organ trade, are just a few examples). There are many trafficked Asian women in Europe and the US, African women in Europe since the need for their ethnicity among the sex industry in those regions is high.

Some trafficked persons do travel with their own travel documents (passport, border pass, etc), though most of them usually take illegal means of travel, i.e. crossing border unchecked, through land or sea borders, with forged documents provided by traffickers, or by bribing immigration officers. After reaching the destination point, it is often the case that every travel document is taken away, therefore, many trafficked victims, who are working in foreign countries, are un-documented. In the country like Cambodia where the legal system is not developed to protect the trafficked victims, they are more likely to be considered as illegal migrants by authorities and thus, taking away the travel documents is the way to prevent them from reporting the crime.

Stage 3: Coercion

Once victims are transported to the “working site,” usually their freedom is taken away. If a girl was trafficked to be a brothel worker, she is not allowed to refuse any request from the customer, to go out, make phone calls, etc. She might also be cut off any communication from outside the brothel. There are three forms of coercions that traffickers use in order to keep the victims on site and to exploit as much as possible. Firstly, trafficked victims are usually tied up with the amount of debt that they are not able to pay back due to unfair interest rate. Therefore, victims are not allowed to leave the worksite until they pay back such huge amount of debt (debt bondage). Secondly, use of

violence is another form of coercion. If the trafficked victim is working in the sex industry, rape and physical abuses are the most commonly used method to keep the girls silent. The use of reprisal against victim's love ones is also another technique that is used by traffickers. Victims are threatened that their family will be executed if they do not obey. Threat of exposure is also an effective way of keeping victims under control. For cultural or religious reasons, many trafficked victims are afraid of being exposed the fact that they are working in the sex industry. Exposure to their family members, relatives, or even someone from the same cultural or religious background may cause severe result. Some traffickers use this method more effectively, by video taping victims' work and keep it as a tool to use against their escape. In extreme case, there is a possibility that trafficked victims from certain cultural or religious background may be abused or even killed by their own family for the shameful acts such as working as a prostitute. Traffickers use these techniques to keep the victims from escaping.

Stage 4: Exploitation

Debt bondage is a typical form of exploitation. Trafficked victims are forced to work with a little or no salary in order to cover their transportation cost, accommodation, food, etc, while their business owner makes fortune out of victims' effort. Another form of exploitation is organ trade. In Eastern Europe, donor usually gets around US \$800 for one kidney, yet the actual seller of the organ gets US \$30-50,000². Whatever the business is, trafficked victims are the ones who suffer the most.

B. CAMBODIA'S COUNTER TRAFFICKING CAPACITY

Despite achieving formal independence, many developing countries have realized that they are still far from achieving political and economic independence from their former colonizers. Even though situations are different in each region, neocolonialism has kept the structure of exploitation as it was before in most parts of the world. Additionally, the borderless phenomenon, often called "globalization," has created a new structure of exploitation around the globe. Trafficking in persons is one of the forms of globalized exploitation. Cambodia, in particular, has every element to enable trafficking crimes to grow. From the extreme poverty to the weak legal framework and the limited resources in the country, many factors made Cambodia as an ideal country of origin, destination, and transit point for the trafficking networks.

Poverty

Cambodia is a poor, war ravaged country that offers little in terms of economic opportunity to its people. It has a newly established system of government and is now at the stage of development. The country gained independence from France in 1953, and yet the history of conflict started when they fell down into a civil war in 1970. Cambodia was ruled by the Pol Pot regime from 1975 to 1979, and then allowed the Vietnamese to invade the country. After more than 20 years of unrest wars and disputes, Cambodia now has been getting significant amount of aid and support from international community for reconstruction of the country. Started with the Paris Peace Accords in 1991, the establishment of the United Nations Transitional Authority in Cambodia (UNTAC)

² Paul Holmes, Interpol, at the workshop on Human Trafficking in Asia Region, September 2003.

resulted the first democratic election in the country in 1993. Although it has been more than ten years since the democratic Constitution was established in Cambodia, the Cambodian Government has not been able to maintain the orderly system of a state and the function of a democratic government for its citizens. The GDP per capita on purchasing power parity basis is estimated as US\$1,600 (2002) and 36% of total population is below poverty line (1997)³. It is in fact one of the least developed countries in Southeast Asia. The extreme poverty is the major factor that makes people vulnerable to the trafficking and provides opportunities for its network.

Its history of conflict also contributes to make Cambodia a place with a high crime rate. The country has been through series of conflicts, and the whole structure of the nation was reconstructed after 1992 with a support of the UNTAC. Long periods of civil and regional wars have damaged the social structure, human resources, and culture in the country. According to the research of Human Rights Task Force on Cambodia, fragmentation of families and psychosocial factors have led to the increase of trafficking victims, which may be the cause of individual and collective trauma during the past two decades of massive bombings, genocide, foreign occupation, starvation, forced exile, and civil war. The era of suffering has created the separation and disarticulation of families, mistrust among neighbors, weakened community values, and dependency towards the international and NGO assistances even among the individuals. Such factors increase the vulnerability of people to the trafficking.

Legal system

Among the large variety of efforts to counter trafficking, one of the best ways to combat it is to strengthen the capacity of law enforcement and legal system in the countries involved. Many counter trafficking measures around the world demonstrate that successful enforcement and legal framework are the key to tackle the crime effectively. However, its condition that Cambodia has yet to develop the infrastructures and the capacity to deal with modern transnational crimes such as trafficking. In fact, many international organizations and governmental agencies have expressed their concerns about the security management of the country, especially for the growing threat of terrorist activities. Further, Cambodia possesses many problems in its legal system that needs significant reform.

Fundamentally, law and order work if the rule of law is followed properly. The rule of law, which usually refers to the hierarchy and constitutionality of laws, must be followed and maintained by authorities in order to keep a society under control. All the legislation related to trafficking, both international and domestic ones that form a framework for counter trafficking activities, should not be the exception from this principle. In many countries, international laws and treaties are respected before the domestic laws, stated in Article 26 of the Vienna Convention on the Law of Treaties as “Every treaty in force is binding upon the parties to it and must be performed by them in good faith” In Cambodia, while the constitution remains the highest national principle, its 31st Article also states that “The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations charter, the Universal Declaration of Human Rights, the

³ CIA The World Fact Book

covenants and conventions related to human rights, women's and children's rights." However, many international instruments that were signed by the Cambodian government were often put aside for practicality, and even their domestic laws seem to malfunction in many cases due to how authorities act. Unfortunately Cambodia, under a newly formed democratic system in 1993, does not always follow this general rule of law, which has clearly been demonstrated through the performance of the executive⁴ that overruled the decisions of courts. Further, more problems arise when existing legal instruments conflict and overlap each other, creating a state of confusion in the legal system in Cambodia.

On the other hand, the laws and legal systems on trafficking in Southeast Asian countries are in the process of being established. Thailand was the first country in the region to adopt the heavier legal constraints and penalties on the demand side of trafficking and prostitution in underage commercial sex. Such trends in legal systems that focus on the prosecution of traffickers and protection of victims' rights are growing. In that sense, Cambodia is also far behind in terms of reaching the international standard, even though many organizations and agencies are available to give assistance in these areas. In addition, corruption, lack of resources, and negative attitudes towards the issue of trafficking among the law enforcement officers reduce the impact of improvement.

Laws in Practice

No law is perfect. This is the general principle of laws and also the reason for the existence of a judiciary to address and fill the gaps that laws left out or are not able to cover. In general, the judiciary plays the role to interpret the law when a problem arises due to unstated cases or lack of specific wording in a law. Widespread support of general rules (e.g. unwritten common law) helps to fill the gaps between the law and reality as well. In a country like Cambodia, where laws are under process of being developed, the need for a strong court is very high in order to support the poor legal environment. However, the country fails to meet such demands that created a situation in which judicial institutions and law enforcement agencies fail to turn the series of laws into practice. In other words, enforcement officers often operate outside of laws and orders. This is especially the case when dealing with trafficking in persons. Many human rights groups have reported the cases of investigation, persecution and trial process for unfair and inhumane treatment of people who are involved.

Such issues are also due to the absence of legal procedures. Many of frontline officers are unaware or not clear about the laws in detail so that they are unable to properly deal with the cases that they encounter everyday, especially the cases of human trafficking. The legal procedure is the fundamental aspect of turning the law into practice effectively. Lacking this component certainly does not help to combat crimes nor to protect victims. Lack of training and awareness raising for enforcement officials about the international/domestic legislation contribute to unacceptable practice.

The Cambodian authority has a tendency to create laws in order to solve various issues. However, many of the issues that they are facing could be improved or abolished simply

⁴ See the Finding section: "Legal System in Cambodia"

by properly implementing the existing legal instrument or creating the environment that strengthening their capacity to deal with the issues (such as the judicial capacity). From the counter trafficking perspective, it is more important to provide a solid environment for the implementation of counter activities than to add more laws.

International Co-operation

Another challenge in counter trafficking efforts in Cambodia is the lack of co-operation and coordination among concerned agencies. In spite of the high international support and assistance offered to the country, extensive donor activities in the areas of development and lack of coordination in these areas have led to a situation in which their activities overwhelmed the system and have created a confused and dysfunctional structure in some cases. For example, during and after the UNTAC presence, many laws were created to control various issues. However, the drafters of these laws might not take other laws into consideration that are already existed. This resulted in overlap and conflicting laws in the legislation in the country. Many agencies are operating on their own to combat human trafficking without being aware of the activities of others. Despite the fact that trafficking is a global phenomenon, current initiatives in Cambodia and the surrounding region have not yet established a model of effective co-operation among the governments, international organizations, and NGOs.

Co-operation among various agencies is one of the methods to create a “solid environment” for effective counter trafficking measure. In Cambodia, a strong networking among the Ministry of Women’s and Veterans’ Affair, the Ministry of Justice, the Ministry of Interior (Police Force), and the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation (MOSALVY) needs to be sought in this matter. At this moment, not only these listed ministries but also some of the departments within a same ministry do not have a formal way of communication regardless of the types of problem that they are dealing, leading the existing legal instruments ineffective and hard to implement.

Therefore, Cambodia has a series of issues in its legal framework for the effective counter trafficking. Those issues are found in legal documents, practice of laws and governmental functions. It is important for the Government of Cambodia to review these problematic areas and come up with the solutions in order to improve their capacity to combat the trafficking crimes.

III. LITERATURE REVIEW

As the impact of globalization hits many countries economically and politically, a number of transnational crimes also started to benefit from this borderless phenomenon. The trafficking in persons is one of the transnational crimes that gained significant attention from the international community due to its cruelty and the large number of victims. It is also one of the most under-reported crimes and therefore, many governments and law enforcement workers have struggled to find a way to combat this crime for long time.

The issue of human trafficking is not new. However, its aspect has changed in a number of ways and led a series of discussion to define the crime among concerned organizations and agencies. UNIFEM has described the trends of trafficking in their *Trafficking in Person: A Gender & Rights Perspective* as “diverse and sophisticated mechanisms, varied purposes, and changes in the profile of trafficked persons (sheet 2)”. Yet the easy way to understand the trafficking in persons is to consider it as a demand-led crime. The trafficking process begins when men and pimps create the demand for women, girls, men and boys to be used for prostitution (Hughes 2002) or any other purpose of exploitations. In each region, persons with certain characters are placed on order, and traffickers will gather those persons for an amount that they need.

The characteristic of human trafficking in Southeast Asia has a strong aspect of forced prostitution. The business of prostitution has tripled in its size and economic importance worldwide in past 30 years (UNIFEM East and Southeast Asia 2002) and Southeast Asia has been a major contributor to the increase of such business. As the sex industry grows in the region, the number of trafficked victims also increased. It was estimated that there were 20,000 to 30,000 trafficked women and girls from Myanmar into brothels in Thailand in 1994, according to the Asian Migrant Centre (2002). Moreover, Cambodia is estimated to have between 50,000 and 55,000 women and girls in prostitution, about 35 percent of them are younger than 18 years old (Human Rights Task Force 1996). Sex workers in Southeast Asia are mainly recruited from economically poor regions such as Vietnam, Yunnan Province of China, Laos and Cambodia. The trafficked population is estimated to increase every year and only Cambodia alone generates US \$511 million each year through illegal sex trade (Poole 2001).

International trafficking in persons has created a complex system of exploitation, but there are many ways to combat the crime as well. There are many examples, legal instruments, research and publications available on trafficking related issues. In particular, there are many materials that refer to the effectiveness of a legal approach to tackle the crime, representing the importance of such strategy in many countries. Among the enforcement experts in the trafficking crime, Holmes (2002) strongly expressed the importance of specialization in counter activities among law enforcement and supportive organizations. He claimed that the past law enforcement agencies could not address the trafficking issues on their own due to lack of specialized “skills, resources, or time to provide appropriate level of care and assistance to the victims,” which is still the case in Cambodia. When authorities deal with case of trafficking crimes, the treatment of victims is the key to the successful prosecution, and thus providing humanitarian support to victims such as psychological and physical programs as well as to provide protection for them will facilitate their co-operation to tackle the crime. While these duties should be left in the hands of other supporting agencies, NGOs and human rights groups for maximizing capacity of victims to contribute in combating the crime, enforcement officers should be trained and focus specifically on the investigation, prosecution of trafficking in persons and protection of its victims. To achieve this goal, Holmes suggested to strengthen the rational co-operation between enforcement agencies and inter/non-governmental organizations to clarify their role in the counter trafficking effort.

Rome (2002) also pointed out the need of counter trafficking measures with a specific objective through the legal approach, for each stage of trafficking. For instance, he suggested either establishing or amending the immigration and criminal laws particularly aimed to combat the recruitment process of trafficking. That includes the creation of legal environment that is able to “extradite offenders who are found guilty or the object of judicial prosecution in a foreign country for this kind of crime (Rome 2002:15)” or to apply trafficking related offences to foreign nationals/residents in a country. He argues for the establishment of different reintegration programs for the trafficked victims in the country of destination and the country of origin. He mentioned that while the reintegration program in the country of destination should focus on supporting victims’ legal status in the country, professional integration and his/her relational network establishment, the one in the country of origin needs to focus on the assistance in return and the preventive measures to avoid the possibility of being re-trafficked. Yet in either case, the will of victims must be respected.

On the other hand, Peterson (2001) looked at the ways to combat the crime from the humanitarian perspective, by providing safety for trafficked victims. She concluded the major reason that the trafficking in persons is one of the most under-reported crimes is the lack of trust in law enforcement agencies. From the series of interviews with trafficked victims, the fear of being arrested is identified as a factor that draws victims away from enforcement agencies. Not only to provide protection but also to grant victims a right to stay and work in a country (in case that they are foreign nationals) are mentioned as the key components of the counter trafficking measure.

However, through all the counter trafficking measures that are presented above, use of legislative tools to establish a solid legal ground to combat the crime is considered as an essential strategy in order to focus the policy of governments on the trafficking crime. Igor Dolea (2002) mentioned in his talk that “one of the important conditions when combating trafficking is not only the application of criminal law, but also the creation of legal mechanisms directed toward the discovery, investigation, court hearings and conviction of the persons responsible for this crime.” There are number of international conventions and treaties that aim to abolish the trafficking and other transnational crimes, which are listed in Annex of this paper. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol), which supplements the U.N. Convention Against Transnational Organized Crime, on April 24, 2002 is one of these instruments that forms its objective to suggest a signatory/member state to perform series of activities such as protecting and assisting victims of the crime, promoting co-operation among states parties and many other activities to work against the crime. Although only a few governments have been able to meet the conditions of such conventions and produced satisfactory result, the use of international legal tools should be encouraged to establish a series of activities and environment to combat trafficking, especially in a country like Cambodia where their national legal framework is not strong enough to address the issue by itself.

After years of struggling, many researchers identified the most effective counter trafficking measure must recognize the importance of co-operation among relevant agencies and organizations, as well as to provide humanitarian support for trafficked victims. Policy makers and enforcement agencies are making effort to combine various efforts and stakeholders into one force rather than focusing on producing a single solution to tackle the crime. Yet the process of identifying the effective counter measure can be hard since the complexity of the crime and its characteristics that are varied from place to place. It is also one of the themes for Cambodia's anti-trafficking activities. Adopting the best practice of anti-trafficking activities around the world into Cambodian context seems the easiest part of the counter trafficking effort. However, it is the hardest, since Cambodia has very different political and cultural ground from many other countries.

IV. ISSUES AND FINDINGS

The aim to produce the effective counter trafficking measure through legislative approach does not take a form of single document but rather, it is a series of activities and practices of respective agencies and organizations.

Traffickers commit a range of illegal activities and each stage of the trafficking process helps to indicate the corresponding counter trafficking framework from the legal perspective. To combat such crime, counter measures should heavily depend on an effective law enforcement and international co-operation against the crime. First of all, the proper border control must be achieved in order to prevent traffickers and victims from the illegal entry to the destination country. This includes the establishment of immigration laws that have particular focus on trafficking measures. Secondly, a strong criminal justice system must be established. Proper laws, enforcement and judicial system are a strong threat for traffickers. Thirdly, in relation to the first two, protection of victims is needed for successful countering of human trafficking. Trafficking is one of the hardest crimes to prosecute due to many reasons. One of these reasons is that the victims are afraid of reprisals if they speak out. Yet the statement from victims is better evidence than anything else to combat this crime. Providing the sense of security and protection for victims from being abused or re-trafficked after their return is an important part of anti-trafficking method. Finally, global co-operation and coordination is the essential step. Trafficking of human beings is the global crime and it can not be tackled without regional or global perspectives. There are laws and treaties that encourage such co-operation, and have been recognized internationally, yet the adjustment must be made in order to correlate the experience in each region with those treaties.

Considering the above points, there is no doubt that the anti-trafficking activities in Cambodia need to be reformed dramatically. Like the poor infrastructure of the country, Cambodian law enforcement capacity is also considered weak. Corruption and absenteeism among government workers are a serious problem, and police and court officers are no exceptions from that sense. Low salaries, lack of supervision and lack of proper training are just a few factors. More significantly, the fact that government workers have little knowledge of general procedures and do not follow them in their

duties leaves many problems unsolved or possibly encourages some criminal activities. In addition, the weak judicial system in the country fails to maintain fair trials and keep criminals off the streets. At the same time, it also draws victims away from the court due to lack of protection and lack of a guarantee that the criminals will be charged.

Therefore, this section looks closely on the counter trafficking measure in Cambodia from legal perspectives. These include: human rights, refugee, and migration aspects of laws as well as the ones specifically on trafficking in persons; the prevention and the prosecution of the trafficking crime; the protection of victims; and the recovery, rehabilitation and reintegration of the victims. In order to develop effective counter trafficking measures, the one must take all these components into consideration.

A. LEGAL INSTRUMENTS

i. Law on Trafficking

Cambodia adopted a Kram⁵ (Law) on Suppression of the Kidnapping, Trafficking and Exploitation of Human Persons in 1996. Considering that this is the only law that specifically targets the trafficking issues, its 10 articles in five chapters are relatively short and left a variety of trafficking issues uncovered. There are four major problems in the Cambodian Trafficking Law: the lack of effective definitions of trafficking and its victims; uncontrollable restriction on prostitution; absence of protection clause for trafficking victims; and the gaps between the law and the practice of the law.

The first thing that you will realize in this law is that the law has a focus specifically on trafficking, kidnapping, and exploitation for the purpose of prostitution or any other sexual activities, without defining clearly what the trafficking is and who the victims of trafficking could be. The lack of such wording may cause serious consequences during a trial in order to prosecute traffickers as well as to provide protection for the victims, which may put heavier burdens on prosecutors, witnesses, victims and so on.

In addition, there is no description on the treatment of victims, whether victims will be charged for crimes that they committed during the trafficking process, such as illegal entry to the country or possession of forged official documents. There was a case of 14 Vietnamese girls who were charged for illegal immigration after they were rescued from brothels in Phnom Penh in 2002. Although this case triggered the discussion of how to deal with foreign trafficked nationals, the answer is obvious. Trafficking victims must not be treated as illegal immigrants or charged for the crimes that they commit during the trafficking process, according to the series of international instruments that Cambodia is a signatory, including the UN Convention against Transnational Organized Crime and its Protocol, and the Convention of the Right of the Child. Since those girls could prove their cases as victims of trafficking, they should have been granted freedom from charges against illegal entry. The Cambodian authority must avoid such poor practice of law in order to protect victims.

⁵ See Annex for the list of names for the legal document in Cambodia.

Another issue of this law is its treatment of prostitution. The law does not illegalize the act of prostitution itself, but penalizes the act of pimping, debauchery or operating brothels. It is well-known that even though the law prohibits it, there are number of these acts in Cambodia that are part of trafficking networks. The quasi-legal status of prostitution has led to a situation in which prostitutes have no specific legal rights or standing in the society as well as to encourage serious human rights abuses and exploitation in the sex industry. Moreover, the cultural and social atmosphere of the country often causes the discrimination and inhumane treatment of prostitutes in the community, including at the police stations. It is often the case that at the time of arrest of brothel workers/owners, prostitutes are also treated as criminal by the law enforcement officers.

The situation must be resolved for humanitarian reasons as well as to abolish the exploitation through sex businesses. The main issue here is that the Government is unable to control the illegal operation of sex businesses, thus, the law maker should establish the legal grounds to control it. One possible solution is to legalize brothels and require them to register under the control of the Government. This way, the Cambodian authority is able to maintain order in the commercial sex industry as well as to give more freedom for prostitutes. However, whatever the solution is, the Government should take action as soon as they can.

Despite of the ambiguity of this law, there were at least 75 convictions of sexual exploiters under this law in 2002, according to the record available as of July 2003. Yet the number is significantly low, considering the size of trafficking and sexual industry in the country. Many of successful investigation and persecution of traffickers, even though there are very few, are based on the victim testimony. The voice of victims is thus important, considering the fact that the trafficking is one of the most under-reported criminal activities. However, traffickers use any ways to avoid being investigated or persecuted (See Stage 3: coercion, Stage 4: exploitation in the Definition). Providing protection to trafficked victims is one of the most important parts of the counter measures. It means not only protecting victims from possible physical and psychological abuses, but also preventing the creation of extended victims such as families and relatives of trafficked persons. Such protection gives victims a sense of security, thus most victims become cooperative to testify against their cases.

However, among the laws on trafficking in Cambodia, the protection clause for victims is totally lacking. The lack of legal procedures and guidelines among the law enforcement to deal with the cases of trafficking has resulted unacceptable treatment of the victims. During the research, quite a few police officers informally noted that victims of trafficking are placed in T3 Prison just outside of the capital with other criminals due to above reasons, in addition to the lack of facilities to shelter them. This sort of enforcement practice should not be allowed from the humanitarian perspective, yet it was not clear that such practice is a routine protocol to handle the victims. The Ministry of Social Affairs, Labor, Vocational Training and Youth Rehabilitation (MOSALVY) attempts to place victims of trafficking in two of their temporary shelters and other

facilities provided by NGOs, yet the capacity of those facilities are limited and not appropriate for long-term sheltering.

Moreover, significance of the issue arises again from the legal status of the victims. Due to lack of procedures and guidelines among the frontline enforcement officers including immigration police, they are likely to be treated as irregular migrants, and even more, in jeopardy to be deported. This has become an issue in many countries, and quite a few governments amended their domestic legislation to provide more support for victims of trafficking that concerns their immigration status. Following examples from other countries may applicable to the Cambodia's approach to protect trafficked victims.

Italy

One of the most distinguished legislation on countering trafficking was adopted in Italy in 1997. Article 18 of their Immigration Law (Law 286 of 1998) grants the residency permit of six months for foreign nationals who were found in abusive and exploitative situations. The permit can be renewed for one year with a possible extension for judicial purposes. It also allows the permit holders to access various social services and employment in accordance with local NGOs. Surprisingly enough, Italy does not have a law to prohibit trafficking specifically. The Italian Government are making effort to combat the crime with provisions of other laws such as the ones that prohibits the exploitation of prostitution (Law 75 of 1958) and assisting the entry of illegal migrants (Article 12, the Immigration Law), as well as using relevant international instruments.

Belgium

A law on the suppression of trafficking in human beings and child pornography was adopted 1995 in Belgium. In accordance with this law, the Royal Government of Belgium established three shelters in the country in order to provide legal, administrative, social and medical assistance for victims of trafficking. The foreign victims who are registered under one of these shelters are allowed 45 days of "rest period" to decide whether they make statements against the crime or to return to his/her country of origin. If the victims decided to file charges, they are given three months residence and temporary work permits, which can be extended for six months or longer as the legal proceeding take place.

Philippines

The Government of Philippines passed the Anti-Trafficking of Persons Act on May 2003. The law offers mandatory services for victims such as shelter, medical and legal assistance. It also guarantees that trafficked persons are not charged for their illegal activities that are conducted during the trafficking process. Moreover, legal proceeding for the cases of trafficking, which includes investigation, prosecution and trial, is closed in order to protect the identities as well as to avoid further abuses and traumatization of trafficked victims.

United States

The Victims of Trafficking and Violence Protection Act of 2000 amended their Immigration Law and has created two categories of visa for trafficking victims.

According to the law, victims are allowed temporary stay in the country while criminal prosecution processes. Victims are also given access to certain social benefit and services.

ii. Law on Immigration

Immigration related laws in Cambodia lack certain components and are not flexible. Some of their provisions are also in conflict with each other. Cambodia has three main laws that deal with immigration (Those are: *Kram* dated 22 September 1994 on Immigration; *Anukret* dated 21 June 1996 on the Formalities of Application for Authorization to Enter, Exit and Reside in the Kingdom of Cambodia, of Immigrant Aliens; *Anukret* No.75 on Formalities to Fulfill for Authorizing Foreigners (who are not Immigrants) to Come, Leave and Sojourn in the Kingdom of Cambodia). The design of these laws is relatively general and left many areas uncovered. The lack of proper law leads to the situation in which no guideline or procedure exists for those enforcement officers to follow. However, despite uncertainties in the legal framework, the frontline immigration officers manage to fill in the gaps between the law and the needs in realities through their duties.

One of the most significant loophole in the Cambodian Immigration Law (*Kram* dated 22 September 1994 on Immigration) is the lack of any refugees/IDPs component. Cambodia is the only signatory state of the 1951 refugee convention in the Southeast Asia region. However, considering the fact that refugees/IDPs are one of the most vulnerable groups to human trafficking, the Cambodian immigration law today does not provide legal protection to this population. Although Cambodia receives very few asylum seekers every year, the lack of framework in the legal system and the official agencies to support them is not acceptable. Throughout the research, it comes to the conclusion that the most of immigration workers have very limited knowledge of the immigration law and their duties especially those who are at the isolated border checkpoints, including the capacity to handle refugees/IDPs.

Another factor that could endanger victims of trafficking is the expulsion clause in the Immigration Law (*Kram* 1994). Although the whole chapter 6 of the Law (in five articles) describes the rules of expulsion as well as the other relevant articles, the clear definition of expulsion is lacking. In other words, the Law doesn't provide the detailed conditions when aliens should be removed from the territory of Cambodia. The Article 36 describes that the Ministry of Interior is able to order expulsion against those who:

- a) have his/her behavior or activity which is dangerous to the national security of the Kingdom of Cambodia, or
- b) that the competent ministries have collected all specific evidences, which prove that the person is dissident to the national security of the Kingdom of Cambodia, or
- c) such is working in the Kingdom of Cambodia with no labor/working card.

Except for the last one, it is not clear what should be considered a threat to national security and who would make that decision. Rather, the law should describe the conditions for the expulsion based on unlawful behavior of aliens in the country or a result of irregular migration. Furthermore, the last provision of this list directly affects victims of trafficking, since most of them usually employed illegally.

The following two Articles from the same law also contain the serious danger against victims of trafficking.

Article 35: *The Ministry of Interior **shall** order for expulsion from the Kingdom of Cambodia of **every immigrant alien**, who violates the provisions of this Immigration Law.*
Article 37: *The Ministry of Interior **shall** expel from the Kingdom of Cambodia, **every alien** who entered illegally in the Kingdom of Cambodia.*

In general principle, a good law always leaves flexibility for a case of exception. However, the wording of these two articles leaves no room for exceptional cases such as trafficked victims or refugees/IDPs, since there is no relevant law nor order exists for exempting those groups from these provisions. According to these Articles, victims of trafficking, who crossed the border illegally to enter Cambodian territory, are subject of expulsion. Yet, it is often the case that the return of trafficked victims contains the danger of re-trafficking (with more burdens on them) if there is no assistance available. In addition, considering Article 33 of the UN Refugee 1951 Convention, forced return of refugees and asylum seekers are not acceptable. Cambodia must consider the ways to grant special treatments for those exceptional cases.

The issue of expulsion according to these Articles becomes even more confusing with Anukret No.30 (the lower legal instrument under Kram, the Law) that was issued in 1996, on the formalities of application for authorization to enter, exit and reside in the Kingdom of Cambodia, of immigrant aliens. Article 11 of this Ankret states:

The immigrant alien status may be removed through a Proclamation of the Ministry of Interior, for those immigrant aliens who violated the provisions of the law of the Kingdom of Cambodia and who have been sentenced by the court for a criminal offence from 5 years or more.

The statement of this Article also refers to the removal process of a person from the country. However, the process in this Article is different from the ones in Kram. This is the typical case of Cambodian legal documents. Law makers try to amend the previous provision with or without referring the other, creating conflict and confusion in their legal system. Here, considering the fact that Anukret is not legally binding as a Kram, the Immigration Law should overrule the Anukret No.30 in this provision. But then, there is no point of having this Anukret. Such conflict of laws must be avoided in future legal development.

iii. International Instruments

Some human rights groups and NGOs are making effort for Cambodia to sign and ratify international conventions and treaties that are relevant to combat trafficking, including the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949). However, as stated in the objective of this paper, having more legal instruments is not as important as establishing solid environment that implement the existing laws and orders properly. Regardless of geographical location, the

implementation of any legal instruments should be considered as a priority matter as well as establishing a legislative basis of a country.

However, reactions of the Cambodian government as a signatory/member state of those international instruments⁶, not only trafficking related ones but rather in general, have been passive. The effective implementation of those instruments should be, once a law is established, to provide training and information campaign among appropriate agencies who will be in charge of the law. Although such action should be the responsibility of signatory/member states, the Cambodian government rarely takes initiative to follow up those international instruments, but waits till donor agencies take action. Moreover, it is often the case that those actions may not be effective due to Cambodia's political and cultural environment.

One good example of how a well-developed legislation can become a useless statement is represented by the Memorandum of Understanding (MOU) between the Government of Thailand and Cambodia to encourage bilateral co-operation for eliminating trafficking. The document is well-developed, listing specific activities to counter trafficking in both countries such as establishing educational and vocational training programs and to undertake necessary legal reform (Article 4 and 5). However, there is no sign that such activities are undertaken by the Cambodian Government; rather all those counter trafficking activities are left on the hands of international actors.

The major reasons for that are the lack of funding and the hierarchical environment of Cambodian politics. While the first one is very much self explanatory, the latter refers to the lack of practice of delegation (the next section will detail this issue). This issue can be seen at any level of Cambodian Public Sector and in many cases, even some of the Ministers are not able to make any decision without consent of the higher, Prime Minister and his party. This causes delays in the implementation of many activities. From the Cambodian perspective, there are many issues that should be touched on before the trafficking related ones. And yet, establishing effective delegation system at all levels can ease the process and be more efficient in many of their governmental activities.

It is also worth mentioning that a country like Cambodia receives a huge political pressure from the international community to solve their domestic problems, in exchange of financial assistance. The government then quickly establishes the framework to solve an issue, without making further effort to turn them into practice. That was the case of the 1951 Refugee Convention, there is still discussion between the government and the UNHCR about when Cambodia will establish the legal framework accordance with the Convention since its ratification in 1992.

Recommendations

The Cambodian Government must order its legal instruments, aiming to create a solid environment for the implementation of laws. Particularly in terms of a counter trafficking measures, the Law on Trafficking should be improved as follow:

⁶ See ANNEX for the list of International instruments signed/ratified by Cambodia

- Adopt definitions of *trafficking in persons* and *victims of trafficking* in its provisions;
- Establish the protection clause for trafficked victims;
- Develop a way to control the sex industry and to protect the rights of commercial sex workers in the country, possibly by legalizing brothel operations and register them under the control of the Government;
- Properly implement the law, i.e. to end the treatment of trafficked victims as criminals;
- Create a policy to avoid the deportation/expulsion of trafficked victims from outside Cambodia, possibly by granting temporary residential status in the country.

The core legal framework of counter trafficking measures must refer to the improvement of the Cambodian Law on Immigration. The Government of Cambodia should consider to:

- Amend or create laws on refugee as well as the legal system to deal with these special case;
- Exempt the special cases from the deportation/expulsion clauses in the Law on Immigration such as refugees, asylum seekers and victims of trafficking;
- As general principle, avoid the conflict of laws, as the case of Law on Immigration and Anukret No.30 on expulsion clauses.

Furthermore, one of the most important recommendations would be the implementation of those international conventions, treaties and agreements that Cambodia is a signatory. The Government must establish a way to follow up on those instruments in order to fulfill their role as part of international community.

B. GOVERNMENTAL FUNCTIONS

i. Enforcement of Laws

Having said that the counter trafficking capacity of Cambodia is fairly weak, the major effort should be aimed at the law enforcement in the country. There are many problems among the general functions of their government structure and its workers, and such problems are widely known. However, the significant reform to improve the situation hasn't been made at this point.

Throughout this research, it has been clear that the most of Cambodian frontline enforcement officers have very limited knowledge of legislation in general. It is doubtful that information on the relevant laws and orders related to their duties, including international ones, are available to them. Rather, the daily practices of their duties as enforcement officers are considered the best way to meet the need in realities. It is true that many of the laws in Cambodia are either not realistic ones or conflict with each other as other sections of this paper mentioned. The current legal state of the country is greatly assisted by the daily effort of frontline officers who work to fill gaps between laws and realities. However, it is also the case that their practice can lead to the unacceptable use of their power and authority, e.g. torture and abuse of criminal suspects, bribery, and

illegal arrest. Therefore, the enforcement agencies must develop appropriate ways of controlling their activities within the area that the Cambodian laws define.

One possible solution to that would be to establish an effective training program for enforcement in order to properly exercise the existing legislation. One of the best practices of such training should refer to the National Anti-Trafficking Plans (NAPs) of Southeast European Governments. Their program offers the training for law enforcement officials at two levels: one for the general frontline officers, which aims to raise awareness on trafficking from the legal and human rights perspectives as well as to train them on a provision of identifying and protecting victims of trafficking; the other for the specialized agents (police and investigator) whose expertise is particularly on the crime.

Another solution is to develop guidelines and procedures to deal with the crime of trafficking. Throughout this paper, the need for the criminal procedure on trafficking is pointed out in many ways. The lack of such system in the legal framework is very serious, causing delays of implementation of many legal instruments and allowing unacceptable practice of enforcement power. The Cambodian authority needs to develop proper procedures or guidelines quickly for enforcement officials and put them into practice, with contribution to the particular trend and phenomenon of trafficking in Cambodia and the surrounding region.

Furthermore, the lack of a delegation system in the public sector has significant influence on the functions of governmental agencies and institutions. As you see in the section above, the Cambodian enforcement officers do not possess enough ability to implement many of legal instruments. Without a system of delegation, the management of those frontline officers to be sufficient and dependable public servants is a necessary practice among the Cambodian senior officials. Lack of a formal system that authorizes lower ranking officers to perform certain duties is causing inefficiency among the performance of public duties and creating a situation in which frontline officers are not able to carry out the proper roles that are required in legal documents and rules. The lack of guidelines and procedures at those workplaces have worsened the situation, frontline officers are always depending on the expertise and knowledge of their superior, while their superiors do not possess any knowledge or the authority to deal with the cases outside of their daily routine. As a result, the problematic and special cases are often referred or transferred to the higher authorities for further decisions and treatments. If frontline officers do not receive proper training nor possess relevant legal knowledge of their duties, it is essential for their superiors to lead them in doing the correct duties. Otherwise, the law enforcement of Cambodia can not be the dependable in their society.

This problem can cause a significant danger in terms of protecting trafficking victims and other vulnerable groups to trafficking. Without instruction, frontline officers will operate on their own with their limited knowledge of the Cambodian and International laws. Their action may result in arrests of the trafficked persons, deportation of asylum seekers, or torture and discrimination of crime suspects.

ii. Legal System in Cambodia

A well-established judicial system is one of the key components to combat trafficking effectively. A fine judicial system creates a fear of being prosecuted, which drives traffickers away from the country. However, it is to say that the Cambodian judiciary fails to produce a fair trial, thus draw the victims away from the court and keep the traffickers on the street.

The level of trials that held in Cambodian court is far from reaching the international standard. In fact, the United Nations recently ended its effort to establish a tribunal against Khmer Rouge leaders for genocide and inhumane crimes during the 1970's and 1980's due to lack of independence, impartiality and objectivity among Cambodian judicial system. In addition, a number of trial cases have been reported by human rights organizations for failing to provide a fair trial. One example of an allegation against a multiple rape case was presented by the Amnesty International. According to their report, the case was held in 22 March 2002 and the list of findings is as follow⁷:

- One lawyer represented for three defendants who had different interests;
- The lawyer met the defendants at the day of trial for the first time;
- The judge and the prosecutor ignored the possibility of torture and mistreatment at the police against the defendants;
- A minor was presented as one of the defendants without any special assistance or care;
- The trial lasted only two hours.

These findings are derived only from one example, and there are many issues that should be addressed in order to improve the court system in Cambodia. However, there are few fundamental factors that need a serious consideration, such as: lack of education and training among lawyers, prosecutors, judges, and other relevant workers in judiciary; low salary among court workers; and “separation of power” principle is not guaranteed. To improve the situation, the Government of Cambodia must protect the independence and impartiality of their court workers. These are the essential factors that grant the fairness at trials. In other words, court workers shall be able to stand against any kinds of threats, bribes, and most importantly political interference.

From this perspective, Cambodian judiciary seems one of the most problematic branches of the government. Besides the issues of corruption and the poor judicial capacity, the fundamental principle of democratic government e.g. the separation of power, is sometimes interfered with the executive. The most significant example is represented by the incident on December 1999. After the claim was made by the Governor of Phnom Penh regarding to the corruption in the Phnom Penh Municipal Court, the Prime Minister Hun Sen ordered the re-arrest of all suspected armed robbers, kidnappers and drug trafficking criminals who were previously released by the decision made under the Phnom Penh Court. More than a hundred people were on the list of re-arrest, without the government presenting any evidence of misjudgment from previous release order. Further, even among the Cambodian Supreme Court, the influence from the other

⁷ Amnesty International, “Kingdom of Cambodia: Urgent need for Judicial Reform” 2002

branches of the government and political parties can be seen fairly often. One of the posts at the Supreme Council of Magistracy was given to the Minister of Justice, which is not a desirable way to achieve the independence of the judiciary. Moreover, the poor terms and conditions of lawyers and members of judiciary, i.e. low salary and benefits, make them vulnerable to bribery and the political pressure, and therefore hard to maintain the independence of courts and fair trials.

The influence of such interference is significant, violating both international human rights laws and domestic legislation. Cambodian government must make effort to bring the standard of judiciary up to the international level.

iii. Inter-agency Co-operation

As stated as the general issues in Cambodia, there is no or little co-operation on counter trafficking effort in Cambodian governmental agencies. In order to tackle the crime through the effective measures (prevention, prosecution, protection, and reintegration), co-operation and coordination of activities are vital.

Besides the lack of such component between the ministries, one significant problem in the Cambodian system is its border control agencies. Proper border control and providing a controllable immigration system are the essential part of migration management, which is eventually able to contribute combating trans-border crimes and illegal migration. To do so, every border point in a country needs to maintain certain standard of information and equipment available to detect criminal acts. Unfortunately under current system of Cambodia, all the international border checkpoints (it is a point at an international frontier where all the travelers are allowed to cross after inspection and clearance, while bi-lateral checkpoint allows crossing only for the citizen of countries that share the border. Local checkpoint is usually for residents of provinces or towns around international borders) are under control of the Department for Foreigners (DoF) that is under supervision of the Ministry of Interior, while local and bilateral checkpoints are maintained by the Provincial Foreign and Immigration Police, which comes under jurisdiction of Provincial Governor. So as many other agencies, the DoF and the Provincial Police haven't established a formal information exchange or joint border management system. Further, the capacity of the Provincial Police to conduct immigration duties is doubtful due to lack of training and access to the intelligence information related to immigration matters. The absence of such co-operation should be highly considered as a weakness of border security, which can be targeted by traffickers and other criminals, thus needed an immediate reform. In order to successfully implement the existing legislations and counter activities, the importance of inter-agency co-operation should be addressed as a part of legislative approach to combat trafficking.

Recommendations

The best practice of counter trafficking measures must depend on the effective enforcement of laws. In that sense, Cambodia must review and reform its system. First, the Cambodian authority needs to:

- Develop effective training and educational programs for enforcement

- officers, particularly on the areas of law related to their duties;
- Establish guidelines and procedures to deal with the trafficking crimes, with a special attention to the rights and protection of trafficked victims;
- Adopt the system of delegation in the framework of organizational function of the Government for more sufficiency in its works.

In addition, Cambodia does not fulfill its functions as a democratic state. Under the current system, the “separation of power” principle is not guaranteed and the independence of judiciary is threatened. This area of governmental function must be reformed through following components:

- Establish a way to cultivate professional lawyers, investigators, prosecutors, judges and court workers;
- Improve the terms and conditions of court workers in order to assure the independence of the court;
- End the executive interference to the judiciary, e.g. any post of judiciary must not be filled by the member from the other branches of the Government.

Further, for efficient functions of the Government as well as to combat trafficking effectively, the Cambodian Government should develop a system of inter-agency co-operation, e.g. information exchange and joint working group, especially on the border control management.

C. ADDITIONAL ISSUES

i. Trafficking Trends around Cambodia and the Region

It is clear that Cambodia is a both source and destination country for human trafficking. The Trafficking in Persons Report 2003 by the US State Department categorized the persons trafficked to and from Cambodia as follows:

- Cambodian men, women, and children who cross into Thailand, often as illegal migrants, are forced into labor or prostitution by traffickers;
- Cambodian children are trafficked into Thailand and Vietnam, and forced to work as street beggars;
- Vietnamese women and girls are trafficked into Cambodia for prostitution;
- Cambodian women and children are trafficked internally for sexual exploitation.

Of course, these are just examples, and the category of victims should not be limited to the list above during the time of research and investigation by the enforcement.

In addition, due to the weak migration management capacity of the country, Cambodia is possibly attracting number of smugglers and traffickers to use their territory as a transit point for easy access to more economically attractive neighbors such as Thailand and Malaysia. In fact, IOM Mission in Phnom Penh assisted the voluntary return of 18 Bangladeshis illegal migrants stranded in Cambodia at the beginning of year 2003. These 18 migrants were caught by the Cambodian authority, while they were trying to cross the border through forest into Thailand. According to the questionnaire taken by the IOM,

the migrants flew from Bangladesh to Cambodia via Thailand and were heading to Malaysia through land for illegal employment. By the assistance and the research conducted by the IOM, it was clear that they were victims of trafficking, using Cambodia as a transit point.

There are also some indications that trafficking of adult men have increased particularly in Cambodia and other surrounding regions. Another project by the IOM was implemented to assist the return and repatriation of Cambodian fishermen stranded in Indonesia. Those fishermen were recruited from various provinces of Cambodia with a promise of high wages. However, they ended up working on a fishing boat for 15 hours a day with small wages. Different from women and children, men are mainly trafficked for the purpose of forced labor and slavery. Due to the high unemployment rate and the low number of well-paid work, men in Cambodia are thus particularly vulnerable to the attractive “job opportunity.”

ii. Trends in the Counter Trafficking Activities

The current trend in counter trafficking activities focuses on the humanitarian approach, i.e. providing protection for trafficked victims. All the components that are presented in this section are considered as a part of essential strategies for the successful counter trafficking measure and also weak points in the Cambodian effort to combat the crime.

Remedy for the Victims

As a part of protection program, it is important to provide remedies for victims of trafficking for some extent. Throughout a trafficking prosecution, the importance of victim’s statement is emphasized in order to achieve successful persecution of traffickers. In fact, it is true that in many countries, law enforcement agents consider statements from trafficked victims as the main testimony against traffickers. As a result, such legal atmosphere lead to the situation in which victims become a tool rather than someone who needs a protection.

Treatment of victims of trafficking has been an issue in many countries, and major part of that is related to providing protection. One of the reasons for that is the high cost. Protection program, often known as a witness protection, is very costly, and not many countries have such a system. However, there are always other means of protection that could be provided at much lower cost, although it requires co-operation of many agencies and enforcement.

One fundamental principle of the witness protection is that the identity of victim shall not be revealed in any way particularly to avoid the re-victimization and the reprisal. As already mentioned, trafficking is a transnational crime that involves many agents and networks. Getting one trafficker doesn’t mean the end of the crime, and many others are still in operation. Revealing the name, face, or any other means of identity of victims opens the door for the repetition of trafficking by those criminal networks. Since identities of victims are not well protected in Cambodia, it encourages the opportunity for traffickers to bribe, threat, or abuse the victims. Therefore, it is often the case that victims drop charges against traffickers (or suspects).

To avoid such problems, enforcement agents, prosecutors and protection lawyers must establish a way that keeps the absolute anonymity of statements of trafficked victims. In some European countries, video communication system was introduced for a real-time video trial that allows victims to give witness without being at the trial court. This system is not only to provide conformity for the victims, but also to protect them from further traumatization by facing the traffickers. It is also encouraged due to easy identity protection. In Cambodia, where financial shortage is always a constant concern, the introduction of video communication system is not a realistic option. Rather, use of tape or video recorded statement should be adopted during the trafficking trial.

Providing compensation is another component that should be included in the protection program. Many victims of trafficking join the trafficking network voluntarily due to extreme poverty, knowing that they are taking risks of exploitation. Many victims, or rather say migrants, have a hope that they will be better off somewhere else. In a village, one success of migration leads to another, and at the end, causes “chain migration.” However, lives of trafficked victims are often miserly. Victims of trafficking are usually one of those migrants who unfortunately fell into a trap of exploitation. Even if they escaped from the exploitative situation, what usually occur to them is not very different from what was before, i.e. the life of the poor, or in many cases, the situation could be even worse. As mentioned in the definition of trafficking, some victims may need to face the abundance from their family, relative, or community. And yet, most of them have to struggle for finding financial support and a job to survive the harsh environment around them.

Therefore, successful protection program should guarantee the various supports from the government throughout the trial period, such as: financial compensation; providing legal support including legal representatives; document support; transport, shelter, and other necessary support in exchange of testimony against suspects. In addition, enforcement officers shall make their effort to recover victims’ wages/salaries for their work, or as a form of financial compensation from the traffickers.

Children as a target population

One of the trafficking trends in Cambodia and the surrounding region is the large number of children exploited. Children are targeted not only for sexual exploitation, but also to work as street beggars, domestic labors or for organ trades. One of the IOM project conducted a research in Svay Rieng Province of Cambodia and stated in their report that children are out numbered adults by 4:1 among the returnees who were sent back to Cambodia by Vietnamese authorities.⁸ These children were not necessarily victims of trafficking, however, many of them had experienced some form of threat, abuse and exploitation. In addition, many of them appeared to cross the border repeatedly.

⁸ IOM Mission in Phnom Penh, “Needs Assessment for Long Term Recovery and Reintegration Assistance to Trafficked Women and Children: Svay Rieng Province, Cambodia”, January 2004

Children are the most vulnerable group to trafficking. Particularly in Cambodia, the cases of trafficked children are widely known. However, the Cambodian legal system to deal with minor victims is considerably poor in spite of the needs. From the legal perspective, children need to be represented by his/her family members or relatives as a guardian, and if there is no such person, a state becomes the guardian of those children by providing shelters, medical support, education, etc. There are many cases of unaccompanied children crossing Cambodian borders, without getting particular attention from the law enforcement officers. At border checkpoints, many of immigration officers offer the same treatment for children with no accompanied person as normal travelers, and they are unable to detect the sign of trafficking crimes. Those children are highly likely to be victims of trafficking and therefore, special attention should be made by the authority if they encounter such cases.

Moreover, enforcement agencies must work closely with the other sector of the government and NGOs to provide a foster care in case that a child is identified as an orphan. Means to identify their age, the origin (home address), and their family must be developed as a part of legal procedure among the enforcement, considering the case that those children have no document or any other means of identification. In addition, physical and psychological support as well as medical assistance should be provided at all stages of this process. And yet, while the government needs to establish procedures quickly for cases of children, the assistance measures should be left on the hands of well-trained professionals and social workers.

Legislative effort should also be made to develop a special provision for children among the Cambodian criminal justice system. Successfully introduced international conventions such as the Convention for the Rights of the Child and its optional protocols have resulted a number of convictions on sexual exploitation cases in the country. It is good news for ones working to abolish the trafficking crimes since some of the children of those cases were identified as victims of trafficking. However, under the current Cambodian system, legal components to grant and protect the rights of children are very few. Due to the fact that children can easily become a target for abuses and exploitations, establishing a strong legal ground for the protection is imminent agenda for the Government of Cambodia. The absence of such provisions may cause a treatment of children without considering the best interest of a child. Furthermore, a common legal definition of age as a minor should be developed among the Cambodian Laws, which will set the minimum age for criminal responsibility, as well as to help granting separate justice system for children with a physical and psychological assistance and counseling. Children have different needs from adults. To meet with those needs, Cambodia should develop a solid environment to protect them properly.

Return Program

One of the many measures lacking in the Cambodian effort to counter trafficking is an appropriate return program for the victims. Cambodia is especially complex in this issue because it is at the same time a country of origin, destination and transit for trafficking networks. Yet the establishment of solid return program is necessary to protect those who are suffering from endless loop of victimization and exploitation.

In general principle, everyone has a right to leave any country, including his own, and to return to his country, as stated in Article 13 of the Universal Declaration of Human Rights as well as in Article 33 of the Cambodian Constitution. Victims of trafficking are not exception from this provision. However, the problem is that simply returning to the place of origin contains the danger of re-trafficking for those victims without a proper protection. Therefore, the best practices of counter trafficking program pay a great deal of attention on the return program for the victims.

The assisted return program is practiced in worldwide, and many governments are taking advantage of the experts such as the International Organization for Migration (IOM) in this matter. On the other hand, such consideration hasn't been noted by any enforcement agencies in Cambodian system except by a few concerned ministries. And yet, many of victims are likely to be treated as illegal immigrants and thus in jeopardy of being deported without any support. Cambodia should add the provision of assisted returns to its legal framework, while they should seek the coordination with international organizations and NGOs to gain expertise and support from them in establishing such program.

In addition, from the counter trafficking perspective, it is important that the voluntary return must be granted on a case-by-case basis in order to avoid the abuse of the rights of migrants. Current condition of the Cambodian practice to grant return or to deport does not always guarantee the case-by-case consideration. Some of the enforcement officers noted informally that interviews for illegal migrants are always conducted individually, but the consideration for the further treatment (either to deport, detain, or grant the return) is sometimes made in a group basis for those who are found in a same situation. Such practice must be avoided for further abuse of individual human rights.

Furthermore, the components of assistance and counseling should not be forgotten as a part of return program, especially if the Government is dealing with victims of trafficking. Assistance and support should be offered at all stages of their return process in order to assure their safety and return to the final destination. Adopting the return program is not a complicated process if funding is available. Yet the option of voluntary return is one of the internationally recognized rights for every migrant, and it should be granted from the humanitarian perspective as well.

Reintegration/Protection Program

In many counter trafficking programs, the reintegration of victims is included as a part of safe return program. The practicality of combining these two matters is understandable in terms of efficiency to implement them. However, Cambodia's status in the trafficking network as country of destination, origin, and transit suggests delinking the return and reintegration programs. The purpose for the delinking is to: provide more care and assistance for victims of foreign nationals as a country of destination under trafficking network; establish an exclusive reintegration program for the returnees as a country of origin; give equal treatment for the returnees coming back through different programs and countries. The reasoning behind this separation becomes clearer by emphasizing that

the return program mostly deals with foreign nationals, governments and carrier agencies, while the reintegration deals with Cambodian Nationals only. By doing so, both return and reintegration programs will be strengthened in detail. Especially the latter program, the agency that deals with the program will gain more focus and be able to provide services and support that match the needs and the realities of victims.

Information Campaign

Information campaign as a counter trafficking measure has two aspects: awareness raising of the rights of trafficking victims and the role of enforcement. First, the awareness raising for the trafficking victims should be placed under a part of protection program. It is often the case that trafficking victims commit either: illegal border crossing; obtaining forged travel documents; or illegal employment. Therefore, they are often afraid of being punished for those crimes and even more so that traffickers use those fears against them. The information campaign on the legal rights of trafficking victims (that they won't be punished) and the protection program will encourage victims to report their cases to the authority. And yet, another aspect of the information campaign e.g. awareness raising among enforcement agents on the trafficking issue must be achieved in advance in order to gain successful result from this program. Among the Cambodian law enforcement, the level of awareness on the rights of trafficked victims and the legal procedures to deal with the trafficking case is very low as mentioned in many sections of this paper. Although victims are aware of their rights and seeking support and protection from the police, the reaction from them won't be helpful one without a proper knowledge and procedure among those frontline officers. For that, the government of Cambodia should adopt the training and guideline to deal with trafficking cases with a particular attention to the protection and the rights of trafficking victims.

Prevention Measures

Prevention program is also an effective approach to combat the crime. Currently in Cambodia, the Ministry of Women's and Veterans' Affairs (MOWVA) and the Ministry of Social Affairs, Labor, Vocational Training and Youth Rehabilitation (MOSALVY) have worked extensively on this process, co-operating with NGOs and International Organizations. Most of their activities, based on the strategic working plan to combat trafficking of MOWVA, focus to tackle the root causes of the crime such as information campaign for the potential victims, education program, employment support and income generation, participation of women and children to their counter activities, and the advocacy program.

While these activities listed above should be named as defensive, there is an aggressive approach that Cambodia should adopt or be aware of within its legal framework. Major part of this approach is to strengthen the legal system of the country, as mentioned throughout of this paper. Solid legal system and the effective enforcement are the definite threat for traffickers. High conviction rate and the severe punishment on trafficking related crimes should scare the potential criminals passing through Cambodia. The establishment of an effective border control is also a part of this "pre-entry" approach.

Another approach, although it is widely known internationally but not yet adopted in Cambodia, is carrier's sanction. This method gives a carrier (transporting company such as airline) to be responsible for any illegal entry to the country by their company. In other words, if an airline brought illegal immigrants, the company will be charged for the illegal entry of the person, and in some cases, responsible for the person's return. This method certainly makes carriers to develop a solid screening process at pre-entry point in order to detect traffickers and victims who do not possess proper travel documents or any other persons who do not satisfy the immigration requirement of the country of destination. However, it is important to note that when adopting the provisions of carrier's sanction such as ICAO's Convention for the Unification of Certain Rules Relating to International Carriage by Air (1929) and the Chicago Convention on International Civil Aviation (1944), carrier's responsibility must be limited within those legal components. In some cases, the "carrier's sanction" approach is criticized when airline employees exceeded their legal responsibilities by playing a role of immigration. Possible human rights abuses such as denial of asylum or the deportation of trafficking victims could occur beyond the authority of a government.

Recommendations

As the crime of trafficking has a complicated structure, the counter trafficking measure should recognize its characteristics that are particular to the country and surrounding region. In that sense, the Cambodian Government needs to develop a research function as a part of counter effort.

Moreover, adaptation of the world best practices of counter trafficking activities should also pay careful attentions to the needs of Cambodia as well as to its social, cultural and political contexts of the country. Specifically, the Cambodian counter measure lacks the humanitarian approach, i.e. the protection of victim's rights. Therefore, the country needs to:

- Establish ways to protect identities of trafficked victims at any stage;
- Develop the assistance programs for trafficked victims by providing various supports such as financial compensations, physical and psychological assistances, and legal and social assistances;
- Create special provisions for children in its legal framework and practice;
- Develop a return program for migrants (either legal or illegal) in its legal framework, with a particular attention to the safety issue in case to deal with trafficked victims, refugees and asylum seekers;
- Raise awareness among the law enforcement agencies, trafficked victims and vulnerable population to the trafficking crimes on the legal rights of trafficked persons and the assistance offered, as well as on the legal procedure to deal with the crime and its victims;
- Strengthen the "pre-entry" approach to avoid the crime, e.g. adoption of carrier's sanction.

V. CONCLUSION

Due to its low standard of governmental functions and the extreme poverty in the country, Cambodia have drawn all kinds of criminal activities into the country, which include slavery, forced labor, and smuggling and trafficking of drugs, weapons and human beings. Especially the issue of human trafficking has become well known in Cambodia due to its cruelty and consequence of the crime, and has attracted a flood of projects and operations to counter the crime. However, such overwhelming effort to solve the problem has made a little impact due to lack of co-operation and collaboration among the implementing organizations and agencies. In addition, there are many overlaps and conflicts of interest among them, with little knowledge of each other's work as is the case among the governmental agencies and institutions of Cambodia as well. Lack of coordination in the Cambodian governmental agencies and ministries are addressed in various sections of this paper. Those issues can easily allow traffickers and other criminals to take an advantage of the weak areas of the system.

There is also a constant international pressure to take collective action to combat trafficking. It is in fact, important to make collaborative regional and international effort to deal with the transnational crimes such as trafficking and smuggling. However, most of UN conventions, regional/bi-lateral agreement signed by Cambodia do not always guarantee that the country makes the effort to solve the issues addressed by signed treaties. One significant example is that Cambodia is the only signatory state of the 1951 Refugee Convention in Southeast Asia and yet the country has no law or legislation that addresses asylum/refugee issues. Further, there are number of "unacceptable practices" reported by human rights organizations and other NGOs, especially among the judiciary and the law enforcement in the country. One of priorities of the Cambodian Government's agenda to improve their civil system is to make sure that the public sector exercises its power properly.

The challenges that Cambodia is facing to combat trafficking in persons require enormous effort. It is important to keep in mind that there is no single solution that could change the current legislation to combat trafficking more effectively. In addition, no matter how well the counter trafficking measure was designed, collaboration of various efforts must be sought, especially the ways to implement existing legal instruments properly. The importance of counter trafficking measure is to provide a constant review and monitoring on the implementation and practice of the counter effort as well as on the legislation, in order to offer effective and up-to-date activities. Therefore, the review of the Cambodian counter trafficking measures through this paper had taken various areas into its analysis and revealed that the issues are found in many areas from ministerial structures to daily practice of laws. Even though the effort to solve these issues will be time consuming and require serious commitment from the Government of Cambodia, IOs and NGOs, it must be addressed widely and implemented effectively to tackle the crime and to protect victims.

Besides the issues and recommendations that are presented in the context of this paper, another conclusion should be drawn from one of the objectives against the Cambodian

practice of legislations. It has been clear that the legal framework of this country, either around the counter trafficking measures or in general laws, is fairly weak and incoherent. Despite of the large number of legislations that have been introduced in the country since 1992 and the long history of trafficking as a crime in this region, adoption of the counter trafficking effort into legislation and legal practice has started recently in many countries not exception of Cambodia. However, the counter trafficking effort of Cambodia through legal approach has overwhelmed the existing institutions and enforcement officers that are poor in capacity to implement those changes. Further, the government of Cambodia, due to high international political pressure and financial needs of the country, has accepted a series of international instruments and modern laws with or without a support of donor agencies. As a result, these instruments are existent but put a side of power game in the government. Detail of these laws and treaties are mostly unknown among the law enforcement officers, even among some of the legal experts, which is the major reason for unacceptable practices in their daily duties.

As mentioned repeatedly in this paper, the problem of Cambodia is not the lack of legislations (though many government officials insist that they need more laws) but the capacity to implement them. Tendency to create more laws are encouraged by the various donor activities. Thus under such environment, when there is an issue, the solution is to draft a new law or legislation without reviewing the existing ones. A good example is shown in the Finding section that there are many useful conventions and treaties that have ratified in last ten years, waiting to be followed up by the Cambodian Government. Cambodia needs a better mechanism to implement the ratified international instruments and the domestic laws, and the Cambodia's effort to fulfill the obligations that are stated in those instruments must be supported by international community.

Trafficking in persons is a serious crime and it violates many aspects of human rights. The crime is cruel, and a great danger to the society. Moreover, cultural and social atmosphere of the country toward the trafficked victims, especially against the ones involved in a sex industry, is discriminatory. From the perspective of trafficked victims, although the Government of Cambodia is working hard to fight against the crime, current condition of their effort and the legal system are more likely to make further abuses and re-victimization. And yet, many of recommendations that are produced as a result of this paper are depending on the political condition of the Government. It is important that the Cambodian Government will make a strong commitment to improve their ability to abolish the crime.

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ANNEXES

A. LIST OF REFERENCES

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B. CAMBODIAN LEGAL TERMS

Kram (law): Designates either the promulgated Law and the Act of Promulgation of a Law by the King. Kram is signed by the King or, in His absence, by the acting Chief of State; countersigned by the Prime minister and the interested Minister.

Kret (Decree): Highest Norm that may be enacted by the Executive Power, within the framework of its Regulatory Power. Signed by the King or, in His absence, by the acting Chief of State; generally countersigned by the Prime Minister and the interested Minister.

Anukret (Sub-Decree): Regulation adopted by the Prime Minister and countersigned by the interested Minister.

Prakas (Regulation): Regulation adopted by a Minister (or the Governor of the National Bank for Banking Issues).

Sarachor (Circular): Ministerial implementing measure.